

NO. CV 105014984S	:	SUPERIOR COURT
	:	
KIMBERLY ALBRIGHT-LAZZARI, ET AL.	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
	:	
COLLEEN MURPHY, CONNECTICUT FREEDOM OF INFORMATION COMMISSION, ET AL.	:	APRIL 21, 2011

**MEMORANDUM OF DECISION**

The plaintiffs, Kimberly Albright-Lazzari and Anthony Lazzari, appeal from a November 18, 2009 final decision of the freedom of information commission (FOIC) dismissing a complaint brought by the plaintiffs against the mayor of the town of Wallingford (the mayor).<sup>1</sup>

The record shows as follows. The plaintiffs complained to the FOIC in a December 29, 2008 letter. After a hearing on the complaint on May 18, 2009, a hearing officer for the FOIC wrote a proposed decision dismissing the complaint of the plaintiffs. At this hearing, the plaintiff, Mr. Lazzari, testified and the mayor's attorney introduced exhibits. Both parties made an oral argument. After a meeting of the FOIC, on November 18, 2009, a final decision was issued. It provided in part as follows:

---

<sup>1</sup>  
As the complaint was dismissed by the FOIC, the plaintiffs are aggrieved for purposes of § 4-183 (a).

SUPERIOR COURT  
2011 APR 21 P 2:01  
FILED

\* \* \*

2. By letter dated December 29, 2008 and filed with the Commission on January 2, 2009, the complainants [now the plaintiffs] appealed to the Commission, alleging that the respondent violated the Freedom of Information (hereinafter "FOI") Act by denying their request for information described in paragraph 3, below. The complainants requested the imposition of civil penalties against the respondent [mayor].
  
3. It is found that by letter dated December 17, 2009 (2008), the complainants requested from the respondent the following information, subsequent to requesting related information from the Wallingford Health Department, Assessor's Office, and Tax Assessors Office:
  - a. "[T]he name of the owner(s) of the following Subways:"
    - i. "Walid Subway, LLC-844 North Colony Rd. Wallingford, CT 06492;"
    - ii. "M.N.K. Subway, LLC-1046 North Colony Rd. Wallingford, CT 06492;"
  
  - b. [A]ny/all records, files, documents, deeds, certificates, bill of sale, agreements, and papers related to and associated with my request as may be maintained in your files;" and
  
  - c. [I]nformation as to any transfers or selling of these two businesses owned by Mr. Mohammed Kohsar in the year 2008."(Hereinafter "the requested records")
  
4. It is found that, by letter dated December 22, 2008, the respondent [Mayor] replied to the complainants' December 17, 2008 request described in paragraph 3, above, by stating that "[t]he Town of Wallingford is not required to research the ownership of a particular business for [the complainants] or conduct a title search." The respondent

also attached property cards for two properties he believed were responsive to the complainants' request described in paragraph 3, above. The respondent further stated that it was "unaware of any other records relating to" such businesses and advised the complainants to search Connecticut's Secretary of State's website for such related information.

\* \* \*

8. It is found that to the extent the respondent maintains the requested records, such records are public records within the meaning of §§ 1-200(5), 1-210(a), and 1-211(a), G.S.
9. At the hearing on this matter, the complainants contended that the respondent failed to provide them with the names of the owners related to their request described in paragraph 3a, above. The complainants also contended that the property cards provided to the complainants as an attachment to the respondent's December 22, 2008 letter described in paragraph 4, above, are not responsive to their requests. The complainants further contended that such property cards pertain to Walmart, a 'completely different entity' that leases an area within its department store, to one of the Subway stores at issue in this matter. Additionally, the complainants contended that they sent their December 17, 2008 requests to the respondent Mayor because all departments of the Town of Wallingford are accountable to the Mayor's office.
10. As to the questions asked by the complainants in their request described in paragraph 3a, above, it is concluded that the respondent is not required under the FOI Act to create documents it does not already have, in order to answer the questions asked by the complainants. The FOI Act gives every person the right to request and access records that exist. It is therefore, concluded that the respondent did not violate the FOI Act as alleged in the

complaint with respect to the questions asked by the complainants.

11. With respect to the complainants' request as described in paragraphs 3b and 3c, above, it is found that the respondent has provided the complainants with copies of the records "maintained or kept on file" by the respondent, which records are the only ones existing in the respondent's files, that are responsive to the complainants' December 17, 2008 requests for information described in such paragraphs.
12. It is concluded that, pursuant to §§ 1-210(a), G.S., the responsibility to provide copies of the requested records to the complainants rests with the individual Town of Wallingford agency that maintains and has custody of any portion of the requested records. See James A. Lash, First Selectman of the Town of Greenwich, et al. v Freedom of Information Commission et al., 116 Conn. App. 171, 188 (2009) (reversing the trial court's decision by concluding that "one public agency may not be held responsible for disclosing the public records in the custody of another public agency"). In addition, the Commission takes administrative notice of the final decision in contested case Chikara v. Governor, State of Connecticut, Docket #FIC 1996-556 (concluding that the responsibility to provide copies of the records rest with the individual agency which maintains and has custody of any portion of the requested records).
13. Accordingly, it is concluded that the respondent did not violate § 1-210(a), G.S., with respect to the records described in paragraphs 3b and 3c, above.
14. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondent.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed. (Return of Record, ROR, pp. 92-96).

