DOCKET NO. HHB-CV-13-6021690S	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF
	:	NEW BRITAIN
FIRST SELECTMAN, TOWN OF TRUMBULL ET AL.	:	
Plaintiff	:	
	:	
v.	:	AT NEW BRITAIN
	:	
FREEDOM OF INFORMATION COMMISSION ET AL.	:	
Defendant	:	MAY 16, 2014

MEMORANDUM OF DECISION

This is an administrative appeal brought by the town of Trumbull and certain of its officials (collectively, Trumbull) challenging a decision by the Freedom of Information Commission (commission) ordering the disclosure of the names and addresses of the property owners in Trumbull that are connected to Trumbull's sanitary sewer system. The principal issue in this appeal is whether the names and addresses of these owners are exempt from disclosure because the record of the names and addresses constitutes a "customer list" that falls within the definition of a trade secret, as defined by General Statutes § 1-210 (b) (5) (A). For the reasons set forth below, this court concludes that the commission applied an improper construction of the definition of "customer list" and failed to consider requisite statutory factors in determining that the requested record did not contain trade secrets. Accordingly, the commission's decision is reversed in part, affirmed in part, and remanded for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

The record reveals the following facts and procedural history. The defendant, Bridgeport Water Pollution Control Authority (Bridgeport WPCA), was created by the city of Bridgeport,

pursuant to General Statutes § 7-246, to collect and treat wastewater generated by properties located in the city. In 1997, the Bridgeport WPCA entered into an agreement with the town of Trumbull to treat wastewater generated by approximately 9,600 properties in Trumbull that are connected to Trumbull's sanitary sewer system. Trumbull does not have its own wastewater treatment plant.

Pursuant to the agreement, Trumbull paid a user fee to the Bridgeport WPCA for providing it these wastewater treatment services. On May 2, 2012, the Bridgeport WPCA sent a letter to Trumbull officials that it intended to terminate the agreement effective June 30, 2012, and to negotiate a new agreement in its place. Trumbull objected to the Bridgeport WPCA's plans, and the contractual dispute is being arbitrated.

On June 28, 2012, the Bridgeport WPCA filed a written freedom of information request with the town of Trumbull seeking the disclosure of the names and addresses of all Trumbull property owners that use Trumbull's sanitary sewer system. The Bridgeport WPCA sought this information so that it may directly bill Trumbull property owners for providing wastewater treatment services.[1]

By failing to respond to the request within four business days, Trumbull constructively denied the request on or about July 5, 2012. The Bridgeport WPCA then filed a timely complaint with the commission.

[1] It is well-established that "whether records are disclosable under the [freedom of information act] does not depend in any way on the status or motive of the applicant for disclosure, because the act vindicates the public's right to know, rather than the right of any individual." *Chief of Police* v. *Freedom of Information Commission*, 252 Conn. 377, 387, 746 A.2d 1264 (2000). These facts are significant, however, because they shed light on the proper characterization of the records at issue, specifically, whether the records of the names and addresses of Trumbull residents are a "customer list" within the meaning of the act.

On February 21, 2013, the commission held an adjudicatory hearing on the complaint. At the hearing, the Bridgeport WPCA clarified its request by stating that it was seeking only a list of the names and addresses of Trumbull residents and businesses that use the wastewater collection system in Trumbull, which ultimately connects with the wastewater treatment system operated by the Bridgeport WPCA. At the hearing, Trumbull asserted that the records were exempt from disclosure pursuant to General Statutes §§ 1-210 (b) (2) (personnel or medical files the disclosure of which would constitute an invasion of personal privacy), 1-210 (b) (4) (records pertaining to strategy or negotiation with respect to pending claims or pending litigation), 1-210 (b) (5) (A) (trade secrets), and 1-217 (residential addresses of certain public officials and employees).

On May 8, 2013, the commission issued a final decision concluding that the list of the names and addresses was not exempt from disclosure under any of the claimed exemptions. The Trumbull officials, who are aggrieved by the order of the commission requiring disclosure, then filed this timely administrative appeal pursuant to General Statutes §§ 4-183 and 1-206.

ANALYSIS

Trumbull brings this appeal pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. "It is well established that [j]udicial review of [an administrative agency's] action is governed by the [UAPA] . . . and the scope of that review is very restricted. . . . With regard to questions of fact, it is neither the function of the trial court nor of [an appellate court] to retry the case or to substitute its judgment for that of the administrative agency. . . ." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010). "[This court's] review of an agency's factual determination is constrained by General Statutes § 4-183 (j), which

mandates that a court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . . . This limited standard of review dictates that, with regard to questions of fact, it is neither the function of the trial court nor of [an appellate court] to retry the case or to substitute its judgment for that of the administrative agency. . . . An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole. . . . Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review. . . . The burden is on the [plaintiff] to demonstrate that the [agency's] factual conclusions were not supported by the weight of substantial evidence on the whole record." (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, 266 Conn. 492, 503–504, 832 A.2d 660 (2003).

