

I. IN GENERAL.

The Freedom of Information Commission was created by the General Assembly in 1975 with the passage of the Freedom of Information Act. The Act provides the public with rights of access to records and meetings of public agencies. You may obtain a copy of the Act without charge by contacting the Commission at the address printed on the last page of this guide.

If you feel that you have been denied a right guaranteed by the Freedom of Information Act you may file an appeal with the Freedom of Information Commission.

II. REQUIREMENTS FOR FILING AN APPEAL.

Generally, an appeal must be filed with the Commission within 30 days of the violation alleged, except when the appeal concerns an unnoticed or secret meeting. In that case, the appeal must be filed within 30 days after the person filing the appeal receives notice in fact that such meeting was held. There is no specific form to complete. A letter containing a statement of all relevant facts is sufficient to institute an appeal. In addition, if you want to request the imposition of a civil penalty (fine) permitted under Section 1-206(b) of the Act, you should say so explicitly in your letter. Your letter should contain the names, titles and addresses, if known, of the persons or agencies you feel have violated the Act, as well as a telephone number at which you can be reached during business hours. If an appeal concerns a request for records contained in a public employee's personnel, medical file or similar file, the Commission may require the respondent public agency to notify the subject employee(s) of the appeal and any such employee(s) may intervene as a party to the appeal.

NOTE: BE SURE TO READ THE ACT CAREFULLY TO DETERMINE WHETHER YOUR CLAIM OF A VIOLATION IS SUPPORTED BY THE LAW. The staff of the Freedom of Information Commission is available to assist you with any procedural questions concerning an appeal. While the staff may be able to refer you to specific sections of the law and cases interpreting them, only the Commission, not its staff, has the power to interpret and apply the law.

III. PRE-HEARING CONSIDERATIONS.

A person bringing an appeal to the Commission is called the "complainant" and the public agency or official defending is called the "respondent." When an appeal is filed, the Commission issues a "Notice of Hearing and Order to Show Cause." This is the official notice that the matter will be heard, and sets forth the date, time and place of the hearing. All parties named must appear at the hearing, either in person or by counsel or other authorized representative. A complainant's failure to appear will lead to dismissal of the complaint. A respondent's failure to appear deprives it of the opportunity to defend itself against the complainant's allegations.

The Freedom of Information Commission has an "ombudsman" program which involves the assigning of a staff member to each appeal to act as liaison between the parties. An ombudsman

will attempt to effect a settlement of each appeal. But if a settlement is not possible, the matter will proceed to a hearing.

Due to the large number of cases filed and the requirements for speedy action, the Freedom of Information Commission will NOT ordinarily postpone scheduled hearings at the request of the parties UNLESS the parties are negotiating a settlement and, in writing, request a postponement based upon the likelihood of agreement. For the same reason, hearings are scheduled to be heard within 90 MINUTE time periods. Be prompt to ensure that you will be able to take advantage of the full 90 minutes allotted.

The hearings are conducted in one of the hearing rooms on the FIRST FLOOR at 18-20 Trinity Street, Hartford. There is no off-street parking available, so be prepared to arrive early enough to find a parking space, either on the surrounding streets where parking is metered, or in commercial lots in the vicinity. If you are attending an afternoon hearing, be aware of tow zones--they are enforced PROMPTLY at 4:00 p.m.

IV. PREPARING FOR A HEARING.

Here are a few suggestions on how to prepare for a Freedom of Information Commission hearing.

1. Know your facts. Don't rely on what others have told you or what you have read in the newspaper. Check the facts yourself if possible.
2. Determine what evidence you need to prove your case. That is, consider what you would want proved if you were a member of the Freedom of Information
3. Commission. Remember, however, you may present evidence only on those issues fairly raised in your appeal. Decide what documents and witnesses you will need. For example, if you have alleged that an agency's agenda was faulty, bring a copy of the agenda with you.
4. Make arrangements in advance to have NECESSARY witnesses and documents available for the hearing. You may wish to contact the opposing party or its counsel, either directly or through the ombudsman assigned to your appeal, to see if you can agree upon essential facts. You may avoid the necessity of presenting evidence by "stipulating" or agreeing to these facts at the hearing. See Section V. of this Guide concerning the procedure for entering agreements of fact on the record.
5. If a NECESSARY witness will not testify voluntarily, contact the Commission staff immediately. If you are able to show why the person's testimony is necessary and why you believe he or she will not appear voluntarily, the Commission may issue a subpoena which would require the person to appear. You must make arrangements for and pay the cost of serving such a subpoena.

