

WILLIAM TONG  
ATTORNEY GENERAL



55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Office of the Attorney General  
State of Connecticut

(860) 808-5319

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By Hand Delivery and Email

The Honorable Themis Klarides  
House Minority Leader  
Legislative Office Building  
300 Capitol Avenue, Suite 4200  
Hartford, CT 06106-1591

Dear Minority Leader Klarides:

You have asked for a formal opinion as to whether records in your possession that are related to your service on the board of directors of The Partnership for Connecticut, Inc., are subject to disclosure under the Connecticut Freedom of Information Act, Conn. Gen. Stat. §§ 1-200, *et seq.* (FOIA).

The Partnership for Connecticut, Inc., is a non-profit, non-stock corporation created by Connecticut Public Act 19-117, §§ 183-189. Using a mix of state and private funds, the corporation's purpose is to strengthen public education in the state, support financial inclusion, social entrepreneurship, and economic development in under-resourced communities, promote upward mobility by connecting at risk high school age youths and young adults to educational and career opportunities, and expand collaboration between the state and philanthropic entities in carrying out these goals. PA 19-117, § 183(b). Section 185 of the Act states that the corporation's first thirteen-member board of directors shall include the minority leader of the House of Representatives, as well as the Governor, president *pro tempore* of the Senate, the speaker of the House, and the minority leader of the Senate. Therefore, as the minority leader of the state House of Representatives, you are an *ex officio* member of the corporation's board.

You note that as a state legislator, you are subject to FOIA, which generally requires you to treat records in your possession as public records subject to disclosure. The corporation, however, is

exempted from FOIA pursuant to Public Act 19-117, § 183(c). Given this situation, you question how you should respond to requests from the public seeking disclosure of records related to your service on the corporation's board of directors.

We conclude that if presented with the issue, the Connecticut Freedom of Information Commission or a court would likely hold that notwithstanding the corporation's exemption from FOIA, you remain subject to FOIA in your role as the House minority leader and must disclose records in your possession relating to your service on the corporation's board of directors unless one of the statutory exemptions to FOIA applies.

### Discussion

The Connecticut Freedom of Information Act, Conn. Gen. Stat. § 1-200, *et seq.* (FOIA), provides in pertinent part that "[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by *any public agency*, whether or not such records are required by any law or by any rule or regulation, shall be public records" and every person shall have the right to inspect and copy them. Conn. Gen. Stat. § 1-210(a) (emphasis added). "Public agency" is defined broadly to include "[a]ny executive, administrative or *legislative office of the state* . . . and any state or town agency, any department, institution, bureau, board, commission, authority or *official of the state*," among others. Conn. Gen. Stat. § 1-200(1)(A) (emphasis added).

As a general rule, a private corporation is not a public agency and therefore not subject to FOIA. But when a corporate entity is created, funded, and regulated by the state and performs a governmental function, a court may deem it the functional equivalent of a public agency and therefore subject to FOIA. *See, e.g., Board of Trustees of Woodstock Academy v. Freedom of Information Commission*, 181 Conn. 544 (1980); *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 47 Conn. App. 466 (1998); Conn. Gen. Stat. §§ 1-200(1)(B), 1-200(4). Presumably to avoid any such uncertainty with regard to the



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Partnership for Connecticut, the General Assembly directed that "[t]he corporation shall not be construed to be a . . . public agency, . . . or to perform a governmental function." PA 19-117, § 183(c). Because it is not a public agency, the Partnership for Connecticut is expressly exempted from FOIA.

The fact that the corporate entity is exempted from FOIA does not mean that you as an individual are not subject to FOIA. In serving on the board of directors, you are serving in your capacity as minority leader, not as a private citizen. Section 185(a)(1) of Public Act 19-117 expressly states that the board of directors shall include "[t]he minority leader of the House of Representatives." PA 19-117, § 185(a)(1)(G). It is therefore specifically because of your current official position that you are serving on the board. As noted above, FOIA's definition of "public agency" includes any "legislative office of the state" and any "official of the state". Conn. Gen. Stat. § 1-200(1)(A). The Freedom of Information Commission has consistently held that because FOIA defines a "public agency" to include "[a]ny . . . legislative office of the state," Conn. Gen. Stat. § 1-200(1)(A), state legislators are subject to FOIA. *See Freedom of Information Commission, Declaratory Ruling #90; Godbout v. Ayala and Hartley*, FIC 2013-183, ¶ 1 (FOIC Feb. 11, 2014). Because you are on the board by virtue of your position as a minority leader and legislators are subject to FOIA, you are subject to FOIA while serving on the board.

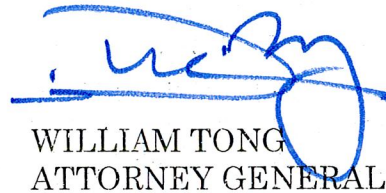
Although the General Assembly could have exempted you from FOIA by including express language to that effect in Public Act 19-117, it did not do so. Nor did it include any language requiring that the corporation's records be kept confidential, as it has done in other statutes concerning other entities. *See, e.g.*, Conn. Gen. Stat. §§ 51-44a(j); 36a-21(a). It is a fundamental rule of statutory construction that "[a] court must construe a statute as written," *McCullough v. Swan Engraving, Inc.*, 320 Conn. 299, 309 (2016), and "may not by construction supply omissions." *Id.* Accordingly, given the lack of any language exempting the legislative board members from FOIA or requiring that they keep the corporation's records confidential, we cannot read any such provisions into the statute.

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Our conclusion that records in your possession relating to the Partnership for Connecticut are subject to FOIA does not change the fact that the corporation itself is exempted from FOIA. Thus, FOIA's record disclosure provisions and open meeting requirements do not apply to the corporation and are unaffected by your participation on the board. It is only records relating to the corporation that are in your possession that would be subject to disclosure in response to a citizen request, and only if they were not otherwise statutorily exempt from FOIA.

It should be noted that in reaching this conclusion we have not consulted with the Freedom of Information Commission. It is possible that the Commission might reach a different conclusion and you may wish to seek its advice. Nonetheless, this opinion represents our reasoned determination of how the Commission or a court would likely rule if presented with the issue.

Very truly yours,



WILLIAM TONG  
ATTORNEY GENERAL