

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Andrea Sandor,

Complainant

against

Docket #FIC 2020-0098

New Canaan Library, Inc.,

Respondent

March 23, 2022

This matter was heard as a contested case on December 1, 2020, January 25, 2021, May 3, 2021, June 21, 2021, September 9, 2021, and November 18, 2021, at which times the complainant and the respondent 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 telephonically¹ and remotely.² Although the Town of New Canaan originally was named as a respondent in this matter, by email dated January 12, 2021, the complainant withdrew the complaint as to the town only. The case caption has been amended accordingly.

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

1. It is found that, by email dated January 19, 2020, the complainant requested from the respondent library ("library" or "respondent") a copy of the "report/study i.e. costs, issues, any preliminary plans, etc.," that were "reviewed by the Library Committee about expanding the existing library vs. raising [sic] and rebuilding. Before deciding that a new building made more sense [sic]."

2. It is found that, by email dated January 24, 2020, the executive director of the library, Lisa Oldham, acknowledged the request.

3. It is found that, on or about January 25, 2020, a copy of an engineering report was provided to the complainant.

4. It is found that, by email dated January 26, 2020, the complainant informed Ms. Oldham that the engineering report was not the record she was seeking and reiterated that she

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

² Section 149 of Public Act 21-2 (June Sp. Sess.) authorized remote meetings through April 30, 2022.

was seeking a copy of “the alternative plan/study” concerning whether to expand the existing library or to raze it and build a new building.

5. By email to the Commission, dated and filed February 26, 2020,³ the complainant appealed to the Commission, alleging that the respondent violated the Freedom of Information (“FOI”) Act by denying her request.

6. At the hearing in this matter, the library argued that it is not a public agency, or the functional equivalent of a public agency, and further, although not required to do so under the FOI Act, that it provided to the complainant all responsive records it maintains. The complainant argued that the library is the functional equivalent of a public agency,⁴ and that it did not provide all responsive records to her in violation of the FOI Act.

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

(A) Any 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.

8. It is found that the library is not a public agency under §1-200(1)(A), G.S., or an implementing agency, under §1-200(1)(C), G.S.

³ 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, through June 30, 2021. Accordingly, the Commission retains jurisdiction over this appeal.

⁴ Throughout the hearing in this matter, the complainant repeatedly referred to the library as a “quasi-public” agency; however, it was apparent that the complainant’s argument was that the library is the “functional equivalent” of a public agency.

9. In determining whether an entity is 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).

10. It is found that the library is a non-profit tax-exempt organization that operates a public library for the benefit of the residents of the town and the general public. It is found that the library is governed by a Board of Trustees (“Board”), made up of volunteer members of the community. It is found that a committee of the Board nominates potential new members to the Board, and that the Board has final authority to approve or disapprove of potential new members. It is found that no town official, board or committee has authority to appoint members to the Board, or to approve or disapprove of prospective new members. However, it is found that the town’s first selectman is a non-voting ex-officio member of the Board.

11. It is found that the Board appoints and employs an executive director, whose salary is paid by the library. It is found that members of the library’s staff are hired by the executive director and are employees of the library, not of the town. Although the staff of the library is eligible to participate in the town’s health insurance plan, and the library’s property is insured under the town’s property insurance policies, it is found that the library reimburses the town for the cost of such insurance. It is found that the library owns the property on which the library building sits, and that the library pays for all of its utilities, including internet and electricity. It is found that the respondent is not on the town’s computer system. All fees and fines collected by the library are retained by the library and are not shared with the town.

12. It is found that the library’s executive director and his or her staff, with approval of the Board, are responsible for determining the mission and vision for the library; specifically, the collections the library maintains, and the services and programs the library provides. It is found that the town has no authority to approve, direct, or control these decisions.

