

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Stephen Nevas,

Complainant

against

Docket # FIC 2023-0197

Executive Director, Westport Library  
Association; and Westport Library  
Association,

Respondents

April 10, 2024

The above-captioned matter was heard as a contested case on August 11, 2023, at which time the complainant and the respondents<sup>1</sup> appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

On September 15, 2023, pursuant to the order of the hearing officer, the respondents submitted their operating budget request for the 2023-2024 fiscal year, which has been marked as Respondents' Exhibit 14 (after-filed).

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

1. It is found that by letter dated April 3, 2023, the complainant requested that the respondents provide him with copies of “[a]ny and all internal and external written or electronic communications sent or received [from 1985 through the date of the request], including but not limited to documents or recordings, email, memoranda, notes, or minutes of meetings that pertain to or mention, whether directly or indirectly,” the following:

- a. The “River of Names”
- b. Marion Grebow (aka Marion Grebow Olsen)
- c. Installation, continued display of, removal, storage and/or reinstallation of the “River of Names”
- d. Storage of the “River of Names”
- e. Proposed and actual actions or decisions pertaining to the “River of Names”
- f. Solicitation and/or receipt by the Library or anyone acting on its behalf of commentary or criticism of the “River of Names”
- g. Display of the “River of Names” on the Westport Public Library’s Internet site

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<sup>1</sup> The case caption originally identified the respondent library as the Westport Public Library. During the hearing and in their post-hearing brief, the respondents noted that the library’s legal name is the Westport Library Association. Absent objection from the complainant, the case caption has been modified accordingly.

- h. Failure or refusal of the Library to reinstall “River of Names”
- i. Any [and] all fundraising documents associated with the “River of Names” ....

2. It is found that by email dated April 6, 2023, the respondents denied the complainant’s request, asserting that the Westport Library Association (“Library”) is “not a public agency subject to the Freedom of Information (“FOI”) Act.”

3. By letter of complaint filed April 24, 2023, the complainant appealed to the Commission, alleging that the Library is a public agency that is subject to the FOI Act. The complainant further alleged that the respondents violated the FOI Act by denying the request described in paragraph 1, above.

4. Section 1-200(1), G.S., provides:

“Public agency” or “agency” means: (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.

5. At the hearing in this matter, the respondents claimed that the Library is not a “public agency,” “implementing agency,” or the “functional equivalent of a public agency,” within the meaning of §1-200(a), G.S., and therefore is not required to comply with the FOI Act.

6. It is found that the Library is not a “public agency” within the meaning of §1-200(1)(A), G.S., or an “implementing agency” within the meaning of §1-200(1)(C), G.S. Thus, the sole issue is whether the Library is the “functional equivalent of a public agency,” within the meaning of §1-200(1)(B), G.S.

### **Factual Background**

7. It is found that the Library is a non-profit, tax-exempt, non-stock corporation that operates a public library in the Town of Westport (“Town”).<sup>2</sup> It is found that the Library is governed by a Board of Trustees (“Board”) that is made up of volunteer residents of the Town.

8. It is found that the Library was originally formed by residents of the Town as a private association that required a paid membership. It is further found that in 1906, the Town initiated an annual appropriation of \$1,000 for the maintenance of the Library. It is found that the Library was incorporated by the General Assembly in 1907, and that 12 private residents of the Town were the original members of the Board. Sen. Joint Resolution No. 122 (1907) (“1907 Charter”). It is also found that the 1907 Charter provided that the Board was to be comprised of a minimum of 10 members, that the Town had the authority to elect three ex-officio members to the Board, and that the remaining members were to be elected by the Board. It is found that the 1907 Charter further provided that, during the period of time that the Library received an annual appropriation from the Town, the Library was to remain free and open to Town residents.

9. It is further found that the Library’s charter has been amended twice since 1907. It is found that in 1973, the charter was amended by a majority vote of the Board to (1) provide the Town the authority to elect seven members to the Board, and (2) provide that “[t]here shall be no distinction in the rights and duties of the two classes of trustees.” It is further found that in 2017, the charter was amended by special act of the General Assembly to provide that the Library “may engage in any lawful act or activity for which corporations may be formed under [the Connecticut Revised Nonstock Corporation Act, §§33-1000, G.S., *et seq.*]” Special Acts 2017, No. 17-9.

