FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2012 REGULAR SESSION

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Summary of Legislative Session:

The 2012 legislative session was a short session during which several pieces of legislation affecting the cause of open and accessible government in Connecticut were raised. Some of the bills proposed increased the public's right to access (e.g., HB 5035, HB 5303 and HB 5463, *discussed below*); while other proposals further limited access (e.g., SB 218, SB 389 SB 426, SB 501 and HB 6001, *discussed below*).

The Freedom of Information (FOI) Commission submitted two proposals to the legislature, which the Commission believed would be beneficial. The proposals were introduced in HB 5463, *An Act Concerning Requests for Records Under the Freedom of Information Act and Appointments to the Freedom of Information Commission*. The bill proposed to change the term of the legislatively appointed members of the FOI Commission from two to four years, and to clarify that requests under the FOI Act may be oral as well as written. Unfortunately, even though HB 5463 made it out of the Government Administration and Elections (GAE) Committee without any opposition, there was no further push by legislators to have this bill taken up by the House and/or Senate.

Significantly, the greatest challenges this session pertained to: (1) redaction of residential addresses; (2) executive sessions; and (3) economic development. With various groups of individuals and organizations working together, the negative impacts on the public's right to access were, to an extent, diminished.

(1) Section 1-217, G.S., and Redaction of Residential Addresses:

The residential address exemption in §1-217, G.S., has been a source of much controversy since its enactment in 1995. Since that time, there have been legislative proposals to add to the 11 categories of public officials and employees whose residential addresses are exempt from disclosure, and proposals attempting to clarify what public records are subject to the residential address exemption.

In June 2011, the Connecticut Supreme Court addressed the question of whether §1-217, G.S., , applies to records such as grand lists, voter rolls, and other records that are required by law to be complete, accurate, and open to public inspection. The Supreme Court held that §1-217, G.S., requires the redaction of residential addresses from the copy of the motor vehicle

grand lists that are open to the public.[1] Although the Supreme Court case pertained only to motor vehicle grand lists, the decision signaled that it could apply to *all* public records. Municipalities and state agencies worried about the impact of the decision and immediately sought a legislative remedy.

Consequently, a coalition was formed to urge the legislature to introduce a legislative remedy to alleviate the detrimental effects of the Court's decision. The coalition included the FOIC, CCFOI, the Connecticut Bar Association, the Connecticut Bankers Association, the Connecticut Mortgage Bankers Association, the Connecticut Attorneys Title Insurance Company, the Connecticut Conference of Municipalities, the Council of Small Towns, the Town Clerks Association, and the Tax Collectors Association, the Association of Municipal Attorneys, and the Secretary of State, among others.

The coalition members argued, as expressed in written statements to the legislature, that compliance with the Court's decision would irreparably damage the people's right to know that their government is functioning competently and fairly. In addition, compliance with the decision would (1) create havoc by disrupting, for example, title searches, service of process, collection of debts, and notification of adjoining landowners in planning and zoning matters; (2) compromise access to voter lists as well as records of tax assessors, municipal clerks, the Secretary of the State, and the State Elections Enforcement Commission; (3) prevent clerks, assessors and registrars from meeting their duties under the law to certify the accuracy and completeness of their records that must be open to the public; and (4) create an impossible burden of identifying and redacting public documents. Also, the costs associated with this unfunded mandate were extreme due to the scope and volume of public records. In an effort to solve the problem, the coalition supported *amending* §1-217, G.S., to limit the address exemption *to personnel records, only.*

Subsequently, early in the session, the Governor's Office proposed HB 5035, *An Act Reducing Mandates for Municipalities*, prohibiting the disclosure of residential addresses *from the personnel records* of certain groups of government employees. The coalition, including the FOIC and CCFOI, supported this bill. The coalition believed that the proposal was an effective

