NO. HHB CV15-5017046S	:	STATE OF CONNECTICUT
DAVID GODBOUT	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION	:	AUGUST 9, 2016

Memorandum of Decision

The plaintiff, David Godbout, applies for an order pursuant to General Statutes § 1-206 (b) (2) requiring the defendant state freedom of information commission (commission) to hold a hearing on a complaint he filed with the commission. The commission has moved for summary judgment. As discussed below, the court grants the motion for summary judgment and denies the plaintiff's application for a court-ordered hearing before the commission.

I

Contrary to the plaintiff's suggestion, summary judgment is available in "any action," including this one. Practice Book § 17-44.[1] Summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49. "The movant has the burden of showing the nonexistence of such issues but the

[1]In relevant part, § 17-44 provides: "In any action, including administrative appeals, which are enumerated in Section 14-7, any party may move for a summary judgment as to any claim or defense as a matter of right at any time if no scheduling order exists and the case has not been assigned for trial." The plaintiff distorts the meaning of the section to argue that, because this case is not an administrative appeal, summary judgment is not available. Were that the case, then the rule would not allow the vast majority of summary judgment cases that parties file in court.

evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist . . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents . . . . The opposing party to a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . The existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence." (Citation omitted; internal quotation marks omitted.) *Gianetti v. Health Net of Connecticut, Inc.*, 116 Conn. App. 459, 464-65, 976 A.2d 23 (2009). "The test is whether the party moving for summary judgment would be entitled to a directed verdict on the same facts. . . ." (Internal quotation marks omitted.) *SS-II, LLC v. Bridge Street Associates*, 293 Conn. 287, 294, 977 A.2d 189 (2009).

In the present case, the material facts are not in dispute and the only question is whether the commission is entitled to judgment as a matter of law.[2] The material, undisputed facts are as follows. On or about January 6, 2015, the plaintiff filed eleven complaints with the commission alleging that the State Task Force on Victim Privacy (task force) conducted secret meetings in violation of the Freedom of Information Act (act). See General Statutes §§ 1-200 et seq. In a complaint that the commission docketed as number 2015-15, the plaintiff alleged that Colleen Murphy, James H. Smith, Jodie Mozdzer Gil, Klarn DePalma, William V. Dunlap, Brian Koonz, and Don DeCesare, all of whom were members of the task force, held a secret meeting on or about October 25, 2013 to discuss task force business and did not create any minutes of the

[2]Although the plaintiff attaches a large number of exhibits to his summary judgment opposition, nothing in them creates a genuine dispute of the facts relied upon in this decision.

meeting. The plaintiff alleged that he obtained notice of this meeting on December 23, 2014. The plaintiff included two paragraphs in his complaint about Colleen Murphy, claiming that she was "instrumental in making sure that the meeting took place and participated fully in the meeting."

In the "Relief Sought" section of the complaint, the plaintiff initially stated that he sought a finding that a violation of the act occurred and "any and all relief that the Act may provide me and the people of this state." The plaintiff then added three paragraphs about Murphy. In the first paragraph, the plaintiff alleged that Murphy is the executive director of the commission and that her actions in "willfully and wantonly" violating the Act should result in "the commission giving serious consideration to ending her employment with the commission." In the second paragraph, the plaintiff cited a specific case in which Murphy declined to hold a hearing on a complaint and then stated that "[t]he executive director has filed numerous notices not to schedule complaints due to same merit-less reasons in an attempt to get complaints, like this complaint filed here, regarding herself from being heard before the commission." The plaintiff's third paragraph consisted of two questions: "Is this the person that the commission wishes to manage the FOI Commission? Is this a person that the people of this state wishes to be in employment in state government?"

