2011-005
Atty: KRR

HHB-CV-11-6009297S		**SUPERIOR COURT**
PAUL J. GARLASCO	:	**J.D. OF NEW BRITAIN**
V.	:	**AT NEW BRITAIN**
FREEDOM OF INFORMATION COMMISSION	:	**FEBRUARY 7, 2012**

MEMORANDUM OF DECISION

This is an administrative appeal from a decision of the Freedom of Information ("FOI") Commission brought pursuant to Conn. Gen. Stat. §§1-206(d) and §4-183(b). The plaintiff seeks review of the decision of the FOI Commission in Paul Garlasco v. First Selectman, Town of Bridgewater; and Board of Selectman, Town of Bridgewater, Docket #FIC 2010-125, based upon allegations of error in his appeal.

On February 8, 2010, the plaintiff requested from the first selectman, in writing copies of all bids and contracts submitted to the town of Bridgewater the past five years. By email, dated February 9, 2010, the first selectmen ("town") acknowledged the request, informed the plaintiff that a review for responsive records would be conducted, requested that the plaintiff submit a legible copy of the request, and further informed the plaintiff that he would be notified once the review for responsive records was complete. By email dated February 10, 2010, the plaintiff resubmitted his request for copies of all bids and contracts submitted to the town

"under the bidding ordinance" for the preceding five years. On February 23, 2010, the plaintiff appealed to the Commission, claiming that the town violated the FOI Act by failing to produce requested documents.

On March 23, 2010, by email, the first selectman's assistant informed the plaintiff that most of the records he requested would be referenced in the Board of Selectmen's meeting minutes, and she asked the plaintiff whether he would be interested in coming to the town hall to view these records. In response, the plaintiff, by email dated March 23, 2010, stated "please set out each such bid/meeting file and let me know when its [sic] ready..." Later that same day, the plaintiff again emailed the first selectman's assistand and clarified that he wanted "copies of the bids that were actually published along with the documents that established that they were actually published in the newspaper..."

However, sometime after March 23, 2010, the plaintiff requested that the town compile the records, rather than copy them, so that he could view them before any copies were made. The plaintiff also requested that the town notify him when they had compiled the records.

By May 23, 2010, the town had compiled approximately 3000 pages of responsive records for the plaintiff, and, by email dated May 25, 2010, the first selectman's assistant informed the plaintiff that she was still working on his request for information, but that he was welcome to come to her office to see what had been compiled and make copies of the documents he wanted. The plaintiff did not respond to the email, nor did he even go to the town hall to view the records that had been compiled at his request.

Some four months later the plaintiff emailed the first selectman's assistant and asked whether she had "completed the compilation of the requested records so as to make it

unnecessary to move forward with the September 30th hearing." She responded by email on September 20th that, she had compiled records for the plaintiff to review and copy as desired. She further informed the plaintiff that there were a significant number of documents dealing with the senior center alone, and renewed her request that he come to the town hall to view the documents "before I make thousands of unnecessary copies." On September 20th, counsel for the town emailed the plaintiff and asked him to clarify whether he wanted copies or access to the records that he requested so that both the town and the plaintiff might save "time and money" by only making copies of records that the plaintiff was truly interested in obtaining.

On September 30, 2010, Ms. Lindblom , the first selectman's assistant brought with her to the hearing in this matter a box containing the records compiled for the plaintiff in response to the February 8th request. (R. 85, 88). She testified at the hearing in this matter, that she had conducted a search for, and had compiled, all records maintained by the town responsive to the February 8th request. (R. 80, 85). On September 30th, the plaintiff and the town agreed that the town would copy all of the records contained in the box, and on October 6, 2010, via email, the town informed the plaintiff that such copying had been completed. The town also attached an invoice for $1500.00 for the cost of the copies, or $.50 per page for 3000 pages. (R. 88). On October 7, 2010, the plaintiff responded, "[w]e will forward payment pursuant to statute." (R. 89, 125). However, on October 8, 2010, via email, the plaintiff informed the town that he would not pay for the copies "given the late disclosure and the incomplete disclosure." (R. 91, 126).

A continued contested case hearing on this matter was held on October 29, 2010. Thereafter, the hearing officer found that the respondents did not violate the FOI Act as alleged

in the complaint, gave serious consideration to, but declined, the town's request to impose sanctions against the plaintiff for undertaking the appeal frivolously, and ordered the plaintiff to pay the town for the cost of the copies he had requested and for which he had agreed to pay. (R. 128 – 133).

At a special meeting on January 28, 2011, the Commission unanimously adopted the hearing officer's report. (R. 201). On March 2, 2011, the plaintiff filed this appeal, claiming that the findings of fact in the Commission's decision are erroneous, and requesting that this court overturn the decision, order the town to reimburse him for the cost of the requested copies, and to provide him with "the requested and itemized documents or an explanation of their absence."

Conn. Gen. Stat. §1-206(d) requires that appeals from decisions of the FOIC must be brought in accordance with Conn. Gen. Stat. §4-183(j).

> The court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provision; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (Emphasis added).

Connecticut courts have restricted their role as overseers of administrative decisions. The court may not substitute its judgment for that of the agency as to the weight of evidence on

questions of fact. Conn. Gen. Stat. §4-183(j). This court is required to defer to the subordinate facts found by the Commission, if there is substantial evidence to support those findings. Dufraine v. Commission on Human Rights & Opportunities, 236 Conn. 250, 259, 673 A.2d 101 (1996); Newtown v. Keeney, 234 Conn. 312, 319-20, 661 A.2d 589 (1995). Indeed, the Supreme Court has stated:

> Even as to questions of law, "[t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion ....

