

**FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2010 REGULAR SESSION**

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Overall, the 2010, thirteen-week legislative session was deeply troubling for proponents of open and accessible government, resulting in several new pieces of legislation that negatively impact the cause of open and accessible government in Connecticut.

The Freedom of Information Commission (FOIC) was unable to block or revise several bills that have resulted in a setback for government transparency. This all occurred in a session where the Government Administration and Elections (GAE) Committee, the legislative body that tackles open government issues, did not even raise the only FOIC access-related initiative pertaining to judicial openness (which has been floating around the legislature for three years now).

The FOIC faced three significant challenges to open and accessible government – (1) the nondisclosure of personnel, medical or similar files of Department of Correction (DOC) employees, Department of Mental Health and Addiction Services (DMHAS) employees, and Board of Pardons and Paroles members and employees, to inmates; (2) the nondisclosure of certain information regarding members of senior centers and participants in senior center programs; and (3) the repeal of the web posting of minutes requirement for municipalities.

The DOC proposals (HB 5404, An Act Concerning the Nondisclosure of Certain Information Regarding Certain Employees to Inmates Under the Freedom of Information Act; and SB 221, An Act Prohibiting the Disclosure of Employee Files to Inmates) seeking to exempt from disclosure under the FOI Act, the personnel, medical or similar files of current or former DOC employees to people under DOC custody, was anticipated. A similar bill (HB 6709, An Act Concerning the Department of Correction) was proposed by the DOC during the 2009 legislative session that overwhelmingly passed the House, but surprisingly, was never called by the Senate. This session's bills received even greater support from legislators making this issue, once again, a major legislative battleground for the FOIC and advocates of open government. Of additional concern this year was the broadening of this exemption to include DMHAS employees and the Board of Pardons and Paroles members and employees. Throughout the session, the FOIC and CCFOI worked hard to persuade the DOC and the Legislature that current law already provides an appropriate balance for access, privacy and security, and that these proposals overlook the countervailing public policy interest in disclosure. However, it was an uphill battle from the start, and with Senator John Kissel, R-7th District, leading the way, government transparency lost in the end with the passage of HB 5404.

One of the biggest surprises and disappointments of this session was HB 5278, An Act Concerning Senior Centers and the Freedom of Information Act, exempting certain information regarding members of senior centers and participants in senior center programs. A similar bill (HB 6904, An Act to Exempt the Member List of Senior Centers from the Freedom of Information Act) was proposed nine years ago during the 2001 legislative session. However, since 2001, the issue has not been raised with the FOIC. Supporters of this year's bill argued that exempting the names, addresses, telephone numbers and email addresses of members of senior centers from disclosure would help secure their privacy and safety. The FOIC attempted to persuade such supporters that this exemption would not provide senior citizens with the protection that they seek, but could deprive them of vital information while simultaneously impeding upon the public's legitimate right to know. Ultimately, with the assistance of Senator Edith Prague, D-19th District, Chair of the Select Committee on Aging, the bill made its way through the General Assembly with overwhelming support.

During this legislative session, given the current economic crisis, many of the proposed bills were understandably aimed at providing mandate relief to municipalities. Unfortunately, some of the same proposals included provisions that would limit access to public information. The FOIC was particularly concerned with SB 365, An Act Concerning the Posting of Public Agency Minutes and Legal Notices on the Internet Web Site of a Municipality; and HB 5255, An Act Concerning Municipal Mandate Relief. Both of these bills contained proposals regarding the web posting of minutes requirement in an effort to help municipalities save money. SB 365, basically provided municipal agencies additional time to post meeting minutes, while HB 5255 completely eliminated the requirement. The FOIC argued that neither bill was necessary given that not only are towns complying with the requirements, but they are finding that posting the minutes online has actually reduced their workloads. In the end, even though SB 365 never made it out of committee, HB 5255 overwhelming passed the House and Senate.

There were a few legislative proposals that the FOIC believed would be an opportunity to have a positive impact on transparency (either in their original form and/or as amended), including: SB 30, An Act Concerning Legislative and Judicial Records and Concerning the Freedom of Information Act Exemption from Disclosure for Preliminary Drafts or Notes; SB 289, An Act Concerning the Online Submission and Posting of Statements of Financial Interests; and SB 423, An Act Concerning Recommendations of the Connecticut Town Clerks Concerning Election Laws. Regrettably, however, these bills were defeated.

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. We also thank the following individuals for their assistance: Senator Eric Coleman, D-Second District, Deputy President Pro Tempore and Chairman of the Planning and Development Committee; Representative Patricia Widlitz, D-Branford/Guilford, Deputy Majority Leader; Paul Wright with Prison Legal News; and Andrew Schneider with the American Civil Liberties Union of Connecticut.

