

DOCKET NO: HHBCV236083041S

SUPERIOR COURT

LEMCKE, MARC
V.
FREEDOM OF INFORMATION
COMMISSION

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

12/19/2024

ORDER

The following order is entered in the above matter:

ORDER:

The plaintiff, Marc Lemcke, appeals an October 25, 2023 decision (the decision) by the codefendant, the Freedom of Information Commission (commission), dismissing Mr. Lemcke's complaint regarding the response of the codefendant, the Town of Westport, to Mr. Lemcke's October 31, 2022 request (the request) for documents under the Freedom of Information Act (FOIA). Mr. Lemcke proceeds pro se. For the reasons set forth below, the court dismisses this appeal.

It is undisputed that Mr. Lemcke's request was directed to Westport's First Selectwoman, Jennifer Tooker, and that the request sought documents regarding former First Selectman, James Marpe, as well as several other agencies of the Town of Westport (e.g., the Fire Department, the Planning and Zoning Department, and the Town Attorney). See Return of Record (ROR), at 259-260. Westport produced a substantial number of documents in response to the request. See ROR, at 260-61. Nevertheless, Mr. Lemcke challenges the commission's conclusion that First Selectwoman Tooker was not required to produce potentially responsive documents that her office did not maintain, but where those documents might be held by a Town of Westport department that, as First Selectwoman, Ms. Tooker supervised or had ultimate authority over. This is particularly true with respect to documents relating to former First Selectman Marpe. As a former employee, the record discloses that Mr. Marpe's documents are maintained by the Town of Westport's Information Technology (IT) Department. ROR, at 261.

As an initial matter, the court holds that there is substantial evidence in the record to support the commission's factual conclusion that First Selectwoman Tooker's office does not maintain public records related to former Town of Westport employees because an assistant town attorney for Westport submitted an affidavit to the commission attesting to that fact and the commission is entitled to rely on that evidence. See ROR, at 261. Second, the court agrees with the commission that it is settled law that a first selectperson's office is not required to seek out, or to produce, public records not maintained by that office simply because, as first selectperson, that office supervises, or has administrative control over, other town agencies. See *Lash v. Freedom of Info. Comm'n*, 116 Conn. App. 171, 187, 976 A.2d 739, 750 (2009), *aff'd in part, rev'd in part*, 300 Conn. 511, 14 A.3d 998 (2011) (“[A]s a department of the town of Greenwich, it is clear that the law department is an agency in its own right under the administrative supervision of the town attorney. In setting forth the disclosure requirements for public agencies, § 1-210(a) requires that ‘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.... Each such agency shall keep and maintain all public records in its custody....’ It is undisputed that the records of the law department are not kept on file by or in the custody of the first selectman's office but, rather, are maintained by the law department itself. Although both the first selectman and the law department may be public agencies for the purposes of the act; see General Statutes § 1-200(1)(A); as distinct agencies, *Lash* has no duty to maintain or make available the records of the law department, just as the law department has no duty to maintain or disclose the records of the first selectman.”) To the extent that Mr. Lemcke desires to obtain public records from the Town of Westport's IT department, or any other agency or department of the Town of Westport other than the Office of the First Selectperson, Mr.

Lemcke may file a public records request with those specific departments and that is otherwise in compliance with FOIA.

Finally, to the extent Mr. Lemcke asserts any other arguments in support of his appeal, the court concludes that, even considering Mr. Lemcke's pro se status, those claims are waived as not adequately briefed, or having been set forth with sufficient clarity such that the court can properly consider those claims. See *Rosario v. Rosario*, 198 Conn. App. 83, 90, 232 A.3d 1105, 1109 (2020) (internal citations omitted.) ("Claims are ... inadequately briefed when they ... consist of conclusory assertions ... with no mention of relevant authority and minimal or no citations from the record.... Where an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived.")

For all the foregoing reasons, this appeal is dismissed.

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

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Judge: MATTHEW JOSEPH BUDZIK

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.