[1] The case arose in the town of North Stonington, when the assessor in 2007 refused to give a private investigator an unredacted copy of the motor vehicle grand list. A complaint was filed with the FOI Commission, which then had to resolve two apparently conflicting statutory mandates. Specifically, although state statute (§12-55, G.S.) requires the assessor to lodge a complete and accurate list for public inspection, §1-217, G.S., prohibits disclosure of residential addresses of select public officials and employees. The FOI Commission reasoned that the legislature did not intend to repeal §12-55, G.S., by enacting §1-217, G.S., and concluded that the address exemption provision applied to all public records *except* those that the legislature determined, by enacting separate statutes, are to remain complete, accurate, and open. The Commission's final decision was appealed and then affirmed by the Superior Court. However, the Supreme Court overturned the Superior Court, and held that the address exemption supersedes §12-55, G.S. Specifically, the Supreme Court ruled that that the FOI Act requires disclosure of all public records except as otherwise provided by state law, and §1-217, G.S., is one such state law that requires non-disclosure. See Commissioner of Public Safety et al v. Freedom of Information Commission and Peter Sachs, 301 Conn. 323 (2011).

and workable solution to the problems caused by §1-217, G.S., and the Supreme Court ruling. A public hearing on HB 5035 was held before the Planning and Development Committee during which public officials and employees, as well as the public, had an opportunity to comment. Unfortunately, although HB 5035 made it out of committee, it did so without the proposed workable "fix" to §1-217, G.S.[2]

With increased pressure from the Department of Correction Officers' union, a different "fix" was needed. After negotiations involving various coalition members, the Governor's Office and the Democratic and Republican Caucuses, new language was brought before the legislature in the form of an emergency certified bill, HB 5303, *An Act Concerning the Exemption from Disclosure of Certain Addresses under the Freedom of Information Act*. The bill passed both chambers and, within a few days, was signed by the Governor. HB 5303 provides, in part, that land records, voter lists and grand lists are no longer subject to the nondisclosure requirements of §1-217, G.S. In addition, HB 5303 provides that all other records are permitted to be disclosed without redaction of residential addresses, *except* when (1) the address is contained in the personnel, medical and similar file of an agency's employees, who are members of one of the protected groups; (2) a requester *specifically names* a person who has requested address confidentiality; or (3) the request is for an existing list derived from a searchable electronic database or for any list that the agency voluntarily creates in response to a FOI request, and the individual has requested address confidentiality. (A summary of Public Act 12-3 is attached for your reference).

Although the language of HB 5303 is convoluted and will undoubtedly need to be amended, without this "fix" municipal and state agencies would have the impossible burden of complying with the Supreme Court decision, and the public's right to access would have been curtailed. Hopefully, if the legislature revisits the issue next session, the result will be to provide further access to public records and greater clarity.

(2) Executive Sessions:

Early in the session, the GAE Committee Chairs, at the request of the CT Attorney General's Office, introduced Senate Bill 389, *An Act Redefining Executive Sessions under the Freedom of Information Act to Permit Certain Confidential Communications*. The bill's stated purpose was to permit public agencies to enter into executive sessions for the purpose of discussing the oral *or* written legal advice of a government attorney under the FOI Act and to limit the exception for oral communications to confidential communications.

The Commission had serious reservations about the bill. The FOI Act already permits an agency to enter into executive session to receive attorney-client privileged *oral* communications *as long as* the executive session is for one of five explicitly permitted purposes – including, but not limited to, discussions concerning the employment and performance of public officials and employees, and strategy or negotiations with respect to pending claims or litigation. The bill, as

[2] House Bill 5035, in its revised form, was ultimately adopted by the General Assembly, and became Public Act 12-157, *An Act Concerning Property Tax Assessment by Municipalities.*

written, would have given public agencies significantly greater authority to enter into closed session to discuss *any* issue as long as their attorney was involved.

Fortunately, following significant outcry from proponents of open-government, including the FOI Commission, CCFOI and various news media organizations, the bill was pulled before the scheduled public hearing date and never rescheduled. It would be surprising if a similar, perhaps narrower, proposal is not introduced next session.

(3) Economic Development:

Last, deeply tucked into one of two omnibus budget implementation bills, which were taken up in the one-day June special session, was an overly broad provision attempting to add a 27th exemption to the FOI Act.[3] There was no public hearing or debate on the impact of this proposal.

