

Freedom of Information Commission  
of the State of Connecticut

In the Matter of a Complaint by

Report of Hearing Officer

Martha R. Dulko and  
Kathryn M. Dulko  
Complainant(s)

Docket #FIC81-35

against

City and Town of Meriden;  
City Clerk of the City and  
Town of Meriden

Respondent(s)

October 15, 1981

The above-captioned matter was scheduled for hearing on May 1, 1981, at which time the complainants appeared and presented evidence and arguments.

After consideration of the entire record the following facts are found:

1. The respondents are public agencies within the meaning of §1-13a, G.S.

2. By letter filed with the Commission February 24, 1981, the complainants alleged (1) that the respondent clerk had illegally destroyed applications for absentee ballots and (2) that the conditions imposed by the corporation counsel of the respondent town and city upon them with respect to their viewing certain envelopes from which absentee ballots had been removed were illegal and violated the Commission order in #FIC80-207.

3. The complainants alleged that the respondent clerk had willfully destroyed the applications for absentee ballots and that the Commission should impose a fine in accordance with §1-21k, G.S.

4. Section 1-21k, G.S. provides in relevant part that:

Any person who willfully, knowingly  
and with intent to do so, destroys,  
mutilates or otherwise disposes of any  
public record without the approval re-  
quired. . . . pursuant to Chapter 47,  
. . . shall be guilty of a class A  
misdemeanor.

5. Section 53a-24, G.S. provides in relevant part that the term "crime" comprises felonies and misdemeanors.

6. The duty to investigate and prosecute criminal matters is vested in the criminal justice division of the judicial department pursuant to Section 51-276, G.S.

7. It is concluded that the duty to investigate and prosecute any violation of the prohibition of §1-21k against destruction of documents is the duty of the prosecutor and that therefore the Commission lacks jurisdiction with respect to the complainants' allegations that the absentee ballot applications were illegally destroyed.

8. The Town counsel had told the complainants that their inspection of the envelopes from which the absentee ballots had been removed could only occur once, that the envelopes would be destroyed thereafter.

9. The complainants argued that this was too restrictive a reading of the Commission order in #FIC80-207, and that they should be allowed to "inspect the records as often as they need to."

10. The relevant portion of the order in #FIC80-207 provided that:

1. The respondent shall forthwith permit the complainants to inspect the contents of the depository envelope maintained by the respondents pursuant to § 9-153, G.S., for the September 9, 1980 democratic primary in the respondent town.

. . . . .

3. Nothing herein shall be construed as condoning the destruction of the contents of a depository envelope maintained pursuant to § 9-153, G.S., to which any person has at any time requested access, unless the custodian of the envelope has complied with all such requests.

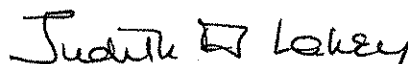
11. It is found that the town counsel's interpretation of the Commission order is too restrictive.

12. It is concluded that the complainants may inspect the envelopes from which the absentee ballots have been removed as often as is needed provided they give the custodian of the records a firm date after which the records may be destroyed.


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 insofar as it alleges a violation of §1-21k, G.S.

2. The respondent clerk shall make the envelopes from which the absentee ballots have been removed available to the complainants provided the complainants give the custodian of the records a firm date after which destruction of the records may occur.

  
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Commissioner Judith A. Lahey  
as Hearing Officer

Approved by order of the Freedom of Information Commission at its regular meeting of November 12, 1981.

  
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Mary Jo Jolicœur  
Clérk of the Commission