FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2017 REGULAR SESSION

By
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Summary of Legislative Session:

During the 2017 legislative session, the most crucial piece of legislation for the Freedom of Information ("FOI") Commission, as for many others, was the state budget proposal for the 2018 and 2019 biennium. With respect to the Commission, the various budget proposals released by the Governor, Democrats and Republicans, respectively, would further reduce the Commission's budget. Since 2011, the Commission's budget has been reduced by nearly 40%. The Commission remains extremely concerned that further reductions in its budget will have a detrimental impact on the Commission's ability to carry out its core services and responsibilities, and that it will curtail the right of the citizens of Connecticut to open and accountable government. The regular session ended without the passage of a state budget. A special session was called for June 29, 2017, but is unlikely to take place on such date.

Additionally, as discussed below, there were numerous pieces of legislation that would impact the public's right to access government meetings and records. Among such legislative proposals was Senate Bill 983, *An Act Concerning Appeals Under the Freedom of Information Act Involving Notice of Meetings*, which was passed by the General Assembly. The Commission did not initially submit such proposal to the Government Administration and Elections ("GAE") Committee, but appreciates the committee's and General Assembly's recognition that Senate Bill 983 will help restore the balance between the public right to know and a public agency's need for finality with respect to its operations, after a recent superior court decision, Lowthert v. Freedom of Information, HHB-CV15-6030425-S (January 17, 2017). Senate Bill 983 (Public Act 17-86), amends section 1-206(b)(1) of the FOI Act and restores the statutory deadline for filing an appeal with the Commission in the case of a "secret or unnoticed" meeting. The bill reinstates the Commission's long-held interpretation of "notice in fact" to include "constructive" or "implied" notice. Without the passage of Senate Bill 983, a complaint alleging a "secret or unnoticed meeting" could have been filed whenever a person personally learns of such meeting, which notice could occur 10, 20, or 30 years after the meeting. Such result is unworkable and an unfair burden to public agencies, exposing them to uncertainty for an indefinite period of time, and would create administrative inefficiencies within the Commission (e.g, the Commission could be put in the position of utilizing its limited resources to investigate complaints that have long lost their timeliness; and may be unable to secure reliable evidence). Senate Bill 983 was signed by the Governor on June 27, 2017.

Below is a brief description of the bills of note:

BILLS PASSED - FAVORABLE RESULTS

SB 4; P.A. 17-73. AN ACT CONCERNING MUNICIPAL ELECTRIC UTILITY COOPERATIVES AND ESTABLISHING A MUNICIPAL ELECTRIC CONSUMER ADVOCATE.

Senate Bill 4, as passed, requires a Connecticut municipal electric energy cooperative ("CMEEC")[1] to hold any meetings, public hearings and retreats in the state, and to post notices, agendas and minutes for each meeting and public hearing on its Internet website. Each municipality is also required to post such notices, agendas and minutes on its Internet website.

In addition, the bill requires that a CMEEC have a forensic examination conducted by a certified forensic auditor which must include a review of the revenue and expenditures of the CMEEC for the preceding five years. The auditor must submit (1) a report that includes an opinion regarding the financial statements and a management letter, and (2) a report that includes an opinion on conformance of the operating procedures of the CMEEC with certain statutory provisions and the CMEEC's bylaws, and any recommendations for any corrective actions needed to ensure such conformance. The CMEEC and municipalities must also post such reports on their Internet websites.

Under the bill, a CMEEC must also annually submit the following, among other information, to the General Assembly's Energy and Technology Committee: the CMEEC's most recent annual report, most recent audited financial statements, management letter and a listing of employee positions and salaries.

A similar bill, Senate Bill 413, *An Act Making Municipal Utility Companies' Books and Financials Subject to Disclosure under the Freedom of Information Act and Concerning Municipal Electric Utilities and Rate Design Studies*, which would require municipal utility companies to allow the public to examine such companies' books and accounts, except for commercially valuable, confidential, or proprietary information, was passed by the Senate, as amended, but died on the House calendar.[2]

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[1] A "municipal electric energy cooperative" or "municipal cooperative" is defined in Conn. Gen. Stat. §733b(7) as: "a separate legal entity hereafter created by concurrent resolutions of two or more municipal electric utilities to exercise any of the powers as provided in this chapter in connection with the acquisition, construction, reconstruction, operation, repair, extension or improvement of electric power generation or transmission facilities, or the acquisition of any interest therein or of any capacity thereof…."

