

FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2015 REGULAR SESSION

By
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Summary of Legislative Session:

During the 2015 legislative session there were numerous pieces of legislation introduced that would impact the public's right to access government records (*e.g.*, SB 230, SB 848, SB 1056, SB 1096, HB 6813 and HB 6903, *discussed below*). The most crucial proposal pertained to the disclosure of arrest records during a pending prosecution.

House Bill 6750, *An Act Concerning the Requirement for Disclosure of Arrest Records under the Freedom of Information Act* sought to reverse the recent Connecticut Supreme Court decision in Commissioner of Public Safety v. Freedom of Information Commission, et. al., 312 Conn. 513 (July 15, 2014),¹ and to restore the standard for disclosure of law enforcement records during a pending prosecution to what had been the Freedom of Information Commission's interpretation of the law for many decades.

House Bill 6750, as originally proposed, required that during the pendency of a criminal prosecution, a law enforcement agency must disclose *at least* basic blotter information and one other piece of information, without redaction. All other records were required to be disclosed unless they fell within the Freedom of Information ("FOI") Act's "law enforcement exemption" in §1-210(b)(3), G.S.²

¹ In Commissioner of Public Safety, a request was made for access to a police report concerning the arrest of an individual who was charged with assault and attempted murder in connection with an incident that had occurred in Derby, CT. The Department of Public Safety denied the request claiming that the entire police report was exempt from disclosure pursuant to Conn. Gen. Stat. §1-215, and provided the requester with only a copy of a press release. After an administrative hearing, the Commission concluded that the Department had violated the FOI Act. The Department then appealed.

On appeal, the Commission asserted that §1-215, G.S., required the disclosure of "the record of arrest" and that, if an agency sought to withhold other police records, it must establish that such records were exempt from disclosure pursuant to the provisions of §1-210(b)(3), G.S. The Court, however, found that the Department's disclosure of the press release to the requester satisfied the requirements of §1-215, G.S., and that the Department was not obligated to make the full police report available during the pending criminal prosecution. The Court held that while a criminal prosecution is pending, §1-215, G.S., requires *only* that the Department disclose basic "police blotter" information about the arrest (*i.e.*, the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested) and either an arrest report, incident report, news release or other similar report of the arrest, designated by the agency.

² Section 1-210(b)(3) of the FOI Act provides that:

Opponents of the proposal, including the Office of the State's Attorney and the CT Police Chiefs Association, argued that requiring more disclosure would endanger witnesses, harm a defendant's right to a fair trial, jeopardize the integrity of a pending prosecution and would be burdensome, among other reasons. Towards the end of the session, some criminal defense attorneys also raised concerns regarding the Fourth, Fifth and Sixth Amendments of the U.S. Constitution. The FOI Commission and advocates of open government, however, maintained that the original proposed bill struck an appropriate balance between promoting transparency in law enforcement and preserving the integrity of pending prosecutions. In addition, the major concerns expressed by the opponents of the bill are already addressed in the FOI Act's law enforcement exemptions. The proposal also had the support of the CT ACLU and Office of the Chief Public Defender.

The bill that made it out of the Government Administration and Elections ("GAE") Committee restored the standard for disclosure of law enforcement records during a pending prosecution to what had been the FOI Commission's interpretation for 20 years. The GAE bill was then referred to the Judiciary Committee where it was amended. Unfortunately, under the amended Judiciary proposal, access to arrest records would remain very limited.

Subsequently, the Commission worked with open government advocates, the Office of the State's Attorney and legislators led by Representative Ed Jutila, to reach a solution that is agreeable to both open government advocates and law enforcement. House Bill 6750, as amended and passed by the House and Senate, restores some transparency and accountability to government during times when it is needed most – when government is impacting the freedom of its citizens by power of arrest and detainment – and preserves the integrity of a pending prosecution.

