

SHOW SLIDE: Road map.

Introduction

The FOI Act was passed in 1975 and has three components which are

- 1.) The open meetings provisions;
- 2.) The disclosure of records provisions; and
- 3.) The creation of the Freedom of Information Commission and its enforcement powers.

The act applies to all municipal and state government agencies – including their committees, sub-committees, working groups, task forces, brainstorming groups, site walking groups...not matter the name of the committee – the FOI Act will apply.

The act applies to quasi-public agencies as well. Those would include agencies like the Connecticut Lottery Corporation, the Connecticut Resources Recovery Authority and the Connecticut Housing Finance Authority.

The Act applies to agencies that are the functional equivalent to public agencies.

To determine if an agency is the functional equivalent four factors, must be considered and they are: whether the agency performs a government function; receives government funding; or has government involvement or regulation. Agencies don't have to have all three – but rather they three factors are considered on balance to determine if the agency is the functional equivalent of a public agency.

In broad terms, members of the public **have right to know:**

- when a public agency is going to have a meeting,
- what will be discussed at that meeting,
- to attend that meeting, video tape, audio record, or photograph that meeting,
- and have access to the minutes of the meeting.

We also have a **right to access the records** that are maintained by our public agencies –

- this includes the right to review
- or get a copy of any paper record, e-mail, tape recording, bills, photographs ...

We'll discuss this right in more detail later.

Public Records

SHOW SLIDE: So let's discuss in greater detail starting with the Act's provisions governing public records.

The key provisions governing our access to public agency records are found at:

SHOW SLIDE: §1-200(5)

SHOW SLIDE: §1-210

SHOW SLIDE: §1-212

CONTINUE WITH SLIDES

CONTESTED CASES

Now let's look at some cases that will help us learn about some of the exemptions.

There are 26 exemptions in the Act but we will only go over two or three.

SHOW SLIDE: So let's turn to the case captioned **Robert H. Boone and Journal Inquirer v. Metropolitan District Commission** on page 3 of the material .

This is a case in which the complainants alleged that the MDC violated the disclosure provisions of the FOI Act by denying them access to certain records.

The MDC however, claimed that because the employees claimed that disclosure of the records would be an invasion of their personal privacy and had objected to the disclosure of the records they could give them put unless the Commission ordered them to do so.

SHOW SLIDE:

FACTS:

- The complainants made a request for access to records identifying the individual employees by name and the discipline each received for their alleged involvement in a fire that destroyed the MDC's composting facility.
- Upon receipt of the request, MDC determined only that the records requested would impact the personal privacy of the employees.
- MDC informed that employees of the request and gave them an opportunity to object to the disclosure of the records.

SHOW SLIDE:

- The employees objected to the disclosure of the records claiming disclosure would invade their personal privacy.
- Three of the employees were involved in a grievance regarding the disciplinary action taken against them at the time of the request.
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So let's look at the decision...

In paragraph 1, the Commission first establishes that it has jurisdiction over the MDC by finding that it is a public agency.

SHOW SLIDE: What right was alleged to have been violated?
Section 1-210

SHOW NEXT 2 SLIDES: But the MDC claimed as a defense that the employees objected to the disclosure because it would invade their personal privacy...

But let's look at our copy of the FOI Act and look at §1-214 a little closer.

SHOW NEXT 2 SLIDES: Let's look at one more piece that will help us figure out who's right or wrong when it comes to claims of personal privacy in the FOI Act - the Perkins Test.

The test was established by the Supreme Court in a case called Karen Perkins v. FOIC

SHOW SLIDE: What did MDC do wrong in this case?

See the decision.

SHOW SLIDE: Let's look at another case captioned 2004-092 Dan Levine v. Public Information Officer, Police Department, City of Hartford.

This is a case in which the complainant, a reporter, alleged that the Hartford PD violated the disclosure provisions of the Act deny him access to inspect an internal investigation of one of its police officers.

Here again the officer objected to the disclosure of the records claiming that the investigation related to off-duty conduct and that disclosure of the records would invade his personal privacy.

He also claimed that the records should not be disclosed because they contained uncorroborated allegations and should be exempt from disclosure pursuant to §1-210(b)(3)(G).

SHOW SLIDE: Relevant facts:

- Mr. Levine asked for access to all internal affairs investigations related to a specific officer.
- The HPD gave him access one but the officer objected to the disclosure of the other so HPD withheld it.
- The off-duty conducted was related to the officer's position as a police officer – it involved his behavior in a program sanctioned and promoted by the HPD.
- The matter was not criminal.
- The file contained no charges of misconduct and no disciplinary action was taken against the officer.

- The file contained a letter of complaint, a transcript of interviews with the officer addressing the complaint, and a recommendation that the officer conduct the program differently in one respect.
- Most of the file contained letters from parents written in support of and praising the officer. No discipline was recommended in the report.
- The letter of complaint questioned the propriety of the participants in the program staying overnight at the officer's home.
- The officer had not reviewed the file before he objected to the disclosure.

Without question, the Hartford PD is a public agency and so the Commission has jurisdiction of over it in this matter.

SHOW SLIDE: What right is alleged being violated?

1-210(a) – the right to inspect public records.

SHOW SLIDE: So let's look at the law on invasion of personal privacy again quickly.

Could the officer meet that test given the facts?

What do you think about the fact that he never even looked at the file before he objected to its disclosure?

