DOCKET NO.: HHB-CV-22-5032223-S : SUPERIOR COURT

DAVID GODBOUT : JUDICIAL DISTRICT OF NEW BRITAIN

v. : TAX AND ADMINISTRATIVE APPEALS SESSION

FREEDOM OF INFORMATION COMMISSION : FEBRUARY 16, 2024

MEMORANDUM OF DECISION

The plaintiff, David Godbout, and the defendant, the Freedom of Information Commission (the commission), cross move for summary judgment on Mr. Godbout's First Amended Petition, see Docket Entry No. 113.00, filed pursuant to General Statutes § 1-206(b)(2).[1] Mr. Godbout filed a Freedom of Information Act (FOIA) request with the commission and the commission responded to Mr. Godbout that the commission did not maintain any of the records sought by Mr. Godbout. In response, Mr. Godbout filed a complaint with the commission. Exercising her authority under § 1-206(b)(2), the commission's Executive Director informed the commission that she had reason to believe that holding a hearing on Mr. Godbout's complaint would be an abuse of the administrative process. Therefore, the commission's Executive Director recommended to the commission that it not hold a hearing on Mr. Godbout's complaint. In her recommendation, the Executive

[1] In relevant part, § 1-206(b)(2) states, "[a]ny party aggrieved by the commission's denial of [a request to schedule an appeal hearing] may apply to the superior court for the judicial district of New Britain, not later than fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal."

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Mailed to Plaintiff at his address of record.
Electronic notice sent to D's counsel Harmon.
A. Jordanopoulos ct officer 2/16/24

Director noted that Mr. Godbout had filed over 450[2] complaints with the commission over the years, that, at the time, Mr. Godbout had 28 other pending complaints, that the commission did not maintain the records sought by Mr. Godbout, and that two previous Superior Court decisions had affirmed the commission's decision not to hold hearings on Mr. Godbout's prior complaints.

The commission adopted the Executive Director's recommendation and denied Mr. Godbout's request for a hearing on his complaint. In response to the commission's denial, Mr. Godbout filed the instant application. Mr. Godbout proceeds *pro se*.

In his motion for summary judgment, Mr. Godbout argues that § 1-206(b)(2)'s provision allowing the commission to deny Mr. Godbout a hearing is unconstitutional under Connecticut's constitution because the right to seek information from the government was a common law right that existed at the time of the adoption of the Connecticut constitution in 1818. Therefore, Mr. Godbout argues, the legislature cannot restrict his common law right to seek information from the government without providing a reasonable alternative for enforcing that common law right. Mr. Godbout argues that because the commission can refuse to hold a hearing on his complaint if it finds that the hearing would be an abuse of the commission's administrative process, § 1-206(b)(2) does not provide that required reasonable alternative. In addition to this claim, Mr. Godbout claims that the guidelines set forth in § 1-206(b)(3) for determining when the commission may refuse to hold a hearing are

[2] This number has evidently increased to 479. See Docket Entry No. 147.00, at 1.

unconstitutionally vague. Finally, Mr. Godbout seeks an order requiring the commission to hold a hearing on his complaint.

For its part, the commission cross moves for summary judgment arguing that §§ 1-206(b)(2) and (3) are constitutional and that, on the undisputed facts of this case, the commission was correct to conclude that a hearing on Mr. Godbout's complaint would be an abuse of the commission's administrative process. In so moving, the commission relies on the undisputed history of Mr. Godbout's extraordinary number of complaints and the fact that the commission does not maintain the documents sought by Mr. Godbout.

The court agrees with the commission. The court finds that Mr. Godbout has failed to meet his heavy burden of demonstrating the unconstitutionality of §§ 1-206(b)(2) and (3). First, Mr. Godbout has failed to present relevant legal authority for the proposition that access to government records was a common law right existing at the time of the adoption of Connecticut's constitution in 1818. Moreover, even if such a common law right did exist at that time, there is no legal authority for the idea that such a right could not be restricted where the request for information was an abuse or constituted an injustice. Second, the court holds that the terms of § 1-206(b)(3) provide a person of ordinary intelligence a reasonable opportunity to understand what conduct might trigger its application. That is particularly true here where Mr. Godbout has filed some 450 complaints and § 1-206(b)(3) explicitly states that the commission may refuse to hold a hearing where a complaint is "repetitious or cumulative." Finally, the court concludes that the undisputed material facts demonstrate that the commission was correct in denying Mr. Godbout a hearing because it is plain that doing

so would have been an abuse of the commission's administrative process. Therefore, the commission is entitled to judgment as a matter of law on Mr. Godbout's petition.[3]

For all the reasons set forth herein, the court denies Mr. Godbout's motion for summary judgment and grants the commission's cross motion for summary judgment. Judgment shall enter in favor of the commission as to all claims.

