

**FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2018 REGULAR SESSION**

By
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Summary of Legislative Session:

During the 2018 legislative session, there were numerous pieces of legislation introduced that would impact the public's right to access government records. Among such legislative proposals were House Bill 5173, *An Act Protecting the Privacy of Voters*, and House Bill 5176, *An Act Protecting Municipal Police Officers and their Families*. Both of these proposals aimed to limit access to voter registration information.¹

Specifically, House Bill 5173 proposed to restrict access to voter registration information according to the following purposes and people: for election, primary or referendum purposes to a candidate, referendum committee, political party or political committee; to a person verifying his or her own signature; to an election primary or referendum official; for scholarly or journalistic purposes, to the scholar or journalist; or for governmental purposes, to a government agency as determined by the Secretary of the State. Any information provided under this section would have included only the year of birth, not the month and day, unless the recipients were government agencies, in which case the whole date would have been provided. House Bill 5173 also would have prohibited the personal, private or commercial use of voter registration information; prohibited the reproduction of such records in print or on the Internet; and created a new class C felony punishable by a 10 year term of imprisonment and a fine of \$10,000 for obtaining or using voter information not in accordance with the new prohibitions.

House Bill 5176 proposed to withhold from public disclosure the voter registration information (*e.g.*, date of birth, address) of any elector who (1) resides in the same dwelling unit as any sworn member of a municipal police department who is a bona fide resident of the town served by such officer, and (2) has the same last name of such officer.

The purpose stated by the bills' proponents, including the Secretary of State's Office, was to protect the identity, privacy and safety of individuals and their family members. However, the

¹ Similar proposals were introduced during the 2015, 2016 and 2017 legislative sessions, respectively: Senate Bill 27, *An Act Prohibiting the Internet Publication of Voter Information* (2015); Senate Bill 703, *An Act Exempting Voter Personally Identifiable Information from the Freedom of Information Act* (2015); House Bill 5169, *An Act Prohibiting the Disclosure of Voter Birth Date Information* (2015); House Bill 5789, *An Act Protecting Voter Privacy* (2015); House Bill 6098, *An Act Protecting the Identity of Law Enforcement Officers* (2015); House Bill 5613, *An Act Prohibiting Disclosure of Date of Birth Information on Voter Records* (2016); House Bill 5616, *An Act Concerning Notices and Public Information* (2016); and House Bill 5947, *An Act Protecting the Identity of Law Enforcement Officers* (2017).

Freedom of Information (“FOI”) Commission, among others, objected to House Bill 5173 and House Bill 5176 for various reasons. First, Title 9 of the general statutes already contains provisions that explicitly mandate public access – provisions that have been law for decades. In addition, transparency in the area of voter information is important because transparency is meant (1) to deter voter fraud and provide a means to detect it, and (2) to ensure that registration and election officials, who are charged with entering, updating and maintaining voter data, are accountable and carry out their roles in accordance with the law.

The Commission was especially concerned that House Bill 5173 would create classes of individuals, some of whom could, and some of whom could not, access public records. The Commission felt that provision would be subject to abuse and manipulation; and it would empower one public official, such as the Secretary of the State, to be the sole determiner of which entities and individuals are allowed access to public records. In addition, dates of birth are necessary to determine voter eligibility and to guard against voter fraud. Also, the Commission argued that allowing the government to make it a crime to publish public records raised constitutional issues concerning the potential impact on the right to free speech under the First Amendment.

Ultimately, neither proposal passed. House Bill 5176 never made it out of committee. House Bill 5173 made it out of committee with substitute language. Although the substitute language itself is not absolutely clear, it appears that the intent was to only prohibit the disclosure of the month and day of birth, unless such information was being used for a governmental purpose, as determined by the Secretary of State. House Bill 5173 was placed on the House calendar, but was never taken up by the General Assembly.

Below is a brief description of additional bills of note:

BILLS PASSED - FAVORABLE RESULTS

HB 5175; P.A. 18-95. AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF INFORMATION ACT AND PETITIONS FOR RELIEF FROM VEXATIOUS REQUESTERS. (Signed) (Effective October 1, 2018)

The ultimate purpose of House Bill 5175, as passed, is to permit the FOI Commission to grant relief to public agencies from vexatious requesters and their filing of frivolous complaints. Specifically, the bill amends §1-206(b)(3) of the FOI Act to give the Commission greater statutory authority to refuse to hear a complaint should it be “repetitious or cumulative.” The Commission could also refuse to hear a complaint if a complainant has a history of “nonappearance at commission proceedings or disruption of the commission’s administrative process” or if the complainant refuses to participate in settlement conferences.