On October 1, 2015, the acting clerk of the commission responded with a "Notice of Decision Not to Schedule Hearing."[3] The notice stated that the Managing Director, who had authority to act for the Executive Director, was not seeking a hearing but rather was asking the

[3]The acting clerk signed the letter under the statement: "By order of the Freedom of Information Commission." For ease of reference, the court will refer to this notice as one sent by the commission.

commission to affirm her decision not to schedule a hearing on the grounds that the complaint "would constitute an abuse of the commission's administrative process" pursuant to General Statutes § 1-206 (b) (2) (C) and "presents a claim beyond the commission's jurisdiction" under § 1-206 (b) (2) (A). Among the reasons cited were the following:

1. Since 2011, the plaintiff has filed 385 complaints with the commission, many of which were "duplicative and/or frivolous." Despite diminished resources due to budget cuts and consolidation with other state agencies, the commission has spent "an inordinate amount of time and resources adjudicating a multitude of previous cases filed by the [plaintiff]." In a separate complaint against the commission, the plaintiff sought as relief the resignations of the commissioners and the termination of the commission's staff. In another complaint, the plaintiff filed a motion taking issue with the executive director's competence and requesting the termination of her employment.

2. The present complaint was one of eleven separate complaints against the task force that the plaintiff filed on the same day. As part of the relief sought in the present complaint, the plaintiff urged that the termination of the position of the executive director of the commission.

3. The complaint was time-barred in that it was filed more than 30 days after the alleged secret meeting. The complaint stated that the plaintiff obtained notice of the alleged secret meeting on December 23, 2014, but it did not inform the commission how the complainant came to know this information.

4. The task force no longer exists and did not exist at the time of the complaint. By operation of law, the task force terminated upon submission of its report in January, 2014.

The October 1, 2015 notice gave the plaintiff an opportunity to file affidavits and written

argument regarding the issue of whether leave should be granted to hear the appeal. The plaintiff filed objections on October 27, 2015.[4] In the objections, the plaintiff stated that "[t]he commission is an evil agency that must be eliminated." The plaintiff did not provide any further information as to why he did not learn about the alleged secret meeting of the task force until December, 2014. Instead, the plaintiff replied that "[t]he commission could have used its investigative powers to seek out this information but decided instead to simply file this notice." The plaintiff concluded his last substantive paragraph with the following question: "Is the commission going to protect its own executive director's complete disdain for the Act from the public's eye?"

On November 3, 2015, the commission filed a notice stating that, at its regular meeting of October 28, 2015, it voted to affirm the executive director's decision not to schedule a hearing on this complaint pursuant to General Statutes §§ 1-206 (b) (2) (A), 1-206 (b) (2) (C), and 1-206 (b) (3). The plaintiff then filed the present application in Superior Court for an order to schedule a hearing before the commission.

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

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[4]The copy, filed by the commission as an exhibit to its summary judgment motion, of the plaintiff's consolidated objections to the proposal dismissal of the eleven complaints he filed on January 6, 2015 contains one page that lists some of the eleven docket numbers in question but appears to be a missing a page that contains docket number 2015-15, which is the complaint at issue here. (Defendant's Exhibit E.) There is no dispute, however, that the exhibit filed by the commission accurately contains the substance of the plaintiff's objections to the dismissal without a hearing of complaint number 2015-15.

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,[5] within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal."[6]

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[5]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. See General Statutes § 51-347b (a) (authorizing the "Chief Court Administrator or any judge designated by the Chief Court Administrator" to order the transfer of cases from one judicial district to another).

[6]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 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

As stated, the commission voted to affirm the executive director's decision not to schedule this complaint pursuant to General Statutes §§ 1-206 (b) (2) (A), 1-206 (b) (2) (C), and 1-206 (b) (3). Subsection (b) (3) does not provide a separate basis for denial of a hearing, but does authorize the commission, in making the findings and determinations under subsection (b) (2), to "consider the nature of any injustice or abuse of administrative process . . . ."[7] The court considers the first two reasons in turn.

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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."