13. It is found that approximately 65 to 75 percent of the funding for the library is provided by the town annually through what the executive director described as a “grant”, and that the majority of the remainder of the funding is derived from private fundraising. It is found that there is no contract between the library and the town under which the town provides funding in exchange for services provided. Rather, the process by which the library receives funding from the town begins with the executive director creating a proposed budget for the upcoming fiscal year. It is found that the proposed budget reflects the amount of money the library is seeking from the town, in part, based on how much money the library anticipates it will raise through private fundraising, and from other grants, fees, fines and other income. The proposed budget is first sent to the Board for its approval. Once the Board approves the proposed budget, the executive director then emails it to the town’s chief financial officer. Thereafter, the executive director is invited to attend meetings of the town’s board of selectmen, board of finance and the town council, at which meetings he or she presents the proposed

budget, explains the services the library has been providing or intends to provide in the future, and answers questions. It is found that if the town were to deny the library's request for annual funding, the library would continue to provide services to members of the community by increasing its fundraising and likely scaling back its staff and/or services. Moreover, it is found that, in addition to the annual amount the town provides to the library, the town in recent years provided grants to the library of more than \$10 million for the purchase of land and construction of a new library building.

14. As to the first prong of the four-part Woodstock test, 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 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). But in determining whether the first prong of the test is satisfied, courts also have looked to whether the government is "really involved in the core of the program"; whether the entity has the power to govern, regulate or make decisions affecting government; and whether the entity is required by law to perform the function at issue, or is merely performing the function pursuant to a contract with the government. Id. at 474-5.

15. In Domestic Violence, the Court concluded that, although Domestic Violence Services of Greater New Haven ("DVS"), was performing a service that had evolved into a governmental function, it further concluded that the governmental function prong of the Woodstock test was not met because DVS was not required to perform such service, but rather was doing so pursuant to a contract with the government, and because government was not "really involved in the core of the program." The court further found it relevant that DVS had no power to govern, regulate, or make decisions affecting government. Id. at 475.

16. Similarly in Envirotest Systems Corporation v. Freedom of Information Commission, 58 Conn. App. 753 (2000), the Court found that Envirotest Systems Corporation ("ESC") was performing a governmental function because it was providing automobile emissions testing which testing was required by statute. However, the Court concluded that the governmental function prong of the Woodstock test was not met because ESC was providing such function pursuant to a contract with the state and "otherwise ...[had] no obligation to provide emissions inspections." Envirotest at 759.

17. By contrast, in Woodstock, the Court concluded that Woodstock Academy was performing a governmental function in that it was fulfilling, through a statutory scheme, the constitutional mandate to provide a free public education. Woodstock at 547.

18. In support of her claim that the first prong of the Woodstock test is satisfied, the complainant argued that the town is required to fund the library pursuant to §7-148(c), G.S.

19. Section 7-148(c), G.S. provides, in relevant part:

Powers. Any municipality shall have the power to do any of the following, in addition to all powers granted to municipalities under the Constitution and general statutes:

...(E) Make appropriations to military organizations, hospitals, health care facilities, public health nursing organizations, nonprofit museums and libraries, organizations providing drug abuse and dependency programs and any other private organization performing a public function....

20. It is concluded, however, that although §7-148(c), G.S., grants municipalities the authority to make appropriations to nonprofit museums and libraries, it does not require them to do so.

21. In addition, the complainant cited to the Commission's decision in Mark Weber v. President, Sherman Library Association, et al., Docket #FIC 2011-357 (May 23, 2012), in which the Commission found that operation of a public library is a governmental function. Based solely on that finding, the Commission concluded that the first prong of the Woodstock test had been satisfied. However, the Commission did not consider whether the library in that case was required by statute to operate the library, whether the library had the power to govern, regulate, or make decisions affecting government, or whether the government was "really involved in the core of the program."

22. As noted in paragraphs 14 through 17, above, the governmental function prong of the Woodstock test is not satisfied where an entity is performing a governmental function, but is not statutorily required to do so. See Greenwich Emergency Medical Service v. Freedom of Information Commission, 2019 WL 3248554 at *6, (superior court, judicial district of New Britain, HHB-CV-17-6039788-S), citing Domestic Violence, Connecticut Humane Society, and Envirotest.

23. In the present case, it is found that the library is not required by statute to provide services to members of the community, and that the library does not have the power to govern, regulate or make decisions that bind the government. Moreover, it is found that the town is not "really involved in the core of the [library's] program."

24. Accordingly, it is concluded that first prong of the Woodstock test is not satisfied in this case.

25. With regard to the second prong of the Woodstock test, i.e., the level of government funding, it is found that the respondent library annually receives approximately 65 to 75 percent of its funding from the town, which, in 2020, amounted to approximately \$2.3 million.