In brief, House Bill 6750 (Public Act 15-164) requires prompt disclosure of arrest warrants and affidavits, unless they are sealed by a court, in which case law enforcement must provide a document summarizing the circumstances that led to the arrest. In cases where an arrest is made without a warrant, access must be granted to the official police or incident report or similar official document. Finally, HB 6750 requires the disclosure of records, including video recordings, that depict an arrest or the custody of an arrestee during the period while a prosecution is pending. As of June 17, 2015, Public Act 15-164 has yet to be signed by the Governor. (A summary of Public Act 15-164 is attached for your reference.)

Nothing in the Freedom of Information Act shall be construed to require disclosure of... Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216....

Acknowledgements:

We would like to provide special recognition to Jim Smith, Dan Klau and John Bailey for their tireless efforts during the legislative session to advocate for freedom of information and good government.

We also thank the following legislators for their assistance: Representative Ed Jutila (D- 37th Assembly District); Representative Bob Godfrey (D-110th Assembly District); Representative Richard Smith (R- 108th Assembly District); Representative William Tong (D-147th Assembly District); Senator McLachlan (R-24th Senate District); Senator Steve Cassano (D-4th Senate District); and Senator Eric Coleman (D-2nd Senate District).

Bill Tracking:

During the regular legislative session, we monitored **239** bills. A total of **107** received public hearings and FOI Commission staff prepared statements for and/or testified on 10 of those bills. *As of June 17, 2015*, **21** of the **107** bills became public acts. A special session is scheduled for the end of June 2015.

Below is a brief description of the bills of note:

BILLS PASSED - FAVORABLE RESULTS

SB 1096; P.A. 15-__ . AN ACT CONCERNING CHARTER SCHOOLS.

SB 1096 was one of several bills this session that sought to improve transparency, accountability and performance of charter schools.³ SB 1096, as originally written, amended the definition of “charter management organization” (“CMO”) to explicitly subject such organizations to the FOI Act. Opponents of the bill argued that complying with the FOI Act would be burdensome, would distract and undermine the work performed by CMOs, and would have a chilling effect on donor contributions, among other reasons. The Education Committee voted the bill out of committee without the language subjecting CMOs to the FOI Act. The bill was subsequently amended by the Senate and provides for increased access to certain information. Specifically, the amended bill requires that each contract for whole school management services between a governing council of a state or local charter school and a CMO (1) provide that the governing council is entitled to receive copies of all records and files related to the administration of the charter school, including the compensation paid to the CMO and any expenditures of such compensation by the CMO, and (2) indicate that such records and files are subject to the FOI Act and may be disclosed by the governing council pursuant to the FOI Act. The amended bill permits the governing council to redact the personally identifiable information of donors from such records. SB 1096, as amended, passed the Senate and House.

It has been reported by the media that there were attempts made in a budget implementing bill to negate the provisions in Senate Bill 1096 as passed by the General Assembly. It has also been reported that the issue of transparency of charter schools may be taken up during the special session in June.

HB 6750; P.A. 15-164. AN ACT CONCERNING THE DISCLOSURE OF ARREST RECORDS DURING A PENDING PROSECUTION UNDER THE FREEDOM OF INFORMATION ACT.

Please see discussion of House Bill 6750, above.

BILLS PASSED - UNFAVORABLE RESULTS

SB 1056; P.A. 15-145. AN ACT CONCERNING THE COLLECTION AND REPORTING OF DATA RELATING TO SPECIAL EDUCATION EXPENDITURES.

Senate Bill 1056, as unanimously passed by the Senate and House, requires each local and regional board of education to submit a report on its expenditures for special education to the Department of

³ See also HB 6523, *An Act Concerning Charter School Transparency, Accountability and Performance*; HB 6613, *An Act Making Certain Revisions to the Charter School Laws*; and HB 6718, *An Act Making Certain Revisions to the Charter School Laws*.

