FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kenneth Lerman,

Complainant

against

Docket #FIC 2016-0779

Chief, Newtown Ambulance Association; and Newtown Ambulance Association,

Respondents

April 12, 2017

The above-captioned matter was heard as a contested case on February 2, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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

1. It is found that, by email, dated October 27, 2016, the complainant requested from the respondents electronic copies of "the treasurer's report, and all financial statements, documents, spreadsheets, notes, etc., that were distributed or discussed at the most recent regular meeting of the trustees of the Newtown Volunteer Ambulance Association, Inc." The complainant also requested "the most recent statement from the Oppenheimer Fund Account."

2. It is found that the respondents did not respond to the request, described in paragraph 1, above.

3. By email dated and filed November 3, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request, described in paragraph 1, above.

4. The respondents contended that Newtown Ambulance Association ("NAA") is not a public agency within the meaning of §1-200(1), G.S., and therefore not subject to the FOI Act.

5. Section 1-200(1), G.S., defines a "public agency" or "agency," in relevant part to mean:

> ...(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...(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.

6. It is found that neither subdivision (A) nor (C) of subsection (1) of §1-200, G.S., applies in this case. Consequently, for NAA to be considered a public agency for purposes of the FOI Act, over which the commission has jurisdiction, it must be determined whether NAA is "deemed to be the functional equivalent of a public agency pursuant to law," within the meaning of §1-200(1)(B), G.S.

7. In Board of Trustees of Woodstock Academy v. FOI Commission, 181 Conn. 544, 554 (1980) ("Woodstock"), the Supreme Court adopted the "functional equivalent" test to determine whether an entity is a public agency. The test for functional equivalence to a public agency consists of the following four criteria: (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.

8. Subsequently, in Connecticut Humane Society v. FOI Commission, 281 Conn. 757, 761 (1991), the Supreme Court elaborated that all four factors set forth in Woodstock are not necessary for a finding of functional equivalence, but rather that "all relevant factors are to be considered cumulatively, with no single factor being essential or conclusive."

9. It is found that NAA provides ambulance service to the town of Newtown ("town").

10. It is found that NAA was incorporated in 1941 as non-profit, tax-exempt, corporation by members of the Newtown Rotary Club. NAA presently is governed by a 10 member board of trustees.

11. With regard to whether the entity was created by government, it is found that NAA was not created by government.

12. With regard to the level of government funding, it is found that NAA's budget for 2016-17 was over $800,000, and that it receives funding from a combination

of insurance reimbursements, private donations, and grants from the town, which grants amount to between $40,000 and $60,000 per year. It is found that NAA uses the grant money received from the town to purchase new ambulances. In addition, it is found that under a contract among the town, NAA and Danbury Ambulance Service, Inc. ("Danbury"), the town and NAA each pay approximately $175,000 per year to Danbury for the cost of paramedic services provided by Danbury to NAA. It is further found that the town pays for the fuel used by the three ambulances owned by NAA, totaling approximately $10,000 per year.

13. In addition, it is found that NAA receives the following in-kind financial contributions from the town: the property on which NAA's building is located is owned by the town and leased to NAA for only $1.00, far below the market value of that lease; the town provides and administers NAA's worker's compensation program; the town provides pensions and life insurance to NAA's employees; the town provides a tax abatement to NAA in the amount of $1,000 per year; NAA utilizes the town's phone system at no cost to NAA and its phone numbers are town phone numbers; and the town provides snow plowing services to NAA, free of charge.

14. Thus, it is found that NAA receives significant funding and in-kind contributions from the town.

15. With regard to whether NAA performs a government function and the extent of government regulation, it is found that NAA is subject to state statutes governing emergency medical services, particularly §19a-175, G.S., et seq.

16. It is also found that NAA is subject to the regulations of the state's Office of Emergency Medical Services, pursuant to §19a–178-1, et seq.

17. It is concluded that the provision of ambulance service is extensively regulated by government and is a governmental function, pursuant to the statutory and regulatory scheme identified in paragraphs 15 and 16, above. The Commission observes that it has consistently reached this conclusion in many prior decisions. See, e.g., Paul F. Rowen v. Vera Rosa, President, Bethlehem Ambulance Association, et al., Docket #FIC 2008-098 (August 27, 2008); Frank F. Marcucio, III, v. Board of Directors, Valley Emergency Medical Services, Inc., Docket #FIC 2004-245 (March 23, 2005); Fred B. Feins v. President and Chief Executive Officer, Granby Ambulance Association, Inc., et al., Docket #FIC 2000-005 (May 10, 2000); and Richard N. Bergin and Susan G. Ellis v. Glastonbury Volunteer Ambulance Association, Inc., #FIC 91-59 (November 13, 1991).

18. It is concluded that, based on the totality of relevant criteria, NAA is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., and therefore subject to the jurisdiction of this Commission.

19. Section 1-200(5), G.S., provides:

> [p]ublic records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

20. Section 1-210(a), G.S., provides, in relevant part, that:

> [e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

21. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

22. It is concluded that the records, described in paragraph 1, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

23. The respondents made no claim that any of the records, described in paragraph 1, above, are exempt from disclosure.

24. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records, described in paragraph 1, above, from the complainant.

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

1. Within seven (7) business days of the date of the Final Decision in this matter, the respondents shall provide a copy of the records, described in paragraph 1, of the findings of fact, above, to the complainant, free of charge.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 2017.

Cynthia A. Cannata

Cynthia A. Cannata
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:

Kenneth Lerman
55 Main Street
Newtown, CT 06470

Chief, Newtown Ambulance Association; and
Newtown Ambulance Association
c/o Christopher G. Winans
98 Mill Plain Road, Suite 2A
Danbury, CT 06811

Cynthia A. Cannata
Acting Clerk of the Commission

FIC/2016-0779/FD/cac/4/12/2017