The proposed exemption in section 181 of emergency certified House Bill 6001, *An Act Implementing Provisions of the State Budget for the Fiscal Year Beginning July 1, 2012*, provided, in relevant part, that all records obtained by a state agency or a quasi-public agency related to a request for assistance from a business or organization seeking to expand or relocate to Connecticut would be exempt from disclosure if the disclosure of such records *could* adversely affect the financial interest of the state, the business or organization. The proposed exemption would essentially enable certain public agencies to withhold the release of any information concerning private businesses or organizations seeking state economic development assistance.

The Commission believed, and based on various news media coverage, that the proposal resulted from a case brought before the Commission involving economic development and the governor's First Five initiative.[4] The Commission found in favor of the Governor's Office, but the administration has expressed concerns that the exceptions to disclosure were not broad enough.

Fortunately, as with SB 389 (executive sessions, *discussed above*), following significant outcry from proponents of open-government, including CCFOI and various news media organizations, HB 6001 was amended (LCO #5819), striking the proposed exemption. The Governor's Office has made it clear, however, that the proposal, in a revised form, will likely be introduced again next session. Hopefully, at that point, there will be an opportunity for a public

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[3] The same exemption language appears to have been filed, during the regular session, as an amendment (LCO #5332) to HB 5018, *An Act Concerning Connecticut Innovations, Incorporated, and the Connecticut Development Authority*. The media has reported that the secretary of OPM was aware that this amendment was proposed during the hectic last days of the regular session. However, given that HB 5018 was *never* taken up, the public, including open government advocates, were *not* aware of the proposed amendment. There was no opportunity for public comment or debate.

[4] *See* Docket #FIC 2011-152; James Craven and the Norwich Bulletin v. Governor, State of Connecticut; and State of Connecticut, Office of the Governor.

hearing and comment on the detrimental impact of such proposed language on the public's right to know.

Notably, the successful defeat of this last minute amendment was due in large part to the rapid response of the media and members of CCFOI. The FOIC thanks them for writing about the subject and raising the necessary questions, with the right people, in such a timely manner. Their efforts made a significant and positive impact.

Acknowledgements:

We would like to provide special recognition to Claude Albert and Chris VanDeHoef with CCFOI for their tireless efforts during the legislative session to advocate for freedom of information. Members of the 1-217 coalition – especially, Essie Labrot (West Hartford Town Clerk), Joyce Mascena (Glastonbury Town Clerk), Antoinette "Chick" Spinelli (Waterbury Town Clerk) and Mike Dugan (lobbyist for the CT Town Clerks Association) - also deserve special recognition for their vigorous pursuit of a solution to the §1-217, G.S., problem.

We also thank Representative Russ Morin (D-28th Assembly District, Chair, GAE) and Senator Gayle Slossberg (D-14th District, Chair, GAE) for their assistance.

Bill Tracking:

During the *regular* legislative session, we monitored a total of 56 bills. A total of 52 received public hearings and FOIC staff prepared statements for and/or testified on 6 of those bills. As of June 20, 2012, of the 47 bills that received public hearings, a total of 13 have been signed by the Governor.

Below is a brief description of the bills of note:

FAVORABLE RESULTS – BILLS PASSED

1. HB 5303; P.A. 12-3. AN ACT CONCERNING THE EXEMPTION FROM DISCLOSURE OF CERTAIN ADDRESSES UNDER THE FREEDOM OF INFORMATION ACT.

Please see discussion of HB 5303, above.

2. HB 6001. AN ACT IMPLEMENTING PROVISIONS OF THE STATE BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2012.

Please see discussion of HB 6001, above.