[2] Notably, on April 26, 2017, prior to the passage of Senate Bill 4, the Commission issued a decision in Docket# FIC 2016-0544; Jay Dempsey v. Mayor, City of Groton; and City of Groton, wherein the Commission addressed the application of Conn. Gen. Stat. §7-232a to certain financial statements.

SB 983; P.A. 17-86. AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF INFORMATION ACT INVOLVING NOTICE OF MEETINGS.

(*See discussion of SB 983, above)*

HB 7100; P.A. 17-189. AN ACT CONCERNING AMERICAN LEGION STATE FUND COMMISSION TRANSPARENCY AND MUNICIPAL OPTION PROPERTY TAX EXEMPTIONS FOR CERTAIN VETERANS.[3]

House Bill 7100, as originally written, would have subjected any record of the American Legion related to the administration of the Soldiers, Sailors and Marines Fund ("SSMF") to the FOI Act, without limitation.

As set forth in the Commission's statement to the Veterans' Affairs Committee, in the Auditors of Public Accounts ("Auditors") 2015 Annual Report to the General Assembly, the Auditors recommended that the General Assembly "consider clarifying whether the [American Legion] State Fund Commission that administers the Soldiers', Sailors' and Marines' Fund [including the disbursement of funds] is a public agency subject to freedom of information laws."[4] The Auditors opined that "the State Fund Commission is essentially functioning as a public agency since it exists solely for the public purpose of administering a function that had previously been regarded as belonging to that of a state agency."[5]

The bill was subsequently amended and passed by the General Assembly. The bill, as passed, deems any record of the American Legion related to the administration of the SSMF to be a public record and requires disclosure of such record(s) to the extent required under the FOI Act. However, the bill also explicitly prohibits the disclosure of "the personal information of any individual who (1) makes a gift, bequest or donation to the fund, or (2) is an applicant for, or a

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Section 7-232a provides: "A municipal utility established under this chapter, or a municipal electric or gas utility owned, leased, maintained, operated, managed or controlled by any unit of local government under the general statutes or a special act, may withhold from public disclosure under the Freedom of Information Act, as defined in section 1-200, any commercially valuable, confidential or proprietary information." In Dempsey, the Commission concluded that the detailed breakdown of the revenues and expenses in certain audited financial statements was "commercially valuable, confidential or proprietary information," and was therefore exempt from disclosure pursuant to §7-232a, G.S. The final decision was not appealed.

[3] A similar bill made it out of the Veterans' Affairs and GAE Committees during the 2016 legislative session, but died on the Senate calendar. See Senate Bill 203, *An Act Concerning American Legion State Fund Commission.*

[4] *See* Auditors of Public Accounts 2015 Annual Report to the Connecticut General Assembly (page 27). https://www.cga.ct.gov/apa/reports/annual/Annual%20Report%20to%20the%20Connecticut%20General%20Assembly_20160122_CY2015.pdf.

[5] *Id*.

recipient of, aid from the fund unless any such disclosure is for purposes of (A) administering aid from the fund, (B) assisting any such applicant or recipient in obtaining aid from any other government or private program, or (C) complying with a court order."

HB 7221; P.A. 17-211. AN ACT CONCERNING ACCESS TO WATER PLANNING INFORMATION.[6]

As the Commission expressed in its written statement to the Public Health Committee, even though House Bill 7221, as originally written, would have created a new exemption to the FOI Act, the Commission supported the bill because the proposal sought to balance the need for transparency and accountability about water supply systems with the need for security and the protection of vital infrastructures. The proposed exemption would have eliminated the broad nature of the exemption as currently structured and specified which records water utilities would be permitted to withhold should they fear a security risk if the records were to be released (e.g., emergency contingency plans, emergency preparedness plans, cybersecurity plans and measures). By specifying what records were permissibly exempt, the new language also signaled that certain records should be in the public domain (e.g., water quality reports, information concerning a water company's margin of safety and information concerning the amount of available water and safe daily yield).

The bill was subsequently amended by the House through a "strike-all" amendment and passed by the General Assembly. The bill, as passed, does not include a new exemption to the FOI Act. Rather, the bill amends Conn. Gen. Stat. §25-32d, deeming 11 categories of records, which are filed with any public agency by a water company, to be confidential and not subject to disclosure under the FOI Act. Among such categories of records, is a broad provision that applies to "[*a]ny other record* if there are reasonable grounds to believe the disclosure of such record may result in a safety risk."[7] (Emphasis added). With the amendment, it is no longer clear whether the public act is an improvement over prior law. The Commission is hopeful, however, that the new law will expedite the review process.

