

**FINAL REPORT  
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION  
CONNECTICUT GENERAL ASSEMBLY  
2022 REGULAR SESSION**

By  
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*Summary of Legislative Session:*

The 2022 legislative session was a short session during which several pieces of legislation affecting the cause of open and accessible government in Connecticut were raised. Some of the bills proposed increased the public’s right to access (e.g., SB 18, SB 433, HB 5269, HB 5453, HB 5458, HB 5459), while other proposals further limited access (e.g., SB 203, SB 459, HB 5378, HB 5393, HB 5463, HB 5494).

Among the proposals were recommendations submitted by the Freedom of Information (“FOI”) Commission to the legislature. Such recommendations were raised by the Government Administration and Elections Committee (“GAE”) in House Bill 5458, *An Act Concerning Revisions to the Freedom of Information Act Recommended by the Freedom of Information Commission*. House Bill 5458 proposed to revise the following provisions in the FOI Act: §§1-200(11) and 1-218 (regarding definition of “governmental function” and contracts in excess of \$2.5 million); §1-205(e) (regarding training by the FOI Commission); §1-210(b)(17) (regarding education records exemption); §1-212(g) (regarding hand-held scanner definition); and §1-225(d) (regarding electronic notice of special meetings to board members). (Attached is a copy of the Commission’s statement in support of House Bill 5458 explaining in detail the various recommendations.) Unfortunately, even though House Bill 5458 made it out of GAE without any known opposition, there was no further push by legislators to have this bill taken up by the House and/or Senate. House Bill 5458 died on the House calendar.

Below is a brief description of additional bills of note:

**BILLS PASSED – UNFAVORABLE RESULTS**

**SB 459; P.A. 22-18. AN ACT CONCERNING THE CORRECTION ADVISORY COMMITTEE, THE USE OF ISOLATED CONFINEMENT AND TRANSPARENCY FOR CONDITIONS OF INCARCERATION.**

Senate Bill 459, as passed by the General Assembly, moves the Office of the Correction Ombuds from the Department of Correction (“DOC”) to the Office of Governmental Accountability, for ombuds services such as the handling of complaints from individuals in DOC custody. This bill also contains several confidentiality provisions including the following: “The name, address and other personally identifiable information of a person who makes a complaint to the Correction Ombuds, information obtained or generated by the Office of the Correction Ombuds in the

course of an investigation and all confidential records obtained by the Correction Ombuds or the office shall be confidential and shall not be subject to disclosure under the Freedom of Information Act....”

The Governor has signed Senate Bill 459 (P.A. 22-18).

**HB 5393; P.A. 22-26. AN ACT CONCERNING COURT OPERATIONS AND THE UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT.**

*See discussion of Senate Bill 203 and House Bill 5378, below.*

**BILLS PASSED – FAVORABLE RESULTS**

**SB 18; P.A. 22-16. AN ACT CONCERNING VARIOUS REVISIONS TO THE HIGHER EDUCATION STATUTES.**

Senate Bill 18 concerns various revisions to the Higher Education statutes. Among other requirements, the proposal requires that board members of the Board of Regents for Higher Education and the Board of Trustees of the University of Connecticut adopt a policy requiring that any new board member receive and complete instruction and training in the provisions of the FOI Act not later than one year after being appointed or elected to the board.

Senate Bill 18 was voted out of the Higher Education and Employment Advancement Committee, with substitute language. It was subsequently amended by the Senate and passed by the House in concurrence. The Governor has signed Senate Bill 18 (P.A. 22-16).

**HB 5269; P.A. 22-3. AN ACT CONCERNING REMOTE MEETINGS UNDER THE FREEDOM OF INFORMATION ACT.**

House Bill 5269 concerns remote meetings. Section 149 of Public Act 21-2 (June Special Session) authorized public agencies to meet remotely using electronic equipment until April 30, 2022, and established requirements and procedures for holding such meetings. House Bill 5269 was voted out of the Planning and Development Committee, with substitute language. It was subsequently amended by the House and passed by the Senate in concurrence. The bill, as passed by the General Assembly, eliminates the April 30, 2022 sunset provision. A similar bill, Senate Bill 467, *An Act Permitting Remote Public Meetings under the Freedom of Information Act*, was voted out of GAE, with substitute language, but died on the Senate calendar.

The Governor has signed House Bill 5269 (P.A. 22-3).