10. It is found that the Library is governed by the Board in accordance with by-laws established by the Board. It is found that the Board appoints and employs an Executive Director, who is responsible for managing the day-to-day operations of the Library in accordance with policies established by the Board. It is further found that the Executive Director is responsible for hiring and managing the Library’s staff, and that the Executive Director and his staff are responsible for all aspects of the programs, services, collections, and reference materials offered by the Library. It is found that the Town has no authority to direct or control any aspect of the Library’s operations. It is also found that the Executive Director serves at the pleasure of the Board, and that the Town has no authority over the Executive Director.

11. It is found that the Executive Director and staff are employees of and paid by the Library, not the Town. It is found that the Library’s employees are eligible to participate in a health insurance plan that is provided by and paid for by the Library, not the Town. It is further found that while the Library’s employees previously were eligible to participate in the Town’s pension plan, that arrangement ceased over 10 years ago. It is found that employees who were already participating in the Town’s pension plan may remain on the plan, but any employees

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<sup>2</sup> Section 11-24a, G.S., defines “public library” to mean “a library that serves its residents through its outlet or outlets without charging a borrower’s card fee and which receives its financial support in whole or in part from local tax funds.” Thus, the Library’s status as a “public library” under Connecticut law, standing alone, does not mean that it is a public agency.

hired since then are not eligible. It is found that the Town has no authority to direct or control any matters relating to the Library's personnel.

12. It is also found that the Library and the Town jointly own the Library building, with the Library owning 77% and the Town owning 23%. It is further found that the Town owns the land on which the Library is located, which the Library leases for \$1 per year pursuant to a 99-year lease agreement with the Town. It is found that pursuant to the lease, the Library is "deemed to be an independent contractor and operator," and is required to indemnify the Town from liability for the actions of the Library and its employees. It is also found that the Library has sole responsibility to pay for construction and maintenance of the Library building, as well as its own utilities and grounds maintenance. It is found that, while the Library partners with the Town to purchase liability insurance, the Library has and pays for its own insurance policy.

13. It is found that in 2019, the Library completed a \$21 million renovation and expansion project, of which \$5 million was provided by the Town, \$1 million was provided by the state, and the remainder was raised by the Library in the form of private donations.

14. It is further found that pursuant to the by-laws, between 14 and 20 Trustees serve on the Board at any one time, half of which are elected by the Board ("Board-elected trustees") and half of which are elected by the Representative Town Meeting ("RTM") of the Town ("RTM-elected trustees"). However, it is found that the process for recruiting and selecting potential trustees is the same regardless of whether the vacancy is for a Board-elected or RTM-elected trustee position, and that process is primarily directed by the Board. Specifically, it is found that the Board identifies the key skills and qualifications necessary to serve as a trustee and creates a job description that it posts publicly to recruit potential candidates. It is further found that the Board's Governance and Nominating Committee ("GovNom Committee") reviews applications submitted by interested candidates and compiles a list of candidates to be interviewed. It is found that only after the GovNom Committee has identified such candidates is the list shared with the RTM's Library, Museum, and Arts Committee ("LMA Committee").

15. It is found that the candidates identified by the GovNom Committee are interviewed jointly by the GovNom Committee and the LMA Committee, using a set of interview questions developed by the GovNom Committee. It is found that after such interviews, the GovNom Committee and the LMA Committee arrive at a consensus list of candidates to be recommended for the open positions. It is found that the number of candidates identified is always equal to the number of open trustee positions. It is further found that such candidates are then presented to either the full RTM or the full Board, depending on whether the vacancy is for a Board-elected or RTM-elected trustee position. The respondents testified credibly that they were not aware of any instance in which a candidate recommended to the RTM through this process was not elected. The respondents also testified credibly that they were not aware of any instance in which the RTM recruited or selected a candidate outside of this process.

16. It is also found that the trustees' duties and responsibilities are the same regardless of whether the trustee was elected by the Board or the RTM. It is found that the trustees are fiduciaries of the Library, and that the Town has no authority to control the decisions of a RTM-elected trustee. It is further found that pursuant to the by-laws, the Board has sole authority to remove a trustee. The respondents' witnesses testified credibly that they were not aware of any

instance in which the RTM attempted to exercise control or supervision over a RTM-elected trustee.

17. It is found that the Town typically provides approximately 75% to 80% of the Library's funding, although the Town provided approximately 93% of the Library's funding in the 2021-2022 fiscal year. It is found that the remainder of the Library's funding is derived from private fundraising, grants, and revenue generated through fines, fees, and various programs and services offered by the Library. It is found that the funding provided by the Town is in the form of an annual appropriation, and that there is no contract between the Library and the Town under which the Library receives funding in exchange for services provided. It is further found that, to obtain such funding, the Library submits an annual budget proposal to the Town, and the Town allocates funding to the Library as part of the Town's annual budget process. It is found that the Town has ultimate control over whether and how much funding to provide the Library, and that the Library has ultimate control over how to spend the funding it receives.