Education. The report must contain information relating, but not limited, to (1) total expenditures for special education of the board of education, (2) expenditures for special education as a percentage of total school district expenditures, and (3) individual expenditures for each child requiring special education who is under the jurisdiction of the board of education. SB 1056, however, imposes limitations on the disclosure of such information and explicitly provides that the report is not considered a public record, as defined in the FOI Act.

BILLS DEFEATED - FAVORABLE RESULTS

HB 6905. AN ACT CONCERNING THE AWARDING OF COSTS FOR APPEALS UNDER THE FREEDOM OF INFORMATION ACT.

House Bill 6905 proposed to amend the FOI Act to require the Commission to pay attorney's fees to a complainant who prevails in an appeal against the Commission. The Commission objected to the proposal because, among other reasons, certain terms in the proposal were unclear and other terms duplicated similar provisions already contained in the Uniform Administrative Procedure Act relating to the awarding of reasonable fees and expenses to a prevailing party in administrative appeals, and were therefore unnecessary. The bill never made it out of the GAE Committee.

SB 848. AN ACT CONCERNING POLLING PLACES FOR PRIMARIES.⁴

Senate Bill 848 permitted registrars of voters of a municipality to reduce the number of polling places for primaries as a cost saving measure. The bill further provided that if a candidate objected to a change in polling place(s), the candidate must provide written notification to the Secretary of State, who must keep the objection confidential. The bill also prohibited the identification of the candidate in the Secretary of State's notice of objection provided to the registrars of voters. The FOI Commission questioned the purpose of such confidentiality provisions where that significantly affects the conduct of an election and contended that such provisions compromise the democratic process, including the principles of open government, where there is no apparent need to do so. The bill did not make it out of committee.

SB 27. AN ACT PROHIBITING THE INTERNET PUBLICATION OF VOTER INFORMATION.

Senate Bill 27 sought to protect voter privacy by prohibiting publication on the Internet by a private entity of voter information contained on any record of the registrars of voters. Opponents of the bill including, but not limited to CCFOI and CT ACLU, argued that the proposal violated the First

⁴ Notably, during the 2012 legislative session, the General Assembly passed P.A. 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*, which included similar confidentiality provisions regarding objections to changes in polling places. The Governor vetoed the bill, expressing, 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."

Amendment to the U.S. Constitution and Article 1, Section 5 of the Connecticut Constitution, and was therefore unconstitutional. The bill never made it out of the GAE Committee.

Notably, the following bills also proposed limiting access to voter information in order to protect the identity, privacy and safety of voters, but did not receive a public hearing: SB 703, *An Act Exempting Voter Personally Identifiable Information from the Freedom of Information Act*; HB 5169, *An Act Prohibiting the Disclosure of Voter Birth Date Information*; HB 5789, *An Act Protecting Voter Privacy*; and HB 6098, *An Act Protecting the Identity of Law Enforcement Officers*.

SB 876. AN ACT CONCERNING THE NONDISCLOSURE OF THE RESIDENTIAL ADDRESS OF SWORN MEMBERS OF A LAW ENFORCEMENT UNIT.⁵

Senate Bill 876 proposed to amend the residential address exemption in §1-217 of the FOI Act to include the residential address of a “sworn member of a law enforcement unit, as defined in section 7-294a, who has obtained certification.”⁶ The FOI Commission objected to the inclusion of additional employees to the residential address exemption list because: (1) it was overly broad; (2) it was unknown whether such employees are any more “at risk” than other public employees; and (3) the proposal would provide very little protection to those employees.⁷ The Commission urged the rejection of the proposal, unless it could be clarified as to whether such employees ought to be afforded protections (that are not granted to other categories of employees) due to the unique nature of their public positions. SB 876 did not make it out of committee.

⁵ During the 2014 legislative session, a similar bill, SB 273, *An Act Concerning the Nondisclosure of the Residential Address of Sworn Members of a Law Enforcement Unit*, died on the Senate calendar.

