FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2023 REGULAR SESSION

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Summary of Legislative Session:

The 2023 legislative session was replete with legislation affecting the cause of open and accessible government in Connecticut. Many of the proposals would have restricted access to public records of important public interest. Fortunately, most of these proposals were defeated. Additionally, there were two bills that passed that increase access to public records: Senate Bill 1221 (Public Act 23-200), *An Act Concerning the Enforcement of Violations of the Freedom of Information Act*, increases civil penalties for public agencies found to be in violation of the Freedom of Information ("FOI") Act and empowers the FOI Commission to seek additional judicial relief in certain cases; and Senate Bill 1103 (Public Act 23-16), *An Act Concerning Artificial Intelligence, Automated Decision-Making and Personal Data Privacy,* provides for greater transparency concerning algorithms and automated decision-making systems utilized by state agencies to make policy decisions and other decisions that have significant effects on various aspects of an individual's life. For a more detailed summary of these bills and others of note, please see below:

BILLS PASSED – UNFAVORABLE RESULTS

SB 1154; P.A. 23-197. AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE AUDITORS OF PUBLIC ACCOUNTS.

Senate Bill 1154 (section 1), as passed, broadens the applicability of §1-210(b)(13) of the FOI Act and exempts from disclosure whistleblower complaints, in their entirety.[1] Existing statutes already protect the identity of the whistleblower and records of whistleblower investigations (§§1-210(b)(13) and 4-61dd, G.S.). The new exemption applies to complaints filed against any state department or agency, quasi-public agencies (such as the Connecticut Port Authority) or involving large state contracts. Currently, only basic statistical information regarding whistleblower complaints is made available by the Auditors of Public Accounts in their annual report.

Opponents of Senate Bill 1154 (section 1) contended that determining whether a whistleblower complaint should be entirely exempt from disclosure (i.e., when disclosure would likely result in revealing the identity of the whistleblower) should be made on a case-by-case basis. In addition, they argued that a better approach would be to require disclosure in the same manner done at the federal level; while there are statutory protections for the identity of the whistleblower, records

[1] A similar proposal was raised during the 2022 legislative session, which died on the House calendar. See Senate Bill 438, *An Act Implementing the Recommendations of the Auditors of Public Accounts.*

pertaining to an investigation including the substance of the complaints themselves, even if unsubstantiated are subject to disclosure and published online.

Senate Bill 1154 made it out of the Government Administration and Elections ("GAE") committee and passed the Senate (with an amendment). The House passed the bill in concurrence with the Senate. The Governor has signed Senate Bill 1154.

HB 6767; P.A. 23-99. AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING LICENSING AND ENFORCEMENT.

House Bill 6767 (section 21), as passed, amends §21a-11, G.S., concerning investigations conducted by the Department of Consumer Protection ("DCP"). The bill exempts from disclosure all records, papers, and documents obtained during an investigation or enforcement action conducted by DCP until such investigation or enforcement action has been finally adjudicated or otherwise settled or closed. Under House Bill 6767 (section 21), an investigation of alleged violations of the consumer protection statutes could go on indefinitely and the public will not know anything about the investigations.

House Bill 6767 was voted out of the General Law committee (with substitute language) and passed the House (with an amendment). The Senate passed the bill in concurrence with the House.

The Governor has signed House Bill 6767.

BILLS PASSED – FAVORABLE RESULTS

SB 1103; P.A. 23-16. AN ACT CONCERNING ARTIFICIAL INTELLIGENCE, AUTOMATED DECISION-MAKING AND PERSONAL DATA PRIVACY.

Senate Bill 1103, as passed, sets certain requirements concerning the inventory of systems that employ artificial intelligence ("AI"). Among other requirements, Senate Bill 1103 requires the following:

- The Department of Administrative Services ("DAS") must conduct an inventory of all systems that employ AI and are in use by any state agency; perform ongoing assessments of such systems to ensure that no such system shall result in any unlawful discrimination or disparate impact; and perform such assessments in accordance with policies and procedures established by the Office of Policy and Management.

  Senate Bill 1103 prohibits a state agency from implementing any system that employs AI (1) unless the state agency has performed an impact assessment to ensure that such system will not result in any unlawful discrimination or disparate impact, or (2) if the head of such state agency determines, in such agency head's

discretion, that such system will result in any unlawful discrimination or disparate impact.