"Even for conclusions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . [Thus,] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its

discretion. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . [T]herefore . . . the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Citation omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 281–83, 77 A.3d 121 (2013).

On appeal, Trumbull raises two claims. First, Trumbull asserts that the commission improperly concluded that Trumbull had failed to establish, pursuant to General Statutes § 1-210 (b) (4), that the names and addresses were exempt from disclosure because they are "records pertaining to strategy and negotiations with respect to pending claims or pending litigations to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled." Second, Trumbull argues that the commission improperly concluded that Trumbull failed to establish, pursuant to General Statutes § 1-210 (b) (5) (A), that the names and addresses are exempt from disclosure because they constitute a customer list that is protected as a trade secret. The court will address each of these claims in turn.

A. Strategy with respect to pending claims or litigation

Trumbull contends that the commission improperly concluded that the electronic database of the names and addresses of customers who are connected to the Trumbull sanitary sewer system are not exempt from disclosure, pursuant to General Statutes § 1-210 (b) (4), as "records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled." Trumbull cannot prevail on this claim.

It is true that the names and addresses of property owners connected to the Trumbull sanitary sewer system are at the heart of the legal dispute, currently being arbitrated, between Trumbull and the Bridgeport WPCA. In fact, Trumbull is justifiably concerned that the disclosure of these records will allow the Bridgeport WPCA to proceed with its attempts, rightly or wrongly, to directly bill the owners of property in Trumbull that enjoy the use of the sanitary sewer system.

That reality, however, does not transform the names and addresses into records of either strategy or negotiations with respect to that legal dispute. In construing this statutory exemption, our Supreme Court has stated that "[s]trategy is defined as the art of *devising or employing plans or stratagems*. . . . Negotiation is defined as the action or process of negotiating, and negotiate is variously defined as: to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something; to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meetings or agreements or compromises; and to influence successfully in a desired way by discussions and agreements or compromises." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Stamford* v. *Freedom of Information Commission*, 241 Conn. 310, 318, 696 A.2d 321 (1997).

Trumbull's maintenance of a list of names and addresses of customers neither reflect the devising of plans or stratagems for their dispute with the Bridgeport WPCA nor an attempt to negotiate or compromise any claims between the parties. Indeed, the evidence in the record reflects that this list was maintained by Trumbull long before any pending claim or litigation arose. Instead, the names and addresses have been maintained in order for Trumbull to collect user fees from the owners of those properties that are connected to its sanitary sewer system.

Finally, Trumbull's assertion that the records pertain to strategy or negotiation with respect to a pending claim or litigation is directly contradicted by its concomitant assertion that the same records are a customer list that qualifies as a trade secret. A customer list has an essentially different purpose than a record that discloses strategy or negotiation with respect to a pending claim or litigation. Accordingly, this claim is without merit.

B. Trade Secret

Trumbull also contends that the record is exempt from disclosure pursuant to General Statutes § 1-210 (b) (5) (A). Section 1-210 (b) provides in relevant part: "Nothing in the Freedom of Information Act shall be construed to require disclosure of . . . (5) (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including . . . customer lists . . . that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy . . . ."

The commission concluded that the list of names and addresses of the Trumbull property owners connected to Trumbull's sanitary sewer system is not a customer list within the meaning of the freedom of information act. In reaching that conclusion, the commission defined a "customer list" as a "list of buyers from a company that a company maintains in order to continue the business relationship and promote customer loyalty." The only authority that the commission relied upon in defining "customer list" was an internet financial dictionary. See http://financial-dictionary.thefreedictionary.com.

The commission then applied this definition to the underlying facts and concluded that list of names and addresses maintained by Trumbull are not a customer list within the meaning of

§ 1-210 (b) (5) (A), stating: "It is found that Trumbull purchases the wastewater services of [the Bridgeport] WPCA and so is a customer of the [Bridgeport] WPCA, and it is found that the Trumbull property owners that use the [Bridgeport] WPCA are, through Trumbull, also customers of the [Bridgeport] WPCA. It is found, however, that the Trumbull users of the [Bridgeport] WPCA are property owners in and governed by Trumbull, but they are not customers of Trumbull. It is further found that Trumbull does not maintain the list of WPCA users in order to promote loyalty to the town's services, especially in light of the fact that the town itself is unable to provide wastewater services to such properties. It is found that the [Bridgeport] WPCA and Trumbull are not competitors with respect to wastewater service; indeed, the [Bridgeport] WPCA provides a service that the respondents are unable to provide themselves."