### **Whether the Library is the Functional Equivalent of a Public Agency**

18. In *Board of Trustees of Woodstock Academy v. FOI Commission*, 181 Conn. 544, 554 (1980) ("*Woodstock*"), the Supreme Court, relying on federal court decisions interpreting the federal FOI Act, adopted the following four-factor test to determine whether an entity is the "functional equivalent" of a public agency: (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. "All relevant factors are to be considered cumulatively, with no single factor being essential or conclusive." *Connecticut Humane Society v. FOI Commission*, 281 Conn. 757, 761 (1991) ("*Humane Society*"). "As the courts have made clear, the functional equivalence test was not intended to expand the scope of the [FOI] Act, but to ensure that nominally private entities do not avoid the obligations of the act if they effectively take the place of a public agency." *Desmond v. FOI Commission*, 2019 WL 3526451, at \*5 (Conn. Super. July 1, 2019). See also *Woodstock*, 181 Conn. at 555-56 (functional equivalent test "ensure[s] that the general rule of disclosure underlying this state's [FOI Act] is not undermined by nominal appellations which obscure functional realities," while "also ensur[ing] that a truly private entity would not be subject to disclosures which were unintended by our [FOI Act].").

### **Whether the Library Performs a Governmental Function**

19. In determining whether the activities performed by an entity constitute 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." *Domestic Violence Services of Greater New Haven, Inc. v. FOI Commission*, 47 Conn. App. 466, 474 (1998) ("*Domestic Violence Services*"). In prior cases in which courts have found that an entity performed a "governmental function" for purposes of the *Woodstock* test, the function at issue was one that the government was required to perform pursuant to statutory or constitutional mandate. See *Woodstock*, 181 Conn. at 547 (private school serving as only free high school for town residents performed governmental function because state statute and constitution mandate free public education); *Humane Society*, 218 Conn. at 764 (entity engaged in governmental

function where it was authorized by statute to engage in law enforcement activities); *Envirotest Systems Corp. v. FOI Commission*, 59 Conn. App. 753, 758-59 (2000) (“*Envirotest*”) (automobile emissions testing was governmental function because statute required state to establish emissions inspection program); *Domestic Violence Services*, 47 Conn. App. at 474 (prevention and treatment of domestic violence was governmental function because statute required provision of such services); *Greenwich Emergency Medical Services, Inc. v. FOI Commission*, 2019 WL 3248554, at \*6-7 (Conn. Super. June 18, 2019) (“*GEMS*”) (emergency medical services was governmental function because municipalities required by statute to provide emergency medical services and entity was approved as town’s only provider of such services).

20. Moreover, even if the activities performed by a private entity constitute a governmental function, courts have held that the first prong of the *Woodstock* test is not satisfied if the entity is “[p]erforming a government service pursuant to contract,” does not “have the power to govern or to regulate or to make decisions [affecting the government],” or if “the government is [not] really involved in the core of the program.” *Domestic Violence Services*, 47 Conn. App. at 475 (provision of services to domestic violence victims was governmental function, but first prong not satisfied because entity “[had] no power to govern, to regulate or to make decisions affecting government [and] provides advocacy services to the victims of domestic violence pursuant only to its contractual obligation”). See also *Envirotest*, 59 Conn. App. at 758-59 (emissions testing was governmental function, but first prong not satisfied because entity provided services pursuant to contract); *GEMS*, 2019 WL 3248554, at \*7 (emergency medical services was governmental function, but first prong not satisfied because entity provided services pursuant to contract and “[did] not have the power to govern or to make decisions that bind the town”).

21. In the present case, the complainant relied on Chapter 190 of the General Statutes, §§11-20, G.S., *et seq.*, which governs certain aspects of the operations of public libraries, in support of his claim that the Library performs a governmental function.

22. Section 11-20, G.S., provides that:

Any town, city, borough, fire district or incorporated school district *may*, by ordinance, establish a public library and *may* expend such sums of money as may be necessary to purchase land for a suitable site and to provide and maintain such suitable rooms or buildings as may be necessary for such library or for any library which is the property of any corporation without capital stock or for any public library established in such municipality, provided the use of such library shall be free to its inhabitants under such regulations as its trustees prescribe. Any such municipality may receive, hold and manage any devise, bequest or gift for the establishment, increase or maintenance of any such library within its limits and may retire with a pension or other reward any employee of any such library. (Emphasis added.)

