

THE CONNECTICUT FOI ACT TURNS 50



Celebrating Connecticut's Unique Law and Commission



Presented by Speaker of the House Matthew Ritter, House Majority Leader Jason Rojas, House Minority Leader Vincent Candelora, Senate President Pro Tempore Martin Looney and Senate Minority Leader Stephen Harding
in partnership with the Connecticut Freedom of Information Commission (FOIC) and the Connecticut Council on Freedom of Information (CCFOI)



FOI 101: An Overview Of Connecticut's FOI Act

Presented by the Connecticut Freedom of Information Commission

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Brief History Of The CT FOIA

“The legislature finds and declares that secrecy in government is inherently inconsistent with a true democracy, that the people have a right to be fully informed of the action taken by public agencies in order that they may retain control over the instruments they have created; that the people do not yield their sovereignty to the agencies which serve them; that the people in delegating authority do not give their public servants the right to decide what is good for them to know.” — **Freedom of Information Act Preamble, Oct. 1, 1975**



Connecticut Gov. Ella Grasso

History Of The CT FOIA, Continued

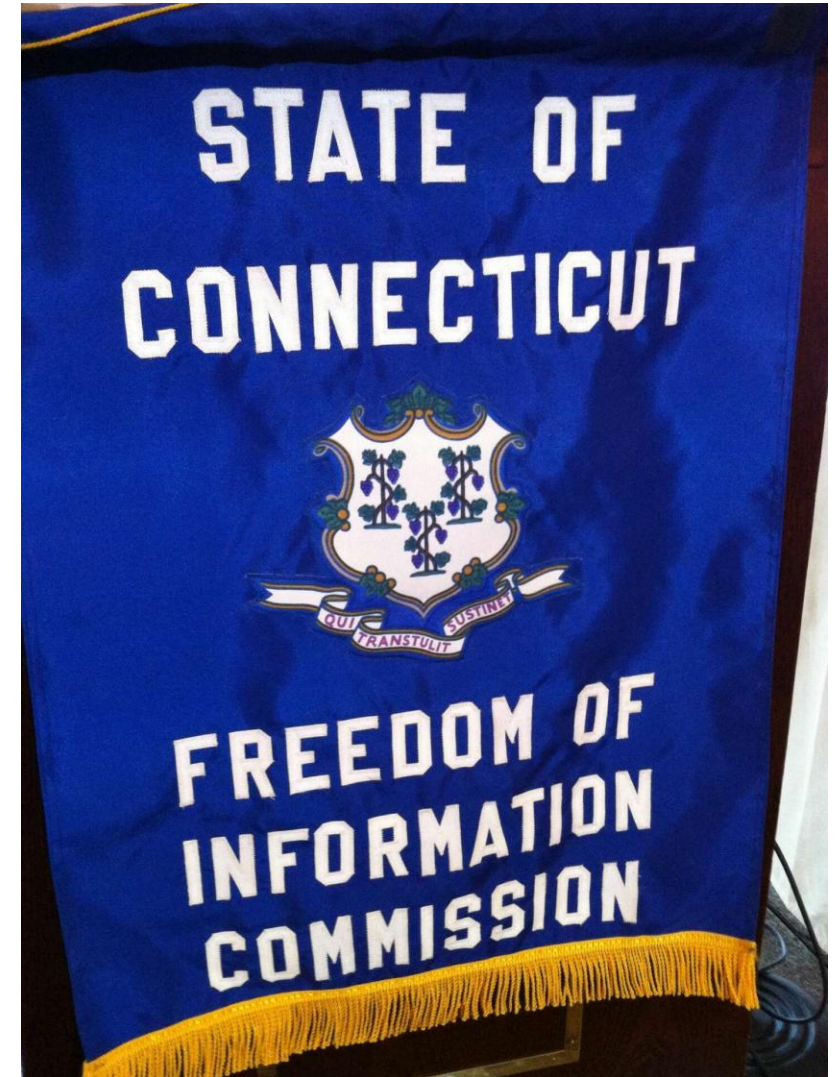
- The Freedom of Information Act passed the state House of Representatives and state Senate unanimously before being signed into law by Gov. Ella Grasso.
- Connecticut's Freedom of Information Act remains a model for the rest of the country and throughout the world.
- In 2015, Connecticut was one of just three states to score higher than a D+ in a review of public records laws conducted by the Center for Public Integrity.