The bill, as passed, also requires a water company to submit both an unredacted and redacted copy of any water supply plan (and any subsequent revisions to the plan) to the Department of Public Health.

A similar bill was also referred to the Environment Committee, but did not receive a public hearing. See HB 6343, *An Act Concerning Access to Water Planning Information*.

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[6] During the 2016 legislative session, a similar bill received a public hearing, but did not make it out of committee. See HB 5263, *An Act Concerning the Department of Public Health's Recommendations on Disclosure of Water Plan Information*.

[7] Section 3(e)(11) of P.A. 17-211 exempts "(11) Any other record if there are reasonable grounds to believe the disclosure of such record may result in a safety risk. Upon request by the water company, such record may be reviewed by the Commissioner of Administrative Services, in consultation with the chief executive officer of the executive branch state agency or municipal water or sewage treatment entity that has custody of such record, to determine if such reasonable grounds exist."

BILLS DEFEATED - FAVORABLE RESULTS

SB 856, AN ACT CONCERNING FEDERAL RECORDS ACCESSIBLE TO OR MAINTAINED BY THE CONNECTICUT NATIONAL GUARD.

Senate Bill 856 proposed to add a 29th exemption to §1-210(b) of the Connecticut FOI Act in an attempt to clarify that records accessible to or maintained by the Connecticut National Guard for federal purposes are exempt under the state FOI Act and instead may be requested under the federal FOI Act.

As expressed by the Commission in its written statement to Veterans' Affairs, there were several issues with the bill. First, the bill was unnecessary since the Commission had recently reached a final decision on this issue regarding certain federal records.[8] Second, the bill, as written, was nonsensical. If the purpose of the bill was to provide a specific mandatory exemption to prohibit the disclosure of certain federal records, the proposed language did not accomplish that result. Instead, the proposal created a permissive, rather than a mandatory, exemption. Lastly, the Commission noted that, at least at the Commission level, this issue arises very rarely.

Senate Bill 856 received a public hearing, but did not make it out of committee.

HB 5354, AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF INFORMATION ACT.

The stated purpose of House Bill 5354 was to reduce the number of frivolous or vexatious complaints filed with the Commission. Although the Commission shared the proponent's concerns regarding the filing of frivolous complaints, it opposed the bill to the extent it would impose a $125 filing fee for each complaint filed after the first in a calendar year. The Commission further opposed the "mandatory mediation" portion of the proposal, as written. However, the Commission was (and is) open to working with members of the General Assembly to craft a mutually agreeable proposal, aimed at reducing the number of frivolous complaints without unnecessarily curtailing the people's right to access the records and meetings of their government.

Although the bill received a public hearing, it did not make it out of the GAE Committee.

HB 5636, AN ACT PROHIBITING THE DISCLOSURE OF THE RESIDENTIAL ADDRESSES OF CERTAIN ATTORNEYS.

[8] In Eberg v. Human Resources Manager, State of Connecticut, Military Department, et. al., Docket #FIC 2014-879, the Commission concluded that the records at issue therein (*i.e.,* personnel records, complaints of sexual assault, sexual harassment or equal employment opportunity violations), which were maintained by the National Guard exclusively as federal records, were outside the jurisdiction of the state FOI Act. The Commission concluded that such records were not "public records" within the meaning of the state FOI Act and dismissed the complaint. Such decision was not appealed.

HB 5947, AN ACT PROTECTING THE IDENTITY OF LAW ENFORCEMENT OFFICERS.

House Bill 5636 proposed to amend section 1-217 of the FOI Act to prohibit the disclosure of the residential address of any attorney-at-law during the period in which such attorney provides pro bono legal services in one or more juvenile cases. The stated purpose was to protect the privacy and security of attorneys who volunteer their legal services in juvenile cases.

House Bill 5947 sought to reverse, in part, Public Act 12-3, *An Act Concerning the Exemption from Disclosure of Certain Addresses under the Freedom of Information Act*. It proposed that Title 9 of the general statutes be amended to withhold from public disclosure the voter registration information of any elector who (1) lives in the same dwelling unit as any law enforcement officer residing in the town served by such officer, and (2) shares the same last name with such officer. The stated purpose was to "suppress" the publication of information that may potentially place law enforcement families at risk of harm.