23. Nothing in §11-20, G.S., or the remaining provisions of Chapter 190 of the General Statutes, requires the Town to establish a public library or to provide funding to a private entity for the purpose of establishing a public library. To the contrary, by providing that municipalities “may” establish a public library and “may” provide funding to a private entity for the operation of a public library, §11-20, G.S., merely authorizes, but does not require, municipalities to take such action. See *Office of Consumer Counsel v. Department of Public Utility Control*, 252 Conn. 115, 122 (2000) (“The word ‘may,’ unless the context in which it is employed requires otherwise, ordinarily does not connote a command. Rather, the word generally imports permissive conduct and the conferral of discretion.”). In addition, while §11-20, G.S., does require the Library to remain free to the residents of Westport as long as it receives funding from the Town, it is found that the Town is not required to provide, and the Library is not required to accept, such funding.

24. Moreover, even if the operation of a public library was a governmental function, it is found that the Library does not have the power to govern or make decisions that bind the Town, and that the Town is not involved in the core of the programs and services offered by the Library. Rather, as noted in paragraph 10, above, it is found that the Board, through the Executive Director and his staff, have sole responsibility for making decisions regarding the programs, services, collections, and reference materials offered by the Library, and that the Town has no authority to control or manage such decisions.

25. Based on the foregoing, it is found that the first prong of the *Woodstock* test weighs against finding that the Library is the functional equivalent of a public agency.

#### Level of Government Funding

26. With respect to the level of government funding, courts have distinguished between funding received as consideration for services provided pursuant to a contract, wherein “the amount of money received by the [entity] reflects the amount of business that is done pursuant to the contract,” and “an allotment of government funds” in the form of a direct appropriation from the government. *Envirotest*, 59 Conn. App. at 759. The second prong of the *Woodstock* test is not met where the “payment made to the [entity] was consideration for the services it provided pursuant to a contract.” *Id.* at 760.

27. In *GEMS*, the court upheld the Commission’s finding that the funding provided to an emergency medical services provider was an “allotment of government funds,” rather than a “fee for service,” despite the existence of a contract between the municipality and the service provider. In that case, the contract did not specify a fee for the services provided, but instead required the service provider to submit an annual budget request to the municipality, which would review such request and appropriate funds during its annual budget process in the form of a fixed annual payment. *GEMS*, 2019 WL 3248554 at \*9. The court concluded that such process “closely resembles the process by which a town department obtains budgetary funding,” and therefore constituted an “allotment of government funds.” *Id.*

28. It is found that the process by which the Library receives funding from the Town, as described in paragraph 17, above, closely resembles the process described in *GEMS*. It is found

that the amount of funding that the Library receives from the Town is not consideration for services provided pursuant to contract, but instead is an “allotment of government funds.” *Envirotest*, 59 Conn. App. at 759. It is further found that the amount of funding that the Library receives from the Town is substantial, both in absolute terms and as a percentage of its annual revenues. See *Woodstock*, 181 Conn. at 547 (government funding prong met where school received 95.32% of operating expenses from towns); *GEMS*, 2019 WL 3248554 at \*7 (government funding prong met where town provided approximately \$4.5 million, constituting 62% of entity’s operating budget); *Sandor v. New Canaan Library, Inc.*, Docket #FIC 2020-0098, ¶¶25-28 (March 23, 2022) (government funding prong met where library received 65-75% of its funding from the town).

29. Based on the foregoing, it is found that the second prong of the *Woodstock* test weighs in favor of finding that the Library is the functional equivalent of a public agency.

*Extent of Government Involvement or Regulation*

30. The third prong of the *Woodstock* test requires examination of the level of government involvement or regulation. Courts have held that in order to satisfy the government regulation prong, the entity “must operate under direct, pervasive or continuous regulatory control.” *Hallas v. FOI Commission*, 18 Conn. App. 291, 296 (1989), overruled on other grounds by *Humane Society*, 218 Conn. 757. “Also critical in the determination of whether an entity is a governmental agency is the amount of control the government exercises over the entity’s detailed physical performance.” *Envirotest*, 59 Conn. App. at 761. “[T]he regulation prong of the test does not pertain to the general regulation of a profession but rather, applies to specific government regulation of the function of the agency.” *Hallas*, 18 Conn. App. at 295.

