FIC#2011-032
FIC#2011-185
Atty: GFD

NO. CV 115015511S	:	SUPERIOR COURT
BRADSHAW SMITH	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION, ET AL.	:	SEPTEMBER 11, 2012

MEMORANDUM OF DECISION

The plaintiff, Bradshaw Smith, appeals[1] from a September 14, 2011 final decision of the defendant freedom of information commission (FOIC) dismissing a complaint that he filed against the defendant town of Windsor's police department (the town).

After a hearing, the FOIC issued the following final decision:

1. The respondents are public agencies within the meaning of § 1-200 (1) (A), G.S.

2. It is found that, by letter dated April 6, 2011, the complainant requested a copy of the "so-called 'leash law', as contained in the Connecticut General Statutes" (the "requested record"). The complainant added that he looked forward to a response "within the hour."

3. It is found that by letter dated April 8, 2011, the respondent Department sent the complainant copies of § 22-361, G.S., and a Town of Windsor ordinance concerning the restraining of dogs, together with an explanatory letter.

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[1] The plaintiff is aggrieved under General Statutes § 4-183 (a) by the dismissal of his complaint by the FOIC.

4. By letter also dated April 8, 2011 and filed with the Freedom of Information Commission ("the Commission") on April 11, 2011, the complainant appealed to the Commission, alleging that the respondents failed to provide access to public records in violation of the Freedom of Information Act ("FOIA"). In addition to other relief, the complainant requested the assessment of civil penalties against the respondent Police Chief and two other members of the respondent Department.

5. At the June 6, 2011 hearing, the respondents filed a motion seeking a civil penalty against the complainant for taking both appeals (this case and Docket #FIC 2010-695) without reasonable grounds and solely for the purpose of harassing the respondents. The respondents stated that the complainant knew there is no "leash law" in the Connecticut General Statutes.

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9. It is concluded that the requested record described in paragraph 2, above, is, if such record exists, a "public record [. . .]" within the meaning of § 1-210(a), G.S.

10. It is found that there is no "leash law" in the Connecticut General Statutes. Section 22-364, G.S., prohibits allowing dogs "to roam at large upon the land of another and not under the control of the owner . . .", but does not in any respect address leashes.

11. It is also found that, effective April 1, 2011, the Town of Windsor adopted an ordinance "making it unlawful for the owner or keeper of any dog to fail to keep their dogs under restraint with a leash. . . ." The town adopted this ordinance because prosecutors refused to prosecute cases based upon § 22-364, G.S., which relies upon the vague concept of "control."

12. It is found that the respondents do not maintain or keep on file any record which is within the scope of the request set forth in paragraph 2, above. Section 22-364, G.S., and the Town of Windsor ordinance, discussed at paragraphs 3, 10 and 11, were related materials, believed by the respondents to be of possible interest to the complainant, but neither record was strictly speaking within the scope of the complainant's request (i.e., a leash law in the Connecticut General Statutes). Moreover, the respondents' April 8, 2011 response to the complainant's April 6, 2011 request was exceedingly prompt.

13. It is concluded that the respondents did not violate § 1-210(a), G.S. Given this conclusion, there is no need to address the issue of imposing civil penalties on the respondent Police Chief and two other members of the respondent Department.

14. The complainant testified that at the time he filed his complaint in this matter, to the best of his knowledge, there was no "leash law" in the Connecticut General Statutes. In that the complainant complained of harassment, it is found that the complainant was displeased with his interaction with a member of the respondent Department on March 9, 2011. (Also see complainant's request letter dated April 6, 2011.) It appears that he was taking issue with the police officer who allegedly told the complainant that "you need to put your dog on a leash . . . because that is the law in Connecticut." Therefore, the complainant may have had the objective of wishing to demonstrate that the police officer's request to leash the complainant's dog was without legal authority. (The new town ordinance was not yet in effect on March 9, 2011.)

15. It is found that the complaint was dated only two days after the date of the request letter (April 8 and 6, 2011, respectively). The complaint was filed on the third business day, April 11, 2011, following the request (April 9

and 10 being a Saturday and a Sunday).

16. It is concluded that the complaint was filed before the expiration of four business days, so that even if there had been a failure to comply with a records request, it could not be deemed to be a denial pursuant to § 1-206(a), G.S. This matter did not involve the prompt provision of a record that the respondents had readily at hand. The complaint was filed before the respondents had a reasonable opportunity to provide records promptly.

17. Moreover, the complainant did not withdraw his complaint when he received the respondents' April 8, 2011 response to his records request, including as enclosures copies of § 22-364, G.S., and the Town of Windsor ordinance concerning the restraining of dogs. At the July 21, 2011 hearing, the complainant claimed that the April 8, 2011 letter was not "clear and unequivocal", in that it did not state directly that the respondents did not maintain any record that was a "leash law" in the Connecticut General Statutes. Since there is no FOIA requirement to notify a requester when a public agency does not maintain any record within the scope of a request, the complainant was insisting on receiving a statement that the respondents had no FOIA obligation to furnish. The complainant should have known this law based upon the decision in Docket # FIC 2008-776; *Bradshaw Smith* v. *Donald S. Trinks, Mayor, Town of Windsor*.