[7]In full, General Statutes § 1-206 (b) (3) states: " In making the findings and determination under subdivision (2) of this subsection the commission shall consider the nature of any injustice or abuse of administrative process, including but not limited to: (A) The nature, content, language or subject matter of the request or the appeal; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking the appeal; and (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal."

A

Subsection (b) (2) (A) provides for the denial of a hearing if the plaintiff "presents a claim beyond the commission's jurisdiction." For this ground, the commission relied on the belief that the complaint was time-barred in that it was filed more than 30 days after the alleged secret meeting. The commission noted that the alleged secret meeting of the task force took place on October 11, 2013 and the plaintiff filed his complaint with the commission over a year later on January 6, 2015. The commission cited § 1-206 (b) (1), which provides in part that "[a] notice of appeal shall be filed not later than thirty days after any such denial [of the right to attend any meeting of any public agency]."[8]

The act provides for an exception to the thirty day rule "in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held." General Statutes § 1-206 (b) (1). The plaintiff alleged in his complaint that he received notice of the secret meeting on December 23, 2014. If that fact were true, the plaintiff's January 6, 2015 complaint would have fallen within the extended thirty day period provided in the exception. Thus, the commission, in

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[8]There is no explanation for why the plaintiff alleged that the meeting took place on October 25, 2013 and the commission alleged that it took place on October 11, 2013 but, in either event, the plaintiff's complaint was over a year late. Section 1-206 (b) (1) provides in relevant part: "Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken."

its October 1, 2015 notice, both acknowledged that the plaintiff alleged that he first received notice of the meeting on December 23, 2014 and added that the plaintiff "does not inform the Commission of facts relative to how he came to know this information." The plaintiff, however, did not supply any further information on this matter in his October 27, 2015 objections to the proposed dismissal. Instead, the plaintiff attempted to shift the burden to the commission by stating that the commission should have used its investigative powers to seek out this information.

Because only the plaintiff would have the facts as to how and why he personally and initially learned of the alleged secret meeting on December 23, and the commission would not have ready access to this information, it was reasonable for the commission to ask the plaintiff to supply this information. Indeed, the commission did exactly what the plaintiff suggested it should do and investigated the matter by asking for information from the person most likely to have it – the plaintiff. When the plaintiff failed to supply any information, it was proper for the commission to conclude that there was no basis for applying the exception to the thirty day rule in § 1-206 (b) (1) and that therefore the commission lacked jurisdiction over the plaintiff's complaint.

B

The commission also ruled properly in denying a hearing on the ground that the complaint "would constitute an abuse of the commission's administrative process" under § 1-206 (b) (2) (C). The commission initially relied on the fact that the task force no longer existed and did not exist at the time of the filing of the complaint in this matter. Essentially, the commission reasoned that there was no practical relief that the commission could order against the task force

at that point and that his complaint was moot.

In response to the summary judgment motion, the plaintiff argues that there is no evidence to support the commission's statement that the task force no longer existed at the time.[9] The commission, however, was entitled -- and remains entitled – to rely on Public Acts 2013, No. 13-311, § 4 (c), which provides for the task force to have submitted its report and terminate "[n]ot later than January 1, 2014,"[10] and the "strong presumption of regularity in the proceedings of a public agency." *Forest Walk, LLC v. Water Pollution Control Authority,* 291 Conn. 271, 286, 968 A.2d 345 (2009). Thus, the commission could properly presume that the task force followed the law and went out existence by the January 1, 2014. The plaintiff, in his opposition to summary judgment, does not dispute this proposed fact by "counteraffidavits and concrete evidence." (Citation omitted; internal quotation marks omitted.) *Gianetti v. Health Net of Connecticut, Inc.,* supra, 116 Conn. App. 464-65. Accordingly, the plaintiff provides no basis to argue that his complaint was not moot.