Perkins v. Freedom of Information Commission, 228 Conn. 158, 164-165 (1993) (emphasis in original).

This court shall not retry the case and shall uphold the agency's decision if reasonably supported by the evidence. Caldor Inc. v. Mary M. Heslin, Commissioner of Consumer Protection, 215 Conn. 590, 596 (1990); cert. denied, 498 U.S. 1088 (1991), Madow v. Muzio, 176 Conn. 374, 376 (1978); C&H Enterprises, Inc. v. Commissioner of Motor Vehicles, 176 Conn. 11, 12-13 (1978); Williams v. Liquor Control Commission, 175 Conn. 409, 414 (1978). The record before the administrative agency supports the action taken. Hospital of St. Raphael v. Commission on Hospitals and Health Care, 182 Conn. 314, 318 (1980). The "substantial evidence" standard requires that the administrative decision be upheld "[i]f the administrative record provides a "substantial basis of fact from which the fact in issue can be reasonably inferred." Adriani v. Commission on Human Rights and Opportunities, 200 Conn. 307, 315 (1991); Lawrence v. Kozlowski, 171 Conn. 705, 713 (1976), cert. denied, 431 U.S. 969 (1977).

The Connecticut Supreme Court has long held that, when reviewing agency decisions, the courts should "accord great deference to the construction given [a] statute by the agency

charged with its enforcement." Perkins at 165; Ottochian v. FOIC, 221 Conn. 393 (1992); Board of Trustees of Woodstock Academy v. FOIC, 181 Conn. 544 (1980); Anderson v. Ludgin, 175 Conn. 545, 555 (1978); Corey v. Avco-Lycoming Division, 163 Conn. 309, 326 (1972) (Loisell, J. concurring); Clark v. Town Council, 145 Conn. 476, 485 (1958) and Downer v. Liquor Control Commission, 134 Conn. 555, 561 (1948).

While pure questions of law do invoke a broader standard of review, State Board of Labor Relations v. FOIC; State Board of Mediation and Arbitration v. FOIC, 244 Conn. 487, 493-494 (1998); Connecticut Light & Power Co. v. Texas-Ohio Power, Inc., 243 Conn. 635, 642-644 (1998), where a statutory provision is subject to more than one plausible construction, the one favored by the agency charged with enforcing the statute will be given deference. Bridgeport Hospital v. Commission on Human Rights & Opportunities, 232 Conn. 91, 110 (1995); Starr v. Commissioner of Environmental Protection, 226 Conn. 358, 376 (1993). "[W]hen an agency must make a case-by-case determination of matters that fall within the department's expertise, a deferential standard of review is proper even if the particular legal issue is a novel one." Rudy's Limousine Service, Inc v. Department of Transportation, 78 Conn. App. 80, 94 (2003) (emphasis added). Even where an agency's interpretation on an issue of law has not previously been subject to judicial review, if the agency's interpretation of its statute is "time-tested and reasonable," it deserves deference from a court. Longley v. State Employees Retirement Commission, 284 Conn. 149, 166 (2006).

The decision of the FOIC is sustained because the facts found are reasonably supported by the record and because the FOIC has correctly applied the law to those facts.

The plaintiff claimed that the respondents violated the FOI Act by failing to comply with his request for records. The hearing officer, after a lengthy hearing, found, based on substantial evidence, that the town received the request, complied with it, at the plaintiff's request, by compiling all responsive records for his review, and then, after he stated that he wanted copies, provided the plaintiff with copies of such records. The Commission concluded that the town did not violate the Act.

In this appeal, the plaintiff claims that the Commission's findings of fact are erroneous. It is the plaintiff's brief that is replete with inaccurate statements that plainly contradict the evidence that was presented at the hearing. For example, on page 3, in the first paragraph of the plaintiff's brief, he states: "The [town] repeatedly promised to produce the COPIES of the requested documents and to date has failed to do so." (Emphasis in original). As the record reflects, however, it is uncontroverted that the plaintiff himself requested, at some point, that the town NOT make copies until he had an opportunity to inspect the records, and the plaintiff himself testified at the hearing that, after he was informed that the records he requested had been compiled for him, he did not ever go to the town hall to inspect them. Substantial evidence also exists in the record to support the finding that the town did, in fact, after the plaintiff failed to come to inspect the records, provide copies of all responsive records it maintains to the plaintiff on September 30, 2011. Substantial evidence exists in the record to support the Commission's finding that if there was any delay in providing copies or access to the requested records, such delay was caused by the plaintiff's own actions.

There is ample and substantial evidence in the record on which the findings of fact could have reasonably been based. The law is clear that the appeal must be dismissed.

A plaintiff seeking to overturn the decision of an administrative agency has the significant burden to demonstrate that the agency's findings were "clearly erroneous" in view of the substantial evidence in the record, or "arbitrary or capricious" or an "abuse of discretion." The Commission's decision that is the subject of this appeal is clearly supported by substantial evidence in the record. The plaintiff has failed to meet his burden. The court affirms the Commission's decision and dismisses this appeal.

By the Court,

OWENS, J.T.R.