18. Additionally, the April 8, 2011 complaint merely repeated the November 2, 2010 complaint in the companion case, Docket # FIC 2010-695; *Bradshaw Smith* v. *Kevin Searles, Chief, Police Department, Town of Windsor; and Police Department, Town of Windsor*. Given the complainant's records request for a state statute, the adoption of the dog ordinance in the Town of Windsor did not create in the April 8, 2011 complaint any allegation not already set forth in the November 2, 2010, complaint. It is found that there

was no arguable lawful purpose for the second complaint. Nor did the complainant withdraw the November 2, 2010 complaint when he filed the April 8, 2011 complaint.

19. The respondents introduced as an exhibit a list from the Commission website of ten final actions by the Commission or the Superior Court on FOIA matters brought by the complainant. It is found that the complainant has considerable experience and expertise concerning the FOIA.

20. Finally, the respondents introduced as an exhibit a thirty-eight page document, in the form of a grid on each page purporting to record the complainant's complaints and requests of various kinds to the Town of Windsor between 2002 and 2011. Of course, the Commission expresses no opinion herein concerning the merits of each of these numerous matters. But it is found that the respondents were credible when they contended that they feel they have unavoidably been drawn into a "gotcha game" with the complainant, where the respondents feel they must document every contact related to the complainant in order to avoid technical violations. The respondents were also credible when they contended that they felt a need to proceed in a very defensive posture in all matters relating to the complainant, and that as a result, the complainant has caused substantial expense to the taxpaying public.

21. Given the totality of these circumstances, it is therefore concluded that the complainant was acting frivolously, without reasonable grounds, and solely for the purpose of harassing the respondents when he filed his complaint herein. At the very inception of this matter, the complainant's hostility was suggested when his April 6, 2011 letter requested a response "within the hour." As late as the July 21, 2011 hearing, the complainant's profane outburst directed at close quarters to counsel for the respondents demonstrated the complainant's deep and

continuing hostility toward the respondents.

22. It is therefore concluded that the complainant has abused the FOIA purpose of records transparency and that a civil penalty against the complainant is authorized by § 1-206 (b) (2), G.S.

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

1. The Commission hereby imposes a civil penalty of twenty five ($25.00) dollars against the complainant. The complainant shall make the payment of such penalty by tendering same at the offices of the Commission, within thirty days of the mailing of notice of this final decision.

(Return of Record, ROR, pp. 220-25).

The plaintiff contests the findings of the FOIC that the town supplied the records sought by him and that it was appropriate to fine the plaintiff $25 for bringing a frivolous complaint to the FOIC.[2] These claims are solely factual in nature. The court's standard of review of alleged factual errors made by an agency is well-settled. "Judicial review of [an administrative agency's] action is governed by the Uniform Administrative Procedure Act [(UAPA) General Statutes § 4-166 et seq.] . . . and the scope of that review is very restricted. . . . With regard to questions of fact, it is neither the function of the trial court

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[2] There is no question that under § 1-206 (b) (2), the FOIC may fine a complainant "no less than twenty dollars nor more than one thousand dollars" if a "person has taken an appeal . . . frivolously, without reasonable grounds and solely for the purposes of harassing the agency from which the appeal has been taken" and an appropriate hearing has been held.

nor of this court to retry the case or to substitute its judgment for that of the administrative agency. . . ." *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010). "The appropriate standard of judicial review . . . is whether the commission's factual determinations are reasonably supported by substantial evidence in the record taken as a whole." (Citation omitted; internal quotation marks omitted.) *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 507, 46 A.3d 291 (2012).

Turning to the first issue, the FOIC found in Finding # 2 that the plaintiff requested a copy of a "so-called leash law" as contained in the General Statutes and in Finding # 3 that the town sent the plaintiff copies of § 22-364 and a town ordinance concerning the restraining of dogs, as well as an explanatory letter. The plaintiff does not claim that these findings are unsupported by the record. Rather, he contends that the documents forwarded to him by the town were not a sufficient response. The FOIC, found, however, in Finding # 12 that the town does not maintain or keep on file any other record related to the plaintiff's request and that it promptly responded, and in Finding # 13 that the town therefore did not violate § 1-210 (a). The record supports these findings. (ROR, p. 32). The court agrees with the conclusion that the town's response did not violate the freedom of information act.

The plaintiff also contends that he did not file a frivolous complaint and that the

civil penalty of $25 should be set aside. Findings ## 15-22, quoted above, set forth the reasons for the imposition of the fine. There is substantial evidence to support these findings. (ROR, pp. 13-14, 77, 144, 155, 169). The court will not set aside the FOIC's conclusion in this regard. See *O'Connell* v. *Freedom of Information Commission*, 54 Conn. App. 373, 380, 735 A.2d 363 (1999) (upholding imposition of penalty as reasonable).

The appeal is therefore dismissed.

Henry S. Cohn, Judge