**HB 5453; P.A. 22-65. AN ACT REQUIRING THE ONLINE POSTING OF CERTAIN STATE CONTRACTS.**

House Bill 5453 requires that contracts entered into by the state without being subject to competitive bidding or competitive negotiation requirements be posted on the Internet website of the Department of Administrative Services.

The bill was voted out of GAE and passed by the General Assembly. The Governor has signed House Bill 5453 (P.A. 22-65).

**HB 5459; P.A. 22-109. AN ACT REQUIRING THE ONLINE POSTING OF MEETING NOTICES OF STATE PUBLIC AGENCIES.**

House Bill 5459 amends §1-225 of the FOI Act and requires that state agencies post their schedule of regular meetings on the Secretary of State's Internet website and that the Secretary of State post special meeting notices of state agencies on its website.

The bill was voted out of GAE and passed by the General Assembly. The Governor has signed House Bill 5459 (P.A. 22-109).

**HB 5506; P.A. 22-118. AN ACT ADJUSTING THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2023, CONCERNING PROVISIONS RELATED TO REVENUE, SCHOOL CONSTRUCTION AND OTHER ITEMS TO IMPLEMENT THE STATE BUDGET AND AUTHORIZING AND ADJUSTING BONDS OF THE STATE.**

The complexity and scope of contested cases before the Commission has increased over the past few years, along with the volume of in camera record submissions (in some instances, amounting to thousands of pages). The Commission sought funding for an existing attorney position that has been vacant since 2016. Fortunately, the budget passed by the General Assembly, and signed by the Governor, includes funding for the long vacant attorney position.

**BILLS DEFEATED - UNFAVORABLE RESULTS**

**SB 433, AN ACT REQUIRING PUBLIC HEARINGS FOR CERTAIN SPECIAL SESSION LEGISLATION.**

Senate Bill 433 sought to require certain bills or resolutions proposed during a special session to have a public hearing. Specifically, the bill prohibited the General Assembly from enacting any bill or resolution during a special session that is called after the regular session for that year which is the same or substantively similar to a bill or resolution filed during such regular session, unless a public hearing is held on such bill or resolution during such special session. The bill would help protect the public's participation in the legislative process.

Senate Bill 433 was voted out of GAE, but died on the Senate calendar.

**HB 5211, AN ACT CONCERNING THE APPLICATION OF THE FREEDOM OF INFORMATION ACT TO CERTAIN CEMETERY ASSOCIATIONS.**

House Bill 5211 sought to amend section 19a-296 of the general statutes. Specifically, the bill provided that any cemetery association that receives or expends any public funds shall be a “public agency” subject to the provisions of the FOI Act.

House Bill 5211 was voted out of the Judiciary Committee, but died on the House calendar.

**BILLS DEFEATED - FAVORABLE RESULTS**

**SB 203, AN ACT CONCERNING CERTAIN FEES PAYABLE TO A STATE MARSHAL AND EXTENDING PRIVACY PROTECTIONS TO A STATE MARSHAL RELATING TO THE NONDISCLOSURE OF THE MARSHAL'S RESIDENTIAL ADDRESS.**

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**HB 5378, AN ACT CONCERNING THE NONDISCLOSURE OF THE RESIDENTIAL ADDRESSES OF CERTAIN EMPLOYEES UNDER THE FREEDOM OF INFORMATION ACT.**

Senate Bill 203 and House Bill 5378 revived an exhaustive debate in the General Assembly that has been held on an almost annual basis. The bills sought to amend §1-217 of the FOI Act and add yet more classifications of workers whose home addresses would be “protected” – i.e., state marshals appointed by the State Marshal Commission (Senate Bill 203) and employees of the office of the Attorney General (House Bill 5378<sup>1</sup>).

Every year, it seems, another agency or another profession attempts to have the addresses of its employees included in §1-217, without really understanding the limited scope of the statute, which should not be viewed as a cure for safety and privacy concerns. Section 1-217 is not the panacea that many believe it to be, and only protects the residential addresses of covered employees in personnel, medical or similar files.