31. Decisions since *Woodstock* have made clear that the regulation prong is satisfied only if “the government ... control[s] the day-to-day activity of the [entity’s] business.” *Envirotest*, 59 Conn. App. at 762. In *GEMS*, for example, the court affirmed the Commission’s finding that the government exercised substantial regulatory control over an emergency medical services provider based on an “extensive statutory and regulatory scheme” and detailed contractual requirements that constituted “comprehensive regulation of the core of [the provider’s] activities, the provision of emergency medical services.” *GEMS*, 2019 WL 3248554 at \*12. Such regulation included detailed licensing and certification requirements, regular inspections to ensure compliance with safety standards, and even control over such granular details of the provider’s operations as “response times, the location and staffing of ambulances, the availability of backup ambulances, the requirement of independent medical supervision, and the type of communications systems to be used.” *Id.* at \*11.

32. The complainant contended that the third *Woodstock* factor weighs in favor of finding that the Library is the functional equivalent of a public agency because (1) Chapter 190 of the General Statutes, §§11-20, G.S., *et seq.*, as noted in paragraph 21, above, governs certain aspects of the operations of public libraries, (2) the RTM appoints half of the trustees to the Board, and (3) certain provisions of the Town Charter delineate the role of the RTM in appointing such trustees.



33. It is found that the provisions of Chapter 190 of the General Statutes do not constitute the kind of “direct, pervasive or continuous regulatory control” that is required under the third *Woodstock* factor. Rather, the provisions of Chapter 190 that are applicable to the Library<sup>3</sup> set forth general requirements regarding the governance of public libraries and establish certain grant programs available to public libraries that elect to participate in such programs. See §11-21, G.S. (requiring management by board of trustees); §§11-23c, 11-24a through 11-24d, and 11-31a through 11-31c, G.S. (providing state funding for public libraries and setting requirements for receipt of such funding); §11-25, G.S. (requiring annual report to State Library Board and providing for confidentiality of personal identifying information). It is found that the requirements set forth in such statutes do not rise to the level of “direct, pervasive or continuous regulatory control” under the third prong of the *Woodstock* test.

34. With respect to the RTM’s role in electing trustees to the Board, it is found that while the RTM theoretically could *attempt* to exert a certain level of control over the Library through its election of trustees, no evidence was presented that the RTM has ever attempted to do so. To the contrary, the respondents presented substantial evidence, and it is found, that the recruitment and appointment process is largely driven by the Library, that the RTM has not attempted to recruit or appoint any trustees outside of that process, and that the RTM has not otherwise attempted to exert control or supervision over the affairs of the Library. In addition, because the RTM-elected trustees owe a fiduciary duty to the Library, and not the Town, the RTM’s ability to control or direct the decisions of such trustees is necessarily limited.

35. With respect to the Town Charter provisions relied on by the complainant, Chapter 34 of the Town Charter provides:

§C34-1. There shall be up to 10 Town-designated Trustees of the [Library] who shall be electors of the Town selected by the [RTM]. The term of office of each Trustee shall be 4 years and until a successor shall be appointed and shall have taken office. Town-designated Trustees shall constitute 50% of the Library voting Trustees. Either one (1) or two (2) Trustees shall be appointed each year, depending upon the number of Trustees whose terms are expiring that year.

§C34-2. The Trustees of the [Library] shall have all the powers and duties conferred or imposed upon them by law.

36. It is found that the Town Charter provisions described in paragraph 35, above, are consistent with the Library’s by-laws, and do not purport to vest the Town with any additional authority beyond what is set forth in such by-laws. It is further found that such provisions do not

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<sup>3</sup> Certain provisions of Chapter 190 govern the State Library Board, the State Librarian, and/or municipal libraries, which are not applicable to the Library.

purport to exert “direct, pervasive or continuous” control over the Library, or to direct how the Library conducts its day-to-day operations.<sup>4</sup> *Envirotest*, 59 Conn. App. at 761-62.

37. It is also found that the Town Charter provisions described in paragraph 35, above, do not purport to require RTM-elected trustees to act in a manner other than as fiduciaries of the Library. Rather, by providing that RTM-elected trustees “shall have all the powers and duties conferred or imposed upon them by law,” the Town Charter reinforces that such trustees must abide by their obligations to act in the best interests of the Library. See §33-1104, G.S. (director of non-stock corporation “shall discharge his duties as a director ... in a manner he reasonably believes to be in the best interests of the corporation”).<sup>5</sup>

38. Based on the foregoing, it is found that the third prong of the *Woodstock* test weighs against finding that the Library is the functional equivalent of a public agency.