FACTS

The court finds that the following material facts are undisputed. Although this matter is not an administrative appeal pursuant to General Statutes § 4-183, see *Godbout* v. *Freedom of Information Commission*, 2015 WL 4380266, fn.1 (Conn. Super. Ct., June 1, 2015) (Schuman, J.), the commission nevertheless filed a record reflecting the relevant facts from the underlying administrative process. See Docket Entry Nos. 120.00; 126.00. The court takes the undisputed facts from that record[4] and the parties' pleadings as necessary.

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[3] Mr. Godbout's First Amended Petition contains a number of inchoate claims. See Docket Entry No. 113.00, at 25-26. As to those claims not expressly discussed in this memorandum of decision, the court grants summary judgment in favor of the commission on each of those claims because they are duplicative of Mr. Godbout's fundamental claim for hearing, plainly not authorized by applicable law, see *Burton* v. *Freedom of Information Commission*, 161 Conn. App. 654, 662-63, 129 A.3d 721 (2015) (setting forth the forms of relief available under FOIA), and/or not adequately briefed, see *State* v. *Buhl*, 321 Conn. 688, 724-29, 138 A.3d 868 (2016) (inadequately briefed arguments may be rejected). Additionally, the court denies Mr. Godbout's motion made at the October 25, 2023 merits hearing that the court consider additional exhibits in support of Mr. Godbout's motion for summary judgment. Mr. Godbout offered voluminous additional exhibits at the hearing. The court has reviewed Mr. Godbout's proffered exhibits and concludes that they are irrelevant to the issues before the court and do not raise any material factual dispute or relevant issue of law.

[4] See *Godbout* v. *Freedom of Info. Comm'n*, No. HHBCV195025125S, 2019 WL 5172357, at *5 (Conn. Super. Ct. Sept. 23, 2019), aff'd, 202 Conn. App. 908, 245 A.3d 496, appeal denied

On February 18, 2021, Mr. Godbout made a request to the commission for various records, including, *inter alia*, Microsoft Teams and Zoom "sign-on logs" related to the regular and special meetings of the commission from October 1, 2020 through February 18, 2021, Microsoft Teams "collection" data, any contract between Microsoft Teams and the commission regarding the technology used for the commission's remote meetings, documents related to the selection of the technology used by the commission to conduct remote meetings, and all "staff meeting" minutes or notes from March 1, 2020 through March 1, 2021. The commission acknowledged Mr. Godbout's request on March 1, 2021. On March 19, 2021, commission staff informed Mr. Godbout that the commission maintained no records responsive to his request. On March 19, 2021, Mr. Godbout filed a complaint with the commission contesting the commission's response to Mr. Godbout's February 18, 2021 request. On May 25, 2021, the commission informed Mr. Godbout that it had docketed his appeal. On August 4, 2022, the commission and Mr. Godbout were notified that the commission's Executive Director, Colleen Murphy, had reason to believe that scheduling a hearing on Mr. Godbout's appeal would be an abuse of the commission's administrative process pursuant to General Statutes § 1-206(b)(2)[5] and, therefore, Executive Director

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by 336 Conn. 936, 249 A.3d 38 (2021) *(Godbout III)* (accepting certified records from the commission in order to establish undisputed facts on summary judgment).

[5] General Statutes § 1-206(b)(2) states, in relevant part, "If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing

Murphy was not scheduling a hearing on Mr. Godbout's appeal. Applying the considerations set forth in General Statutes § 1-206(b)(3),[6] Executive Director Murphy found that Mr. Godbout had filed over 450 complaints with the commission, of which 28 were then still pending, and that such complaints often had been duplicative and/or frivolous. Executive Director Murphy also stated that (1) Mr. Godbout had previously failed to appear for commission hearings, resulting in the waste of state resources; (2) Mr. Godbout was contemptuous of the commission and had made it plain that he sought the commission's elimination; (3) Mr. Godbout's requests were frequently voluminous and responding to Mr. Godbout's numerous complaints depleted scarce commission resources; (4) holding a hearing

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without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process."

[6] General Statutes § 1-206(b)(3) states, in relevant part, "In making the findings and determination under subdivision (2) of this subsection the commission shall consider the nature of any injustice or abuse of administrative process, including, but not limited to: (A) The nature, content, language or subject matter of the request or the appeal, including, among other factors, whether the request or appeal is repetitious or cumulative; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking the appeal; (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal; (D) any history of nonappearance at commission proceedings or disruption of the commission's administrative process, including, but not limited to, delaying commission proceedings; and (E) the refusal to participate in settlement conferences conducted by a commission ombudsman in accordance with the commission's regulations."

on Mr. Godbout's complaint would delay hearings on complaints filed by other citizens; (5) prior decisions not to hold hearings on Mr. Godbout's complaints had been upheld in the Superior Court;[7] and (6) that the commission simply did not maintain the records sought by Mr. Godbout.

On August 24, 2022, the commission voted to deny leave to hold a hearing on Mr. Godbout's complaint. On September 6, 2022, Mr. Godbout appealed the commission's denial of leave to hold a hearing on his complaint to the Superior Court.

LEGAL STANDARD

a. Summary judgment

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012). "In deciding a motion for

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[7] See *Godbout* v. *Freedom of Information Commission*, 2015 WL 4380266 (Conn. Super. Ct., June 1, 2015) (*Godbout I*); *Godbout* v. *Freedom of Information Commission*, 2016 WL 4708550 (Conn. Super. Ct., August 9, 2016) (*Godbout II*); see also *Godbout III*, 2019 WL 5172357.

summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case. . . ." (Internal quotation marks omitted.) *Stuart* v. *Freiberg*, 316 Conn. 809, 820-21, 116 A.3d 1195 (2015); see also Practice Book § 17-49 (summary judgment standard).

b. Constitutionality

"[A] party challenging the constitutionality of a statute must prove its unconstitutionality beyond a reasonable doubt. While the courts may declare a statute to be unconstitutional, our power to do this should 'be exercised with caution, and in no doubtful case.' Every presumption is to be given in favor of the constitutionality of the statute." (Citations omitted.) *Fair Cadillac-Oldsmobile Isuzu P'ship* v. *Bailey*, 229 Conn. 312, 316, 640 A.2d 101 (1994).

"The purpose of the vagueness doctrine is twofold. The doctrine requires statutes to provide fair notice of the conduct to which they pertain and to establish minimum guidelines to govern law enforcement. The United States Supreme Court has set forth standards for evaluating vagueness. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap

the innocent by not providing fair warning. . . . A law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. . . ." (Internal quotation marks omitted.) *State* v. *DeLoreto*, 265 Conn. 145, 164, 827 A.2d 671 (2003).

"Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications. . . . Therefore, a legislature must establish minimal guidelines to govern law enforcement. . . . Third, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked. . . . " (Internal quotation marks omitted.) Id., at 164-65.

"These standards should not . . . be mechanically applied. The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment. . . . The Court has . . . expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe. . . . Our vagueness inquiry . . . extends only to those portions of the statute that were applied to the defendant in this case." (Internal quotation marks omitted.) Id., at 165.

LEGAL ANALYSIS

a. Common law right to request government information

"Article first, § 10 [of the Connecticut constitution], has been viewed as a limitation upon the legislature's ability to abolish common law and statutory rights that existed in 1818, when article first, § 10, was adopted, and which were 'incorporated in that provision by virtue of being established by law as rights the breach of which precipitates a recognized injury. . . . Therefore, where a right existed at common law or by statute in 1818 and became incorporated into the Connecticut constitution by the adoption of article first, § 10, the legislature may restrict or abolish such incorporated right only where it provides a reasonable alternative to the enforcement of such right.'" (Citations omitted.) *Ecker* v. *Town of W. Hartford*, 205 Conn. 219, 234, 530 A.2d 1056 (1987).

In support of his claim that a common law right to access government records existed prior to the adoption of Connecticut's constitution in 1818, Mr. Godbout cites to several decisions from British courts dating from the 18th and 19th centuries.[8] Mr. Godbout cites no legal authority as to why decisions from a foreign jurisdiction (and that postdate American independence from Britain) establish what Connecticut common law may have been prior to 1818. The court is not aware of any such legal authority. Indeed, applicable Connecticut law indicates that the right to seek information from the government is a statutory right created by

[8] See Docket Entry No. 137.00, at 1 citing to *Rex* v. *Allgood*, 101 ER 1232, Court of King's Bench (1798); *Rex* v. *Lucas et al.*, 103 ER 765 Court of King's Bench (1808); *Rex* v. *Tower*, 105 ER 795, Kings Court Bench (1815).

our legislature in order to vindicate general democratic principles.[9] See *Lieberman* v. *State Bd. of Lab. Rels.*, 216 Conn. 253, 265, 579 A.2d 505 (1990) (stating that "[t]he state constitution provides that our government is to be responsible to the people. Conn. Const., art. I, § 2. The legislature, in recognition of this guarantee, has ensured the government's accountability through the [Freedom of Information Act] and the establishment of a public records management system.") The court concludes that Mr. Godbout has failed to demonstrate that there was a common law right to access government records at the time of the adoption of Connecticut's 1818 constitution and therefore denies Mr. Godbout's requested relief.

