

DOCKET NO.: HHB-CV-23-6078668-S

CHIEF OF POLICE, CITY OF	:	SUPERIOR COURT
BRIDGEPORT, POLICE DEPARTMENT,	:	
CITY OF BRIDGEPORT, CITY OF	:	JUDICIAL DISTRICT OF
BRIDGEPORT	:	NEW BRITAIN
	:	
v.	:	TAX AND ADMINISTRATIVE
	:	APPEALS SESSION
	:	
FREEDOM OF INFORMATION	:	
COMMISSION, ET. AL	:	JUNE 12, 2024

MEMORANDUM OF DECISION

The plaintiffs, the Chief of Police, City of Bridgeport, the Bridgeport Police Department, and the City of Bridgeport (together, Bridgeport), appeal from an March 8, 2023, final decision (the decision) of the defendant, the Freedom of Information Commission (the commission), ordering the disclosure of documents related to Deonte Tomlinson, the requester. Bridgeport appeals arguing that Bridgeport has the right to redact responsive documents and that the commission erred in not allowing Bridgeport to make unspecified redactions as desired by Bridgeport after the close of the contested hearing on Mr. Tomlinson's request. The court concludes that Bridgeport's arguments are without any legal basis.

It is settled law that the general rule under the Freedom of Information Act (FOIA) is disclosure. It is the burden of the responding agency to justify any applicable exemptions. Here, Bridgeport failed to present any evidence supporting the application of any FOIA exemption to any responsive documents, or, indeed, to identify what specific FOIA exemptions Bridgeport believes apply. Accordingly, this appeal is dismissed.

*Electronic notice sent to all counsel of record:
 1) D. Scalo (TT) and 2) V. Harmon (D).
 A. Jordanopoulos, ct officer 6/12/24 116*

JUDICIAL DISTRICT OF NEW BRITAIN
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FACTS

The administrative record before the court demonstrates the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

On February 27, 2020, Deonte Tomlinson submitted a Freedom of Information Act request to Bridgeport for all records related to Mr. Tomlinson's arrest and conviction for a 2016 murder (the request). See generally *State v. Deonte Tomlinson*, CR16-0290437-T. Mr. Tomlinson is currently incarcerated at the Cheshire Correctional Institution. Bridgeport acknowledged the request on March 4, 2020. On August 3, 2020, Mr. Tomlinson inquired as to the status of the request. On August 12, 2020, Bridgeport informed Mr. Tomlinson that Bridgeport was still processing the request and that at least a portion of the responsive records would be available "within 2-3 weeks." Return of Record (ROR), at 55. Bridgeport did not provide Mr. Tomlinson with any responsive records.

On April 5, 2021, Mr. Tomlinson filed an appeal with the commission (the appeal).¹ On December 17, 2021, the commission held a remote, contested hearing on the appeal. Bridgeport was represented by counsel at the December 17th hearing. At the December 17, 2021 hearing, Bridgeport did not assert that any of the responsive documents were subject to an exemption and did not present any evidence to support any claimed exemption.

¹ Normally applicable appeal deadlines were suspended as a result of the COVID-19 pandemic. See Executive Order No. 7M § 2(1) (March 20, 2020).

On February 8, 2023, the commission sent Mr. Tomlinson and Bridgeport a proposed final decision. The proposed final decision ordered Bridgeport to provide Mr. Tomlinson “with a copy of all records responsive to the request, free of charge.” ROR, at 66. The proposed final decision specifically found that Bridgeport “did not present any testimonial or documentary evidence that they searched for the requested records during the approximately twenty months that passed from the date of the request to the date of the hearing in this matter.” ROR, at 66.