- The Judicial Department must conduct an inventory of the department's systems that employ AI and to develop and establish policies and procedures concerning the department's development, procurement, implementation, utilization and ongoing assessment of systems that employ AI; and perform ongoing assessments of the department's systems to ensure that no such system shall result in any unlawful discrimination or disparate impact.

  Senate Bill 1103 prohibits the Judicial Department from implementing any system that employs AI (1) unless the department has performed an impact assessment to ensure that such system will not result in any unlawful discrimination or disparate impact, or (2) if the Chief Court Administrator determines, in such administrator's discretion, that such system will result in any unlawful discrimination or disparate impact.

- Each inventory conducted by DAS and the Judicial Department must include at least the following information for each system: the name of such system and the vendor, if any, that provided the system; a description of the general capabilities and uses of such system; whether such system was used to independently make, inform or materially support a conclusion, decision or judgment; and whether such system underwent an impact assessment prior to implementation.

- DAS and the Judicial Department must make each inventory conducted available online.

In addition, Senate Bill 1103 establishes a working group to (1) make recommendations concerning, and develop best practices for, the ethical and equitable use of AI in state government; (2) make recommendations concerning the policies and procedures developed pursuant to the Public Act 23-16; (3) assess the White House Office of Science and Technology Policy's "Blueprint for an AI Bill of Rights" and similar materials and make recommendations concerning the (A) regulation of the use of AI in the private sector based, among other things, on said blueprint, and (B) adoption of a Connecticut AI bill of rights based on said blueprint; and (4) make recommendations concerning the adoption of other legislation concerning AI. The working group will consist of voting and nonvoting members (including the FOI Commission's executive director or designee).

Senate Bill 1103 passed the Senate and House unanimously and has been signed by the Governor.

SB 1221; P.A. 23-200. AN ACT CONCERNING THE ENFORCEMENT OF VIOLATIONS OF THE FREEDOM OF INFORMATION ACT.

Senate Bill 1221, as raised, proposed to (1) increase the maximum civil penalty that the Commission may impose on public agencies found to be in violation of the FOI Act (from $1,000 to $10,000); (2) empower the Commission to seek additional judicial relief in cases where a public agency is found to be engaging in "a practice or pattern of conduct that constitutes an obstruction

of the public's right to access information" or "reckless, wilful or wanton misconduct with regard to the delay or denial of responses to requests for public records"; and (3) require public agencies to compile and post certain information about open records requests.

Senate Bill 1221 was voted out of the GAE committee with substitute language eliminating the requirement to compile and post information about open records requests. The bill was referred to and voted out of the Judiciary committee with the same language.

Senate Bill 1221 passed the Senate with an amendment decreasing the maximum civil penalty to $5,000. As amended, the bill also empowered the Commission to impose a maximum of $5,000 against a custodian or other official of a public agency for "engaging in a practice or pattern of conduct that constitutes an obstruction of *any* right conferred by the [FOI] Act or reckless, wilful or wanton misconduct with regard to the delay or denial of responses to requests for public records…and [to] order such other relief that the commission, in its discretion, determines is appropriate to rectify such obstruction or misconduct and to deter such public agency from violating the [FOI] Act." In addition, Senate Bill 1221, as amended, empowered the Commission to apply to the superior court for an order requiring a public agency to comply with such orders. The bill passed the House in concurrence.

The Governor has signed Senate Bill 1221.

HB 5917; P.A. 23-116. AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE VISION ZERO COUNCIL.

House Bill 5917, as passed, implements the recommendations of the Vision Zero Council established pursuant to Public Act 21-28. Among other provisions, the bill allows municipalities to authorize the use of automated traffic enforcement devices to record motor vehicle violations.