In addition, House Bill 5175 adds new language to §1-206(b) of the FOI Act [*i.e.*, §1-206(b)(5), G.S.], to allow a public agency to appeal to the Commission should it believe that a requester “demonstrates a vexatious history of requests, including but not limited to” the number of requests, the nature of the requests, and a pattern of conduct that amounts to abuse of the right to access information under the FOI Act. After reviewing the public agency’s appeal and possibly

holding a hearing on the matter, the Commission would have the authority to provide relief to the agency, including allowing an agency not to comply with requests from the vexatious requester for a specified period of time not to exceed one year.

House Bill 5175 unanimously passed the House and Senate, and has been signed by the Governor.

Notably, a similar bill, House Bill 5354, *An Act Concerning Appeals under the Freedom of Information Act*, was introduced during the 2017 legislative session, but never made it out of committee. The Commission opposed House Bill 5354 because it would have imposed 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.

BILLS DEFEATED - FAVORABLE RESULTS

SB 279, AN ACT EXEMPTING THE DATE OF BIRTH OF A POLICE OFFICER AND AN EMPLOYEE OF THE DEPARTMENT OF CORRECTION FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT.

The purpose of Senate Bill 279 was to provide for the nondisclosure of the birth dates of law enforcement personnel including sworn members of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection and a sworn law enforcement officer within the Department of Energy and Environmental Protection. The proposal addressed birth dates held in personnel, medical or similar files.

As expressed in the Commission’s written statement to the Public Safety Committee, it was unclear as to why this new concept was necessary given that birth dates are used so routinely on so many documents, both official and unofficial; and that there appears to be no evidence that the disclosure of birth dates on public records has led to any great crisis.

Senate Bill 279 made it out of committee with substitute language, adding the employees of the Department of Correction to the listed categories of employees. The bill was never taken up by the Senate.

HB 5173, AN ACT PROTECTING THE PRIVACY OF VOTERS & HB 5176, AN ACT PROTECTING MUNICIPAL POLICE OFFICERS AND THEIR FAMILIES.

See discussion above.

HB 5261, AN ACT CONCERNING FEES CHARGED BY MUNICIPALITIES UNDER THE FREEDOM OF INFORMATION ACT.

House Bill 5261 proposed to authorize municipalities to charge additional fees for public records requested for “commercial purposes.”

The FOI Commission had some serious concerns about House Bill 5261, which would have created classes of requesters. The Commission believed, and continues to believe, that more study regarding fees is necessary. Among other issues, the Commission was concerned that House Bill 5261 permitted a municipality to enact a schedule of “reasonable” fees for records, but the bill did not specify who determines whether the schedule is reasonable. The bill also permitted a municipality to consider five factors in establishing fees; however, only two of the five factors were objective and quantifiable. In addition, the bill permitted each municipality to enact its own schedule which would result in inconsistent fees throughout the state.

The bill received significant opposition from such entities as the ACLU, CCFOI, CT Society of Professional Journalists, LexisNexis, and the State Comptroller, among others. House Bill 5261 never made it out of committee.

A similar bill was unsuccessfully introduced during the 2016 legislative session, House Bill 5512, *An Act Authorizing Additional Fees for Municipal Public Records Requested for Commercial Purposes*.

HB 5308, AN ACT CONCERNING THE ANONYMOUS COLLECTION OF LOTTERY WINNINGS.

House Bill 5308 proposed to exempt from disclosure the name and residential address of any person who redeems a winning lottery ticket worth \$1 million or more when such person requests nondisclosure and consents to the deduction of 10% of the lottery prize. The bill also required that the amount deducted be deposited in the lottery fund.

The Commission questioned the public policy behind “buying anonymity”, and contended that access to public information ensures that winnings are distributed fairly, and guards against wrongdoing in the system. The bill did not make it out of committee.

