



NO. CV 12 5015684S : SUPERIOR COURT *File # 2012-608*
 BRADSHAW SMITH : JUDICIAL DISTRICT OF *Att: GED/KCR*
 v. : NEW BRITAIN
 FREEDOM OF INFORMATION :
 COMMISSION, ET AL. : JUNE 7, 2013

MEMORANDUM OF DECISION

The plaintiff, Bradshaw Smith, appeals from a March 20, 2012 final decision, and a denial of reconsideration of April 30, 2012, of the defendant freedom of information commission (FOIC) dismissing the plaintiff's FOIC complaint against the Greater Hartford Transit District (the district).¹

The record shows that the plaintiff filed his complaint with the FOIC on July 5, 2012. (Return of Record, ROR, p. 1). A hearing was held and a proposed final decision was issued on January 25, 2012. (ROR, p. 56). A final decision was issued on March 30, 2012 (ROR, p. 77) and the plaintiff's motion for reconsideration was denied on April 30, 2012. (ROR, p. 91). The final decision made the following relevant findings of fact and entered an agency order:

¹ The plaintiff is aggrieved for purposes of General Statutes § 4-183 (a) due to the dismissal of his complaint by the FOIC.

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2. On June 2, 2011, the complainant [the plaintiff] hand-delivered a written request for a copy of any records distributed or generated at the meeting of the respondents' Personnel Committee [the district] on June 2, 2011.
3. By letter filed July 5, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the records he requested. The complainant requested the imposition of a civil penalty.

* * *

7. It is concluded that the records requested by the complainant are public records within the meaning of §§ 1-200(5), 1-210(a), and 1-212(a), G.S.
8. It is found that on June 2, 2011, the respondents inadvertently misplaced the complainant's request.
9. It is found that the respondent chairman first learned of the complainant's request in late October 2011, when the Commission notified him of the hearing in this matter.
10. It is found that, within a day of learning of the complainant's request, the respondent chairman sent a letter to the complainant in which the chairman apologized for the delay, provided the complainant with a copy of the four-page report used during the Personnel Committee's meeting on June 2, 2011, and suggested that in the future the complainant deliver requests either by postal service or by hand-delivering them to the respondents' executive director.
11. It is found that, based on the facts and circumstances of this case, the respondents did not violate the FOI Act.
12. Because there is no violation, no civil penalty is warranted.

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. (ROR, pp. 78-79).

In addition to the findings of the FOIC, the record shows as follows:

1. On June 2, 2011, the plaintiff hand-delivered his request for records of the district to an operations manager at the district offices. The request was forwarded to the office of the chairman and executive director where it was misplaced. (ROR, pp. 2, 42 (hearing transcript)).
2. The plaintiff filed his complaint on July 5, 2011. (ROR, p. 1). On August 15, 2011, the complaint was returned by the FOIC due to stated defects. (ROR, p. 3). On September 8, 2011, the plaintiff re-filed his complaint. (ROR, p. 5). On October 25, 2011, the FOIC gave notice to the district of the plaintiff's complaint. (ROR, p. 7). The district sent the records to the plaintiff on October 28, 2011. (ROR, pp. 27-31).
3. Based on the documents themselves, the court concludes that when the plaintiff sent the initial July 5 complaint and the re-submitted complaint of September 8 to the FOIC, he did not send copies to the district.

The plaintiff's sole issue is that the FOIC has erred in dismissing his complaint because the district violated the following provision of the Freedom of Information Act (FOIA): "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record." § 1-212 (a); see also § 1-210 (a). The plaintiff thus argues that the district's response was not "prompt."

The Appellate Court has recently stated the standard of review of an FOIC decision as follows: “We begin by setting forth our well established standard of review of agency decisions. 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. . . . [A]n agency’s factual and discretionary determinations are to be accorded considerable weight by the courts. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of discretion. . . . Furthermore, when a state agency’s determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference.² . . . [I]t is for the courts, and not administrative agencies, to expound and apply governing principles of law.” (Citations omitted; internal quotation marks omitted.) *Commissioner of Public Safety v. Freedom of Information Commission*, 137 Conn. App. 307, 311-12, 48 A.3d 694, cert. granted, 307 Conn. 918, 54 A.3d 562 (2012). See also *Tompkins v. Freedom of Information Commission*, 136 Conn. App. 496, 507, 46 A.3d 291 (2012): “The appropriate standard of judicial review . . . is whether the commission’s factual determinations are reasonably supported by substantial evidence in

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An exception to this rule is where the agency’s interpretation has been “time tested.” *Christopher R. v. Commissioner of Mental Retardation*, 277 Conn. 594, 603, 893 A.2d 431 (2006). The court does not apply this exception here.

the record taken as a whole.” (Citation omitted.)

Commissioner of Public Safety also has relevancy to the interpretation of a statute in the context of the Freedom of Information Act. “Because statutory interpretation is a question of law, our review is de novo. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to the existing legislation and common law principles governing the same general subject matter.” (Citation omitted.) *Commissioner of Public Safety v. Freedom of Information Commission*, supra, 137 Conn. App. 313-14.

Turning to the term “promptly,” the appellate courts have acknowledged that an agency must respond “promptly” to a request for public records. See, e.g., *Planning & Zoning Commission v. Freedom of Information Commission*, 130 Conn. App. 448, 456, 23 A.3d 786 (2011). The Appellate Court has cautioned, however, that there is no fixed period for determining whether a response is prompt. See *Lash v. Freedom of Information Commission*, 116 Conn. App. 171, 184, 976 A.2d 739 (2009), affirmed in part, 300 Conn. 511, 14 A.3d 998 (2011).³

The court adopts the test recognized by the FOIC in its Advisory Opinion 51, also accepted by the plaintiff and the defendants at the oral argument of May 13, 2013. “It is the Commission’s opinion that the word ‘promptly’ . . . means quickly and without undue delay, taking into account all of the factors presented by a particular request.” While acknowledging the factual nature of the inquiry, the opinion also suggests that certain factors may include the number of records sought, the staff time in gathering the records, and the need to consider the request a priority over routine work.⁴

The findings of the FOIC in this case and its conclusion are supported by

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The plaintiff wrongly relies on § 1-206 (a) in contending that the district had only four days to respond. This FOIA provision merely allows a complainant to file a complaint with the FOIC after four days by deeming that a denial has occurred. It does not resolve whether a response is “prompt.”

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It should be noted that these factors do not have relevance to the situation here where the request was misplaced.

substantial evidence. On one hand, the plaintiff is correct that he delivered his request to a district official and should have expected a rapid reply. On the other hand, the plaintiff never followed up with his request either by telephone contact with the district or by sending it a copy of his complaint or a revised complaint. The mistake made by the district in not responding was corrected immediately when it was advised of its lapse, and there was no showing that its mistake was anything other than inadvertent.

The plaintiff argues that the FOIC has acted inconsistently with an earlier complaint in which he was the complainant, FIC # 2008-775. However, in the earlier complaint, the respondent had clearly received the request and was initially delaying its response on a claimed exemption. It later agreed to make the record available. That docket differs from the present one where the request was lost and, immediately on notice, the records were produced.

The court has considered the plaintiff's contentions and finds that the FOIC has not acted arbitrarily, illegally, unreasonably or in abuse of its discretion. Therefore the appeal is dismissed.



Henry S. Cohn, Judge