Second, the commission correctly found the complaint to represent an "abuse of the

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[9]At oral argument, the plaintiff also contended that the termination of the task force would not render his complaint moot because the commission could still have identified the persons who were responsible for holding an allegedly secret meeting so that they could be held accountable in the future. Although the plaintiff did ask for "any and all relief that the Act may provide me and the people of this state" in the "Relief Sought" section of his complaint to the commission, he did not specifically make a request for this unusual sort of relief. Instead, he spent the remaining three paragraphs of this section arguing why the commission should give "serious consideration to ending [Executive Director Murphy's] employment with the commission."

[10]Section 4 (e) of the Public Act provides: "Not later than January 1, 2014, the task force shall submit a report on its findings and recommendations to the majority and minority leadership of the Connecticut General Assembly. The task force shall terminate on the date that it submits such report or January 1, 2014, whichever is later."

commission's administrative process" in the more traditional sense of that phrase. In determining whether a complaint constitutes an abusive pleading, our statutes fully authorize the commission to consider "(A) The nature, content, language or subject matter of the request or the appeal; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking the appeal; and (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal." General Statutes § 1-206 (b) (3). There is no dispute that the plaintiff had filed 385 previous complaints with the commission. The particular complaint in this case was one of eleven that the plaintiff filed on the same day concerning the task force.

The commission surely is not powerless to stem this torrent of litigation, particularly over the same issue. See generally *Bridgeport Hydraulic Co. v. Pearson*, 139 Conn. 186, 194, 91 A.2d 778 (1952)("equity may enjoin vexatious litigation"); *In the Matter of Presnick*, 19 Conn. App. 340, 347, 563 A.2d 299, cert. denied, 213 Conn. 801, 567 A.2d 833 (1989) (court has inherent authority to impose sanctions to achieve orderly and expeditious disposition of its cases). Based solely on the sheer volume of complaints filed by this plaintiff, the commission had a strong basis to deny a hearing in this case.

But there is more than sheer volume. The commission observed that in a previous complaint the plaintiff sought as relief the resignations of the commissioners and the termination of the commission's staff. In a separate complaint, the plaintiff took issue with the executive director's competence and requested the termination of her employment. In the present case, the plaintiff singled out executive director Murphy for alleged wrongdoing in this case and in

previous cases. In addition to asking for relief under the act stemming from the alleged secret meeting, the plaintiff ruminated that "the commission [should give] serious consideration to ending her employment with the commission." The plaintiff then concluded the Relief Sought section of his complaint by publishing the following disparaging remarks: "Is this the person that the commission wishes to manage the FOI Commission? Is this a person that the people of this state wishes to be in employment in state government?" In his objections to the proposed dismissal of the complaint, the plaintiff repeated his attacks on the commission and its executive director by editorializing that the commission is an "evil agency that must be eliminated" and by accusing the commission of protecting "its own executive director's disdain for the Act from the public's eye."

These requests and remarks marks go well beyond the relief that the statutes authorize the commission to provide, which generally consists of the "right to inspect or copy records . . . [and] the right to attend any meeting of a public agency . . . ." General Statutes § 1-206 (b) (1). The "nature, content, language or subject matter" of this sort of complaint makes it clear that the plaintiff's real purpose is not to seek relief under the act but rather to seek some sort of vendetta against the executive director and to eliminate the commission. General Statutes § 1-206 (b) (3). Our statutes make clear, however, that the commission need not tolerate the improper use of the act as a means of targeting one of its officers or challenging the commission's very existence. The commission properly denied the plaintiff a forum to further this ulterior motive.

The plaintiff is entitled to petition the legislature to reform the commission, if that is his true intent. But he is not entitled to a hearing on a complaint, such as the present one, that "would amount to an abuse of the commission's administrative process . . . ." General Statutes §

1-206 (b) (2) (C).

III

The court grants the commission's motion for summary judgment and denies the plaintiff's application for an order requiring the commission to hold a hearing on his complaint.

It is so ordered.

Schuman, J.

Carl J. Schuman
Judge, Superior Court