

OFFICE OF THE CLERK
SUPERIOR COURT

2019 MAY 6 PM 3 58

JUDICIAL DISTRICT OF
NEW BRITAIN SUPERIOR COURT

CV 18 5024397

KACEY LEWIS

V.

FREEDOM OF INFORMATION
COMMISSION

: JUDICIAL DISTRICT

: OF NEW BRITAIN

: MAY 6, 2019

MEMORANDUM OF DECISION

The plaintiff has appealed from a May 25, 2018 final decision of the freedom of information commission (the commission). The parties do not dispute that under General Statutes § 4-183 (c) and (m) the appeal had to be filed in court by July 24, 2018.¹ The commission has moved to dismiss the complaint as it was not filed until October 10, 2018.

The appeal was clearly filed with the court out of the time limit of § 4-183 (c). This is a matter of subject matter jurisdiction. *Glastonbury Volunteer Ambulance Association v. Freedom of Information Commission*, 227 Conn. 848, 852-854 (1993).

The plaintiff claims that he was unable to file the complaint because the clerk of court negligently or intentionally refused to accept it when timely filed. There is no proof of intent or

¹In the court's calculation, the appeal was to be filed on July 9, 2018, forty-five days after the mailing of the decision. The provisions of § 4-183 (m) do not apply as the motion for a waiver of fees was filed on June 18, 2018, during the forty-five day period. In any event, the court's calculation is not necessarily determinative as the appeal was not filed until October 10, 2018.

Electronic notice sent to all counsel of record.
mailed to plaintiff Kacey Lewis.
mailed to official Reporter of Judicial Decisions
A. Jordanopoulos, Ct Office 5-6-19

conspiracy in the record. Our Appellate Court has rejected a claim that a negligent act by a clerk sets aside the appellant's obligation to meet the deadlines of the Uniform Administrative Procedure Act. *Godairé v. Freedom of Information Commission*, 141 Conn. App. 716, 718 (2013) (untimely served based on clerk's advice). See also *Williams v. CHRO*, 257 Conn. 258, 267 (2001) (time deadlines such as § 4-183 are matters of subject matter jurisdiction and are not subject to equitable tolling).

The plaintiff moved prior to the oral argument that the court issue a subpoena to have evidence on his efforts to file the appeal in the New London Superior Court.² He sought to have the court hear testimony from one Bryan Foye, an assistant clerk, regarding his mailing the appeal to the clerk's office in July and subsequent months and the numerous rejections of his attempted filings. As the *Godairé* decision makes the taking further evidence on the possible negligence of the clerk irrelevant, any further proceeding in this case is unnecessary and the subpoena is denied.

The plaintiff's appeal is dismissed for lack of subject matter jurisdiction.

BY THE COURT



Henry S. Cohn, JTR

²The court ruled that the issue was to be resolved after the presentation of oral argument on May 1, 2019.