The plaintiffs timely filed an administrative appeal and make three claims: (1) The FOIC erred as the mayor, as chief executive of the town, had a duty under § 1-210 (a) to produce all records maintained by the town, (2) The FOIC hearing was flawed and unfair, and (3) The FOIC erred in not assessing a civil penalty against the mayor under § 1-206 (b) (2).

The court must decide “in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, or illegally, or abused its discretion.” *Lewin v. Freedom of Information Commission*, 91 Conn. App. 521, 525, 881 A.2d 519, cert. denied, 276 Conn. 921, 888 A.2d 88 (2005). To the extent that the court is being asked to construe a portion of the FOIA, “[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous

and does not yield absurd or unworkable results, extratextual evidence of the meaning of a statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.” (Citations omitted.) *Fairchild Heights, Inc. v. Armario*, 293 Conn. 1, 8-9, 976 A.2d 668 (2009).

The court must adopt a construction that makes a statute effective and workable. See *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 157, 788 A.2d 1158 (2002). “The law favors a rational statutory construction and we presume that the legislature intended a sensible result.” *Wiele v. Board of Assessment Appeals*, 119 Conn. App. 544, 551-52, 988 A.2d 889 (2010).

The plaintiffs’ first argument is that the FOIC applied § 1-210 (a) too narrowly, in finding that the mayor satisfied his duty to disclose. The FOIC found in Finding 4 that the mayor had responded by a letter to the plaintiffs attaching property cards and stating that he had no further information in his custody.<sup>2</sup> He also made the suggestion that the plaintiffs obtain the information that they were seeking by contacting the Secretary of the State. Plainly, the FOIC found that the mayor had discharged his function to make a diligent search of the records that he “maintained.”

---

<sup>2</sup>

The letter is set forth at ROR, p. 56.

Section 1-210 (a) requires the disclosure of “all records maintained or kept on file by any public agency. . . .” and these records are to be “maintain[ed] . . . in its custody at its regular office or place of business in an accessible place.” In interpreting this statute, the Appellate Court reversed a FOIC decision holding that the first selectman was “ultimately responsible for all freedom of information requests to any agency of the town . . . over which he has supervision and control.” To the contrary, like the governor who is ultimately responsible for every state agency, the first selectman did not have custody of the records of each department of the town in question. See *Lash v. Freedom of Information Commission*, 116 Conn. App. 171, 188, 976 A.2d 739 (2009), reversed in part on other grounds, 300 Conn. 511, \_\_\_ A.3d \_\_\_ (2011).

The court, in construing the meaning of § 1-210 (a), is bound by the precedent of *Lash*. The plaintiffs requested materials of the mayor<sup>3</sup> and as found by the FOIC, he supplied the documents that he located that he maintained. Therefore the FOIC did not err in concluding that the plaintiffs were not denied access to records as required by §§ 1-206 (a) and 1-210 (a). The FOIC also did not err in its conclusion that once the mayor produced the documents that he maintained, he had no further duty to answer questions about or create documents that he did not “maintain.” See *Book v. Freedom of*

---

3

The plaintiffs specifically directed their letter to the mayor. (ROR, p. 23).

*Information Commission*, Superior Court, judicial district of Hartford, Docket No. 96 0566436 (January 28, 1998, *McWeeny, J.*).

The plaintiffs further complain that the FOIC did not consider their evidence and reached an unfair decision. Our Supreme Court has stated the following regarding administrative hearings: “The applicable due process standards for disqualification of administrative adjudicators do not rise to the heights of those prescribed for judicial disqualification. . . . The mere appearance of bias that might disqualify a judge will not disqualify an arbitrator. . . . Moreover, there is a presumption that administrative board members acting in an adjudicative capacity are not biased. . . . To overcome the presumption, the plaintiff . . . must demonstrate actual bias, rather than mere potential bias, of the board members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable. . . . The plaintiff has the burden of establishing a disqualifying interest.” (Citation omitted.) *Moraski v. Connecticut Board of Examiners of Embalmers & Funeral Directors*, 291 Conn. 242, 262, 967 A.2d 1199(2009). In addition, the plaintiff must raise the claim of denial of due process “at the first opportunity after discovery of the facts tending to prove disqualification.” (Citation omitted.) *Id.*

The plaintiffs here allege unfairness. But they had a hearing before an officer of the FOIC, were able to testify and introduce documents, and presented their position in



writing to the full FOIC as well. They never expressed any objection to the FOIC's procedures prior to the present appeal in this court. They make three charges of unfairness. (1) the transcript of the hearing was inaccurate. The court has reviewed the alleged inaccuracies and even if the plaintiffs are correct, these alleged errors are not significant. (2) the mayor did not appear at the hearing, only his town attorney, and therefore cross-examination was limited. On the other hand, the plaintiffs had available through the FOIC the ability to compel witness attendance, or at least call the situation to the attention of the hearing officer. (3) The FOIC departed from its mandate of full disclosure in denying the plaintiffs' relief. The FOIC, however, cannot order a remedy unless it is permitted by its act and § 1-210 (a) disallowed the sought relief in this case.

Finally the plaintiffs dispute the lack of a civil penalty. The FOIC has the discretion to assess such penalties and in light of the findings of fact, the decision not to penalize the mayor was appropriate. See *Board of Selectmen v. Freedom of Information Commission*, 294 Conn. 438, 452-53, 984 A.2d 748 (2010).

Therefore, as the FOIC has not acted arbitrarily, illegally or in abuse of its discretion, the appeal is dismissed.



---

Henry S. Cohn, Judge