NEUTRAL BILLS

SB 177, AN ACT APPLYING THE SECURITY EXEMPTION UNDER THE FREEDOM OF INFORMATION ACT TO THE CONNECTICUT AIRPORT AUTHORITY. (Defeated)

Senate Bill 177, which the Commission supported, proposed to provide the Executive Director of the Connecticut Airport Authority with the authority to determine whether there are reasonable grounds to believe disclosure of requested records may result in a safety risk under the FOI Act. The Commission believed the Executive Director, who necessarily interacts with federal law enforcement agencies regarding security concerns, both foreign and domestic, is the appropriate public official to make such determinations under the safety and security exemption contained in §1-210(b)(19) of the FOI Act.

Additionally, the bill proposed to add the phrase “or submitted” to the exemption contained in §1-210(b)(24) of the FOI Act concerning records requests for responses to any RFPs or bid solicitations. The Commission was not opposed to the proposed language as it would include the

very limited circumstances where a public agency is itself submitting a RFP to a non-state agency. The proposed language was an outgrowth of a 2016 contested case at the Commission.²

Senate Bill 177 never made it out of committee.

SB 277, AN ACT CONCERNING ONLINE LOTTERY DRAW GAMES & SB 540, AN ACT AUTHORIZING SPORTS WAGERING AND ONLINE LOTTERY DRAW GAMES IN THE STATE. (Defeated)

Senate Bill 277 and Senate Bill 540 required the Connecticut Lottery Corporation to establish a program to offer multijurisdictional lottery games through the corporation's Internet website, online service or 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." The bills also proposed to exempt from disclosure "[t]he name and any personally identifying information of a person who is participating or participated in the corporation's voluntary self-exclusion process." The proposals, however, also allowed the corporation to disclose "the name and any records of such [participant] if such person claims a winning lottery ticket from the use of the program."

The FOI Commission did not object to the redaction of the name and personally identifying information of the individual participating in the voluntary self-exclusion process, because the proposed language was narrow in its application, and would not completely remove such information from the realm of public records subject to the FOI Act.

Senate Bill 277 never made it out of committee, and Senate Bill 540 died on the Senate calendar.

A similar bill, Senate Bill 967, *An Act Concerning Online Multijurisdictional Lottery Games*, was introduced during the 2017 legislative session, but did not make it out of committee.

HB 5177; P.A.18-93. AN ACT CONCERNING EMPLOYEE NOTIFICATION OF REQUESTS MADE UNDER THE FREEDOM OF INFORMATION ACT.

(Signed) (*Effective October 1, 2018*)

The Commission opposed House Bill 5177, as originally written, since passage of the raised bill would have disrupted an entire body of case law interpreting what constitutes an invasion of privacy, as well as the process that agencies must follow in response to requests for personnel, medical, and similar files. Perkins v. Freedom of Information Commission, 228 Conn. 158 (1993); Rocque v. Freedom of Information Commission, 255 Conn. 251 (2001). Additionally, passage of the raised bill would have very likely resulted in the unwarranted withholding of public records from a requestor, leading to additional complaints filed with the FOI Commission.

² See Docket #FIC 2016-0035; Ann Rubin and Carmody, Torrance, Sandak and Hennessey, LLP v. Executive Director, State of Connecticut, Connecticut Airport Authority; and State of Connecticut, Connecticut Airport Authority (August 26, 2016).

The proposal, as originally written, required notice to the employee *whenever* a public agency receives a request for the employee's personnel, medical or similar file, even where the agency does not believe that disclosure would constitute an invasion of that employee's privacy. Based on the FOI Commission's experience with the current employee notice provisions in section 1-214 of the FOI Act, the Commission argued that once the employee is notified of a request, the employee likely will object to disclosure, regardless of the nature of the record.

Subsequently, after the public hearing on House Bill 5177, the FOI Commission worked with the supporters of the bill and agreed upon substitute language. Under the bill, as passed and signed into law, whenever a public agency receives a request for records contained in any of its employees' personnel, medical or similar files, and the agency reasonably believes that the disclosure of such records would not legally constitute an invasion of privacy, the agency must first disclose the requested records to the person making the request and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned. The bill does not define the terms "reasonable time" and "reasonable attempt."