⁶ The proposal would expand the category to include a sworn member of “any agency, organ or department of this state or a subdivision or municipality thereof, or, if created and governed by a memorandum of agreement under section 2 of this act, of the Mashantucket Pequot Tribe or the Mohegan Tribe of Indians of Connecticut, whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection or investigation of crime.” See Conn. Gen. Stat. §7-294a. According to the Connecticut Police & Fire Union, such employees include POST-certified police officers at the University of Connecticut, state universities and community colleges, UConn Health Center, Department of Social Services, Department of Mental Health & Addiction Services, Department of Children & Families, Department of Motor Vehicles and Division of Revenue Services.

⁷ With the enactment of Public Act 12-3, *An Act Concerning the Exemption from Disclosure of Certain Addresses under the Freedom of Information Act*, section 1-217 of the FOI Act is now quite limited in scope. Under §1-217, land records (Gen. Stat. §7-35bb), voter lists (Title 9), and grand lists (Gen. Stat. §12-55) are no longer subject to the nondisclosure requirements. Section 1-217 prohibits employers of protected public employees from disclosing the employees’ residential addresses contained in their personnel files. With respect to public agencies (that are not the employer), disclosure is only prohibited in limited circumstances where (1) a request “specifically names” a protected person who has requested confidentiality; (2) the address can be redacted by a “reasonable effort” from a searchable electronic database; or (3) the agency has voluntarily created a record in response to an FOI request. (Conn. Gen. Stat. §1-217(c)(1) and (2)). Under these circumstances, individuals in the categories named in §1-217 must take affirmative steps to keep confidential their residential addresses.

The following bills also sought to limit access to residential addresses of certain categories of individuals, but did not receive a public hearing: HB 5327, *An Act Concerning the Nondisclosure of the Residential Addresses of Police Officers on Municipal Land Records*; and HB 5179, *An Act Prohibiting the Disclosure of the Residential Addresses of Certain Attorneys* (proposed to prohibit the disclosure of the residential address of any attorney who provides pro bono legal services in juvenile cases.)

BILLS DEFEATED - UNFAVORABLE RESULTS

SB 230. AN ACT CONCERNING THE FUNDS AND RECORDS OF THE UNIVERSITY OF CONNECTICUT FOUNDATION.

HB 6813. AN ACT REQUIRING TRANSPARENCY OF EXPENDITURES BY THE HIGHER EDUCATION FOUNDATIONS.

HB 6903. AN ACT SUBJECTING FOUNDATIONS OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION TO THE FREEDOM OF INFORMATION ACT.

During the 2015 legislative session, several bills proposed to increase transparency and accountability related to the activities and expenditures of foundations established for public institutions of higher education, including the UConn Foundation.⁸ Senate Bill 230, House Bill 6813 and House Bill 6903, referenced above, were heard by the GAE Committee and Higher Education and Employment Advancement Committee, respectively.⁹

Senate Bill 230 proposed to increase transparency and accountability for the activities of the UConn Foundation by subjecting the foundation to the provisions of the FOI Act, among others. Under the proposal, however, the foundation could withhold the identity of any donor who requested nondisclosure in writing. Similarly, House Bill 6813 and House Bill 6903 proposed to make *all* foundations established for public institutions of higher education public agencies subject to the FOI Act. Unlike SB 230, however, HB 6813 and HB 6903 proposed a new exemption under the FOI

⁸ See SB 98, *An Act Subjecting the UConn Foundation to the Freedom of Information Act*; SB 230, *An Act Concerning the Funds and Records of the University of Connecticut Foundation*; HB 5054, *An Act Requiring Transparency of Expenditures by the Foundation of the University of Connecticut*; HB 5484, *An Act Requiring Audits by the Auditors of Public Accounts of Foundations Established for Public Institutions of Higher Education*; HB 5575, *An Act Requiring the Auditors of Public Accounts to Audit the University of Connecticut Foundation*; HB 6813, *An Act Requiring Transparency of Expenditures by the Higher Education Foundations*; and HB 6903, *An Act Subjecting Foundations of Public Institutions of Higher Education to the Freedom of Information Act*.