SHOW SLIDE: Now let's look at the relevant portions of §1-210(b)(3)(G).

The underlined section should give you a clue as to whether the exemption could be applied to the internal investigation requested by Mr. Levine.

SKIT

Public Meetings

Now let's turn our attention to **public meetings**.

While the provisions governing public meetings are numerous and can be found throughout the Act – we are going to **focus on the four main provisions**.

Refer to your copy of the act

- Section 1-200(2), on page one, which defines meetings under the FOI Act.
- Section 1-225, on page 23, in which we find the right to attend public meetings and the provisions governing notices, agendas and the minutes of the public meetings.
- Section 1-200(6), on page two, which defines executive sessions.

- Section 1-231(a), on page 27, which are more provisions on executive sessions.

Refer to slides.

CONTESTED CASES

SHOW SLIDE: Turn with me to the case captioned Rick Guinness and the New Britain Herald v. Board of Finance, City of New Britain.

This case will help us learn what a “meeting” is within the meaning the FOI Act.

Mr. Guinness complained that the New Britain Board of Finance violated the FOI Act by conducting an illegal meeting and deny him access to attend a portion of the meeting held on March 11, 2008. He requested that the Commission impose a fine against the board.

The Board of Finance claimed that its two members were conducting a workshop and therefore it was not a meeting for which notice and minutes were required.

SHOW SLIDE: Facts

- Pursuant to New Britain’s charter, town departments were required to submit budget recommendations after which a hearing on the recommendations was required.
- Two members of the Board of Finance met with the Board of Education to discuss its submitted budget recommendations.
- There was no quorum of the Board of Finance
- There Board of Finance has supervision, jurisdiction, control, advisory power over all town budget matters.
- There was no notice of the workshop, and there were no minutes of it either.

In order to determine who’s right, we have to turn to the statute to find the answer.

SHOW SLIDE: Let’s establish the ground for filing a complaint in the first place by looking at paragraph 8 of the decision which quotes §1-225(a) of the FOI Act.

SHOW SLIDE: Now paragraph 9 of the decision quotes a section of 1-200(2) which is the definition of a meeting. This is where we find the answer to the question “did the two members conduct a meeting?”

We need to ask if there was:

- A hearing or other proceeding of public agency –
- Any convening or assembly of a quorum of a multimember public agency –
- Any communication by or to a quorum of a multimember public agency –To discuss or act upon a matter over which the agency has supervision, control, jurisdiction or advisory power. –

SHOW NEXT 2 SLIDES: The court's have been helpful in further defining the meaning of the definition.

SHOW SLIDE: Who was right –Rick or the board and explain why?

So what about the notice and the minutes?

Should the board have noticed its “workshops”?

Which type of meeting do you think it would have been?

Should it have generated minutes?

How soon should that have been made available?

Let's look at one more final decision regarding meetings.

SHOW SLIDE:

2002-008; Marlin James Lively v. Mary Moran, Chairman, Police Commission, Town of Trumbull; John Riordan; James McNamara; Lino Constantini; David Wilson, as members, Police Commission, Town of Trumbull; and Police Commission, Town of Trumbull NEED SLIDE

In this case the complainant claims that the Trumbull Police Commission failed:

- to notify him in writing that his employment would be discussed in executive session,
- failed to post the notice and failed to make available the votes of the meeting within 48 hours, and
- he asked that the Commission declare null and void, and
- he asked for civil penalties, costs and attorneys fees.

The Police Commission claimed that it properly convened in executive session to discuss pending litigation. It also claimed that the complainant was notified that his employment may be discussed during the executive session and that it had complied with the FOI Act in that regard. And of course it objected to the requests to declare it's actions null and void and the award of any cost fees and the civil penalty.

SHOW 2 SLIDE: FACTS

- The Mr. Lively and the Police Commission were parties in a lawsuit which was pending at all times relevant to the complaint.
- The Police Commission held a regular meeting December 21, 2001 which Mr. Lively and his attorney attended.
- Prior to the meeting, the complainant was verbally informed that his job performance would be discussed in executive session and he did not object at that time;
- When the executive session was called, the complainant did not object to the session;
- The Police Commission discussed the lawsuit and the complainant's job performance in executive session.
- The Police Commission voted to place the Mr. Lively on administrative leave.
- The minutes of the meeting were made available six days after the meeting.
- The minutes did not record the votes to convene in the executive sessions.

SHOW SLIDE: Now let's establish the ground for filing a complaint in the first place.

§1-225(a)

But the Police Commission claimed it had a right to convene in executive session for the purpose of discussing personnel matters and the pending litigation.

SHOW SLIDE: Let's look at 1-200(6) and then 1-231(a).

SHOW SLIDE: Does Mr. Lively or the Police Commission win on this issue and why?

What about the minutes and the recording of the votes?

SHOW SLIDE: Look on page 23 at §1-225 (a) at the second full sentence and it states that...

If you read further and we'll see that the statute provides that "Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection"

So even though the Police Commission made the minutes available in time it did not make the votes available within the proper time period and it failed to include the votes in the minutes.

Many agencies make efforts to have their minutes available within 48 hours to avoid having to produce a document with votes and then another with minutes. But some agency actually make available the two separate records.

SHOW SLIDE: Q&A

SHOW SLIDE: Now let's do a skit!

Show the rest of the slides until done.