

NO. CV 115015297S : SUPERIOR COURT  
BRADSHAW SMITH : JUDICIAL DISTRICT OF  
v. : NEW BRITAIN  
FREEDOM OF INFORMATION :  
COMMISSION, ET AL. : OCTOBER 4, 2012

**MEMORANDUM OF DECISION**

The plaintiff, Bradshaw Smith, appeals from a December 14, 2011 final decision of the defendant freedom of information commission (FOIC) dismissing his complaint filed against the intervening defendant, the office of the chief public defender (public defender).

The FOIC held an evidentiary hearing and subsequently issued its final decision, making the following relevant findings of fact:

1. It is found that on March 5, 2010, the complainant [the plaintiff] orally requested a copy of the [public defender's] guidelines for representation.
2. It is found that on March 16, 2010, the [public defender] sent to the complainant a copy of [the] Eligibility Guidelines.
3. By letter filed March 8, 2010, the complainant appealed to this Commission, alleging that the [public defender] violated the Freedom of Information ("FOI") Act by failing to provide him with "a **certified** copy of [the public defender's] guidelines for representation." (Emphasis in original.)

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12. It is concluded that the [public defender is a] public agenc[y] for the purpose of determining whether the guidelines are subject to disclosure under the FOI Act.

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16. It is concluded that the records requested by the complainant are public records within the meaning of [FOIA].
17. The complainant alleges that he requested a certified copy of the guidelines and that he sought a copy of all of the [public defender's] guidelines, not just the guidelines pertaining to income eligibility.
18. The [public defender] . . . disputes that the complainant requested certified copies [or that he made] clear that he sought other guidelines than those pertaining to income eligibility.
19. It is found that the income eligibility guidelines sent to the complainant on March 16, 2010, were not certified copies.
20. It is found that the [public defender] complied on March 16, 2010 with what they reasonably understood the complainant's request to be.
21. It is concluded, therefore, that the [public defender] did not violate the FOI Act as alleged by the complainant.
22. It is found that on October 26, 2011, the [public defender] provided the complainant with a certified copy of the same Income Eligibility Guidelines that they originally provided on March 16, 2010. (Return of Record, ROR, pp. 121-123).

The FOIC entered the following order: “The complaint is dismissed.” (ROR, p. 123). The plaintiff subsequently appealed to this court.<sup>1</sup>

The plaintiff’s contention is that the public defender did not comply with his request and the FOIC erred in finding otherwise. According to the plaintiff, “there were a substantial number of other documents relative to a potential client’s eligibility for their [public defender] services—other than merely *income*, however none have—curiously—there—since been disseminated.” (Plaintiff’s response to Intervenor’s Brief, filed September 24, 2012).

The plaintiff’s claim is solely factual in nature. The court’s standard of review of alleged factual errors made by an agency is well-settled. “Judicial review of [an administrative agency’s] action is governed by the Uniform Administrative Procedure Act [(UAPA) General Statutes § 4-166 et seq.] . . . and the scope of that review is very restricted. . . . With regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency.” *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010). “The appropriate standard of judicial review . . . is whether the commission’s factual determinations are reasonably supported by substantial evidence in the record taken as a whole.” (Citation omitted; internal quotation

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The plaintiff is aggrieved for purposes of § 4-183 (a).

marks omitted.) *Tompkins v. Freedom of Information Commission*, 136 Conn. App. 496, 507, 46 A.3d 291 (2012). See also *Briggs v. State Employees Retirement Commission*, 210 Conn. 214, 217, 554 A.2d 292 (1989) (court “must defer to the agency’s assessment of the credibility of the witnesses and to the agency’s right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part”); *Lane v. Commissioner of Environmental Protection*, 136 Conn. App. 135, 156, 43 A.3d 821, cert. granted, \_\_\_ Conn. \_\_\_ (2012) (“we will not disturb that credibility determination”).

The plaintiff claims that his request was orally made to the office of the public defender and he argues that the request was not properly understood. He also argues that the public defender failed to demand that he put his request in writing and therefore the public defender is to blame for the failure to understand what he was requesting. On the other hand, the FOIC concluded in Finding 20 that the public defender on March 5, 2010 honestly understood the plaintiff’s request only to be for the eligibility guidelines and not anything more. Finding 20 is supported by substantial evidence in the record. (ROR, pp. 70,75). Under the standard of review stated above, the court defers to the FOIC’s finding regarding the nature to the request.

Therefore the appeal is dismissed.<sup>2</sup>



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Henry S. Cohn, Judge

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The public defender, an intervenor, submitted a brief to the court arguing that the plaintiff's complaint was moot. Alternatively, the public defender argued that the appeal was without jurisdiction. The court has ruled in favor of the public defender without reaching these issues. The plaintiff's claim that the public defender did not present him with the other documents means that this appeal was not moot. Further, the plaintiff initially appealed and the matter was remanded for a hearing and a new final decision. The initial appeal was therefore timely. See *Citizens Against Overhead Powerline Construction v. Connecticut Siting Council*, Superior Court, judicial district of New Britain, docket No. 10-6004927 (January 21, 2011, *Cohn, J.*).