During this legislative session, we monitored a total of 53 bills. A total of 50 received public hearings and FOIC staff prepared statements for and/or testified about 13 of those bills. A total of 16 passed both houses and became public acts.

A brief summary of the bills of note follows:

FAVORABLE RESULTS – BILLS PASSED

1. HB 5163; P.A. 10-155. AN ACT REQUIRING THE ESTABLISHMENT OF A SEARCHABLE DATABASE FOR STATE EXPENDITURES.

This bill, which passed the House and Senate unanimously, appears to provide for greater transparency and accountability in government. HB 5163 requires the legislative Office of Fiscal Analysis to establish and maintain a searchable electronic database for state expenditures; and to report quarterly to the Appropriations Committee on the database. The bill does include a provision that appears to limit access to public records, but it is unclear the extent to which access is impacted. Specifically, the bill states that a state agency is not required to “(1) Create unavailable financial or management data or an information technology system that does not exist, or (2) disclose consumer, client, patient or student information otherwise protected by law from disclosure.” However, there is nothing in the FOI Act that requires an agency to create a document, and why specific information regarding consumers, clients, patients or students would be included in a budgetary database is puzzling. The database is due on or before July 1, 2011.

UNFAVORABLE RESULTS – BILLS PASSED

1. HB 5255; P.A. 10-171. AN ACT CONCERNING MUNICIPAL MANDATE RELIEF.

This is the second year in a row that legislators proposed to delay or eliminate the web posting of minutes requirement for municipalities established by the legislature in 2008 with passage of Public Act 08-03, June Special Session (P.A. 08-03). During the 2009 legislative session, there were no fewer than 14 different proposals aimed at the same goal. This year, as outlined above, two bills became vehicles for modification of the web posting law – HB 5255, which passed both the House and Senate, and SB 365 (discussed below), which never made it out of the Planning and Development Committee.

HB 5255, in its final form, includes a provision completely repealing the web posting of minutes requirement for municipalities. Proponents of the bill tout this measure as mandate relief – claiming that the lack of funds, manpower and technical skills make it impossible for towns to comply with the existing law. The FOIC argued that the proposed measure is unnecessary. Since the initial outcry over P.A. 08-03, many towns have informed the FOIC that their workloads have diminished because more people are using the websites and are not calling or visiting offices for agendas, notices and minutes. In addition, of those few towns that either shut down or threatened to shut down their websites after P.A. 08-03 took effect, only two are currently without websites.

The FOIC and CCFOI attempted to mitigate the damage by having discussions with Representative James Spallone (D-36th District, Chairman of the GAE Committee) and

Representative Brendan Sharkey (D-88th District and Chair of the Planning and Development Committee), but to no avail. Towards the end of the session, the FOIC tried to get an amendment onto the bill that would have limited the repeal to only those towns with populations of less than 10,000, but, unfortunately, time ran out before Senator Coleman, who sponsored the amendment, was able to call it. The bill passed on the Senate's consent calendar during the final minute of the session.

2. HB 5278; P.A. 10-17. AN ACT CONCERNING SENIOR CENTERS AND THE FREEDOM OF INFORMATION ACT.

As stated above, this bill arose this legislative session without any warning. HB 5278 provides a broad stroke exemption from the FOI Act by excluding the names, addresses, telephone numbers and email addresses of members of senior centers and participants in senior programs from the disclosure requirements for public records. This bill was raised by Senator Prague with the goal of protecting the privacy of those who attend senior centers, and to protect them from "unscrupulous solicitors" wanting to take advantage of seniors.

The FOIC and CCFOI were the only ones to testify against the bill, arguing that removing senior center lists from the public domain would not protect members of senior centers from solicitors; could deprive seniors of good and valuable information (e.g., health insurance options, advances in medicine, new senior housing, new medications); and would chip away at the public's (including seniors) right to know. The bill, however, had strong support from legislators, senior centers and the Connecticut Department of Social Services, and passed easily through the Aging and GAE Committees, the House and then the Senate.

3. HB 5404; P.A. 10-58. AN ACT CONCERNING THE NONDISCLOSURE OF CERTAIN INFORMATION REGARDING CERTAIN EMPLOYEES TO INMATES UNDER THE FREEDOM OF INFORMATION ACT.

As outlined above, the issue regarding the nondisclosure of personnel, medical or similar files of current or former DOC employees to inmates was raised again this legislative session in the form of two bills – HB 5404 and SB 221 (discussed below).