UNFAVORABLE RESULTS – BILLS PASSED

1. SB 218; P.A. 12-73. AN ACT CONCERNING POLLING PLACES FOR PRIMARIES.

Senate Bill 218, *An Act Concerning Polling Places for Primaries*, was raised to permit small towns to reduce the number of polling places for primaries as a cost saving measure. In its original form, the raised bill did not include any language negatively impacting access to public records. Unfortunately, the bill came out of committee in a revised form requiring, in part, that objections from a candidate to a change in polling place(s) be kept confidential. Specifically, if a candidate objects to a change in polling place(s), the candidate must provide written notification to the Secretary of the State, who must keep the objection confidential. The revised bill, including the confidentiality language, made its way through the Committee on Planning and Development and both the Senate and House. The adopted bill became Public Act 12-73, *An Act Concerning Polling Places for Primaries, Registrars of Voters, Registry Lists, Voting District Maps, Election Returns and Supervised Absentee Voting at Institutions.*

Notably, although the bill was adopted by both the Senate and the House, it has been vetoed by the Governor, and returned to the Secretary of the State. In his June 6, 2012 veto message, the Governor expresses, in part, concerns with the relocation of polling locations due to "the potential for undermining the right to vote" as well as the procedure for the removal of registrars of voters because the outlined procedure in the bill is not "rigorous, effective and in accordance with traditional notions of due process."

As of June 18, 2012, the status of the bill is uncertain.

2. SB 501. AN ACT IMPLEMENTING CERTAIN PROVISIONS CONCERNING GOVERNMENT ADMINISTRATION.

Senate Bill 501 was introduced during the June Special Session as an emergency certified bill. SB 501 is 190 pages and consists of 173 amendments to existing statutes and/or creates new statutory language, including a confidentiality provision that was originally raised during the regular session in SB 426, which died on the House floor. Generally, this confidentiality provision provides that any electronic geographic information systems (GIS) data, which is shared by utility companies (i.e., electric and electric distribution companies) with municipalities, shall not be subject to disclosure under the FOI Act, and thereby, broadly protects any GIS data from public view. SB 501 made it through both houses and has been signed by the Governor.

(*For further discussion of the confidentiality provision, please see SB 426, below.)*

UNFAVORABLE RESULTS – BILLS DEFEATED

1. SB 430. AN ACT CONCERNING THE OFFICE OF GOVERNMENTAL ACCOUNTABILITY AND THE FREEDOM OF INFORMATION COMMISSION.

Senate Bill 430, which was introduced by the GAE Committee, proposed to adjust the quorum number for the FOI Commission. Pursuant to Public Act 11-48, *An Act Implementing Provisions of the Budget Concerning General Government*, the number of FOI Commissioners increased from five to nine. Currently, the quorum number set forth in the FOI Act is three members. The Commission supported an increase in the quorum requirement. The Commission, however, cautioned against increasing the quorum number any further given that the Commission is statutorily required to hear and decide appeals within one year of the filing of the notice of appeal. Increasing the number of members required to conduct business to more than five could impede the Commission's ability to decide all of its cases within one year, as it may be difficult to regularly secure the attendance of such a high number of Commission members at Commission meetings. The bill made it out of committee, but no further action was taken.

2. HB 5035. AN ACT REDUCING MANDATES FOR MUNICIPALITIES.

Please see discussion of HB 5035, above.

3. HB 5463. AN ACT CONCERNING REQUESTS FOR RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND APPOINTMENTS TO THE FREEDOM OF INFORMATION COMMISSION.

As mentioned above, HB 5463 contained two amendments proposed by the Commission this session. The bill proposed to change the term of the legislatively appointed members of the FOI Commission from two to four years, and to clarify that requests under the FOI Act may be oral *or* written.

The four new commissioners (appointed by the legislature) are currently appointed for two-year terms. The Commission proposed to amend such two-year appointments to correspond with the four-year appointments served by the five commissioners who are appointed by the governor.

In addition, the Commission proposed to amend Section 1-212(a) of the FOI Act to clarify that a request for copies of public records may be oral *or* written unless the public agency specifically requires, at the time the request is made, that the request be made in writing.[5] The Commission urged the legislature to adopt this provision because denying access to records solely on the basis of a lack of a written request may be a trap for the unsophisticated requester.

The bill passed the GAE Committee unanimously, but, despite attempts to have the General Assembly take up the bill, no further action was taken.

FAVORABLE RESULTS – BILLS DEFEATED

1. SB 389. AN ACT REDEFINING EXECUTIVE SESSIONS UNDER THE FREEDOM OF INFORMATION ACT TO PERMIT CERTAIN CONFIDENTIAL COMMUNICATIONS.