V. CONDUCT OF A HEARING.

One of the five members of the Freedom of Information Commission or a staff member is designated to preside over the hearing and is called the "Hearing Officer." The Hearing Officer

is usually assisted by a staff attorney, one of whose functions is to answer procedural questions. The hearing is an official proceeding conducted as a contested case under Chapter 54 of the Connecticut General Statutes and the Regulations of the Commission. The Commission, however, strives to maintain an atmosphere comfortable to those parties not represented by an attorney. Procedures are explained and questions answered so that lay people can understand what will happen and what is expected of them. A copy of the Commission's Regulations may be obtained upon request at the address printed on the last page or can be found starting with Section 1-21j-1 of the Regulations of Connecticut State Agencies.

Each hearing consists of a presentation of evidence, first by the complainant, then by the respondent. The hearing will provide the **ONLY** opportunity to present evidence, and all evidence becomes part of the record of the hearing. Each party may testify, examine and cross-examine witnesses and offer documents as evidence. The presentation of evidence is followed by a brief argument on the law.

Hearings will ordinarily follow this format: The Hearing Officer convenes the hearing and outlines the hearing procedures, explaining how the Commission will arrive at its decision in the case. The parties are asked if they are willing to go "off the record" (that is, the tape recorder is turned off) to discuss whether any facts can be agreed upon without the need to present evidence. These are called "stipulations." Although the conference concerning stipulations is off the record, the hearing is still open to the public. If the parties wish to discuss any matter privately, they may request a recess and leave the hearing room for their discussion. After the informal conference is completed, the hearing proceeds on the record (that is, the tape recorder is turned back on). The facts agreed upon are read into the tape recorder and become part of the record of the hearing. If there is need for further evidence, all witnesses are then sworn in.

a. Presenting evidence.

The complainant should fairly raise the allegations made in the complaint. (See Section IV. of the Guide concerning preparation for a hearing). This may be accomplished by the testimony of witnesses (including the complainant) or by the submission of written evidence. If a party is not represented by a lawyer or other authorized representative, that party may testify in narrative form--that is, by reciting facts without being asked a question. All other witnesses should testify in a question-and-answer format but narrative may be allowed.

Evidence should relate specifically to the case in question, and should reflect what the witness **KNOWS**, as opposed to what the witness was told or guesses or suspects. When a document is offered into evidence, a witness may be necessary to testify as to its authenticity and how it was obtained. Don't waste time on a long recitation of prior events not related directly to the claimed violation of the Freedom of Information Act.

Each witness is subject to cross-examination based upon the testimony given. The party introducing the witness then may re-examine the witness in order to clarify or explain testimony brought forth on cross-examination. This is called "re-direct," and is occasionally followed by

"re-cross examination." This process allows the parties to satisfy themselves that each witness has presented fairly all material facts.

After the complainant has completed the presentation of evidence, the respondent is then given the same opportunity to present additional evidence in defense. The respondent, unless it has evidence that it is not a public agency, must prove that the actions at issue were proper under the Freedom of Information Act. If the complaint specifically seeks the imposition of the civil penalty permitted under Section 1-206(b) of the Act, the respondent also should be prepared to show that the alleged denial of any rights under the Freedom of Information Act was based upon reasonable grounds. If necessary, the complainant is given the opportunity to present further evidence in rebuttal.

Remember: Do not present several witnesses to testify to the same facts (cumulative testimony)-it is not necessary nor is it desirable. Also keep in mind that a party's motivation in pursuing rights under the Freedom of Information Act is not relevant and will not have any impact on the Commission's decision.

b. Argument on the Law.

Once all the evidence has been submitted, the parties are allowed to make a brief argument on the law. This argument should state why you believe that the Freedom of Information Act was or was not violated. Don't repeat all of the evidence presented or quote extensively from the Act itself. Written arguments and briefs may be filed at the hearing or within the time specified by the Hearing Officer, but are not required. A copy of any written argument or brief must be given or mailed to all parties of record and the written argument or brief must contain a statement to this effect.