HB 5404 in its original form prohibited the DOC Commissioner from disclosing the personnel or medical file or any similar file a current or former employee of the DOC, to any inmate, except pursuant to a court order. Then, early in the session, the GAE Committee, to our dismay, unanimously voted to expand this blanket exemption to DMHAS employees and Board of Pardons and Paroles members and employees. There was also an unsuccessful attempt made by the Director of Administrative Services for the Correctional Managed Health Care program at the University of Connecticut Health Center to include their employees who provide care to inmates.

The FOIC and CCFOI, along with the ACLU of Connecticut and Prison Legal News, who testified and submitted written statements, respectfully, made a strong effort to defeat this bill.

However, support for HB 5404 was unwavering throughout the entire session. In the end, HB 5404 (with a House amendment making it effective from passage) passed unanimously in the House and Senate without much discussion.

Notably, although this legislative battle with the DOC appears to be at an end, the same battle against other public agencies is foreseeable.

UNFAVORABLE RESULTS – BILLS DEFEATED

1. SB 30. AN ACT CONCERNING LEGISLATIVE AND JUDICIAL RECORDS AND CONCERNING THE FREEDOM OF INFORMATION ACT EXEMPTION FROM DISCLOSURE FOR PRELIMINARY DRAFTS OR NOTES.

This proposal sent a positive message about transparency, favoring disclosure of public records. It refined the existing exemption for preliminary drafts or notes, requiring a public agency to make a showing as to the specific reason why a particular document is exempt under that provision. The Governor, herself, in a written statement to the GAE Committee, urged the Committee, to act favorably on this bill “[i]n the spirit of good and open government.” The FOIC and CCFOI also testified at the GAE Committee’s public hearing in support of the bill. Unfortunately, no further action on the bill was taken after the hearing.

2. SB 289. AN ACT CONCERNING THE ONLINE SUBMISSION AND POSTING OF STATEMENTS OF FINANCIAL INTERESTS.

The FOIC supported this bill requiring that statements of financial interests be filed electronically and made available to the public online. This requirement represented a step forward in increasing the openness and accountability of public servants and would have increased citizen awareness of government. Unfortunately, even though the bill made it out of the GAE and Appropriations Committees, it died on the Senate calendar.

3. SB 423. AN ACT CONCERNING RECOMMENDATIONS OF THE CONNECTICUT TOWN CLERKS CONCERNING ELECTION LAWS.

At the end of 2009, the Superior Court affirmed that Section 1-217 of the FOI Act, prohibiting any public agency to disclose the residential addresses of certain enumerated categories of employees (e.g., employees of the DOC, police departments and judicial branch), does not permit residential addresses to be hidden from public records such as grand lists, land records, voter lists, and vital records. The case was recently taken up by the Connecticut Supreme Court, and a decision is anticipated at the beginning of next year.

This same issue surfaced this legislative session in SB 423. The FOIC, along with the Connecticut Conference of Municipalities and Connecticut Town Clerks Association, Inc., supported a proposal in SB 423 aimed at codifying that certain municipal records are not exempt

from the FOI Act, including, land records, maps and surveys; trade names certificates; dog licenses; vital records; lists of appointed and elected officials; meeting minutes; petitions; and registry and enrollment lists of voters.

At the public hearing before the GAE Committee, some individuals, including employees and officials from the DOC and Office of Chief State's Attorney, testified that releasing any public record with the residential addresses of persons listed in Section 1-217 poses a security risk. The FOIC testified that such security concerns cannot trump the need to preserve the integrity of public records and that it would lead to total chaos if residential addresses were to be redacted from certain public records – record custodians would have no way of knowing from the information provided in the records whether an individual's residential address was exempt and it would be extremely difficult for financial transactions (in particular, real estate transactions) to be carried out.

Following the public hearing on this bill, it was suggested by Representative Spallone, at a GAE Committee meeting, that the law remain in its current form and that this address exemption issue will require further study. The bill made it out of GAE, but with substitute language eliminating the provision exempting certain town records from the address confidentiality provisions. It will not be surprising if this issue resurfaces during the 2011 legislative session.

FAVORABLE RESULTS – BILLS DEFEATED

1. SB 221. AN ACT PROHIBITING THE DISCLOSURE OF EMPLOYEE FILES TO INMATES.

SB 221 was one of the two bills this legislative session proposing to create a blanket exemption from inmates for all DOC, DMHAS and Board of Pardons and Paroles personnel records. The language of the bill was identical to that of HB 5404, as passed, except for the effective date.