What The Courts Have Said About CT's FOI Act

- “The Freedom of Information Act expresses a strong legislative policy in favor of the open conduct of government and free public access to government records.” Wilson v. Freedom of Information Commission, 181 Conn. 324, 328 (1980).
- “The general rule under the Freedom of Information [Act] is disclosure with exceptions to the rule being narrowly construed.” Perkins v. Freedom of Information Commission, 228 Conn. 158, 167 (1993).
- “An agency’s FOIA duty is a statutory duty or command. As such, it is not second class to any other statutory duty or command.” Commissioner, State of CT, Dept. of Emergency Services and Public Protection, et. al. v. FOI, et al., Docket No. HHB-CV18-6047741-S (2020).

The FOI Commission:

- The Commission is an independent Executive Branch agency.
- Consists of nine Commissioners appointed by the Governor and General Assembly, no more than five from the same political party.
- Eighteen staff members; FY25 Budget of \$2.2 million.
- Empowered by statute to investigate alleged violations of the Freedom of Information Act pertaining to both **public records and public meetings**, holding hearings if necessary.
- The Commission received **855** complaints in 2024; however, about two-thirds are resolved through the FOIC's ombudsman mediation program.
- The Commission held **125** educational workshops on the CT FOIA in 2024 for cities and towns, state agencies, citizens groups and other organizations.



What Is A Public Record?

Broad Definitions in the FOI Act:

- **“Public records or files”** means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method. - CGS § 1-200(5)
- Except as otherwise provided by any federal law or state statute, **all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records** and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. - CGS § 1-210(a)
- All public records must be made available to the public, unless an exemption or exception applies.

Exemptions And Exceptions To Public Records

- There are **28** exemptions to disclosure contained within the FOI Act itself including:
 - Trade secrets
 - Attorney-client privilege
 - Adoption records
 - Safety risk
 - Certain law enforcement records
- There are countless other statutes that contain exceptions to the CT FOIA and protect certain records from disclosure, including:
 - CGS § 10-151c: Public school teacher evaluations
 - CGS § 1-82a: Ethics complaints (prior to probable cause finding)
 - CGS § 17a-101k: Information relative to child abuse

Exemptions And Exceptions To Public Records, Continued

- Each year, numerous exemptions and exceptions are proposed.
- When a concern is raised about whether certain information should be available under the Freedom of Information Act, the place to turn first should be a review of existing exemptions.
- Connecticut has the benefit of a 50-year body of law between the FOIC and the Courts that has already interpreted many of the issues about which you may be concerned.
- If legislators have questions about how a particular exemption or exception has been applied by the Commission, or whether it might apply in a certain scenario or fact pattern, we are happy to meet to discuss those matters and help to make better legislation.

A Closer Look At The Safety And Security Exemption

- Agencies do not have to release records “when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person.” CGS § 1-210(b)(19)
- Reasonable grounds are determined in conjunction with the Department of Administrative Services, the Department of Emergency Services and Public Protection, the Chief Court Administrator or Legislative Management, depending on the agency that has received a public records request.
- “The department is authorized to rely on the experience and professional expertise of its employees to make a predictive judgment. The statute imposes no requirement that, in making its assessment, the department may only consider evidence of previous instances in which persons were subjected to threats or violence as the result of similar disclosures.” PETA v. Freedom of Information Commission, 321 Conn. 805, (2016)

Safety And Security Exemption, Examples

- PETA v. Freedom of Information Commission, 321 Conn. 805, (2016), UConn did not have to release names of animal researchers.
- Docket# FIC 2021-0448, GerJuan Tyus v. Peter G. Reichard, Chief, Police Department, City of New London, New London Police Department not required to release certain records, including witness information, to individual incarcerated for homicide.
- Docket# FIC 2019-0736, Chris Noe v. Director, Department of Public Works, Town of Darien et al, Town of Darien not required to release a sewer map.

Law Enforcement Records: Balancing Transparency With Privacy

- The FOI Act provides broad access to police records, but there are protections in place for witnesses, juveniles and victims as well as to protect the integrity of ongoing investigations.
- Revisions to CGS § 1-215 that passed the House and Senate unanimously in 2015 struck a balance by requiring public access to certain law enforcement records once an arrest has been made regardless of the status of the case in court.
- Video from body-worn cameras is available under the FOIA, but police departments do not have to disclose videos of minors, footage of people undergoing medical treatment, or scenes of domestic violence, sexual abuse, homicide or suicide or fatal accidents if disclosure could constitute an unwarranted invasion of personal privacy.

