

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lynelle Jones,

Complainant

against

Docket #FIC 2020-0020

President, Wilson Point Property  
Owner's Association; and Wilson  
Point Property Owner's Association,

Respondents

September 22, 2021

This matter was heard as a contested case on October 23, 2020, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.<sup>1</sup>

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. By email to the Commission, dated and filed January 10, 2020,<sup>2</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her records request described in paragraph 2, below.

2. It is found that, by email dated December 13, 2019, the complainant requested from the respondents an opportunity to inspect records including, but not limited to maps, plans, invoices, and correspondence regarding the Nathan Hale Drive project.

3. It is found that, by letter dated December 19, 2019, the respondents provided the complainant with records in response to her request. However, the respondents also informed the complainant that the FOI Act does not apply to private homeowner associations.

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<sup>1</sup> On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct meetings in person.

<sup>2</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains subject matter jurisdiction.

4. It is found that the Wilson Point Property Owner's Association ("WPPOA") was incorporated in 1929 as an association of private property owners. It is found that the WPPOA is located on a more than 150-acre peninsula with 80 private homes in Norwalk, Connecticut.

5. It is found that the WPPOA's Articles of Association provide that it was formed "as a body politic and corporate pursuant to the statute laws of the State of Connecticut..." It is also found that such Articles of Association, as amended in 2008, list the following purposes for which it was formed:

1. To purchase, acquire, and hold the legal title to land lying in the bed of each and every road, street and pathway now or hereafter existing and in use....
2. To build, construct, improve, repair and maintain roads, streets and pathways on and over such parcels of land as the said corporation may acquire and to provide for the sweeping, cleaning, sprinkling and oiling of the said roads, streets and pathways.
3. To construct and maintain sidewalks, gutters, drains, ditches, culverts, bridges, water courses and like facilities necessary, or appropriate for the maintenance and repair of the above-mentioned roads.
4. To provide police protection for all, or any portion, of the tracts of land hereinabove mentioned, and for the owners and occupants thereof, so far as it may be lawful so to do.
5. To grant franchises, rights of way and easements upon, over or under any land it may acquire, for use in connection with any public utility, or any other purpose so far as it can lawfully do so.
6. To establish a fund for the purpose of providing for a) the installation, upkeep, repair and maintenance of the said roads (exclusive of any private road lying wholly within the boundaries of any parcel of land included within the above-mentioned tracts), gates and fences, b) snow removal, including acquisition and maintenance of equipment therefore, c) for the employment of watchmen, d) for carrying on the necessary business of the Corporation and for purposes incidental to, and connected with, the foregoing specific purposes, and e) for such other purposes as the members, by appropriate vote, may determine to be in the interests of the members. The fund shall be funded by imposing and levying, annually or more often, charges or assessments upon each and

every parcel of land, with the improvements thereon, included within the boundaries of the said tracts which may be subject to, or included within the purposes of this corporation, and in respect to each and every one of such parcels by annually, or more often, collecting from each owner thereof, a sum of money as reasonably necessary to meet its lawful expenditures.

7. To expend any and all moneys which it may collect or receive, for the purposes of this corporation.
8. To hold, acquire by gift, purchase or devise, real and personal property and any interest therein (including the right to acquire a lien, or liens) so far as such property may be necessary or proper to enable this corporation to carry out its purposes; to sell and convey the same; to mortgage its real and personal property; to issue its promissory notes, or other evidences of indebtedness....

6. In addition, it is found that the WPPOA By-laws (Article II, section 2), provide that:

The funds of the Corporation shall be expended only (a) for the upkeep, maintenance and repair of roads, grounds, gates and fences, and any other property or facilities owned by the Corporation (b) for snow removal, including acquisition and maintenance of equipment therefore, (c) for the employment of Gatehouse personnel, and the repair and maintenance of the Gatehouse (d) for carrying on the necessary business of the Corporation and for purposes incidental to, and connected with, the foregoing specific purposes and (e) for any such other purposes as the members, by majority vote of those present in person or represented by proxy at any duly called meeting of the Association, may determine to be in the interest of the residents of Wilson Point.

7. It is found that the WPPOA is governed by a Board of Directors (consisting of a President, Vice President, Secretary and Treasurer) elected by majority vote at the Annual Meeting of the association members, all homeowners. It is found that under the WPPOA's By-Laws (Article IV, section 5), the Board "shall have power to conduct, manage and control the affairs and business of this Corporation, and to make regulations and rulings not inconsistent with the laws of the State of Connecticut or the By-Laws of this Corporation, but the members at meetings shall determine questions of general policy." In addition, as set forth in the WPPOA's "Rules," the Board may adopt and administer fines in compliance with the Common Interest Ownership Act (Conn. Gen. Stat. §§47-200 et seq.), which generally governs common interest communities formed in Connecticut.

8. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 . . . or (3) receive a copy of such records in accordance with section 1-212....

9. Section 1-200(1), G.S., defines “public agency,” as:

(A) [a]ny executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, “judicial office” includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any “implementing agency”, as defined in section 32-222.

10. The complainant contended that the WPPOA is a public agency within the meaning of §1-200(1)(A), G.S., and/or the “functional equivalent” of a public agency within the meaning of §1-200(1)(B), G.S.

11. With respect to whether the respondents are public agencies under §1-200(1)(A), G.S., the complainant argues that the use of the term “body politic and corporate” in the WPPOA’s Articles of Association, as well as “the nature and activities” of the WPPOA support a finding that it is a “public agency”. The complainant relies, in part, on a definition of “body politic” from *Black’s Law Dictionary* and on cases in which certain homeowner associations were found to be “public agencies”.

12. The complainant argues that the use of the term “body politic and corporate”, by itself, “should resolve the question as to whether the WPPOA is a public agency,” and quotes the following definition of “body politic”:

A term applied to a corporation, which is usually designated as a ‘body corporate and politic.’ The term is particularly appropriate

to a public corporation invested with powers and duties of government. It is often used, in a rather loose way, to designate the state or nation or sovereign power, or the government of a county or municipality, without distinctly connoting any express and individual corporate character. *Munn v. Illinois*, 94 U.S. 124, 24 L. Ed. 77; *Coyle v. McIntire*, 7 *Houst. (Del.)* 44, 30 *Atl.* 728, 40 *Am. St. Itep.* 109; *Warner v. Beers*, 23 *Wend. (N.Y.)* 122; *People v. Morris*, 13 *Wend. (N.Y.)* 334.<sup>3</sup>

13. The complainant, however, cited no caselaw to support a finding that an entity designated as a “body politic” was necessarily a public agency.

14. The Commission takes administrative notice that, on several occasions, it has analyzed and determined that certain “associations” that were created by special act of the General Assembly and given the power to levy taxes and “discharge limited functions of self-government,” are public agencies within the meaning of §1-200(1)(A), G.S. See, e.g. Docket #FIC 2015-580, Jeffrey Gandolfo and Merle Gandolfo v. Grove Beach Point Association (May 11, 2016) (association created by act of General Assembly, granting it taxing power, police power and other related powers, was a public agency within the meaning of §1-200(1)(A), G.S.); Docket #FIC 2008-139, Jay Fain DBA Winton Park Holdings v. Winton Park Association (October 22, 2008), affirmed Winton Park Association, Inc. v. Freedom of Information Commission, judicial district of New Britain, Docket No. CV08-4019339-S (October 7, 2009) (association created as a “body politic” by special act of the General Assembly, granting it the right to raise taxes, regulate the use and right of easements, build and maintain all necessary main sewers and drains, appoint special police to act with the same powers and duties that constables have in towns, make reasonable health regulations, and approve the construction and appearance of structures, was a public agency within the meaning of §1-200(1)(A), G.S.); Docket #FIC 2006-461, John Holthaus v. Clerk, Morningside Association (July 25, 2007) (association created by special act of the General Assembly, giving it the right to levy taxes, appoint police officers, foreclose on real estate, and acquire land by eminent domain, was a public agency within the meaning of §1-200(1)(A), G.S.); Docket #FIC 1987-115, Mr. and Mrs. Peter Serafin v. Lord’s Point Association, Inc. (July 22, 1987) (association incorporated by special act of the General Assembly empowering it to levy taxes for improvement of specific land and protect interests of inhabitants, was a public agency within the meaning of §1-18a(a), now §1-200(1), G.S.)

15. It is found that the WPPOA was not created or incorporated by special act of the General Assembly granting it certain powers, and therefore is distinguishable from previous cases in which the Commission found that certain associations were public agencies within the meaning of §1-200(1)(A), G.S.<sup>4</sup>

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<sup>3</sup> The complainant did not provide a specific citation to *Black’s Law Dictionary*. After researching the issue, the hearing officer found and the Commission notes that the definition quoted by the complainant for “body politic” can be found in the *Second Edition of Black’s Law Dictionary* (1910).