Trumbull attacks on both legal and factual grounds the commission's conclusions that the list of names and addresses is not a "customer list" maintained by Trumbull, and that the list of names and addresses did not contain exempted trade secrets. The court agrees with Trumbull that the commission applied an improper definition of the phrase "customer list," and, more importantly, concludes that the commission improperly determined that the requested records "do not contain trade secrets within the meaning of § 1-210 (b) (5) (A)" solely on the basis of the commission's finding that the requested records did not constitute a "customer list" rather than on the basis of analysis of the statutory factors set forth in § 1-210 (b) (5) (A) (i) and (ii). The commission improperly adopted, without any analysis, a definition of the statutory phrase "customer list" from an internet business dictionary. Arriving upon the proper definition of the phrase "customer list," however, requires statutory construction. As our Supreme Court has repeatedly held, "[w]hen construing a statute, [o]ur fundamental objective is to ascertain and

give effect to the apparent intent of the legislature. . . . 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 the 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. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, supra, 310 Conn. 283.

The act does not itself define "customer list." If a term is not sufficiently defined within a statute or regulation, "it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Groton* v. *Mardie Lane Homes, LLC*, 286 Conn. 280, 288, 943 A.2d 449 (2008). The dictionary defines "customer" as "one that purchases a commodity or service," and defines "list" as a "simple series of words or numerals." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003). Thus, taking the phrase at its simplest meaning, a "customer list" would appear to mean a compilation, maintained by a seller of a service or product, of individuals or entities that have purchased that service or product. The definition of the phrase "customer list" imposed by the commission imports an added notion of business loyalty that is not suggested by the plain meaning of the words employed by the legislature. Moreover, such a definition is far too narrow in the context of governmental entities,

particulary with reference to the commission's conclusion that such a list must be created in order to maintain loyalty to the town's services.[2]

After finding on the basis of an erroneous definition that the list of names and addresses was not a customer list, the commission next concluded, without any additional findings or analysis, that the list of names and addresses do not contain trade secrets. This conclusion, however, is not supported by the necessary analysis dictated by General Statutes § 1-210 (b) (5) (A). "A customer list is not a distinct category, but a description of a type of 'information' that can be a trade secret. See General Statutes § 1–210 (b) (5) (A)." *University of Connecticut* v. *Freedom of Information Commission*, 303 Conn. 724, 732, 36 A.3d 663, 667 (2012). Accordingly, whether the requested record properly is characterized as a customer list is not, in and of itself, dispositive of whether that record contains trade secrets. For purposes of the trade secret exemption, the commission was required to determine whether the record contains information that "(i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy." The commission did not make any

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[2]Connecticut case law is quite sparse on the meaning of the phrase "customer list." In *University of Connecticut* v. *Freedom of Information Commission*, HHBCV094021320S, 2010 WL 2106972 (Apr. 21, 2010), aff'd, 303 Conn. 724, 36 A.3d 663 (2012), a trial court reversed a decision of the commission in which the commission had concluded, inter alia, that a database containing the names and addresses of season ticket purchasers for university sporting events was not a customer list because the university was not in the business of providing athletic events for profit and the sporting events were incidental to its primary governmental function of education. In reversing the commission's decision, the trial court held that, like for-profit private sector companies, governmental entities sell goods and services, and persons who purchase those goods and services from a governmental entity are customers of that entity for purposes of trade secret customer list analysis. Accordingly, the commission should have consider whether in billing property owners for wastewater treatment provided by the Bridgeport WPCA, Trumbull also received payment for goods and services provided by Trumbull, such as for the upkeep of Trumbull's own wastewater infrastructure.

such findings in support of its determination that the list of names and addresses did not contain trade secrets. Rather, the commission reached its conclusion on the trade secret exemption wholly on the basis of its determination that the record was not a customer list. Because the commission's decision that the requested records were not exempt from disclosure as trade secrets was not made on the basis of a correct application of the law to the facts found, the commission's decision cannot stand, and the matter must be remanded for further proceedings on that issue.

CONCLUSION

For the reasons set forth above, the court concludes that the decision of the agency must be reversed as to its conclusion that the requested records are not exempt from disclosure as trade secrets and the matter remanded to the commission for further consideration of that issue in accordance with this opinion. The decision of the agency is otherwise affirmed. Judgment shall enter accordingly.

Hon. Eliot D. Prescott