

NO. HHB CV14-5016057S : STATE OF CONNECTICUT  
 DAVID GODBOUT : SUPERIOR COURT  
 v. : JUDICIAL DISTRICT OF NEW BRITAIN  
 FREEDOM OF INFORMATION :  
 COMMISSION : JUNE 18, 2015

OFFICE OF THE CLERK  
 SUPERIOR COURT  
 2015 JUN 18 AM 11:06  
 JUDICIAL DISTRICT OF  
 NEW BRITAIN

**Memorandum of Decision**

The plaintiff, David Godbout, applies for an order pursuant to General Statutes § 4-183 (b) (2) requiring the defendant state freedom of information commission (commission) to hold a hearing on his complaint. As discussed below, the court denies the request.

I

The court finds the following facts from the record submitted by the commission.<sup>1</sup> On June 26, 2013, the plaintiff presented argument to the commission in his appeal in the case of *Godbout v. Gayle Weinstein, First Selectman, Town of Weston, et al.* (Docket # FIC 2012-376). The commission voted unanimously to dismiss the plaintiff's appeal on the merits. The commission also took action on twelve other matters that day in which the plaintiff was not a party. (Return of Record (ROR), pp. 111-19, 124-28.)

Instead of appealing the decision in his case, the plaintiff, on the very same day, filed a

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<sup>1</sup>Although the present case is not an appeal under the Uniform Administrative Procedure Act and therefore there is no formal record under General Statutes § 4-183 (g), the commission compiled a record of the underlying administrative proceedings and submitted it to the court. (# 131.) The plaintiff filed a motion to correct the record in which he agreed to most of the record but objected to parts of it. (# 134.) At the hearing on the merits of this case, the court heard and overruled the plaintiff's objections and also allowed the plaintiff to supplement the record. The court therefore relies on the record submitted by the commission in this decision, as supplemented by the plaintiff.

complaint against the commission. In his complaint, captioned *Godbout v. State of Connecticut, Office of Governmental Accountability, Freedom of Information Commission* (Docket # FIC 2013-377), the plaintiff alleged principally that the commission had violated General Statutes § 1-225 by failing to have its agenda for that day posted on the website of the secretary of the state. The plaintiff requested that all matters discussed or ruled upon on that day be “nullified and voided,” that all commission meetings not properly noticed on the secretary of the state’s website should be “voided” from May 8, 2013 through the time of his complaint, and that he receive \$500 in sanctions from the commission. (ROR, p. 1.)

The plaintiff asked for a hearing on his complaint on April 11, 2014. On May 21, 2014, the commission’s executive director sent the plaintiff a notice of her decision not to schedule a hearing on the plaintiff’s complaint without leave of the commission (notice) on the ground that the complaint “would constitute an abuse of the commission’s administrative process” under General Statutes § 1-206 (b) (2). The notice explained, in the first substantive paragraph, that the commission has no ability to post an agenda on the secretary of the state’s website and that the plaintiff was not aggrieved in any way by the alleged failure of the agenda to appear on that website. In a second paragraph, the notice detailed the fact that, since 2011, the plaintiff had filed 136 complaints with the commission, that the complaints were often duplicative or frivolous, and that the “overabundance of the complainant’s complaints and attendant motions and filings is tantamount to harassment and clearly an abuse of the Commission’s administrative process.” (ROR, pp. 50-51.)

The notice advised the plaintiff that the commission would consider whether or not to affirm the executive director’s decision not to schedule a hearing at a meeting on May 28, 2014.

The notice also informed the plaintiff that he could submit an affidavit and written argument to the commission. (ROR, p. 51.)

The plaintiff failed to file an affidavit or written argument. Instead, the plaintiff filed with the commission a request to postpone the meeting, a request for discovery of records, a request to modify the order, and a request to use an office at the commission to inspect records. The commission denied these requests in a letter dated May 27, 2014. The letter again advised the plaintiff that he could submit an affidavit and written argument. Again the plaintiff failed to do so. On May 28, 2014, the plaintiff filed a motion to disqualify the commissioners, a motion to strike the notice, and a series of verified objections to the notice. (ROR, pp. 61-99.)

The commission proceeded to meet on that day on the present matter as well as on at least three other cases filed by the plaintiff that the executive director had recommended should not receive a hearing. The plaintiff attempted to interrupt the commission during its deliberations.<sup>2</sup> Ultimately, the commission voted unanimously to affirm the executive director's decision not to schedule a hearing on the plaintiff's complaint. (ROR, p. 100-08.)

The plaintiff then filed the present application for an order to schedule a hearing before the commission. At various times during the progress of the case, the plaintiff has unsuccessfully

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<sup>2</sup>The present case was number seven on the calendar for the day. The relevant proceedings went as follows:

“THE CHAIRPERSON: Do you want to address 6, 7 and 8 now, together?”

“A VOICE: Just briefly, as I indicated earlier, all of these —

“MR. GODBOUT: If I may, I have a motion to strike and also a motion to disqualify one of the commissioners.

“THE CHAIRPERSON: You are not at liberty to speak at this time.

“MR. GODBOUT: Well, I just have a motion.

“MS. MURPHY: All of your papers are on file.”

(ROR, p. 104.)

attempted to add up to 167 more cases to his application. (#122, 122.01.) The court conducted a hearing on the present application on June 4, 2015.