HB 5233, P.A. 18-104; AN ACT CONCERNING RECORDKEEPING DUTIES OF THE ADJUTANT GENERAL. (Signed) (*Effective July 1, 2018*)

The stated purpose of House Bill 5233, which has been signed by the Governor, is "[t]o specify that requests for Military Department records that are required to be generated and maintained by federal law are made under and processed pursuant to the federal Freedom of Information Act, not the state Freedom of Information Act."

The Commission did not oppose House Bill 5233, as written. However, as expressed by the Commission in its written statement to the Veteran's Affairs Committee, the Commission believed that the proposal was unnecessary. The language is an outgrowth of a 2015 contested case at the Commission regarding certain federal records. 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 its jurisdiction. 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. The Commission also noted that, at least at the Commission level, this issue has arisen very rarely, perhaps twice in the past twenty years.

A similar bill, Senate Bill 856, *An Act Concerning Federal Records Accessible to or Maintained by the Connecticut National Guard*, was considered by the legislature during the 2017 legislative session, but did not make it out of committee.

HB 5271, AN ACT REDEFINING "PUBLIC AGENCY" FOR PURPOSES OF THE FREEDOM OF INFORMATION ACT.

House Bill 5271, as voted out of the Government Administration and Elections Committee, sought to redefine the term “public agency” in the FOI Act to include, among other entities, “[a]ny organization established by a commission, task force, working group or any other body created in statute by the General Assembly, including any nonprofit organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, except in the case of any organization established by a judicial body or judicial office, as described in this subdivision, only with respect to its administrative functions.”

The proposal would have broadened the Commission’s jurisdiction to adjudicate complaints over certain entities which are alleged to have violated the records and meetings provisions of the FOI Act. And, to the extent that House Bill 5271 provided for greater accountability and transparency in government, the Commission supported the proposal.

The Commission believes that House Bill 5271 surfaced as a way to respond to the methods utilized by the legislatively created Commission on Fiscal Stability and Economic Growth (“Fiscal Stability Commission”), which, in 2017, was tasked by the Legislature to “develop and recommend policies to achieve state government fiscal stability and promote economic growth and competitiveness within the state...[and to] ... study and make recommendations regarding state revenues, tax structures, spending, debt, administrative and organizational actions and related activities, including relevant municipal activities, to (1) achieve consistently balanced and timely budgets that are supportive of the interests of families and businesses and the revitalization of major cities within the state, and (2) materially improve the attractiveness of the state for existing and future businesses and residents.” *See* June 2017 Special Session, Public Act 17-2.

The Fiscal Stability Commission, which was led largely by private sector individuals, created a non-profit organization called Connecticut Rising, Inc., to carry on its mission (after the Fiscal Stability Commission dissolved), which took the position that it was not subject to the FOI Act.³

Ultimately, the bill died on the House calendar.

HB 5475; P.A. 18-187. AN ACT CONCERNING THE BODY-WORN RECORDING EQUIPMENT TASK FORCE. (Signed) (*Effective from passage*)

During the 2017 legislative session, the General Assembly passed Public Act 17-225, *An Act Concerning Camera and Recording Devices and Equipment Used by Police*, which established a

³ *See* CT News Junkie Article, dated February 15, 2018: http://www.ctnewsjunkie.com/archives/entry/2018215_fiscal_commission_creates_nonprofit_to_carry_out_mission/; *see also* CT Mirror Article, dated March 22, 2018: <https://ctmirror.org/2018/03/22/foi-complaint-seeks-documents-delving-fiscal-stability-panels-work/>

task force to examine the use of body cameras by law enforcement officers. The task force was never established. A similar proposal was introduced again this year as House Bill 5475, which has been signed by the Governor.

Two key components 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," and "under what circumstances, if any, should (A) a police officer be permitted to review a recording from body-worn recording equipment prior to giving a formal statement about the use of force by such officer or another officer, and (B) members of the public or alleged victims or their family members be permitted to review a recording from body-worn recording equipment during an investigation or following an allegation of excessive use of force by a police officer."

Task force members must include, among others, the following individuals: the Chief State's Attorney (or designee), Chief Public Defender (or designee), the chairperson of the FOI Commission (or designee), four sworn police officers, and six members of the public (including a representative or member of a family of a person who died due to the use of force by a police officer, and a representative or member of a family of a police officer who died in the line of duty).

In addition, the task force must report its findings and any recommendations for legislation to the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and public safety, by January 1, 2019.