Additionally, even if Mr. Godbout were able to demonstrate the existence of such a common law right, settled law holds that the legislature may restrict such a right so long as "it provides a reasonable alternative to the enforcement of such right." See *Ecker* v. *W. Hartford,* 205 Conn. 234. Here, the Freedom of Information Act plainly provides a reasonable alternative to enforcing any common law right to access government records existing prior to 1818. See generally *Wilson* v. *Freedom of Information Commission*, 181 Conn. 324, 328-29,

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[9] Nevertheless, in keeping with its duty to avoid deciding constitutional issues if the case can be decided on other grounds, see e.g., *State* v. *Cortes*, 276 Conn. 241, 253, 885 A.2d 153 (2005), the court does not decide this issue. It should be undisputed that there is no federal constitutional right to make unlimited requests for information from a government agency. See *Houchins* v. *KQED, Inc.*, 438 U.S. 1, 9; 15, 98 S. Ct. 2588, 57 L. Ed. 2d 553 (1978) ("This court has never intimated a First Amendment guarantee of a right of access to all sources of information within government control.... Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control.")

435 A.2d 353 (1980) ("The Freedom of Information Act expresses a strong legislative policy in favor of the open conduct of government and free public access to government records.... The general rule, under the act ... is disclosure.... Exceptions to that rule will be narrowly construed in light of the underlying purpose of the act[.]") In reality, what Mr. Godbout objects to in his Amended Application is that § 1-206(b)(2) deprives him of a hearing, i.e., a reasonable means to attempt to enforce his claimed right to access government documents, where such a hearing would be an abuse of the commission process or constitute an injustice. Mr. Godbout offers no argument or legal support for the idea that a common law right to seek government information existed at the time of the adoption of the Connecticut constitution where such a request would be an injustice or abuse of the government process. Indeed, our Connecticut Supreme Court has made clear that "[t]he [Freedom of Information Act] does not ... confer upon the public an absolute right to all government information." *Lieberman* v. *State Bd. of Lab. Rels.*, 216 Conn. 266; see also *Wilson* v. *Freedom of Information Commission*, 181 Conn. 328.

b. Vagueness

The court concludes that General Statutes § 1-206(b)(3) is not unconstitutionally vague. In determining whether holding a hearing on an complaint would constitute an abuse of the commission process or an injustice under § 1-206(b)(2), the Executive Director and the commission are directed to consider whether a complaint is repetitious or cumulative, the nature and language of prior complaints, the nature and language of communications with commission staff and whether the claimant has a history of nonappearance before the

commission, and any history of refusal to participate in settlement conferences sponsored by the commission's ombudsman. See § 1-206(b)(3). The court concludes that these considerations, on their face, provide a person of ordinary and reasonable intelligence fair notice of what conduct may trigger a refusal to hold a hearing under §§ 1-206(b)(2) and (3). Indeed, Mr. Godbout does not allege that he misunderstood any portion of §§ 1-206(b)(2) or (3)'s provisions or somehow mistakenly became subject to their provisions.

c. *The commission's decision not to schedule a hearing*

The court holds that, based on the undisputed material facts set forth above, holding a hearing on Mr. Godbout's complaint would have been an abuse of the commission process and an injustice. Therefore, the decision of the Executive Director and the commission not to hold such a hearing was legally correct and the commission is entitled to judgment as a matter of law on Mr. Godbout's claims.

Mr. Godbout does not dispute the fact that he has filed over 450 complaints with the commission and that some 28 of his complaints were pending at the time of the appeal filed in this case. Mr. Godbout offers no evidence to the effect that the commission in fact does maintain the records sought by Mr. Godbout, which records the commission has represented in the underlying administrative record that it does not maintain. These undisputed facts alone are sufficient to demonstrate that a hearing on Mr. Godbout's complaint would be an abuse of the commission process and an injustice. Moreover, Mr. Godbout offers no evidence disputing the commission's underlying factual record that Mr. Godbout has previously failed to appear for commission hearings, that Mr. Godbout has made it plain that he seeks the

commission's elimination, that Mr. Godbout's requests are frequently voluminous, and that holding a hearing on Mr. Godbout's complaint would (unfairly, in the court's view) delay hearings on complaints filed by other citizens. Finally, the court takes judicial notice of the underlying facts and rulings of other superior courts that have upheld the commission's prior decisions not to hold hearings on Mr. Godbout's complaints. See *Godbout I*; *Godbout II*; and *Godbout III*. This undisputed history also provides a factual basis for the commission's decision not to hold a hearing in this matter.

Finally, the court is not persuaded by Mr. Godbout's argument that it was somehow improper or a conflict of interest for the Executive Director and the commission to decide whether to hold a hearing on Mr. Godbout's complaint. General Statutes §§ 1-206(b)(2) and (3) expressly empower and direct the Executive Director and the commission to make these decisions.

CONCLUSION

For all the foregoing reasons, the court denies Mr. Godbout's motion for summary judgment in its entirety. The court grants the Freedom of Information Commission's cross motion for summary judgment in its entirety. Judgment shall enter in favor of the Freedom of Information Commission on all claims included in the First Amended Petition.

Budzik, J.