When originally raised by the Transportation committee, House Bill 5917 provided some access to aggregate information and other data gathered from such devices that did not directly or indirectly identify an owner or a motor vehicle, but limited the disclosure of such information or data for "research purposes authorized by the municipality." The bill did not define what constituted "research purposes", did not identify who within the municipality could authorize access to the aggregate information and other data, nor who could acquire such information and data.[2]

House Bill 5917 was voted out of the Transportation committee with substitute language (1) excluding the language limiting disclosure of the aggregate information and other data for "research purposes" and (2) providing that "[a]ny information and other data gathered from automated traffic enforcement safety devices shall be subject to disclosure under the [FOI] Act …

[2] A similar bill was raised by the Public Safety and Security committee this session. House Bill 6625, *An Act Concerning a Red Light Camera Program in the City of Waterbury*, sought to allow the use of automatic traffic enforcement safety devices at certain intersections and locations within the City of Waterbury and to provide limited access to aggregate information and other data for research purposes, only. Such bill was voted out of the Public Safety and Security committee with the same language. It was then referred to the Judiciary committee, which did not vote the bill out of committee.

except no personally identifiable information may be disclosed." House Bill 5917 was referred to and voted out of the Appropriations committee with the same substitute language.

House Bill 5917 passed the House (with an amendment) and the Senate in concurrence. The Governor has signed House Bill 5917.

HB 6941; P.A. 23-204. AN ACT CONCERNING THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2025, AND MAKING APPROPRIATIONS THEREFOR, AND PROVISIONS RELATED TO REVENUE AND OTHER ITEMS IMPLEMENTING THE STATE BUDGET.

Starting in 2011, the FOI Commission underwent numerous cutbacks and a significant reduction in staff. Simultaneously, since that time the complexity and scope of contested cases before the Commission has increased, along with the volume of in camera record submissions (in some instances, amounting to thousands of pages). Further, the worldwide pandemic led to unavoidable delays in adjudicating cases, contributing to a backlog of cases which the Commission has been working to resolve. Fortunately, the budget reported out of the Appropriations committee and passed by the General Assembly, included funding for two new positions to help the Commission reduce the backlog and carry out its mission – to ensure that citizens of Connecticut have the most transparent and accountable government to which they are entitled and permitted by law.

The Governor has signed House Bill 6941.

BILLS DEFEATED - UNFAVORABLE RESULTS

SB 1155, AN ACT IMPLEMENTING RECOMMENDATIONS OF THE FREEDOM OF INFORMATION COMMISSION.

Senate Bill 1155 consisted of recommendations submitted by the FOI Commission to the legislature. Such recommendations proposed to revise the following provisions in the FOI Act: §§1-200(11) and 1-218 (definition of "governmental function" and contracts in excess of $2.5 million); §1-205(e) (training by the FOI Commission); §1-210(b)(17) (education records exemption); §1-212(g) (hand-held scanner definition); §1-225(d) (electronic notice of special meetings to board members); and §1-210(d) (appeals brought for denial of access to public records under §1-210(b)(19) (safety and security exemption)). (Attached is a copy of the Commission's statement in support of Senate Bill 1155 explaining in detail the various recommendations.) Unfortunately, even though Senate Bill 1155 made it out of the GAE committee without any known opposition, there was no further push by legislators to have this bill taken up by the Senate and/or House. Senate Bill 1155 died on the Senate calendar.[3]

[3] During the 2022 legislative session, a similar bill made it out of the GAE committee, but died on the House calendar. See House Bill 5458, *An Act Concerning Revisions to the Freedom of Information Act Recommended by the Freedom of Information Commission*.

BILLS DEFEATED - FAVORABLE RESULTS

SB 1153, AN ACT ESTABLISHING AN EXEMPTION FROM DISCLOSURE FOR CERTAIN HIGHER EDUCATION RECORDS PERTAINING TO STUDY, TEACHING OR RESEARCH UNDER THE FREEDOM OF INFORMATION ACT.

Senate Bill 1153, as introduced, sought to exempt from disclosure records concerning studies and research conducted by faculty and staff of public universities. The bill was voted out of the GAE committee with substitute language broadening the scope of the proposed exemption to include all records maintained or kept by public universities in CT, except for financial records.

Opponents of Senate Bill 1153 questioned the purpose behind such broad confidentiality language and argued that there are already existing statutes and case law that may address the concerns expressed by supporters of the bill.[4] They also contended that, to the extent that faculty members consider requests to be burdensome, providing access to public records should be considered a primary duty of all public employees, along with their other major duties. In addition, they contended that there is great public interest in all teachings, studies and research conducted at public universities, especially interest in significant (and potentially controversial) issues (including animal research, climate change, impacts of the pandemic on mental health) that require a high level of scrutiny and accountability, and which are funded largely with public dollars.