These two proposed bills revived an exhaustive debate in the Legislature that has been held on an almost annual basis. The concept of adding yet another classification of worker whose home address would be "protected" (House Bill 5636) has, for the most part, been opposed by advocates of transparency and open records for years. Further, the concept of removing anyone's address from a voter registration list (House Bill 5947) was addressed and rejected outright by the Legislature in 2012 (*See* Public Act 12-3).[9]

Every year, it seems, another agency or another profession attempts to have the addresses of its employees included in section 1-217, without really understanding the limited scope of the statute, which should not be viewed as a cure for safety and privacy concerns.

House Bill 5636 made it out of the GAE Committee, but died on the House calendar. House Bill 5947 received a public hearing, but never made it out of committee.

The following bills also sought to limit access to the residential addresses of police and correction officers, but did not receive a public hearing: HB 5388, *An Act Concerning the Nondisclosure of the Residential Addresses of Police Officers on Municipal Land Records* and HB 6710, *An Act Concerning the Nondisclosure of the Residential Addresses and Telephone Numbers of Police Officers and Correction Officers on Municipal Land Records*.

[9] In 2011, the Connecticut Supreme Court decided, in Commissioner of Public Safety et. al. v. FOI Commission and Peter Sachs, 301 Conn. 323 (June 28, 2011), that section 1-217 of the FOI Act, as then written, prohibited the disclosure of the residential addresses of certain public employees from any public record, including those records which are required to be open to public inspection by separate statute, such as voter records. The Legislature acted swiftly and decisively early in the following session to overturn the Supreme Court decision, by enacting Public Act 12-3, which substantially amended section 1-217. The General Assembly limited section 1-217 in recognition of the reality that a complete prohibition on disclosure of certain residential addresses is unworkable, impossible and ignores the public policy in ensuring transparency of voter records, grand lists, and land records.

BILLS DEFEATED - UNFAVORABLE RESULTS

SB 1031, AN ACT CONCERNING THRESHOLDS FOR STATE CONSTRUCTION CONTRACTS, THE SHARING OF EXECUTIVE BRANCH AGENCY DATA AND THE REPEAL OF A PROVISION CONCERNING APPRAISAL FEES.

The Commission supported sections 4 and 5 of Senate Bill 1031, which gave responsibility to the Office of Policy and Management ("OPM") for directing executive branch agencies in the use and management of data, and for facilitating the sharing of executive branch agency data with the public.

The bill established a timetable for executive branch agencies to inventory their high value data, develop an open data access plan, and create procedures for complying with requests for data. The bill promoted openness of government information and efficiency in complying with requests for public data.

This pro-disclosure initiative had the support of the Commission, CCFOI, the State Comptroller and OPM, among others. Unfortunately, although the bill was taken up by GAE at a public hearing, it never made it out of committee.

HB 7165, AN ACT CONCERNING NOTICES AND PUBLIC INFORMATION.[10]

House Bill 7165 addressed the requirements to file and post public agency meeting schedules, agendas, notices, and minutes, that are contained in section 1-225 of the FOI Act. The Commission did not oppose the bill in principle, and believed that the proposal would ultimately have led to greater transparency.
Nevertheless, the Commission did note that it was concerned that House Bill 7165 did not make clear how some aspects of it were to be interpreted, and that certain clarifications would improve the proposal. For example, the bill added the following four requirements for state agencies: (1) post meeting minutes on a website designated by the Secretary of the State ("SOTS"); (2) post the schedule of regular meetings on a website designated by the SOTS; (3) post meeting agendas on a website designated by the SOTS; and (4) post special meeting notices on a website designated by the SOTS. However, it was unclear from the proposal, as written, as to what would happen if the website designated by the SOTS faltered or failed. Who would be responsible for any violations of the posting requirements?

The bill was heard by GAE, but did not make it out of committee.

[10] A similar bill passed the House during the 2016 legislative session, but died on the Senate calendar. See House Bill 5616, *An Act Concerning Notices and Public Information*.

HB 7188, AN ACT CONCERNING THE PRESERVATION OF HISTORICAL RECORDS AND ACCESS TO RESTRICTED RECORDS IN THE STATE ARCHIVES.[11]

House Bill 7188 aimed to provide greater access to government records deposited at the state archives, after statutorily prescribed periods of time.