The Judiciary Committee hearing on SB 221, which occurred before the GAE Committee hearing on HB 5404, lasted several hours and was filled with passionate, but arguably, at times, questionable, testimony by the proponents and supporters of the bill. Regrettably, only the FOIC and CCFOI testified and submitted written statements in opposition to the bill. SB 221 made it out of both the Judiciary and GAE Committees with unanimous support and passed the Senate without much discussion. Fortunately, the bill was never called by the House and died on the House calendar without a vote. Ultimately, however, even though this bill was defeated, this is not an actual positive result given the passage of HB 5404 (as noted above).

2. SB 230. AN ACT CONCERNING THE VIDEOTAPING OF CUSTODIAL INTERROGATIONS.

The FOIC did not oppose the stated purpose of the bill - to improve the reliability of confessions by providing that statements made by a person during a custodial interrogation at a

place of detention are presumed inadmissible unless the custodial interrogation is electronically recorded. However, the FOIC did object to the bill's provisions excluding the recording of statements made by a person during a custodial interrogation from disclosure under the FOI Act. The FOIC testified at the public hearing, arguing that permanently excluding the videotapes from the public does nothing to increase government transparency, and that the FOI Act already permissively exempts from disclosure information to be used in prospective law enforcement actions. This proposal would have further eroded the state's FOI Act and the public's confidence in law enforcement. The General Assembly did not take any further action beyond the public hearing.

3. HB 5344. AN ACT CONCERNING THE NONDISCLOSURE OF INFORMATION REGARDING PERSONS ARRESTED FOR DOMESTIC VIOLENCE.

During the 2009 legislative session, the FOIC and other advocates for open government were placed in an uncomfortable position of appearing to argue against protection for victims of crime and their families in opposing a bill (HB 6670, An Act Concerning the Rights of Crime Victims and the Duties of the Office of Victims Advocate) proposing to give victims the right to invoke an invasion of privacy standard before the release of criminal records. The FOIC testified that, if passed, the bill would have severely eroded the public right to access law enforcement records by excluding from public scrutiny a broad category of criminal records without giving the victims of crime the sense of privacy they seek; and that the bill ignored the fact that there are protections in place for victims when it comes to criminal records.

During this legislative session, there was a similar misplaced attempt to protect crime victims by prohibiting police departments from releasing the names of people arrested for domestic violence. HB 5344 was put forward by Representative Fred Camillo, R-151st District, on behalf of the police in his district. The FOIC objected to the bill for the same reasons testified to against HB 6670 last year. Opposition to the bill also came, unexpectedly, from the Department of Public Safety, State of Connecticut Office of Victim Advocate, Connecticut Police Chiefs Association and the Connecticut Coalition Against Domestic Violence, a victim's advocacy group. Some of the concerns expressed in their written statements to the General Assembly included that the passage of the bill would "undue [sic] the progress" that domestic violence victims and advocates have made over the years; provide "the abuser a certain immunity from punishment;" impede the media's and community's "legitimate need to know the prevalence of domestic violence in our communities;" "conflict with the Department of Public Safety's obligations pursuant to CGS Section 1-215;" and increase costs to police departments required to evaluate and determine whether records should be disclosed.

We believe that due to immediate opposition to the bill, Representative Camillo pulled the bill prior to the hearing scheduled before the Public Safety and Security Committee. This issue may be reintroduced during the 2011 legislative session in a revised form.

NEUTRAL RESULTS – BILLS PASSED

1. SB 188; P.A. 10-149. AN ACT ESTABLISHING UNIFORM PROCEDURES REGARDING NEW HOME CONSTRUCTION CONTRACTOR AND HOME IMPROVEMENT CONTRACTOR AND SALESMAN-RELATED COMPLAINTS.

The original bill proposed to establish a new Department of Consumer Protection (DCP) database for accepting, processing and reporting complaints against home construction and home improvement contractors. Although the FOIC did not take a position on the merits of this proposal, we were concerned that the language of the bill was unclear and may have negative implications on the right to access public records, insofar as the bill referenced removing complaints from the database under certain circumstances and point in time. The bill made it out of the General Law Committee with substitute language that required the DCP commissioner to simply study (rather than implement) measures to improve its process. The bill (with the substitute language) passed the House and Senate. The DCP report is due at the end of this year to the General Law Committee.

2. SB 248; P.A. 10-122. AN ACT CONCERNING THE REPORTING OF ADVERSE EVENTS AT HOSPITALS AND OUTPATIENT SURGICAL FACILITIES AND ACCESS TO INFORMATION RELATED TO PENDING COMPLAINTS FILED WITH THE DEPARTMENT OF PUBLIC HEALTH.