Senate Bill 1153 passed the Senate (with an amendment), but died on the House calendar.

SB 992, AN ACT CONCERNING DELINQUENT LOTTERY SALES AGENTS, WAIVER OF LICENSE RENEWAL FEES FOR CERTAIN CONNECTICUT LOTTERY CORPORATION EMPLOYEES AND DISCLOSURE OF THE NAME AND ADDRESS OF LOTTERY AND SPORTS WAGERING WINNERS.

Senate Bill 992, as introduced, proposed to amend §12-810, G.S., to exempt from disclosure the name and address of any person who redeems a winning lottery ticket. The bill made it out of the Public Safety and Security committee as well as the Judiciary committee with substitute language that broadened the exemption to include the name and address of any person who claims or is paid a winning wager from online sports wagering or retail sports wagering or is paid a prize from a fantasy contest.

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[4] See e.g., §1-206 (relief from vexatious requesters); §1-210(b)(1) (preliminary drafts and notes); §1-210(b)(2) (personnel, medical or similar files - invasion of privacy); §1-210(b)(5) (trade secrets and commercial or financial information); §1-210(b)(10) (attorney-client privileged communications); §1-210(b)(19) (safety and security risks); §1-210(b)(17) and the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g (student records); Fromer v. FOIC, et. al., 90 Conn. App. 101 (2005) (court held instructors were not "public agencies" within the meaning of the FOI Act); and Docket #FIC 2012-681, People for the Ethical Treatment of Animals Foundation v. UConn Health Center, et. al. (Commission found that the names and grant numbers of researchers reported for failing to comply with animal welfare guidelines were exempt from disclosure pursuant to §1-210(b)(19), appealed 321 Conn. 805 (2016) (Supreme Court held, in part, that the Commission effectively applied proper standard in reviewing risk assessment).

The FOI Commission questioned the public policy behind such proposal. There are reasons for disclosure of the names of winners who are voluntarily participating in a lottery system offered by a quasi-public agency. Access to public information ensures that winnings are distributed fairly, and guards against wrongdoing in the system.

Senate Bill 992 died on the Senate calendar.

SB 1222, AN ACT CONCERNING FEES FOR COPYING, REVIEWING AND REDACTING RECORDS CREATED BY POLICE BODY-WORN RECORDING EQUIPMENT AND DASHBOARD CAMERAS.

Senate Bill 1222 sought to allow law enforcement agencies to charge a redaction fee for the disclosure of a record created by police body-worn recording equipment and dashboard cameras, and to add broad exemptions to disclosure of public records.[5]

Senate Bill 1222 (section 1), as raised, proposed to amend §29-6d, G.S., and exempt from disclosure records the disclosure of which could reasonably be expected to constitute an *unwarranted* invasion of personal privacy in certain circumstances (e.g., inside of a private residence, an individual in a state of undress or nudity). The bill was broad and did not consider the full import of such exemptions and how they would be interpreted. In addition, the bill placed a burden on a requestor to prove that disclosure is "warranted", without the requestor having access to the proof (the actual record itself) in order to make his or her case. Senate Bill 1222 (section 1) was voted out of the GAE and Appropriations committees with substitute language which excluded the word "unwarranted".

Senate Bill 1222 (section 2) proposed to allow a law enforcement agency to charge a fee for labor costs incurred by the agency to redact a record created by police body-worn recording equipment and dashboard cameras, with exceptions. The proposal was intended to compensate such agencies for the time spent redacting any portion of the record as required or authorized by state or federal law. The FOI Commission worked with proponents of the proposal to establish a fair and balanced fee structure that would not impose too great a cost, create a barrier to public access and discourage requests for information.

Senate Bill 1222 (section 2) was voted out of the GAE and Appropriations committees with the following fee provisions for the time necessary to redact a record:

- No charge for time spent searching for responsive records.
- If the requestor is (i) an involved person[6] in the record requested, (ii) the

[5] Although the FOI Commission staff worked with the proponents of the legislation to establish a reasonable fee structure for the provision of such records, the bill's defeat is reported as a favorable result due to the additional exemptions that were likewise contained in Senate Bill 1222.