<sup>4</sup> At the hearing and/or in her post-hearing brief, the complainant also relied on the following cases and advisory opinion as examples of when the Commission has held that certain associations are public

16. It is found that the WPPOA is not a public agency under §1-200(1)(A), G.S.

17. With respect to whether the respondents are the “functional equivalent” of a public agency, pursuant to §1-200(1)(B), G.S., four factors must be considered: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government. See Board of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn. 544, 554 (1980) (“Woodstock”). “All relevant factors are to be considered cumulatively, with no single factor being essential or conclusive.” Connecticut Humane Society v. Freedom of Information Commission, 281 Conn. 757, 761 (1991).<sup>5</sup>

18. With regard to whether the WPPOA performs a “governmental function” for purposes of the first prong of the Woodstock analysis, the WPPOA, as identified in its Articles of Association, is responsible for performing such functions as constructing, repairing and maintaining roads, granting rights of way and easements, imposing and levying charges or assessments, and providing “police protection.”<sup>6</sup>

19. In determining whether an entity is performing a governmental function, courts have looked to whether the function at issue is one traditionally performed by government, such as fire prevention, police protection, sanitation, public health, and parks and recreation; or one that has

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agencies or the functional equivalent of a public agency: Docket #FIC 1992-217, Choma, Jr. v. Princess Pocotopaug Association (May 13, 1992); Docket #FIC 1993-236, Stack, Jr. v. Marlborough Association Senior Housing, et. al. (April 13, 1994); Docket #FIC 1999-459, Latournes v. Chalker Beach Improvement Association, Inc., et. al. (June 28, 2000); Docket #FIC 2001-039 Simonds v. President, Fall Mt. Lake Property Owners Association, et. al. (September 12, 2001); Docket #FIC 2004-286, Lemmon v. East Norwalk Improvement Association (April 13, 2005); and Advisory Opinion #48, In the Matter of a Request for Advisory Opinion, Crescent Beach Association, Applicant. However, such cases and advisory opinion provide little guidance for the instant matter since those cases did not provide an analysis of whether the respondents were “public agencies”, within the meaning of §1-200(1)(A), G.S., or the functional equivalent of a public agency, within the meaning of §1-200(1)(B), G.S.

<sup>5</sup> In her post-hearing brief, the complainant relies on the following cases, among others, in support of her argument that the WPPOA is the “functional equivalent” of a public agency: Docket #FIC 1987-115, Serafin, supra; Docket #FIC 2006-461, Holthaus, supra; Winton Park Association, 2009 WL 3645674 (Conn. Super. 2009), *supra*; and Sachem’s Head Property Owner’s Association v. Town of Guilford, 112 Conn. 515 (1931) (association created by special act of the General Assembly and granted “the authority of subordinate self-government and improvement to regulate local and internal affairs of the designated territory....”). However, the complainant’s reliance on Serafin, Holthaus and Sachem’s Head Property Owner’s Association, is misplaced given that those cases do not involve an analysis or application of the “functional equivalence” test.

<sup>6</sup> It is found that the WPPOA has hired off-duty Norwalk police officers or other professional guard services, and budgeted \$75,000 for such security guard services in the most recent fiscal year (FY 2020). It is found that such safety and security services do not extend beyond the WPPOA property. Also, there is no evidence in the record that the guards are armed or have any authority to take law enforcement action.

evolved into a governmental function, such as the prevention and treatment of family violence. See Domestic Violence Services of Greater New Haven, Inc., v. Freedom of Information Commission, 47 Conn. App. 466, 474 (1998). In evaluating the first prong of the functional equivalence test, “courts have also considered (1) whether the private entity is statutorily required to perform the governmental function; (2) whether the private entity performs the governmental function pursuant to a contract; and (3) whether the private entity has the power to make decisions that bind the government.” Greenwich Emergency Medical Service, Inc. v. Freedom of Information Commission, 2019 WL 3248554 \*6, 7 (Conn. Super. Ct. June 18, 2019) (the first factor of the functional equivalence test was not satisfied because the entity did not have the power to govern or to make decisions that bound the town), citing to Connecticut Humane Society v. Freedom of Information Commission, 218 Conn. 757, 764-65 (1991) (law enforcement activity is a governmental function, but the functional equivalence test was not satisfied because society was not required by statute to perform such activities); Domestic Violence Services of Greater New Haven, Inc., v. Freedom of Information Commission, supra, 47 Conn. App. 474-75 (first prong of the functional equivalence test was not satisfied where nonprofit advocacy organization performed governmental service pursuant to contract, but was not statutorily required to do so, and had no power to govern, regulate, or make decisions that bound government agency); and Envirotest Services Corp. v. Freedom of Information Commission, 59 Conn. App. 753, 758-59, cert. denied, 254 Conn. 951 (2000) (first prong of the functional equivalence test was not satisfied where for-profit corporation performed governmental function pursuant to contract but was not statutorily required to do so).