Please see discussion of SB 389, above.

2. SB 426. AN ACT CONCERNING GEOGRAPHIC INFORMATION SYSTEMS AND GEOSPATIAL INFORMATION SYSTEMS DATA SHARING.

Overall, the Commission did not oppose SB 426 given that it required the sharing of important GIS data by utility companies (i.e., electric and electric distribution companies) with municipalities. However, as discussed above, the bill also contained a confidentiality provision providing, in part, that any GIS data shall not be subject to disclosure under the FOI Act, and thereby, would broadly protect any GIS data from public view.

Based on testimony provided at the public hearing, it appeared that SB 426 was proposed in reaction to last year's historic snow storm and ensuing statewide power outages. Testimony provided in support of the bill focused primarily on how the sharing of this GIS data could improve storm and disaster response and recovery efforts, as well as increase timeliness and accuracy with respect to the restoration of utility services. The FOIC seemed to be the only one concerned with the confidentiality provision and the lack of public access.

In a written statement, the Commission argued that the proposed confidentiality language would, in essence, automatically exempt *all* of the GIS data provided to government agencies.

[5] A recent Appellate Court decision held, in part, that Section 1-212(a) of the FOI Act "clearly and unambiguously requires that an individual seeking to receive a copy of a public record…must reduce the request to writing in order for the request to be enforceable by the commission." Planning and Zoning Commission of the Town of Pomfret v. FOIC, et. al., 130 Conn. App. 448, 456 (2011)(emphasis added).

The Commission argued that this new provision was repetitive and unnecessary given that exemptions already exist that could exempt certain data at issue from disclosure. Specifically, the FOI Act already contains an exemption for trade secrets and documents that contain commercial or financial information given in confidence, as well as an exemption that provides that records may be withheld when there are reasonable grounds to believe that disclosure may result in a safety risk.

The bill made it out of the GAE Committee with substitute language, including a stricter confidentiality provision. The new language not only specifically exempted the data from disclosure under the FOI Act, it also contained a new requirement that the public agency, prior to the receipt of data, must demonstrate to the electric company that it has implemented appropriate procedures to protect the confidentiality of the information, and that the data could not be publicly disclosed or be subject to any public disclosure requirements without the prior consent of the company.

The bill also made it through the Energy and Technology Committee and the Senate with the same substitute language. SB 426 was never taken up by the House.

Unfortunately, however, the confidentiality provision was revived, as discussed above, during the June Special Session. The emergency certified bill SB 501 passed both houses and has been signed by the Governor.

NEUTRAL RESULTS – BILLS PASSED

1. SB 339; P.A. 12-205; AN ACT REVISING STATUTES CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

SB 339, in relevant part, makes certain changes to the fee monitoring requirements in §1-212 of the FOI Act. Under current law, the Department of Administrative Services (DAS) must *monitor* fees charged by agencies for computer-stored public records. As of July 1, 2012, DAS will be required to provide only *guidelines* to agencies. The Commission did not oppose this proposal.

2. HB 5514; P.A. 12-197; AN ACT CONCERNING VARIOUS REVISIONS TO THE PUBLIC HEALTH STATUTES.

HB 5514, which makes numerous changes to Department of Public Health-related statutes and programs, does not contain any provisions impacting access to information. However, in the final days of the session, Ron Robillard, a journalist and freelance writer, brought to the attention of the Commission and CCFOI a proposed House amendment (LCO #4569) that could have negatively impacted access to public records.

The proposed amendment broadened §52-146o, G.S., which prohibits physicians and surgeons from disclosing communications and information obtained from patients or their conservators or guardians with respect to any actual or supposed physical or mental disease or disorder during any civil action, or probate, legislative or administrative proceeding, with certain exceptions. The amendment expanded the prohibition to include *any "provider."* The amended language could have been used to withhold even the most benign record, so long as it in any way related to an individual seeking services from an expanded list of providers, including veterinarians. Fortunately, the bill passed without this alarming language.