[6] "Involved person" is defined in Senate Bill 1222 (section 1) as "(A) any individual depicted in the record created using body-worn recording equipment or a dashboard camera, (B) any individual directly involved in the incident that led to the police officer being called to respond, or (C) any police officer responding to such incident, including the police officer whose body-worn recording equipment or dashboard camera created the record."

parent or legal guardian of an involved person, or (iii) an attorney representing an involved person in any civil, criminal or administrative matter, then the first 4 hours of labor costs cannot be charged; if the requestor is <u>not</u> (i) an involved person, (ii) the parent or legal guardian of an involved person, or (iii) an attorney representing an involved person in any civil, criminal or administrative matter, then the first 2 hours of labor costs cannot be charged.

- Any additional labor costs may be charged at a rate not to exceed the hourly wage (excluding benefits) of the lowest-paid employee with the requisite training for redacting the responsive record.
- No charge for the services of any attorney hired by the agency to conduct a second review of the requested records or any company providing digital management services to the agency.
- Any fee charged cannot exceed $100 per hour of the actual length of time of the record requested.
- If the amount to be charged is estimated to exceed $250, the agency must inform the requestor of the estimated fee and may require prepayment prior to redacting the record. If the amount of prepaid fees exceeds the actual labor costs incurred by the agency, the agency must reimburse the requestor for any difference between the prepaid amount and actual cost.
- An agency must waive any fee if required under §1-212(d) of the FOI Act (waiver provisions).
- No charge to *any* requestor if: the record depicts a police officer involved in a shooting; a police officer involved in a motor vehicle accident; a police officer giving a formal statement about the use of force; there is an allegation of misconduct concerning the police officer involved; or the police officer involved is the subject of a disciplinary investigation.
- An agency must maintain an original, unredacted copy of any record that is redacted.
- If the FOI Commission determines that an agency has violated any of these fee provisions, the Commission may order the agency to refund any payment.

Senate Bill 1222 died on the Senate calendar.

HB 1157, AN ACT CONCERNING REVISIONS TO THE FREEDOM OF INFORMATION ACT CONCERNING EMPLOYEES OF PUBLIC AGENCIES.

Senate Bill 1157 sought to amend certain provisions in the FOI Act concerning the nondisclosure of residential addresses and notifications to public employees regarding requests for personnel, medical and similar files.

Senate Bill 1157 (section 1) revived an exhaustive debate in the General Assembly that has been held on an almost annual basis. The bill sought to amend §1-217 of the FOI Act and add yet more classifications of workers whose home addresses would be "protected" – i.e., judicial marshals

employed by the judicial branch; employees of the Office of the Attorney General[7], and certain employees of the Department of Aging and Disability Services.[8]

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.

Senate Bill 1157 (section 2) sought to amend §1-214(b) of the FOI Act concerning requests made to a public agency for an employee's personnel or medical and similar files and the process that agencies must follow in response to such requests.

Section 2 required that, in the case of a "mass request" (i.e., a request concerning 50 or more employees) for such files, a public agency, prior to disclosing such records, must first provide notice of the request to employees and their collective bargaining representative, if any, even if the agency does not reasonably believe that disclosure would constitute an invasion of privacy. The FOI Commission expressed concerns regarding such proposal as it ran directly counter to the General Assembly's intent when it passed Public Act 18-93.[9] In addition, in the Commission's experience, once an employee is provided notice of a request for his or her file, the employee will likely object, regardless of whether disclosure would reasonably constitute an invasion of privacy. Under such circumstances, an agency must withhold the record unless ordered by the Commission to disclose it (§1-214(c)), which would require an evidentiary hearing and deliberation by the full Commission; and would almost assuredly lead to a waste of local and state resources.

Senate Bill 1157 was voted out of the GAE committee with substitute language removing judicial marshals from the proposal as such classification of workers is already covered by §1-217. Subsequently, the bill passed the Senate with an amendment striking section 2 and amending section 1 to add "any other employee of a public agency, except when residency is a condition or term of such person's employment." Senate Bill 1157 (as amended by the Senate) was debated in the House and passed temporarily. The bill was not taken up again.

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[7] Similar proposals seeking to exempt the residential addresses of employees of the Office of the Attorney General were taken up during prior legislative sessions. See HB 5409, *An Act Concerning the Nondisclosure of Residential Addresses of Attorney General Employees* (2020); HB 6576, *An Act Concerning the Nondisclosure of Residential Addresses of Certain Employees under the Freedom of Information Act* (2021); and House Bill 5378, *An Act Concerning the Nondisclosure of the Residential Addresses of Certain Employees under the Freedom of Information Act* (2022).

