

OFFICE OF THE CLERK
SUPERIOR COURT

2019 MAY 6 PM 3 58

JUDICIAL DISTRICT OF
NEW BRITAIN SUPERIOR COURT

CV 18 5024304 S

KACEY LEWIS : JUDICIAL DISTRICT

V. : OF NEW BRITAIN

FREEDOM OF INFORMATION : MAY 6, 2019
COMMISSION

MEMORANDUM OF DECISION

The plaintiff filed an administrative appeal from a decision of the freedom of information commission (the commission) "summarily deny[ing] leave to schedule a hearing," on his filed complaint, pursuant to General Statutes § 1-206 (b) (2).

The complaint was filed by the plaintiff with the commission on October 24, 2017. The executive director of the commission concluded thereafter that a hearing on the complaint should be summarily denied. On August 2, 2018, the plaintiff was sent notice (1) of the executive director's determination and the grounds therefore, (2) that the commission would consider the executive director's determination on August 22, 2018, (3) that the issue of the determination was not arguable, and (4) that the plaintiff might submit a written argument and/or affidavit by August 20, 2018. The record does not disclose that the plaintiff did submit anything to the commission as a response. On August 22, 2018, the commission voted to

*Electronic notice sent to all counsel of record.
mailed to plaintiff Kacey Lewis.
mailed to Official Reporter of Judicial Decisions.
A. Jordan Spores, Ct. Officer 5-6-19*

approve the request of its executive director to deny leave to schedule a hearing. Notice was sent to the plaintiff on August 23, 2018, informing him of the denial and closing the file.¹

The plaintiff filed the administrative appeal from the commission's denial on October 25, 2019. The commission has moved to dismiss based upon the following: "Any party aggrieved by the commission's denial of such leave [for a hearing] may apply to the superior court for the judicial district of Hartford, within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal." § 1-206 (b) (2).

The statute as quoted raises whether the appeal was timely filed and therefore whether the court lacks subject matter jurisdiction to hear this appeal. See *Glastonbury Volunteer Ambulance Association v. Freedom of Information Commission*, 227 Conn. 848, 852-854 (1993); *Hillcroft Partners v. CHRO*, 205 Conn. 324, 326 (1987) (dismissal of late-filed administrative appeals for lack of subject matter jurisdiction). Here the plaintiff first asked for a waiver of fees on September 17, 2018 and the appeal was filed on October 25, 2018. The deadline for filing was September 6, 2018 under § 1-206 (b) (2).

¹In paragraph 10 of the plaintiff's administrative appeal, the plaintiff admits that he received the August 2nd notice denying a hearing, but does not acknowledge that the notice related that the commission would consider the issue on August 22nd without an oral presentation. He does not plead that he received the August 23rd notice, and at the oral argument on May 1, 2019, he denied an offer from the court to review and comment on this notice.

The plaintiff replies that he was in Rockville Superior Court acting as a self-represented party on August 22, 2018. He denies having the opportunity to argue at the commission proceeding. The court rejects this argument, as the commission did not allow for oral argument. The plaintiff admits that he received the August 2nd notice that allowed him to present a written argument to the commission. Further the plaintiff argues that he did not know of the commission decision on August 22nd, so that he could timely appeal to court. The record of the notice of August 23rd contradicts this claim. Finally the plaintiff contends that missing the deadline for filing was caused by neglect, not disclosing who caused this neglect. The record again does not support this contention.

Therefore the motion of the commission to dismiss for lack of subject matter jurisdiction is granted.

BY THE COURT



Henry S. Cohn, JTR