⁹ During the 2014 legislative session, a similar bill, HB 5127, *An Act Defining the UConn Foundation as a Public Agency for Purposes of the Freedom of Information Act and Requiring Auditing of the Foundation by the Auditors of Public Accounts*, which was heard by the GAE Committee, proposed to subject the UConn Foundation to the FOI Act including access to the foundation's books and records maintained by the University of Connecticut. In addition, the bill proposed to subject the UConn Foundation to audits by the Auditors of Public Accounts. The bill died in committee.

Act that permitted any foundation to withhold personally identifiable information of a contributor or prospective contributor of a bona fide and lawful charitable contribution to the foundation.

Opponents of the bills argued that a foundation's ability to fulfill its purpose would be negatively impacted and its fundraising dramatically curtailed if the proposed bills were enacted. They maintained that exempting such foundations from the FOI Act is crucial to safeguard donor privacy and advance the foundations' missions. If greater information concerning donors is subject to public disclosure, it would have a chilling effect on the foundations' ability to fundraise.

Supporters of the bills, however, including the FOI Commission and CCFOI, maintained that foundations established exclusively to support a public institution should be accountable to the public. The public should have the right to access information to determine whether such foundations have properly allocated resources and transacted business appropriately. In addition, the FOI Commission believed that an opt-out provision for donors, as proposed in SB 230, would accomplish the apparent goal of shielding the identities of donors who wish to remain anonymous.

Senate Bill 230, House Bill 6813 and House Bill 6903 never made it out of committee. However, several amendments proposing greater transparency in public institutions of higher education, including the UConn Foundation, were filed on various unrelated bills.¹⁰ Two of the amendments (LCO## 7665 and 7707) were called in the Senate, but were rejected.

SB 1109. AN ACT CONCERNING EXCESSIVE USE OF FORCE.

Senate Bill 1109, as originally written, required police officers and certain other law enforcement officials to wear "body-worn recording equipment." In addition, the original bill would subject the images or video recordings captured by such "body-worn recording equipment" to disclosure under the FOI Act, unless such images or video recordings are exempt from disclosure. The Commission submitted a written statement in favor of the increased transparency that may result from the enactment of SB 1109. The bill made it out of the Judiciary Committee without substitute language, but was later referred to the Public Safety and Security Committee where it was voted out of committee with substitute language. The substitute bill eliminated the provisions requiring law enforcement officers to wear body cameras and to disclose the images or video recordings under the FOI Act. The bill was amended again when it was taken up by the Senate. Under the amended bill, certain images (*e.g.*, images of a homicide or suicide victim) captured by the "body-worn recording equipment" would not be considered to be a public record for purposes of disclosure under the FOI Act.¹¹

¹⁰ See *e.g.*, LCO ##7288, 7296, 7665, 7696, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708 and 7709, 8375, 8616 and 8967.

¹¹ Section 6(g) of Senate Bill 1109, as amended, provides:

Except as otherwise provided by any agreement between a law enforcement agency and the federal government, no police officer shall use body-worn recording equipment to intentionally record (1) a communication with other law enforcement agency personnel, except that which may be recorded as the officer performs his or her duties, (2) an encounter with an undercover officer or informant, (3) when an officer is on break or is otherwise engaged in a personal activity, (4) a person undergoing a medical or psychological evaluation, procedure or treatment, (5) any person other than a suspect to a

The amended bill passed the Senate, but the House never took action on the bill. The media has reported that House leaders intend to bring the bill to the floor for a vote when legislators reconvene for a special session in June 2015.