Specifically, section 1 of the bill required the retention for posterity of any record transferred to the state archives (as established in Conn. Gen. Stat. §11-1c) that the State Archivist determines to be a record of historical value, and vests title to such record in the state archives. Section 2 of the bill lifted any prohibition against viewing a government record that has been deposited in the state archives after 75 years, or, if the record relates to a natural person, after 75 years of the death of such person, whichever is later.

Supporters of the bill, which included CCFOI, the State Library and Professor of History at Central Connecticut State University, Dr. Matthew Warshauer, maintained that government and medical records deposited at the state archives have significant historical and research value, and that the preservation and availability of such records, increases transparency in government. Opponents of the bill included the Department of Mental Health and Addiction Services and the National Alliance on Mental Illness, among others. Those opposing the bill argued that disclosure of such records would invade the privacy of the deceased individuals and their family members and discriminated against those individuals receiving public services, among other reasons.

House Bill 7188 received a public hearing, but did not make it out of the GAE Committee.

House Bill 5735, *An Act Concerning Access to Public Records in the State Archives*, also sought to open access to restricted historic public records and files when a reasonable amount of time has passed after their creation or after a person's death. House Bill 5735 never received a public hearing.

NEUTRAL BILLS

SB 967, AN ACT CONCERNING ONLINE MULTIJURISDICTIONAL LOTTERY GAMES. (DEFEATED)

Senate Bill 967 required the Connecticut Lottery Corporation to establish a program to offer multijurisdictional lottery games through the corporation's Internet website, online service or

[11] Similar bills were raised during the 2014 and 2016 legislative sessions. See HB 5124, *An Act Concerning the Preservation of Historical Records and Access to Restricted Records in the State Archives* (2014 legislative session) (bill made it out of the GAE Committee with an amendment requiring that the deceased individual's name, address and social security number be redacted before the records were released, but was never taken up by the House); HB 5499, *An Act Concerning the Preservation of Historical Records and Access to Restricted Records in the State Archives* (2016 legislative session) (bill made it out of the GAE Committee as originally raised, but was never taken up by the House).

mobile application. Among other requirements, the program would establish a "voluntary self-exclusion process to allow a person to exclude himself or herself from establishing an online lottery account or purchasing a lottery ticket through such program." Raised Bill 967 also proposed to exempt from disclosure "any records" regarding a person's participation in the voluntary self-exclusion process.

The Commission did not object to the redaction of certain information regarding an individual's participation in the voluntary self-exclusion process. However, the proposed language was too broad and would have completely removed any records pertaining to such process from the realm of public records subject to the FOI Act. The Commission corresponded with representatives of the Lottery Corporation regarding narrowing the language and drafted language which we believed was acceptable to both sides.

The bill received a hearing, but did not make it out of the Public Safety and Security ("Public Safety") Committee.

HB 7308; P.A. 17-225. AN ACT CONCERNING A TASK FORCE TO EXAMINE ISSUES CONCERNING THE USE OF BODY-WORN CAMERA AND RECORDING EQUIPMENT BY POLICE. (PASSED)

Public Act 17-225 establishes a task force to examine the use of body cameras by law enforcement officers. A key component of the task force's responsibility will be to examine "data storage and freedom of information issues associated with the data created by the use of such equipment." Task force members will include the following individuals (or their designees): the Chief State's Attorney, Chief Public Defender, four sworn police officers, six members of the public, and the chairperson of the FOI Commission, among others.

A similar bill received a public hearing, but did not make it out of the Public Safety Committee. See 242, *An Act Studying the Use of Body-Worn Recording Equipment by Law Enforcement*.

In addition, a bill proposing to establish a fee structure for requests of recordings obtained by body-worn recording equipment was referred to the Judiciary Committee, but did not receive a public hearing. See House Bill 5635, *An Act Concerning a Fee Structure for FOIA Requests of Body-Worn Camera Recordings*.

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We also give a special thank you to Representative Bob Godfrey, Deputy Speaker Pro-tempore (110th District), Representative Daniel J. Fox (148th District) and Representative Laura Devlin (134th General Assembly District), for their assistance this year.

Bill Tracking:

During the regular legislative session, we monitored 164 bills. A total of 101 received public hearings and FOI Commission staff prepared statements for and/or testified on 15 of those bills. As of June 28, 2017, 27 bills became public acts.