NO. CV 115015510S	:	SUPERIOR COURT
BRADSHAW SMITH	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION, ET AL.	:	AUGUST 30, 2012

FIcap# 2011-031
FIC # 2010-695
Atty: GFD
cc: All Attorneys

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 the plaintiff's complaint. The plaintiff's complaint alleged that the defendant town of Windsor's police department (the town) did not provide the plaintiff with a copy of a "leash law" as set forth in the General Statutes.

The FOIC, after a hearing, 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 October 19, 2010, the complainant requested a copy of the "leash law," citing the Connecticut General Statutes, which required the complainant to put his dog on a leash (the "requested record"). The complainant added that he "look[ed] forward to hearing from you by the end of this business day." The complainant's letter did not include any return address or

---

[1] The plaintiff, who had his complaint dismissed by the FOIC, is aggrieved for purposes of § 4-183 (a).

other contact information.

3. It is found that on October 19, 2010 Captain Kelvan Kearse of the respondent Department responded to the complainant's letter with a telephone call and message on the voicemail of the complainant. The respondent Police Chief asked Captain Kearse to call the complainant. Captain Kearse testified that he responded by telephone because the request asked for a response by the end of the day. Captain Kearse's voicemail message asked the complainant to verify that the letter was his letter; stated that Captain Kearse understood that the complainant had a question concerning dogs which had to be under control; and asked that the complainant call back to either the cell or work telephone numbers provided. The complainant did not respond to this phone message.

4. By letter dated November 2, 2010 and filed with the Freedom of Information Commission (the "Commission") on November 3, 2010, 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 2011-185) 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.

* * *

8. It is concluded that the requested record described in

paragraph 2, above, is, if such a record exists, a "public record [. . .]" within the meaning of § 1-210(a), G.S.

9. 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.

10. It is found that the respondents do not maintain or keep on file any record that is within the scope of the request set forth in paragraph 2, above. Moreover, there is no FOIA requirement to notify a requester when a public agency does not maintain any record within the scope of a request. See Docket # FIC 2008-776; *Bradshaw Smith* v. *Donald S. Trinks, Mayor, Town of Windsor*.

11. 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.

* * *

13. Nonetheless, in this matter, it cannot be concluded that the complainant was acting frivolously, without reasonable grounds, and solely for the purpose of harassing the respondents. At the time he filed his complaint, the complainant did not believe there was a "leash law" in the Connecticut General Statutes, but he could be seen as acting in good faith with reference to the possibility that there was a "leash law" concerning which he was not aware.

14. It is therefore concluded that in this matter there is no legal basis for imposing a civil penalty against the complainant.

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

1. The complaint is dismissed.

(Return of Record, ROR, pp. 214-18).

The sole issue[2] raised by the plaintiff is that, assuming that the requested record did not exist, as found by the FOIC in Finding # 9, the FOIC erred in Finding # 10 by concluding that the town was not legally required to respond to the plaintiff with that information[3]. In other words, the plaintiff contends that freedom of information act (FOIA) § 1-206 (a)[4] requires a respondent to an FOIA request to respond to a complainant with the information that a requested record does not exist.

In deciding this issue, the court follows settled precedent on the standard of

---

[2] At the oral argument in this court on August 29, 2012, the plaintiff stated that he does not contest Finding # 9 that the general statutes do not contain a "leash law," only a law, § 22-364, that prohibits owners from allowing their dogs to roam. Therefore, the plaintiff's request was for a record that does not exist.

[3] The FOIC in Finding # 3 found that the town did make an effort by telephone to reach the plaintiff to discuss his request, but the effort proved unsuccessful.

[4] Section 1-206 (a) provides in relevant part as follows: "Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request . . . . Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed a denial."

review: "It is well established that [j]udicial 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 nor of this court to retry the case or to substitute its judgment for that of the administrative agency. . . .

"Even as to questions of law, [t]he court's ultimate duty is to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . Ordinarily, this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes." *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

In addition, "We have determined . . . that we will defer to an agency's interpretation of a statutory term only when that interpretation of the statute previously has been subjected to judicial scrutiny or to a governmental agency's time-tested interpretation and is reasonable." *Albright-Lazzari* v. *Freedom of Information Commission*, 136 Conn. App. 76, 82-83, 44 A.3d 859 (2012), cert. denied, 305 Conn. 927, 47 A.3d 886 (2012), citing *Board of Selectmen* v. *Freedom of Information*

Commission, 294 Conn. 438, 446, 984 A.2d 748 (2010). In light of prior final decisions, the Appellate Court "agreed with the trial court that the commission's interpretation of the relevant statutes and case law was time-tested and reasonable." The Appellate Court found that the appeal was controlled by these FOIC decisions. Id., 83.

Here, the FOIC has issued final decisions prior to this appeal giving an identical determination as was made in this final decision. In *Smith* v. *Trinks*, Docket #FIC 2008-776 (June 10, 2009), Findings ## 12 and 13, the FOIC stated: "12. Section 1-206 (a), G.S., requires a public agency to provide a written response denying a request for public records, within the applicable number of days and permits a requester to invoke his right to file a complaint in the event an agency fails to comply with a request within the applicable number of days–without having to wait indefinitely for compliance that may never be forthcoming. Nothing in § 1-206 (a), G.S., requires a public agency to provide a written response to a request for public records informing the requester that there are no public records. 13. It is concluded that the respondent did not violate the FOI Act by not responding to the complainant's request . . . ." *Smith* v. *Trinks* also cites as holding identically as *Smith* v. *Feser*, Docket #FIC 2007-574.[5]

---

[5] The complainant in these two cases was the plaintiff in this appeal.

The court concludes that the FOIC has set forth a time-tested and reasonable interpretation of FOIA to which the court defers. Therefore the appeal is dismissed.[6]

Henry S. Cohn, Judge

6

Even if the court were to evaluate the plaintiff's claim de novo as a matter of law, it would reach the same conclusion. Section 1-206 (a) provides that the requester has to wait four days and if the respondent does not reply, then the requester may elect to bring a complaint to the FOIC. The four-day deadline insures that the plaintiff does not have to wait indefinitely for a response from the town, and the FOIC will resolve the issue of whether the agency has a record "maintained or kept on file," § 1-210 (a).