## II

General Statutes § 1-206 (b) (2) provides in pertinent part that “[i]f the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process. Any party aggrieved by the commission's denial of such leave may apply to the superior court for the judicial district of Hartford,<sup>3</sup> within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal.”<sup>4</sup>

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<sup>3</sup>The plaintiff filed the application in the Judicial District of Hartford, and the court then transferred the case to the Judicial District of New Britain.

<sup>4</sup>Section 1-206 (b) (2) provides in full: “In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend and may require the production or

As stated, the commission approved the executive director's opinion (that hearing the plaintiff's complaint would amount to "an abuse of the commission's administrative process") based on two subsidiary findings: 1) that there was no merit to the plaintiff's complaint, and 2) that the plaintiff had abused his rights and privileges before the commission by filing 136 previous appeals and complaints, many of which were of a frivolous or harassing nature. On review, the court finds it unnecessary to consider the plaintiff's other 136 cases because this case

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copying of any public record. In addition, upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars. If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars. The commission shall notify a person of a penalty levied against him pursuant to this subsection by written notice sent by certified or registered mail. If a person fails to pay the penalty within thirty days of receiving such notice, the superior court for the judicial district of Hartford shall, on application of the commission, issue an order requiring the person to pay the penalty imposed. If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process. Any party aggrieved by the commission's denial of such leave may apply to the superior court for the judicial district of Hartford, within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal."

alone illustrates an abuse of the commission's process.

First, the plaintiff's underlying complaint against the commission was frivolous. Although General Statutes § 1-225 (c) does require that the agenda for a regular meeting of a public agency "shall be posted on . . . the Secretary of the State's web [site]," it is not clear how the commission could control what the Secretary of the State put on that web site.<sup>5</sup> The executive director observed that the commission provided the plaintiff individual notice of the June 26, 2013 hearing, that it posted notice of its agenda for that day on the commission's own web site, and that it duly filed notice of the June 26 hearing with the Secretary of the State. (ROR, p. 50.) Thus, it appears that the commission did all it could to comply with the statute.

The plaintiff's quest for technical perfection in his case is misinformed. Even in a criminal case, the accused is entitled to a fair trial but not a perfect trial. See *Michigan v. Tucker*, 417 U.S. 433, 446 (1974). In any case, there is no dispute that the June 26 hearing was open to the public and that the plaintiff received a public hearing on his underlying appeal. Thus, the plaintiff was not harmed in any way in his own case.

What makes the plaintiff's complaint especially frivolous is his misguided notion that he has the right to ask the commission to "nullify and void" the results of the other twelve cases

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<sup>5</sup>Section 1-225 (c) provides in full: "The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency. For any such public agency of the state, such agenda shall be posted on the public agency's and the Secretary of the State's web sites. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings."

heard on June 26 in which the plaintiff was not a party. Because of what at most was a technical error, the plaintiff would invalidate the results of twelve or more cases that other parties fully litigated without even giving those parties a right to be heard on whether they want that result. Indeed, apparently not satisfied with doing that much damage to other parties, the plaintiff also asks that all meetings not properly noticed on the Secretary of the State's website from May 8 to June 26, 2013 also be "voided." The plaintiff's proposal amounts to an egregious violation of the due process rights of other litigants.

Because it was apparent from the face of the plaintiff's complaint that there was no merit to it, he was clearly not entitled to a hearing. The plaintiff holds the mistaken belief that a hearing is required in every administrative case. As the Appellate Court has held, however, the claim that "hearings must be held in any administrative proceeding before decisions affecting an individual's rights are made" is "without merit." *Albright-Lazzari v. Freedom of Information Commission*, 136 Conn. App. 76, 81, 44 A.3d 859, cert. denied, 305 Conn. 927, 47 A.3d 886 (2012).<sup>6</sup> The plaintiff has not suggested any reason why there was a need for a hearing in this case or any showing of why the commission could not resolve his complaint on the papers.

Finally, wholly aside from the frivolous nature of the complaint, the plaintiff's behavior

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<sup>6</sup>*Albright-Lazzari* involved a different subsection of § 1-206 that allows the commission, upon motion of the respondent agency, to dismiss an appeal without a hearing if it finds that the appeal has no merit. See *Albright-Lazzari v. Freedom of Information Commission*, supra, 136 Conn. App. 76, 80-81; General Statutes § 1-206 (b) (4) ("Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act.")

in this case alone constitutes an abuse of the administrative process. Even assuming that there was some merit in his complaint about the hearing in *Godbout v. Weinstein*, his remedy was to take an appeal under the Uniform Administrative Procedure Act; General Statutes § 4-183; rather than file a collateral attack against the commission, which is generally disfavored. See *Convalescent Center v. Department of Income Maintenance*, 208 Conn. 187, 200-01, 544 A.2d 604 (1988). In any event, the commission provided the plaintiff two opportunities to submit an affidavit and written argument in support of a hearing on his complaint, both of which the plaintiff bypassed. Instead, the plaintiff filed meritless motions requesting sanctions and office space. The plaintiff then proceeded to interrupt the hearing at which he had no right to speak. In sum, the plaintiff's actions in this case showed that he himself did not follow the rules and that his behavior had the effect of disrupting the commission's orderly process of deciding cases.

### III

The plaintiff's application for an order requiring the commission to hold a hearing on his complaint is denied.

It is so ordered.

  
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Carl J. Schuman  
Judge, Superior Court