VI. HEARING OFFICER'S REPORT.

After the hearing is concluded, the Hearing Officer prepares a report for the full Commission's consideration. This report consists of a series of findings of fact, conclusions of law, and a recommended order. The report is based SOLELY upon the record of the hearing and the Hearing Officer's application of the law.

Even if the complaint does not specifically seek the imposition of the civil penalty permitted under Section 1-206(b) of the Act, the Hearing Officer may find that specific violations of the Act appear to have been committed without reasonable grounds. In that case, the report may recommend that a subsequent hearing be held in order to afford the respondent an opportunity to show that any such violation was based upon reasonable grounds.

The report is not a final decision, and must be adopted by the Freedom of Information Commission to become one. All parties will receive a copy of the report, as well as notice of the date, time and place of the meeting at which the Commission will consider and vote on it. If you wish to submit a brief or written argument to the full Commission, an original and the number of copies indicated on the transmittal letter should be in the Commission's office no later than the

date stated on the transmittal letter. A copy of any written argument or brief must be mailed to all parties of record and the written statement or brief must contain a statement to this effect. Typically, Commission decisions are scheduled for action at its regular meetings, held on the second and fourth Wednesdays of each month.

VII. COMMISSION ACTION ON HEARING OFFICER'S REPORT.

Before the Hearing Officer's Report becomes the final decision of the Freedom of Information Commission, it must be approved by the Commission itself. The Commission may approve the report, amend the report, and approve it as amended, or it may reject the report completely.

The parties may attend the meeting at which the report is considered and may offer brief oral arguments (maximum of 10 MINUTES per side) opposing or in favor of the report. **NO NEW OR ADDITIONAL EVIDENCE WILL BE ENTERTAINED AT THE MEETING.**

Each party is advised to attend the Commission's meeting at which the Hearing Officer's Report will be considered and voted upon, even if the report is in its favor. Remember, all opposing parties may attend the meeting, and the Commission may be persuaded to amend or reject the Hearing Officer's Report. If a party is not present, it risks that unrebutted or unchallenged arguments may convince the Commission to take an unfavorable action in adopting its Final Decision.

After arguments are concluded, the Commission deliberates and votes in public session as to whether to approve, amend or reject the Hearing Officer's Report. All parties are sent a copy of the Commission's final decision.

VIII. APPEALS FROM COMMISSION DECISIONS.

The law provides that an aggrieved party may appeal a final decision of the Freedom of Information Commission to the Superior Court.

If you are successful at the Commission level and an appeal to the courts is brought by an aggrieved (unsuccessful) party, you will be served with a copy of that appeal. Counsel for the Commission will participate in the appeal on behalf of the Commission, but will NOT act as your personal representative. Because your interests may not always be identical to that of the Commission, you may choose to consult your own attorney to fully protect your rights.

IX. MISCELLANEOUS.

If you should resolve your dispute before the Commission hearing is held, please notify the Commission IMMEDIATELY so that everyone concerned can be informed. The appeal to the Commission will be withdrawn officially upon receipt of a written communication, signed by the complainant, stating that the matter has been resolved. If written communication is not received

withdrawing the appeal and the complainant does not appear at the hearing, the case will be dismissed.

If an appeal concerns an announced agency decision to meet in executive session, or an ongoing agency practice of meeting in executive sessions, for a stated purpose, if practicable the Commission will hold a preliminary hearing within 72 hours of the filing of the appeal. The purpose of the preliminary hearing is to determine whether there is probable cause to believe that the agency decision or practice violates the Freedom of Information Act. If the Hearing Officer finds such probable cause, the agency will be prohibited from meeting in executive session for that purpose until the Commission finally decides the appeal. The Commission's final decision is due within five days of the preliminary decision finding probable cause.

A Hearing Officer's Report is a public record, available to the public (including the press) as soon as it is submitted by the Hearing Officer. Therefore, you may read about a proposed decision before receiving your own copy.

If you wish to contact the Commission, you may do so at the following address and telephone number:

Freedom of Information Commission
165 Capitol Ave, Suite 1100
Hartford, Connecticut 06106
Telephone: 1 866 374-3617 or (860) 566-5682;
Fax: (860) 566-6474
Email: foi@ct.gov
Website: <http://www.portal.ct.gov/foi>