[8] A similar proposal raised by the GAE committee this session sought to add the same classifications of workers. Senate Bill 1220, *An Act Concerning the Exemption from Disclosure of Residential Addresses under the Freedom of Information Act*, received a public hearing, but did not make it out of committee.

[9] In 2018, the General Assembly amended the notice provisions in §1-214(b) to require, whenever a public agency receives a request for personnel or medical and similar files, and the agency reasonably believes that the disclosure of the records would not constitute an invasion of privacy, the agency must first disclose such records, and then, within a reasonable time after disclosure, make a reasonable attempt to notify the employee and collective barraging representative, if any.

HB 6912, AN ACT CONCERNING NONDISCLOSURE OF INFORMATION REGARDING AND CONDUCT TOWARD CERTAIN ELECTION WORKERS.

House Bill 6912, as raised, sought to amend §1-217 of the FOI Act and exempt from disclosure the residential addresses of public employees and election workers who may serve on a voluntary basis; specifically, municipal clerks, registrars of voters, deputy registrar of voters, election officials, primary officials and audit officials. The proposal also made it a class D felony to harass or intimidate, or attempt thereof, such employees or election workers in the performance of their duties under Title 9 related to election administration.

House Bill 6912 broadened the application to non-public employees (for the first time) and to records beyond those already covered in §1-217(c). As raised, the bill was highly impractical and would have been difficult to carry out by public employees and officials whose responsibility it is to do so.

House Bill 6912 made it out of the GAE committee with substitute language providing that the covered individuals could request that an agency withhold from disclosure their residential addresses for a period of only 90 days and allowed a public agency to grant an extension if good cause was demonstrated.

House Bill 6912 was subsequently referred to, but not voted out of, the Judiciary committee.

NEUTRAL

SB 1186, AN ACT CONCERNING DATA GOVERNANCE, REQUESTS FOR PUBLIC RECORDS INVOLVING THE CONNECTICUT PRESCHOOL THROUGH TWENTY AND WORKFORCE INFORMATION NETWORK AND APPROVAL OF A SALE OF PROPERTY BY THE TOWN OF WINDHAM.

Senate Bill 1186 (section 4) concerned requests for records involving the Connecticut Preschool through Twenty and Workforce Information Network ("CP20 WIN")[10] and records shared among participating agencies that have entered into a sharing agreement. The bill required that an individual seeking such records to make a records request to the agency from which such records originated. As originally written, Senate Bill 1186 (section 4) created obstacles to accessing public records that may impact the timely processing of requests and delay access to records of significant public interest.

Senate Bill 1186 was heard and voted out of the GAE committee with substitute language setting forth a procedure for when a participating agency that is not the originating agency receives a records request. Specifically, the substitute bill required that the participating agency (1) promptly

[10] CP20 WIN means "a state data system for the purpose of matching and linking longitudinally data of state agencies and other organizations to inform policy and practice for education, workforce and supportive service efforts, including, but not limited to, the purpose of conducting audits and evaluations of federal and state education programs." Conn. Gen. Stat. §10a-57g(a)(7).

refer such request to the originating agency to respond to it directly and (2) provide (i) written notification to the requestor that such request has been referred to the originating agency (ii) the name, address, and (iii) telephone number of the originating agency and the date on which the referral was made.

Senate Bill 1186 died on the Senate calendar.

HB 5796, AN ACT ESTABLISHING A TASK FORCE TO STUDY MANDATORY PUBLIC COMMENT PERIODS AT PUBLIC AGENCY MEETINGS.

House Bill 5796 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.[11]

House Bill 5796 was voted out of the Planning and Development committee with substitute language establishing a task force to study the feasibility of a mandatory public comment period at public meetings, including, but not limited to, an examination of the benefits and drawbacks of mandatory public comment periods, best practices for conducting such public comment periods, legal and practical considerations, and the potential benefits of incorporating new technology into the public comment process. The task force included the Commission's executive director (or designee), among others.

House Bill 5796 passed the House (with an amendment), but died on the Senate calendar.