20. In their post-hearing brief, the respondents “acknowledge[] that its authority over road and part-time employees at the guardhouse to control access could be considered limited governmental functions.” In addition, section 47-249 of the Common Interest Ownership Act regarding the upkeep of common interest communities, provides, in relevant part that: “the association is responsible for maintenance, repair and replacement of the common elements....”<sup>7</sup>

21. It is found that the construction, repair and maintenance of roads, and providing security services are traditional governmental functions. However, there is no evidence in the record that the WPPOA has the power to govern or make decisions that bind the City of Norwalk or other government entity. Accordingly, it is found that the first factor of the functional equivalence test is not satisfied.

22. With regard to the level of “government funding,” it is found, and the complainant concedes, that the WPPOA does not receive government funding. It is found that the WPPOA is self-funded by imposing and levying charges and assessments on each and every parcel of land. Accordingly, the second prong of the functional equivalence test is not met.

23. With regard to “the extent of government involvement or regulation,” the Appellate

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<sup>7</sup> “Common elements” are defined as” (A) in the case of (i) a condominium or cooperative, all portions of the common interest community other than the units; and (ii) a planned community, any real property within a planned community owned or leased by the association, other than a unit, and (B) in all common interest communities, any other interests in real property for the benefit of unit owners which are subject to the declaration.” Conn. Gen. Stat. §47-202(6).

Court concluded that, in order to satisfy the government regulation prong of the functional equivalence test, the entity “must operate under direct, pervasive or continuous regulatory control.” Hallas v. Freedom of Information Commission, 18 Conn. App. 291, 296, *cert. denied*, 212 Conn. 804 (1989). In Domestic Violence, the Appellate Court further opined that if the “government does not have day-to-day involvement in the ongoing activities of the [entity, then] the third prong of the functional equivalent test is not met.” Domestic Violence at 478.

24. At the hearing and in her post-hearing brief, the complainant argues that the WPPOA is “highly regulated”, and that, in addition to its “chartering document and possession of public attributes, the Connecticut Common Interest Ownership Act [sets] forth additional regulation and supervision of associations such as the WPPOA.”

25. It is found that the WPPOA is subject to its Articles of Association and the Connecticut Common Interest Ownership Act. It is found, however, that there is no direct, pervasive or continuous regulatory control by a government entity, nor is the government involved in the day-to-day ongoing activities of the WPPOA.

26. It is found that the level of government involvement or regulation is not significant, and therefore the third prong of the functional equivalence test is not met.

27. With regard to whether the WPPOA was created by government, the complainant argues that “[t]he WPPOA was created by its Articles of Association in 1929, and these articles reflect that the WPPOA is a body politic and corporate.”

28. It is found that the WPPOA was not created by government; rather, it was established in 1929 by private homeowners. Further, the complainant did not cite any caselaw to support a finding that an entity designated as a “body politic” was necessarily created by government.

29. In summary, it is found that none of the prongs of the functional equivalence test are satisfied in this case. As found in paragraphs 21, 22, 26 and 28, above, the WPPOA does not perform a government function, does not receive government funding, is not significantly controlled or regulated by government and was not created by government. It is therefore concluded that the respondents are not the “functional equivalent,” of a public agency, under §1-200(1)(B), G.S.

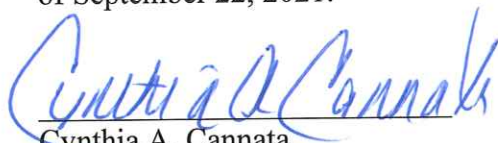
30. Accordingly, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.



Approved by Order of the Freedom of Information Commission at its regular meeting of September 22, 2021.



Cynthia A. Cannata

Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**LYNNELLE JONES**, c/o Attorney Mark J. Sommaruga, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103

**PRESIDENT, WILSON POINT PROPERTY OWNER'S ASSOCIATION; AND WILSON POINT PROPERTY OWNER'S ASSOCIATION**, c/o Attorney William W. Ward, Ackerly & Ward, 1318 Bedford Street, Stamford, CT 06905



Cynthia A. Cannata  
Acting Clerk of the Commission