

DOCKET NO. HHB-CV-19-5026783

FEB 23 2022

SUPERIOR COURT

IAN COOKE

ASSISTANT CLERK

JUDICIAL DISTRICT
OF NEW BRITAIN

VS.

ADMINISTRATIVE APPEALS

FREEDOM OF INFORMATION
COMMISSION, ET AL.

FEBRUARY 23, 2022

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is an appeal from a final administrative decision of the Freedom of Information Commission (FOIC) in FOIC's docket FIC 2019-0310 entitled, *Cooke v. Commissioner of Correction*, dated October 28, 2019 (Final Decision). Ian Cooke (plaintiff) appealed the Final Decision to this court on November 4, 2019. The defendants in this appeal are the FOIC, the Department of Corrections and its Commissioner (collectively, the Department of Corrections and its Commissioner are referred to as "DOC"). Motions to dismiss filed by the defendants were previously denied by this court.

FACTS AND PROCEDURAL HISTORY:

The plaintiff is, and has at all relevant times concerning this appeal been, an inmate in DOC custody. By letter dated April 26, 2019, the plaintiff requested from the DOC, pursuant to the Freedom of Information Act (FOIA), certain monthly reports from the Inmate's Legal Aid

Electronic notice sent to all counsel of record and to the official reporter. Mailed to Mr. Cooke.

Program. The requested reports are public records within the meaning of FOIA and are maintained by the DOC. The DOC conducted a search for, and located, the requested records. The DOC then offered to provide the plaintiff with copies of the requested records upon payment of a copy fee.¹ However, the plaintiff refused to obtain the offered copies and instead demanded to personally inspect the original records. The DOC asserted that they maintained the requested records at DOC's administrative offices located at 24 Wolcott Hill Road in Wethersfield (DOC Headquarters). Because the plaintiff was incarcerated, he was unable to visit DOC Headquarters to inspect the documents.

By letter dated May 20, 2019, the plaintiff filed a complaint with the FOIC alleging that DOC violated FOIA by not providing the requested records to the plaintiff at his location of incarceration for inspection. The FOIC held a contested case hearing on August 7, 2019. On October 23, 2019, the FOIC unanimously issued the Final Decision finding that the DOC had not violated FOIA in connection with the DOC's handling of the plaintiff's FOIA request. On November 4, 2019, the plaintiff appealed the Final Decision to this court. The FOIC and the DOC filed motions to dismiss the plaintiff's appeal, but those motions to dismiss have been denied by this court.

¹ The DOC's copy fee was not unusual and is not being challenged. The DOC attempted to reasonably address the plaintiff's cost concerns by lowering the charge and offering selected portions of the requested records.

The plaintiff is aggrieved because he appeals the Final Decision of the FOIC which decision is adverse to the plaintiff in that it refused to compel the DOC to transfer the requested records to the plaintiff's place of incarceration for his inspection.

STANDARD OF REVIEW:

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183.² Judicial review of an administrative decision in an appeal under the UAPA is limited. *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). “[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the Supreme Court] nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its

² Section 4-183 (j) provides in relevant part: “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings.”

order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” (Internal quotation marks omitted.) Id.

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes, “[c]ases that present pure questions of law . . . invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” (Internal quotation marks omitted.) *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

ANALYSIS:

The single issue presented in this appeal is one of statutory interpretation. In particular, this appeal requires the court to interpret General Statutes § 1-210 (a) to determine the scope of the public’s³ right to inspect public records in relation to the prescribed location of inspection.

Section 1-210 (a) provides as follows:

“(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and **every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection**

³ At oral argument, the plaintiff confirmed that he was not advocating for a right to inspect for inmates that is different from the right to inspect which is afforded to the general public pursuant to the statutes.

(g) of § 1-212, or (3) receive a copy of such records in accordance with § 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. **Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place** and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein.” (Emphasis added.)

In this matter, there is no dispute that the requested records are public records which are subject to inspection under FOIA. Section 1-210 (a) provides the scope of the public’s inspection right. The public is entitled to inspect records “during regular office or business hours”. Further, each agency is required to “keep and maintain **all** public records in its custody at its regular⁴ office or place of business⁵ in an accessible place.”⁶ (Emphasis added.) Accordingly, since each

⁴ The term “regular” modifies both “office” and “place of business.”

⁵ The court notes that words “office” and “place of business” are used are used in their singular form in the statute.

⁶ This obligation to maintain all records at the regular office or place of business, precludes an obligation to transfer such records away from the regular office or place of business where they are required to be maintained. Further, FOIA contains no separate obligation to transfer or move records based upon public inspection requests.

agency is required to keep all public records at its regular office or place of business in an accessible place, and the public must inspect during regular office or business hours, it follows that the public's inspection right is a right to inspect records at the agency's regular office or place of business.

The foregoing interpretation of the statute is consistent with the text of the statute itself as required by General Statutes § 1-2z. Further, the foregoing interpretation considers the entirety of the statutory section which provides both the right to inspect and the obligation to maintain all records at the regular office or place of business. The interpretation makes sense in allowing the agency to maintain its records at one location for all members of the public to inspect. The interpretation also allows the agency the ability to secure its records properly, such that they will not be destroyed or lost. Further, this interpretation allows the agencies to properly plan for, and provide staff and facilities for, reliably administering the public's right to inspect. Any obligation to transfer records at a member of the public's request would interfere with the ability of other members of the public to inspect the same records, and with the ability of the agency to safeguard and maintain such records.

Thus, the plaintiff's right to inspect the requested records in this case depended upon his ability to do so at the DOC's regular office or place of business. The identity and location of the DOC's regular office was a question of fact which

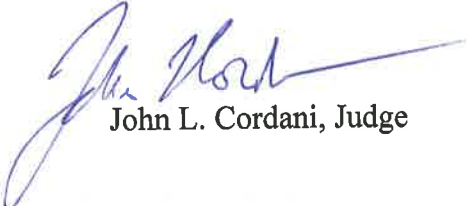
the FOIC determined was at 24 Wolcott Hill Road in Wethersfield. This determination is supported by substantial evidence in the record, and is fairly obvious from testimony of DOC witnesses and documents. Accordingly, the fact that the plaintiff's ongoing incarceration prevented him from inspecting his requested records at the DOC's regular office⁷ does not support the conclusion that DOC had any obligation other than to offer inspection at the 24 Wolcott Hill Road location or to provide copies. The DOC clearly complied with its FOIA obligations and has not violated FOIA.

The plaintiff has failed to establish on appeal that the FOIC's Final Decision is (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the court must affirm the Final Decision and dismiss this appeal.

⁷ None of the requested documents were located at the prison where the plaintiff was located. See Record at pages 37-38 and 106. See also finding of fact No. 8 in the Final Decision. However, even if this were not the case, the plaintiff's right to inspect exists at DOC's regular office or place of business. Further, incarceration obviously carries with it concerns for security, safety and adherence to DOC rules.

ORDER:

The appeal is dismissed.



John L. Cordani, Judge