The extent to which this bill impacts access to public records is uncertain. The bill appears to provide for greater transparency in the reporting of adverse events at hospitals and outpatient surgical facilities – but there remain limitations on disclosure. Although the bill requires the Department of Public Health’s annual adverse events report to the General Assembly to include “aggregate” and “contextual” information for each hospital and outpatient surgical facility where the event occurred, and allows the hospitals and surgical facilities to provide informational comments about the adverse events, it does not require the Department of Public Health (DPH) to provide the names of the hospitals and surgical facilities where the adverse events occurred nor a summary of their corrective action plans (both of which were proposed in the original bill). In addition, the annual reporting requirement continues to apply only to the General Assembly, not the general public, and does not become effective until 2011. The bill also allows the DPH to provide the person filing an adverse events complaint with access to investigatory records, but with limitations – no copying of records is permitted and personnel or medical records or similar files the disclosure of which would constitute an invasion of person privacy are exempt. The bill, as amended, passed the House and Senate unanimously.

3. SB 494; P.A. 10-179. AN ACT MAKING ADJUSTMENTS TO STATE EXPENDITURES FOR THE FISCAL YEAR ENDING JUNE 30, 2011.

This year’s budget bill requires the creation of a task force to study converting legislative documents (e.g., bills, amendments, calendars) from paper to electronic form, placing them on the internet, and removing the requirement that such documents be published. The task force, whose members were appointed by June 1, 2010, will have to examine the feasibility of

producing the electronic documents, the cost of production, and the need to make the documents available to legislators and state libraries. The report is due to the General Assembly by December 1, 2010, and is likely to be taken up next session.

NEUTRAL RESULTS – BILLS DEFEATED

1. SB 365. AN ACT CONCERNING THE POSTING OF PUBLIC AGENCY MINUTES AND LEGAL NOTICES ON THE INTERNET WEB SITE OF A MUNICIPALITY.

The bill contained proposals regarding the posting of meeting minutes and legal notices on a public agency's website.

With respect to the web posting of minutes requirements, SB 365 appeared to take a more rational approach than some other proposals, such as HB 5255 (discussed above). SB 365 proposed to extend the deadline for posting from seven to 14 days rather than completely repealing the requirements. The bill also proposed to give all agencies almost two more years to study and address their concerns about the posting requirements without being in violation of the FOI Act. The FOIC had some concerns about the steps proposed for agencies to avoid being in violation of the Act - but a delay would have been better than a complete repeal (as has resulted in the passage of HB 5255).

The bill also contained language, opposed by both CCFOI and the FOIC, that would allow municipalities to post their legal notices on town websites rather than printing them in newspapers. Proponents of this provision said that this option would save the towns money in that they would avoid the costs associated with legal advertising. However, the public's right to know would have suffered greater harm. Opponents of this provision argued that although individuals are getting more critical information on the Internet, many individuals still continue to rely on newspapers for legal notices.

SB 365 appeared to have some momentum throughout the session. The bill cleared the GAE Committee and made it to the Senate calendar. However, once the Senate referred it to the Planning and Development Committee, it failed. It is likely that both the website posting of minutes and legal notices issues will resurface again in the 2011 legislative session.

2. SB 457. AN ACT CONCERNING THE DEPARTMENT OF CORRECTION.

This is the second year in a row that this bill has come before the legislature. The bill adds to the list of records that may be exempt from disclosure if the DOC Commissioner reasonably believes that disclosure may result in a safety risk, to include records that relate to the physical plant, infrastructure and site conditions of correctional institutions or facilities. The FOIC did not object to the proposed bill as written – indeed, the FOIC helped the DOC draft the proposed measure as an amendment to a similar legislative proposal submitted by the DOC last year. However, we continued to monitor the bill as a possible vehicle for additional exemptions to the FOI Act. The bill cleared the Judiciary and GAE Committees, but died on the Senate calendar.

3. HB 5122. AN ACT ESTABLISHING A PAINT STEWARDSHIP PROGRAM.

The title of this bill would not ordinarily raise concerns about access to government. However, the bill, in its original form, contained a broad secrecy provision and attempted to carve out yet another unnecessary exception to the state's government transparency law. The bill required the production of, and submission to the Department of Environmental Protection, a report about the collection of data concerning paint disposal, which would have been exempt from the FOI Act. Working with Representative Widlitz, the proponent of the bill, the FOIC and CCFOI were able to remove such confidentiality language. The bill in its revised form passed the House, but then died on the Senate calendar.