#### Whether the Library was Created by Government

39. With respect to the fourth prong of the *Woodstock* test, the Supreme Court recognized in *Humane Society* that, around the time that the Library was chartered by the General Assembly, “it was common practice for the General Assembly to incorporate private institutions,” and that “[t]he mere presence of a government charter, therefore, does not compel the conclusion that the [entity] is a public agency.” *Humane Society*, 218 Conn. at 763. See also *Desmond v. FOI Commission*, 2019 WL 3526451 at \*2 (Conn. Super. July 1, 2019) (affirming Commission’s finding that, although Yale-New Haven Hospital was created by legislative act in 1826, such act “created a private corporation dedicated to the purpose of general and public charity.” (quoting *Cohen v. General Hospital Society of Connecticut*, 113 Conn. 188, 191 (1931)). While “this in no way means that the statutory grants of power are in and of themselves of no relevance on the question as to whether the [Library] is a public agency ... the isolated fact that the [Library] received a state charter in [1907] is of no help ... in supporting [the complainant’s] position that the [Library] is a ‘public agency’ under [the FOI Act].” *Humane Society*, 1990 WL 283966, at \*12 (Conn. Super. June 14, 1990), *aff’d*, 218 Conn. 757.

40. Based on the 1907 Charter and the amendments thereto, as well as the testimony presented by the parties, it is found that the Library was initially formed by private Town residents as a private association; that it was chartered by the General Assembly as a private, non-profit corporation with the power to self-govern; and that the General Assembly recently amended such charter to clarify that the Library is vested with the authority to engage in any of

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<sup>4</sup> At the hearing and in their post-hearing brief, the respondents questioned the Town’s authority to enact or enforce such provisions, given that the Library was formed by act of the General Assembly as a private corporation with the power to govern its own affairs. Because the Town Charter provisions at issue do not appear to conflict with the Library’s by-laws, the Commission need not address such issues.

<sup>5</sup> The complainant also relies on *Horvath v. Westport Library Association*, 362 F.3d 147 (2d Cir. 2004), in which the Second Circuit concluded that the Library was a “state actor” for purposes of the Fourteenth Amendment, such that a former employee was allowed to pursue a claim that the Library violated her right to due process by terminating her without notice and opportunity to be heard. However, as the *Horvath* decision makes clear, the analysis applied to determine whether a private entity is a “state actor” under the Fourteenth Amendment is distinct from the *Woodstock* test. Thus, *Horvath* is of limited utility in determining whether the Library is the functional equivalent of a public agency.

the same acts or activities as any private non-stock corporation created under the Connecticut Revised Nonstock Corporation Act, §§33-1000, G.S., *et seq.*

41. It is further found that while the 1907 Charter granted the Town and its residents certain rights, as described in paragraph 8, above, including the right to elect a minority of the members of the Board, such provisions did not alter the Library's fundamental character as a private corporation.

42. Based on the foregoing, it is found that the fourth *Woodstock* factor weighs against finding that the Library is the functional equivalent of a public agency.

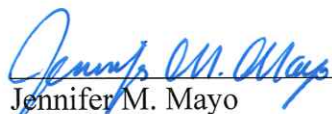
43. In summary, it is found, based on the evidence presented by the parties, that only one of the four prongs of the *Woodstock* test (the government funding prong) weighs in favor of finding that the Library is the functional equivalent of a public agency. Considering all of the prongs cumulatively, as required by the Supreme Court in *Woodstock*, it is concluded, based on the evidence in the record, that the Library is not the "functional equivalent of a public agency," within the meaning of §1-200(1)(B), G.S.

44. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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 April 10, 2024.

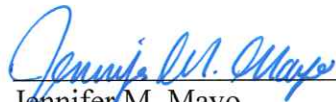
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**STEPHEN NEVAS**, Nevas Law Group, LLC, 237 Post Road West, Westport, CT 06880

**EXECUTIVE DIRECTOR, WESTPORT LIBRARY ASSOCIATION; AND WESTPORT LIBRARY ASSOCIATION**, c/o Courtney A. George, Marino, Zabel, & Schellenberg, PLLC, 657 Orange Center Road, Orange, CT. 06477

  
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Jennifer M. Mayo  
Acting Clerk of the Commission