Legislator Records:

Declaratory Ruling #90: Constituent Correspondence

- “Any recorded data or information prepared, owned, used, received or retained by a member of the General Assembly, in his or her capacity as a member thereof, including correspondence from or to constituents, directly or indirectly relating to enacting legislation or making laws are public records.”
- “Any recorded data or information, prepared, owned, used, received or retained by a member of the General Assembly, whether or not in his or her capacity as a member thereof, including correspondence from or to a constituent concerning a request for the assistance or intervention of the legislator in a matter unrelated directly or indirectly to enacting legislation or making laws, (e.g., constituent correspondence) are not public records.”

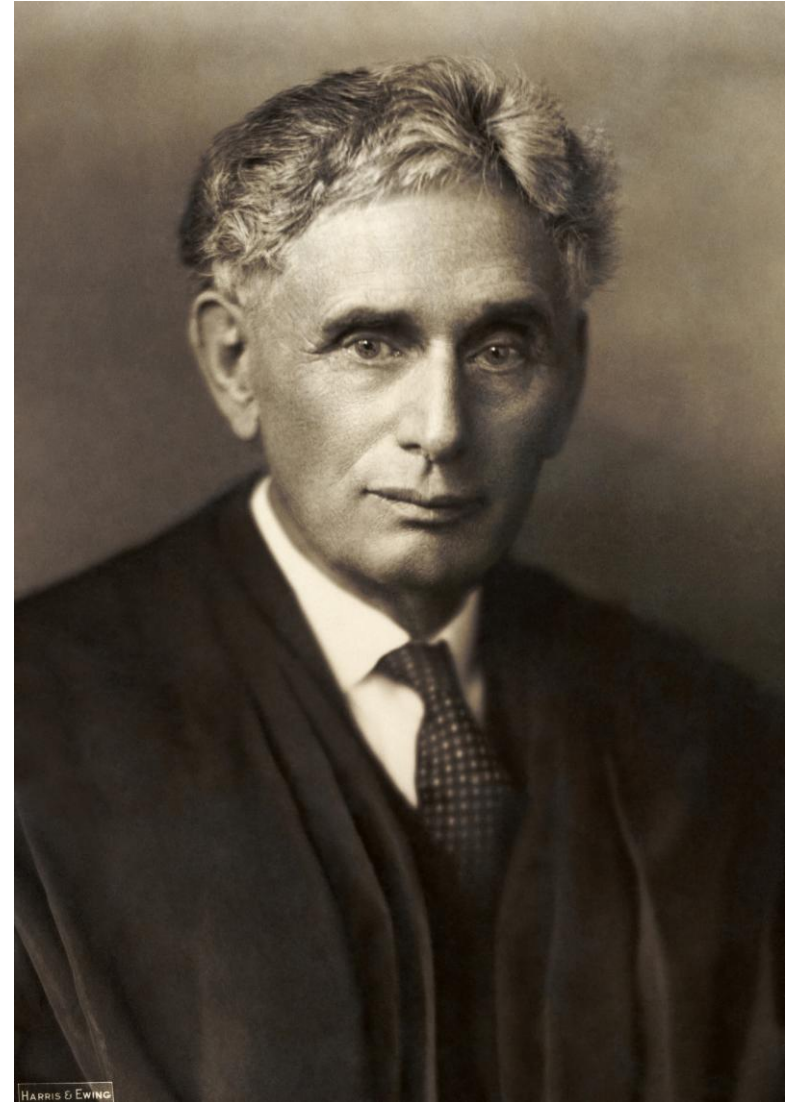
Dealing With Vexatious Requesters

- The FOI Act gives public agencies the option to petition the Commission for relief from vexatious requesters, potentially resulting in an order that an agency need not comply with future requests from the requester for up to one year.
- The law does not define the term “vexatious requester,” but it outlines alleged conduct to be considered by the Commission during its review of a petition, including:
 - The number of requests filed and pending;
 - The scope of the requests;
 - The nature, content, language, or subject matter of the requests and the requester’s other oral or written communications to the agency; and
 - A pattern of conduct that amounts to an abuse of the right to access information under FOIA or an interference with the agency’s operation.

In Conclusion

"Publicity is justly commended as a remedy for social and industrial diseases. ***Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.***"

— Louis D. Brandeis, U.S.
Supreme Court Justice (1916-
1939)



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