

GODBOUT, DAVID
V.
FREEDOM OF INFORMATION
COMMISSION

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

8/3/2021

ORDER

The following order is entered in the above matter:

ORDER:

Disposition: JDGDACT - JUDGMENT OF DISMISSAL

This case arises out of a February 26, 2020 decision by the Freedom of Information Commission (FOIC) acting upon a petition filed by the Town of East Lyme (the "town") pursuant to General Statutes § 1-206 (b)(5). The town sought a determination by FOIC that the plaintiff, David Godbout, is a "vexatious requester" of public records and an order, as provided for by § 1-206(b)(5), that the town be relieved of its obligation to comply with future requests by the plaintiff. FOIC, after extensive motion practice, an evidentiary hearing before a hearing officer, a proposed decision by the hearing officer, and a hearing before the commission on February 26, 2020, FOIC adopted the hearing officer's proposed decision concluding that the plaintiff is a vexatious requester of public records. Having reached that conclusion, FOIC ordered that town "need not comply with public records requests from the [plaintiff] for a period of one year from the date of the Notice of Final Decision in this matter." The Notice of Final Decision was issued on March 3, 2020. On March 6, 2020 the plaintiff timely filed this petition in accordance with § 1-206(b)(5) seeking a reversal of FOIC's decision.

Shortly after the plaintiff filed his petition the courts were closed due to the coronavirus pandemic. On June 2, 2020, however, the court entered a scheduling order that would have had the case fully briefed and ready for argument by October 9, 2020. The plaintiff, however, opted to file a motion for summary judgment instead of following the briefing schedule ordered by the court. Most of the arguments advanced by the plaintiff on summary judgment were meritless. To the extent that substantive arguments were raised concerning the constitutionality of § 1-206(b)(5), they were inadequately briefed. The motion for summary judgment was heard on October 13, 2020 and denied on October 26, 2020. Due to the delay associated with the motion for summary judgment a new briefing schedule had to be established and the court ordered a briefing schedule along with its denial of the motion for summary judgment. Eventually the case was scheduled for a remote hearing on June 14, 2021. On June 9, 2021 the court issued a notice concerning the hearing, which instructed the parties to be prepared to address the question whether the case is moot due to the expiration, on March 3, 2021, of the FOIC's order suspending for one year the town's obligation to respond to the plaintiff's requests for documents. The June 14, 2021 hearing was continued at the request of the plaintiff until August 2, 2021. A further motion by the plaintiff to continue the hearing was denied and the plaintiff's motion to reargue that ruling was also denied. At the hearing on August 2, 2021 the court heard arguments on the issue of mootness, as well as the merits of the plaintiff's petition. Because the court concludes that the case is moot, the court does not reach the merits of the plaintiff's petition.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates a court's subject matter jurisdiction. An actual controversy must exist not only at the time [an action] is [commenced], but also throughout the pendency of the [action].... When, during the pendency of an [action], events have occurred that preclude [a] court from granting any practical relief through its disposition of the merits, a case has become moot." (Citation omitted; internal quotation marks omitted) In re Naomi W., Connecticut Appellate Court, Docket No. AC 44413, ---Conn. App. ---, --- A.3d ----

(July 22, 2021) (2021 WL 3122398, *3). In the present case there is no practical relief the court can afford to the plaintiff. The FOIC order relieving the town of its obligation to respond to the plaintiff's requests for records is no longer in effect. There is no need for a court order requiring the town to do so. See *Newell v. State Department of Motor Vehicles*, Superior Court, judicial district of Litchfield, Docket No. 055716 (Pickett, J Dec. 18, 1991) (5 Conn. L. Rptr. 388) (license suspension expired during pendency of administrative appeal rendering the appeal moot).

There is, of course, an exception to the doctrine of mootness where an issue is capable of repetition yet evading review. "To qualify under the capable of repetition, yet evading review exception, three requirements must be met. First, the challenged action, or the effect of the challenged action, by its very nature must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before [the] litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom the party can be said to act as a surrogate. Third, the question must have some public importance. Unless all three requirements are met, the [case] must be dismissed as moot." (Internal quotation marks omitted; Citation omitted.) *In re Naomi W.*, supra, *3. In the present case, the first requirement is not met.

It cannot be presumed that the delays associated with the coronavirus pandemic and the plaintiff's decision to pursue motion practice rather than follow the scheduling order entered by the court on June 2, 2020 will recur in future cases. *Id.*, *4. While the plaintiff argues that future FOIC orders under § 1-206(b)(5) may be of much shorter duration than the one year order entered in the present case, rendering judicial review practically impossible, those circumstances did not present themselves in this case. In such cases, moreover, the interim remedy of a stay would facilitate such review. The plaintiff in the present case could have sought a stay of the FOIC order as well, but he did not do so. Consequently, the capable of repetition yet evading review exception does not apply. The case is therefore dismissed as moot.

Because this case is moot, a number of other pending motions by the plaintiff are also moot, including Docket Entry No's 115, 117, 126, 142, 145 and 156. Those motions are denied on that ground.

Judicial Notice (JDNO) was sent regarding this order. Mailed to plaintiff.

436946

Judge: JOHN BURNS FARLEY

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.