House Bill 5378 was voted out of GAE and passed by the House. The bill died on the Senate calendar. Senate Bill 203 did not make it out of the Judiciary Committee. However, the proposal to add state marshals as a classification under §1-217 was included in a different bill, House Bill 5393, *An Act Concerning Court Operations and the Uniform Commercial Real Estate Receivership Act*. House Bill 5393 was voted out of the Judiciary Committee with substitute

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<sup>1</sup> Similar proposals were taken up during the 2020 and 2021 legislative sessions. See HB 5409, *An Act Concerning the Nondisclosure of Residential Addresses of Attorney General Employees* (2020); and HB 6576, *An Act Concerning the Nondisclosure of Residential Addresses of Certain Employees under the Freedom of Information Act* (2021).

language, and passed by the General Assembly. The Governor has signed House Bill 5393 (P.A. 22-26).

**HB 5463, AN ACT CONCERNING THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL TO BRING AN ACTION AGAINST A SELLER WHO ENGAGES IN PRICE GOUGING DURING A DISASTER OR EMERGENCY.**

House Bill 5463 sought to amend §42-110d(f) of the Connecticut Unfair Trade Practices Act (CUTPA) to increase the period during which records concerning the investigation of any alleged violation of such Act may be withheld from disclosure. Under existing law, the Commissioner of the Department of Consumer Protection may withhold records concerning the investigation of any alleged violation from disclosure during the pendency of an investigation or examination, for a period of 18 months after the date on which the initial complaint was filed or after the date on which the investigation or examination was commenced, whichever is earlier. House Bill 5463 proposed to allow the withholding of information until the *conclusion* of the investigation. Under the proposal, an investigation could go on indefinitely and the public would not know anything about the investigation.

House Bill 5463 did not make it out of the Judiciary Committee. However, a similar proposal was included in an amendment to House Bill 5222, *An Act Concerning Paid Solicitors of Charitable Funds and Charitable Organization Transparency*. House Bill 5222 passed the House, as amended, but died on the Senate calendar.

**HB 5494, AN ACT PROHIBITING THE DISCLOSURE OF CERTAIN CONTACT INFORMATION UNDER THE FREEDOM OF INFORMATION ACT.<sup>2</sup>**

House Bill 5494 sought to exempt from disclosure certain contact information in the custody of a member of the General Assembly. Specifically, the bill proposed to exempt from disclosure any list of email addresses or portion of such list created or modified by a legislator or legislative staff for purposes related to the legislator's public office. House Bill 5494 allowed the disclosure of such information to a state agency for a "governmental purpose", provided that (1) any such disclosure would not make such list a "public record", and (2) could not be disclosed or used for a political campaign, primary, referendum or election. "Governmental purpose" was not defined.

To the extent that the proposal concerned the disclosure of constituent information, the Commission apprised the GAE Committee that the proposal may be unnecessary based on past precedent. *See* Declaratory Ruling #90 (any records related to the constituent work of members of the General Assembly not related to lawmaking, including contact information, are not subject to mandatory disclosure). The Commission also expressed concerns that the language of the proposal was broad, vague and subject to misconstruction. In addition, the Commission questioned the public policy behind House Bill 5494.

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<sup>2</sup> A similar proposal was introduced during the 2021 legislative session. *See* HB 5879, *An Act Exempting Certain Contact Information from Disclosure Under the Freedom of Information Act*.

House Bill 5494 was voted out of GAE, but died on the House calendar.

### **NEUTRAL**

#### **SB 438, AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE AUDITORS OF PUBLIC ACCOUNTS.**

Section 1 of Senate Bill 438 sought to amend §1-210(b)(13) of the FOI Act to include complaints made pursuant to §4-61dd of the general statutes (i.e., the whistleblower statute). At the public hearing before the GAE Committee, the FOI Commission apprised the committee that whether a complaint under §4-61dd falls within the current exempting language for whistleblower investigation records in the FOI Act was an issue in a then pending contested case before the Commission. *See* Docket #FIC 2019-0710, Docket #FIC 2019-0710, David Collins, et. al. v. Associate Attorney General, State of Connecticut, Office of the Attorney General, et. al.,<sup>3</sup> The Commission also apprised the committee that, at the federal level, the substance of whistleblower complaints are routinely made public and even posted on the federal website of the U.S. Office of Special Counsel.

Senate Bill 438 passed the Senate with an amendment, but died on the House calendar.

#### **HB 5359, AN ACT ESTABLISHING A WORKING GROUP TO STUDY THE FEASIBILITY OF PERMITTING THE ONLINE ADVERTISEMENT OF LEGAL NOTICES BY MUNICIPALITIES.**

House Bill 5359, as voted out of the Planning and Development Committee, required the Connecticut Advisory Commission on Intergovernmental Relations, to convene a working group to study the feasibility of permitting the online advertisement of legal notices by municipalities. The working group would consist of a representative of the FOI Commission, among others.

The bill died on the House calendar.

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<sup>3</sup> On May 11, 2022, the Commission issued a final decision in Docket #FIC 2019-0710, finding that the disclosure of the whistleblower complaints at issue would reveal the name of an employee, or identity of a person providing information under the provisions of §4-61dd, G.S., in contravention of §§1-210(b)(13) and 4-61dd, G.S. Based upon the facts and circumstances of this case, the Commission concluded that such records were exempt from disclosure pursuant to §§1-210(b)(13) and 4-61dd, G.S. However, the Commission also noted that nothing in the final decision shall be construed as a conclusion that all whistleblower complaints are exempt from disclosure pursuant to §§1-210(b)(13) and 4-61dd, G.S. Such determinations will necessarily be made on a case-by-case basis.

## **HB 5362, AN ACT REQUIRING PUBLIC COMMENT PERIODS AT PUBLIC AGENCY MEETINGS.**

House Bill 5362 required that in any meeting of a public agency (except for executive sessions), the agency must provide members of the public an opportunity to present oral testimony on any item appearing on the meeting agenda during a public comment period designated by the public agency.

The bill was voted out of the Planning and Development Committee, but died on the House calendar.

### **Acknowledgements:**

We would like to thank the Freedom of Information Commission's legislative team – Danielle McGee, Zack Hyde, Jennifer Miller, Mary Schwind, Tom Hennick and Colleen Murphy – for their assistance during the session. We would also like to provide special recognition to Liz Gemski, Mike Savino, Michele Jacklin, Jeff Daniels, and the Connecticut Council on Freedom of Information, for their tireless work advocating for freedom of information and good government.

In addition, we would like to thank the Government Administrations and Election Committee for raising the FOI Commission's recommendations (House Bill 5458), and Representative Cristin McCarthy Vahey (133<sup>rd</sup> District) for her assistance this year.

### **Bill Tracking:**

During the regular legislative session, we monitored 110 bills (including collective bargaining agreements). A total of 105 received public hearings and FOI Commission staff prepared statements for and/or testified on 19 of those bills. As of July 5, 2022, 27 of the 110 bills monitored became public acts.

**FREEDOM OF INFORMATION COMMISSION STATEMENT ON  
HOUSE BILL 5458, AN ACT CONCERNING REVISIONS TO THE  
FREEDOM OF INFORMATION ACT RECOMMENDED BY  
THE FREEDOM OF INFORMATION COMMISSION.**

**March 18, 2022**

The Freedom of Information (“FOI”) Commission submits this statement in strong support of House Bill 5458, which seeks to amend various provisions in the FOI Act.

**Sections 1 and 2**

Sections 1 and 2 of the bill seek to clarify the application of the definition of “governmental function” in §1-200(11) of the FOI Act to §1-218 of the Act.<sup>1</sup>

In response to an Appellate Court decision,<sup>2</sup> the General Assembly in 2001 enacted legislation<sup>3</sup> increasing public access to certain records related to contracts in excess of \$2.5 million between a public agency and a nongovernmental entity, where such entity performs a “governmental function” (§1-218). The same legislation added a definition of “governmental function” (§1-200(11)) as it relates to such contracts. Over the years, there has been some confusion as to whether such definition of “governmental function” applies only to §1-218, or whether its application extends to the “functional equivalence test” adopted by the courts to determine whether an entity is the “functional equivalent” of a public agency.<sup>4</sup> The proposed language in sections 1 and 2 of House Bill 5458 would clarify that the definition of “governmental function” in §1-200(11) applies only to §1-218, as was intended by the General Assembly.

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<sup>1</sup> The bill also proposes (in section 3) to delete the phrase “in the course of its governmental functions” from section 1-211(b) of the FOI Act. Section 1-211(b) prohibits an agency from entering into a contract that impairs the public’s right to access non-exempt public records existing on-line in or stored in a computer system owned, leased or otherwise used by the agency. The proposed deletion in section 3 would clarify that the definition of “governmental function” in §1-200(11) does not apply to section 1-211(b).

<sup>2</sup> In Envirotest Systems Corp v. FOIC, 59 Conn. App. 753 (2000), the court concluded that a for-profit corporation that operated the state’s automobile emissions testing program under a contract for approximately \$25 million a year was not the “functional equivalent” of a public agency.