26. The courts have distinguished between funding that constitutes consideration/compensation for services provided pursuant to a contract or a grant, i.e., "fee for service," wherein the level of funding is directly tied to the cost of services rendered, and "a

direct allotment of government funds,” and concluded that a “fee for service” arrangement pursuant to a contract or grant is not “government funding,” for purposes of the Woodstock analysis. See Greenwich Emergency Medical Service, at * 8, *9, Domestic Violence, at 476; Envirotest, at 759-760.

27. In Greenwich Emergency Medical Services, the court upheld the Commission’s determination that the funding provided by the town to Greenwich Emergency Medical Services (“GEMS”), was an “allotment of government funds”, rather than “fee for service”, despite the existence of a contract between the town and GEMS. In that case, the contract did not specify a fee for the services GEMS provided; rather, the contract required GEMS to present an annual budget request to the town to fund its operations to the extent that funding from other sources was insufficient to do so. Under the contract, if the funding provided by the town was insufficient in a given year, GEMS was required to use “best efforts” to continue to provide services to the town. The court concluded that the budgetary process between the town and GEMS more closely resembled the process by which a town department obtains budgetary funding, and therefore constitutes an “allotment of government funds”. See Greenwich Emergency Medical Service, at * 8, *9.

28. In the present case, the budgetary process by which the library receives funding from the town, as described in paragraph 13, above, is very similar to the budgetary process in Greenwich Emergency Medical Services. It is found that the town provides an “allotment of government funds” to the library and that the library is substantially funded by government. Accordingly, it is found that the second prong of the Woodstock test is satisfied.

29. With regard to the third prong of the Woodstock test, i.e., “the extent of government involvement or regulation,” the Appellate Court concluded that, in order to satisfy the government regulation prong of the functional equivalent 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 477.

30. The complainant argued that the library is regulated or controlled by the town because the library is significantly funded by the town, relying on Yantic Volunteer Fire Company v. Freedom of Information Commission, No. CV-40106511, superior court, judicial district of New London (October 15, 1995), *affirmed* Yantic Volunteer Fire Company v. Freedom of Information Commission, 42 Conn. App. 519 (1996). However, Yantic was decided before the Appellate Court’s decision in Domestic Violence, which required “day-to-day” involvement by the town in order for the entity to be considered to be “regulated” or “controlled” by the town. Even if the analysis in Yantic is still good law, it is distinguishable from the instant case. In Yantic, the town’s control over the fire company was demonstrated in that, after a dispute between the town and the fire company, the fire company’s budget was frozen and its firefighting activities were suspended by the city manager. No such evidence of control was offered in the present case. To the contrary, the evidence in the present case was

that even if the town did not to provide funding to the library, the library would continue to operate, albeit with fewer staff and services (see paragraph 13, above).

31. In the present case, it is found that the town does not exercise the type of “extensive, detailed and virtually day-to-day supervision” required by the courts to satisfy the governmental involvement or regulation prong of the Woodstock test. Accordingly, it is found that the third prong of the Woodstock test is not satisfied.

32. With regard to the fourth prong of the Woodstock test, whether the entity was created by government, the parties stipulated that the respondent library was not created by government. It is therefore found that the fourth prong is not satisfied in this case.

33. In summary, it is found that only one of the four prongs of the Woodstock test, i.e., the government funding prong, is met in this case. Upon consideration all of the prongs cumulatively, it is found that the library is not the “functional equivalent” of a public agency, under §1-200(1)(B), G.S.

34. Accordingly, it is found that the requested records, described in paragraph 1, above, are not public records, within the meaning of §§1-200(5) and 1-210(a), G.S., and that therefore, the Commission does not have jurisdiction to determine the merits of the complainant’s claim that the respondent violated the FOI Act.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 23, 2022.



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:

ANDREA SANDOR, P.O. Box 272, 747 Old Stamford Road, New Canaan, CT 06840

NEW CANAAN LIBRARY, INC., TOWN OF NEW CANAAN; AND TOWN OF NEW CANAAN, c/o Attorney Brian R. Smith, Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission