

NO. HHB CV16-5017349S : STATE OF CONNECTICUT  
 BRADSHAW SMITH : SUPERIOR COURT  
 v. : JUDICIAL DISTRICT OF NEW BRITAIN  
 FREEDOM OF INFORMATION :  
 COMMISSION : JULY 19, 2016

OFFICE OF THE CLERK  
 SUPERIOR COURT  
 2016 JUL 19 PM 10 39  
 JUDICIAL DISTRICT OF  
 NEW BRITAIN

**Memorandum of Decision**

The plaintiff, Bradshaw Smith, 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 two separate complaints he filed with the commission. The commission has moved for summary judgment. The court held a hearing on the motion on July 12, 2016, but the plaintiff failed to appear. 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

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 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). Because the material facts are not in dispute in this case, the only question is whether the commission is entitled to judgment as a matter of law.

The material, undisputed facts are as follows. On March 6, 2015, the commission received two letters from the plaintiff requesting copies of “all documents” relating to two

hearings that the commission conducted involving the Windsor Public Schools. On March 10, 2015, Linda Fasciano, the acting clerk of the commission, responded by making a photocopy of every document in each file and sending the copies to the plaintiff free of charge, by first class mail, postage prepaid. Fasciano did not send the plaintiff transcripts of the hearings because he did not request them and because the commission did not maintain transcripts of the hearings in question.

On April 6, 2015, the plaintiff filed a complaint with the commission under the freedom of information act (act); General Statutes §§ 1-200 et seq; alleging that the commission had failed to provide him a transcript of the hearings in question. In addition to requesting the transcripts, the plaintiff requested a civil penalty against Colleen Murphy, the executive director of the commission, without citing any factual or legal basis.

On February 8, 2016, the commission responded with a "Notice of Decision Not to Schedule Hearing." The notice stated that the executive director was not seeking a hearing but rather was asking the 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). Among the reasons cited were the following:

1. "The [plaintiff] filed 18 complaints in 2014, and 14 complaints in 2015. The Commission's resources are diminished due to budget cuts and consolidation with other state agencies. Nevertheless, the Commission has already extended an inordinate amount of time and resources adjudicating a multitude of previous cases filed by the [plaintiff]. In 2014 and 2015, the Commission's caseload has been running at record pace, and hundreds of complainants other than Mr. Smith, who have not yet been before the Commission, await hearings.

[2.] “Thus far, the Commission has concluded that scheduling five of the [plaintiff’s] complaints would constitute an abuse of the Commission’s administrative process. Accordingly, the [plaintiff] has a history of filing abusive complaints with the Commission.

[3.] “In this matter, filed against the Commission itself, the [plaintiff] alleges that the Commission did not provide him with records that he requested. However, the Commission has provided the complainant with all records requested free of charge. There is no point to a [sic] conducting a time-consuming hearing in this matter.”

Meanwhile, on November 3, 2015, the plaintiff had filed a complaint with the commission alleging that the members of the executive committee of the Windsor board of education (school board) discussed items that were not listed on the agenda for its special meeting of October 5, 2015. On December 11, 2015, the school board moved to dismiss the complaint on the ground that the commission had already decided the same issue adversely to the plaintiff. The school board also sought a civil penalty against the plaintiff on the ground that the complaint was a “frivolous one, made solely for the purpose of harassing the Windsor Board of Education.”

By way of a separate notice dated February 8, 2016, the commission’s executive director asked the commission to affirm her decision not to schedule a hearing on the complaint against the school board 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 “would perpetrate an injustice” pursuant to General Statutes § 1-206 (b) (2) (B). The notice reiterated the first two reasons cited in the companion notice concerning the complaint against the commission, which summarized the plaintiff’s repetitive filings and abuse of the

commission's administrative process. In addition, the notice cited the fact that, on September 1, 2015, the commission issued a decision in a case filed by the plaintiff that held that the executive committee of the school board did not violate the act when it convened, apparently in executive session, in November, 2014 to set the agenda for the next board of education meeting. See *Smith v. Klase*, Docket # FIC2014-832. The plaintiff then filed five complaints with the commission challenging similar gatherings of the executive committee in December, 2014 and January, February, March, and April, 2015, all before filing the subject complaint concerning the October, 2015 session.