<sup>3</sup> House Bill 6636, Public Act 01-169, *An Act Concerning Privatized Public Records*.

<sup>4</sup> The Supreme Court in Board of Trustees of Woodstock Academy v. FOIC, 181 Conn. 544, 554 (1980) articulated four factors that must be considered to determine whether an entity is the “functional equivalent” of a public agency: (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.



## **Section 4**

Section 4 of the bill proposes to revise the training requirements of the FOI Commission under §1-205(e) of the FOI Act.<sup>5</sup>

Section 1-205(e) requires the Commission to provide FOI training to public agencies. For reasons unknown, §1-205(e) also requires the Commission to train agencies on §§1-7 to 1-18, G.S., which are not part of the FOI Act and are under the purview of the Public Records Administrator. Additionally, pursuant to §1-205(e), the Commission is charged with training on §19a-342, G.S., which concerns smoking and vaping at public buildings, and not access to public records and meetings. The proposed revision to §1-205(e) is reasonable and straightforward.<sup>6</sup>

## **Section 5**

Section 5 of the bill proposes to amend §1-210(b)(17) of the FOI Act, which, as currently written, provides that the Act shall not require disclosure of “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act [FERPA], 20 USC 1232g.” FERPA gives parents, and students who are 18 years or older who attend a postsecondary institution, rights with respect to access education records, the right to seek to have education records amended, and the right to have some control over the disclosure of personally identifiable information, or “PII”, contained in such education records.<sup>7</sup> For purposes of clarity, the Commission supports replacing the word “educational” with the word “education” in §1-210(b)(17).

## **Section 6**

Section 6 of the bill amends §1-212(g) of the FOI Act regarding the definition of hand-held scanner.

Section 1-212(g) permits any individual to copy a public record through the use of a hand-held scanner. The current definition of a hand-held scanner in the statute, however, is obsolete and does not align with modern day technology. Therefore, the Commission supports expanding the definition of hand-held scanner to include a mobile telephone or camera, and any similar devices, that exist now or will exist in the future.

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<sup>5</sup> In sections 8, 9 and 10, the bill also proposes to delete references to §1-205(e) from §§4d-30(1), 4d-47 and 4d-48, G.S., which concern contracts for state agency information system or telecommunication system facilities, equipment or services, and not access to public records and meetings under the FOI Act.

<sup>6</sup> A similar proposal was submitted by the FOI Commission to the Government Administration and Elections Committee during the 2020 legislative session. Raised Bill 5413, *An Act Revising Training Requirements of the Freedom of Information Commission*, received a public hearing, but was not voted out of committee. [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which\\_year=2020&bill\\_num=5413](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2020&bill_num=5413).

<sup>7</sup> See 20 U.S.C. §1232g and 34 C.F.R. Part 99.

## **Section 7**

Section 7 of the bill amends §1-225(d) of the FOI Act to allow for electronic transmission of special meeting notices to members of a public agency.

During the 2021 June Special Session, the General Assembly amended §§1-206 and 1-227 of the FOI Act<sup>8</sup> to allow public agencies to provide regular and special meeting notices by “electronic transmission” to a person who makes a written request for such notices; to allow a public agency to provide notice, by “electronic transmission”, to an employee of an appeal to the FOI Commission involving the employee’s personnel, medical, or similar file; and to allow the Commission to send certain documents to parties in an appeal before the Commission by “electronic transmission” (e.g., service of the appeal notice and orders).<sup>9</sup> The “electronic transmission” language, however, appears to have been inadvertently left out of §1-225(d), which section requires that written notice of a special meeting “be delivered to the usual place of abode of each member of the public agency” prior to such special meeting. The Commission supports amending §1-225(d) to give public agencies the option of providing such notice by electronic transmission.

The FOI Commission thanks the Government Administration and Elections Committee for raising these proposals.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Mary Schwind, Managing Director and Associate General Counsel, at (860) 566-5682.

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<sup>8</sup> Sections 148 and 150 Public Act 21-2 (June Special Session):  
<https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00002-R00SB-01202SS1-PA.PDF>

<sup>9</sup> Section 1-200(13) defines "electronic transmission" as “any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which (A) is capable of being retained, retrieved and reproduced by the recipient, and (B) is retrievable in paper form by the recipient.”