

DOCKET NO: HHBCV195026923S

SUPERIOR COURT

TORLAI, JAMES

JUDICIAL DISTRICT OF NEW BRITAIN  
AT NEW BRITAIN

V.

FREEDOM OF INFORMATION  
COMMISSION Et Al

12/14/2020

ORDER

The following order is entered in the above matter:

**ORDER:**

In its ruling and order dated October 14, 2020, the court affirmed the final decision of the Freedom of Information Commission dismissing the plaintiff's FOIA complaint against the West Hartford Police Department ("Department"). However, because of serious concerns that the plaintiff had filed and pursued this administrative appeal in bad faith, the court ordered the plaintiff to show cause why he should not be sanctioned.

The parties appeared before the court on November 10, 2020 for an evidentiary hearing. The plaintiff was sworn, testified on his own behalf, and was cross-examined. The court now issues its ruling.

**I. FINDINGS OF FACT**

1. On November 17, 2018, the plaintiff requested that the Department provide copies of all records relating to the following allegations described in the request: "a few days before Christmas in 2015, the victim left a bar while intoxicated, she encountered a Connecticut State Trooper, instead of helping the woman the Connecticut State Trooper took her to his car and coerced [her] into having nonconsensual sex with him, when the victim attempted to resist the State Trooper used physical force to restrain her and then raped her."

2. The Department searched for records consistent with these allegations, but did not find any. The Department sought more specific information from the plaintiff, but none was forthcoming.

3. On December 3, 2018, the plaintiff filed a complaint with the FOIC, alleging that the Department had violated the Freedom of Information Act by failing to produce documents in response to his request. Even after the complaint was filed, the Department continued to communicate with the plaintiff in an effort to obtain more specific information that might help it find responsive public records.

4. The plaintiff's FOIA complaint was heard as a contested case on October 11, 2019. During the hearing the plaintiff was asked whether he had more specific information about the alleged arrest at issue. He declined to provide any more details. However, a week after the hearing concluded, but before the hearing officer issued a proposed decision, the plaintiff submitted to the FOIC two docket sheets and a Hartford Courant article describing in detail the event for which he sought public records. That event was different from the allegations of the event described in his original request. Records pertaining to the Hartford Courant article / docket sheet event had been erased by law and, thus, were not public records.

5. The FOIC issued a final decision on November 13, 2019. The FOIC made the following critical finding, which the plaintiff contests in this appeal: "Based on the credible testimony of the respondents [the Commission] found that the respondents did not maintain any records to the complainant's November 17, 2018 request." Accordingly, the FOIC dismissed the complaint.

6. The plaintiff timely filed this administrative appeal on or about December 31, 2019.
7. On June 8, 2020, the court (Cordani, J.) granted the Department's motion to seal certain records that were part of the administrative record because those records were subject to erasure. The particular records were, in fact, the very records that the plaintiff wanted the Department to produce, but they are different from what he specifically requested on November 17, 2018.
8. On June 12, 2020, the Department emailed the plaintiff: (a) a copy of the court's sealing order; (b) a copy of the relevant state erasure statutes. The Department urged the plaintiff to withdraw his administrative appeal.
9. Notwithstanding the foregoing notice, the plaintiff continued to prosecute this appeal, forcing the Commission and the Department to expend considerable time and expense to defend this appeal. The Department's attorney's fees in this matter, including proceedings before the FOIC, approach \$100,00.00
10. The Defendant had copies of the erased records that he wanted the Department to produce (even though they were different from what he vaguely requested on November 17, 2018); that he obtained those copies from an unidentified third-party; that he had the records shortly before the Commission issued its final decision, if not earlier; and that he had them when he filed this administrative appeal.
11. The plaintiff, although a self-represented litigant, has extensive knowledge and experience concerning the FOIA.
12. The plaintiff knew he possessed the very records that he wanted from the Department and that his purpose in filing this administrative appeal was to harass the Department and cause it to suffer the expense of defending this appeal. The plaintiff also knew that any additional records he requested, which were not in his possession, were subject to erasure and, thus, were not disclosable under the FOIA.
13. The court finds, by clear and convincing evidence, that by continuing to prosecute this appeal after June 12, 2020, the plaintiff engaged in dilatory, bad faith and harassing litigation conduct.

## II. ORDER

Given the above findings, it is within the court's power to sanction the plaintiff and order him to pay the Department's attorney's fees. *Hirschfeld v. Machinist*, 131 Conn.App. 364, 27 A.3d 395 (2001). However, the Department indicated at oral argument that it does not seek monetary sanctions, but only a finding that the plaintiff has acted in bad faith. Accordingly, the court declines to impose monetary sanctions. However, the Freedom of Information Commission may consider this ruling in determining whether the plaintiff is a "vexatious filer" in any future proceeding under General Statutes §1-206(b)(5).n

Judicial Notice (JDNO) was sent regarding this order.

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Judge: DANIEL JOSHUA KLAU

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