HB 6906, AN ACT CONCERNING MEMBER PARTICIPATION DURING REMOTE AND HYBRID MUNICIPAL PUBLIC AGENCY MEETINGS UNDER THE FREEDOM OF INFORMATION ACT.

House Bill 6906 proposed to amend §1-225a of the FOI Act to require that, when a member of a "municipal public agency"[12] participates in a meeting "by means of electronic equipment, such member shall be visible on such electronic equipment whenever speaking during the debate or casting a vote during such meeting." House Bill 6906, as written, appeared to allow members of municipal public agencies to participate in meetings remotely only if they did so by video, even

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[11] The Planning and Development committee also raised HB 5037, *An Act Requiring Public Comment Periods at Public Agency Meetings*, which did not receive a public hearing. A similar bill introduced during the 2022 legislative session was voted out of the Planning and Development committee, but died on the House calendar. See HB 5362*, An Act Requiring Public Comment Periods at Public Agency Meetings.*

[12] The term "municipal public agency" was defined in House Bill 6906 as "any (1) municipal board of selectmen, city council, board of representatives or equivalent legislative body except for a town meeting; (2) local or regional board of education; (3) board of finance or equivalent board with budget-making authority; (4) zoning commission or combined planning and zoning commission; (5) board of ethics, charter revision commission, police commission, fire commission or inland wetlands or equivalent commission; and (6) zoning board of appeals.

though §1-200(5) of the Act allows participation by telephone. In written testimony, the FOI Commission suggested that House Bill 6906 be amended to clarify whether members of municipal public agencies would continue to be permitted to participate in public meetings by telephone. The Commission also welcomed a more comprehensive review of all of the remote meetings provisions enacted in 2021 (Public Act 21-2, June. Sp.Sess.) to ensure the greatest transparency and government accountability.

House Bill 6906 was voted out of the GAE and Planning and Development committees, but died on the House calendar.

Acknowledgements:

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In addition, we would like to thank the following individuals for their assistance this year: Representative Matthew Ritter, Speaker of the House (1st District); Representative Bob Godfrey, Deputy Speaker Pro-Tempore (110th District); Representative Vincent Candelora, Minority Leader (86th District); and Senator Cathy Osten, Senate Deputy President Pro Tempore (19th District).

Bill Tracking:

During the regular legislative session, we monitored 298 bills (including collective bargaining agreements). A total of 111 received public hearings and FOI Commission staff prepared statements for and/or testified on 22 of those bills. As of July 11, 2023, 47 of the 298 bills monitored became public acts.

FREEDOM OF INFORMATION COMMISSION STATEMENT ON SENATE BILL 1155, AN ACT IMPLEMENTING RECOMMENDATIONS OF THE FREEDOM OF INFORMATION COMMISSION.

March 6, 2023

The Freedom of Information ("FOI") Commission submits this statement in strong support of Senate Bill 1155, 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.[1]

In response to an Appellate Court decision,[2] the General Assembly in 2001 enacted legislation[3] 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.[4] The proposed language in sections 1 and 2 of Senate Bill 1155 would clarify that the definition of "governmental function" in §1-200(11) applies only to §1-218, as was intended by the General Assembly.

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.[5]

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[1] The bill also proposes (in section 3) to delete the phrase "in the course of its governmental functions" from §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 §1-211(b).

[2] 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.

[3] See House Bill 6636, Public Act 01-169, *An Act Concerning Privatized Public Records*.

[4] 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.

[5] 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.

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.

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 post-secondary 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.[6] 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, camera or any other portable device capable of capturing an image of a public record."

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[7] 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

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[6] See 20 U.S.C. §1232g and 34 C.F.R. Part 99.

[7] See Sections 148 and 150 Public Act 21-2 (June Special Session).

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). 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.

Section 11

Section 11 of the bill amends §1-210(d) of the FOI Act, regarding appeals brought for denial of access to public records under §1-210(b)(19) of the Act.

Section 1-210(b)(19) provides, in relevant part, that disclosure is not required of:

> [r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility…. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency….

As currently written, §1-210(d) requires that the appeal be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold records.

For purposes of clarity, the Commission supports amending §1-210(d) to clarify that such appeal shall be against *both* the chief executive officer of the public agency that maintains the requested records and the Commissioner of the Department of Emergency Services and Public Protection or the Commissioner of the Department of Administrative Services (as applicable) who issued the directive to withhold the records.

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

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