NEUTRAL BILLS – PASSED

SB 877; P.A. 15-73. AN ACT CONCERNING REVISIONS TO STATUTES CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

Section 4 of Senate Bill 877 amends §1-205(e) of the FOI Act and eliminates a requirement that the Department of Administrative Services conduct annual training sessions for members of public agencies on access to and disclosure of computer-stored public records. The Commission did not object to this proposal.

HB 6921; P.A. 15-213; AN ACT CONCERNING INVASIONS OF PRIVACY.

Section 5 of House Bill 6921 amends §1-210(b)(3)(G) of the FOI Act and permits a law enforcement agency to redact the name and address of a victim of voyeurism in a law enforcement record if such record was compiled in connection with the detection or investigation of crime, is not otherwise available to the public and disclosure of the record would not be in the public interest. Under current law, an agency may redact the name and address of a victim of a sexual assault or injury or risk of injury, or impairing of morals, or an attempt thereof.

The Commission did not object to this proposal.

crime if an officer is wearing such equipment in a hospital or other medical facility setting, or (6) in a mental health facility, unless responding to a call involving a suspect to a crime who is thought to be present in the facility. No record created (A) of an occurrence or situation described in subdivisions (1) to (6), inclusive, of this subsection, (B) when an officer is on the scene of an incident that such officer knows involves domestic or sexual abuse, or (C) of a victim of homicide, suicide or an accident, shall be deemed to be a public record for purposes of section 1-210 of the general statutes.

Freedom of Information Commission's Summary of
Changes to Gen. Stat. §1-215 by Public Act No. 15-164*

➤ Minimum Disclosure Requirements:

- Public Act 15-164 details the information that a police department is required to disclose from the time of an arrest and until a prosecution or prospective criminal law enforcement action is no longer pending against the person arrested. A police department has the discretion to disclose *more* than this amendment requires, if it chooses to do so.
- Public Act 15-164 **requires** law enforcement agencies to disclose:

(1) blotter information – name, race and address of the person arrested, the date, time, and place of arrest, and the offense for which the person was arrested;

and

- (2) i) In the case of an arrest by warrant which has not been judicially sealed: the arrest warrant application, including the affidavits in support thereof.
- ii) In the case of a warrantless arrest: the *official* arrest, incident or similar report.
- iii) In the case where the court has ordered an affidavit or report sealed in whole or in part:
- a. the portion of the affidavit or report that has not been sealed, if applicable *and*
 - b. a report summarizing the circumstances that led to the arrest of the person in a manner that does not violate the court sealing order.

- The **only redactions** permitted in this area are:

- (1) the identity of witnesses and
- (2) specific information about the commission of the crime, the disclosure of which law enforcement reasonably believes may prejudice the pending prosecution or a prospective law enforcement action. *For example*, information only the perpetrator of the crime would know.

* Please note: as of June 17, 2015, P.A.15-164 awaits the Governor's signature.

- **Public Records Documenting or Depicting the Arrest or Custody of the Arrested Person** – such as dash camera and body camera images - must be disclosed during the period in which the prosecution is pending, *unless* they are otherwise subject to an applicable exemption.

- **Notice to State's Attorney:**
 - Law enforcement agencies must provide notice to the local state's attorney when they receive requests for records documenting or depicting the arrest or custody of an arrested person.
 - This notice requirement does not give the state's attorneys the power to prohibit or delay a law enforcement agency from disclosing a record.

- **Opportunity to Intervene:**
 - The State's Attorney's office will have an opportunity to intervene in Freedom of Information Commission proceedings regarding requests for records documenting or depicting the arrest or custody of the arrested person.

- **Finite Time Period:**
 - Public Act 15-164 applies only to a finite time period: beginning with an arrest and until a prosecution or prospective criminal law enforcement action is no longer pending against the person arrested.
 - After that time, the Freedom of Information Act's general rule applies, that all public records must be disclosed unless subject to an exemption contained in any provision of the general statutes.