HB 5517; P.A. 18-175. AN ACT CONCERNING EXECUTIVE BRANCH AGENCY DATA MANAGEMENT AND PROCESSES, THE TRANSMITTAL OF TOWN PROPERTY ASSESSMENT INFORMATION AND THE SUSPENSION OF CERTAIN REGULATORY REQUIREMENTS. (Signed) (*Effective from passage*)

The FOI Commission supported House Bill 5517 to the extent it sought to increase access to data created or maintained by, or on behalf of, executive branch agencies by codifying the provisions of Executive Order 39⁴, and by creating a Connecticut Data Analysis Technology Advisory Board ("Advisory Board").

The Commission, however, was concerned that the proposal, as originally written, provided that a "state data plan"⁵ would be "*deemed* approved if the [Advisory Board] does not meet to approve or disapprove such plan" (emphasis added). The Commission was also concerned that the new definitions of "data" "high value data" "open data" "public data" and "protected data," under House Bill 5517, would conflict with the definition of "public records or files" in section

⁴ Link to Executive Order 39: <https://portal.ct.gov/en/Office-of-the-Governor/Pages/Press-Room/Executive-Orders?SearchKeyword=&Month=02&Year=by+Year>.

⁵ Section 2(c) of House Bill 5517 requires the creation of a "state data plan" that "shall (1) establish management and data analysis standards across all executive branch agencies, (2) include specific, achievable goals within the two years following adoption of such plan, as well as longer term goals, (3) make recommendations to enhance standardization and integration of data systems and data management practices across all executive branch agencies, (4) provide a timeline for a review of any state or federal legal concerns or other obstacles to the internal sharing of data among agencies, including security and privacy concerns, and (5) set goals for improving the online repository...."

1-200(5) of the FOI Act. The bill that ultimately passed did not address the Commission's concerns. However, the FOI Commission's Executive Director (or designee), among others, will have a seat on the Advisory Board as a nonvoting ex-officio member, with the ability to share the Commission's knowledge and experience regarding the FOI Act, and related statutes concerning the disclosure of government records.

The bill requires that the Chief Data Officer,⁶ in consultation with the agency data officers and executive branch agency heads,⁷ to create the state data plan not later than December 31, 2018, and every two years thereafter.

The bill has been signed by the Governor. Notably, a similar bill, House Bill 5 172, *An Act Concerning State Agency Data Management and Processes, the Transmittal of Town Property Assessment Information and the Suspension of Certain Regulatory Requirements*, made it out of committee, but died on the House calendar.

⁶ Section 2(a) of House Bill 5517 requires the Secretary of the Office of Policy and Management (OPM) to designate an OPM employee to serve as the Chief Data Officer, who "shall be responsible for (1) directing executive branch agencies on the use and management of data to enhance the efficiency and effectiveness of state programs and policies, (2) facilitating the sharing and use of executive branch agency data (A) between executive branch agencies, and (B) with the public, (3) coordinating data analytics and transparency master planning for executive branch agencies, and (4) creating the state data plan...."

⁷ Section 2(b) of House Bill 5517 provides, in part, that "[e]ach executive branch agency shall designate an employee of the agency to serve as the agency data officer...who shall serve as the main contact person for inquiries, requests or concerns regarding access to the data of such agency. The agency data officer, in consultation with the Chief Data Officer and the executive agency head, shall establish procedures to ensure that requests for data that the agency receives are complied with in an appropriate and prompt manner."

Acknowledgements:

We would like to provide special recognition to John Bailey, Michele Jacklin, Jeff Daniels, and the Honorable Dan Klau⁸, for their efforts during the legislative session to advocate for freedom of information and good government.

We also give a special thank you to the following individuals for their assistance this year: Representative Bob Godfrey, Deputy Speaker Pro-Tempore (110th District), Representative Daniel J. Fox (148th District), Representative Laura Devlin (134th District), Representative Michael Winkler (56th District), and Representative Adam Dunsby (135th District).

Bill Tracking:

During the regular legislative session, we monitored 81 bills. A total of 72 received public hearings and FOI Commission staff prepared statements for and/or testified on 12 of those bills. As of June 20, 2018, 21 of those bills became Public Acts.

⁸ The Honorable Dan Klau was sworn in as a Superior Court judge in May 2018.