Finally, the notice stated: "The [plaintiff] has his appellate rights with respect to the original case, Docket # FIC 2014-832. The Commission has already voted not to schedule the first five cases [mentioned above], concluding that to do so would constitute an abuse of the Commission's administrative process. The Commission should not have to adjudicate the same issue again, nor should the respondents have to appear before the Commission to defend the same allegation again."

The conclusion of each of the two notices sent to the plaintiff stated the following: "Proceeding would be a waste of the scarce resources of the Commission, and would needlessly delay the hearings of hundreds of other complainants. Therefore, the Executive Director shall not schedule the appeal for hearing under that provision." The notices then provided each party an opportunity to submit an affidavit or written argument to the commission on the issue of whether leave should be granted to hear the appeal. There is no evidence that the plaintiff did so. Accordingly, on February 25, 2016, the commission notified the plaintiff that it had voted to affirm the executive director's decision not to schedule a hearing in these two cases pursuant to

General Statutes §§ 1-206 (b) (2) (B), 1-206 (b) (2) (C), and 1-206 (b) (3).

## 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>1</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>2</sup>

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<sup>1</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. 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).

<sup>2</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 voted to affirm the executive director's decision not to schedule this complaint pursuant to General Statutes §§ 1-206 (b) (2) (B), 1-206 (b) (2) (C), and 1-206 (b) (3). The commission ruled properly in denying a hearing on the ground that both complaints "would constitute an abuse of the commission's administrative process" under subsection (b) (2) (C) and that the school board complaint "would perpetrate an injustice" under subsection (b) (2) (B). To begin with, there was no merit in either complaint. The plaintiff's

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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."

complaint against the commission for denying him a transcript founded on the fact that he never requested a transcript in his original request and that a transcript no longer existed. The plaintiff's complaint against the Windsor school board ran into the barrier that, two months earlier, the commission had rejected virtually the same complaint and the plaintiff had failed to appeal. Requiring the school board to appear again before the commission under these circumstances would in fact "perpetrate an injustice." General Statutes § 1-206 (b) (2) (B). Further, in neither case had the plaintiff accepted the executive director's invitation to submit an affidavit or written argument in response to her proposal not to schedule a hearing.

Second, the commission correctly found the complaints to represent an "abuse of the commission's administrative process" in the more traditional sense of that phrase. In determining whether a complaint constitutes an abusive pleading, subsection (b) (3) of the statute, which the commission also cited, fully authorizes 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).<sup>3</sup>

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<sup>3</sup>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."

Applying these standards, the fact that the plaintiff filed thirty-two complaints with the commission in the past two years in and of itself represents an abuse of the system. Further, in his complaint against the commission, the plaintiff improperly aimed a personal attack at the committee's executive director, asking for civil penalties against her without citing any factual or legal basis. In addition, at least six of the plaintiff's previous complaints addressed the identical issue of whether the Windsor school board improperly conducted a secret meeting under the act. Indeed, the plaintiff filed a complaint concerning the school board even though the commission had just ruled against him on the same issue, the plaintiff had failed to appeal, and the plaintiff did not advance any argument why the commission should reverse its position. Under these circumstances, the plaintiff's only purpose in filing the complaint would be harassment of the commission or the school board.

The plaintiff fails to acknowledge the adverse consequences of his litigious behavior. At least partly as a result of his excessive filing of complaints, the commission has become overburdened. Other deserving litigants do not get their chance to appear before the commission as quickly as they should. Some respondents, such as the Windsor school board, are repeatedly haled into the commission to respond to the same complaint that the commission has previously rejected, thereby imposing unnecessary costs and causing unneeded interference with its legitimate business. In some cases filed by the plaintiff, as noted above, the commission or the respondent agencies have had to defend against litigation intended only to harass, thus making it more difficult for public servants to do their job.

The commission and its constituencies surely are not required to tolerate this sort of abuse. The commission is fully entitled to advance its mission without becoming derailed by

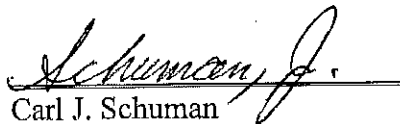


defiant litigants. Under these circumstances, the commission was fully justified in denying a hearing to the plaintiff on the ground that his complaints represented an abuse of the commission's administrative process.

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.

  
Carl J. Schuman  
Judge, Superior Court