On March 8, 2023, the commission met at its regular meeting to consider the proposed final decision. At the March 8th commission meeting, Bridgeport acknowledged that it had located the responsive records. Also at the March 8, 2023 meeting, counsel for Bridgeport argued that because the proposed final decision did not specifically state that responsive documents were to be produced in unredacted form, Bridgeport was entitled to review the responsive documents and redact portions of the responsive documents. At the March 8, 2023 commission meeting, Bridgeport did not identify what responsive documents it intended to redact, on what legal basis, or present any evidence or argument (or indicate that it was prepared to do so at the March 8, 2023 hearing) that such redactions were proper under applicable law. At the March 8, 2023 hearing, the commission voted unanimously to approve the proposed final decision. A notice of final decision was sent to the parties on March 15, 2023.

On April 13, 2023, Bridgeport filed a motion for articulation and a motion for stay of enforcement seeking clarification that the commission’s final order dated March 8, 2023 only

required Bridgeport to produce redacted responsive records. On April 21, 2023, the commission denied both of Bridgeport's motions. On April 27, 2023, Bridgeport filed the instant appeal.

LEGAL STANDARD

“Our resolution of [administrative appeals] is guided by the limited scope of judicial review afforded by the Uniform Administrative Procedure Act; General Statutes § 4-166 et seq.; to the determinations made by an administrative agency. We must decide, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion. . . . Even as to questions of law, the court's ultimate duty is only to decide whether, *in light of the evidence*, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given a statute by the agency charged with its enforcement.” (Citations omitted; emphasis in original; internal quotation marks omitted). *Rocque v. Freedom of Information Commission*, 255 Conn. 651, 658, 774 A.2d 957 (2001).

“Our review of an agency's factual determination is constrained by . . . § 4-183(j), which mandates that a 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 . . . (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . . This limited standard of review dictates that, with regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency. . . . An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole." (Citations omitted; internal quotation marks omitted). *Id.*, 658-59.

"It must be noted initially that there is an overarching policy underlying [the Freedom of Information Act] . . . favoring the disclosure of public records. . . . It is well established that the general rule under the act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the . . . legislation [comprising the act]. . . . The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. . . . This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." (Citations omitted; internal quotation marks omitted). *Id.*, 660-61.

LEGAL ANALYSIS

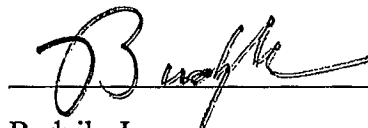
It is the burden of the producing agency to present evidence to the commission justifying the application of a specific statutory exemption to a specific document or a

category of documents. Here, the record demonstrates that Bridgeport presented no evidence of any kind justifying the application of any FOIA exemption. Indeed, Bridgeport fails to even state what statutory exemptions it believes applies to any responsive document. The commission has no legal obligation to state that its production orders apply to only redacted or unredacted documents, as Bridgeport argues in this appeal. That is particularly the case where the record demonstrates that Bridgeport failed to present any evidence whatsoever in support of any statutory exemption, or even request a specific exemption, during the commission's hearings on December 17, 2021 or March 8, 2023. See *Direct Energy Servs., LLC v. Pub. Utilities Regul. Auth.*, 347 Conn. 101, 148, 296 A.3d 795 (2023) (“A party to an administrative proceeding cannot be allowed to participate fully at hearings and then, on appeal, raise claims that were not asserted before the board or agency.”) Bridgeport's argument effectively stands long settled FOIA law on its head. It is not for the commission to demonstrate why statutory exemptions do not apply; it is for the producing agency to demonstrate that specific exemptions do apply. See *Rocque*, supra 255 Conn. 660-61. It is the producing agency's burden to demonstrate the applicability of any claimed statutory exemption. *Id.* Here, Bridgeport failed to present any evidence that any responsive documents were subject to a statutory exemption. Therefore, the commission's order requiring that Bridgeport provide Mr. Tomlinson “with a copy of all records responsive to the request” is clear on its face. Bridgeport's argument that the commission's order exceeds its authority because it compels Bridgeport to produce unredacted documents that are subject to

statutory exemptions is without merit. Bridgeport has not presented any evidence demonstrating that any responsive documents are subject to any statutory exemption.

CONCLUSION

For all the foregoing reasons, this appeal is dismissed.


Budzik, J.