

FOI 101

A Crash Course in the FOI Act

Present by
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James Madison (1751–1836)

“A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both.... A people who mean to be their own Governor, must arm themselves with the power which knowledge gives.”

ORDER OF PRESENTATION

- ▶ The Connecticut FOI Act
 - Applicability
 - The Commission
 - The Public Meeting Provisions
 - The Public Records Provisions
- ▶ Q & A

THE CONNECTICUT FOI ACT: APPLICABILITY

**THE
FREEDOM OF INFORMATION ACT
IN BROAD TERMS**

THE FOI COMMISSION



THE FOI COMMISSION

- ▶ Comprised of nine members appointed to staggered terms; five appointed by Governor, four appointed by legislature leadership
- ▶ No more than five members can be members of the same political party

THE FOI COMMISSION

- ▶ Mediate, hear and decide citizen complaints
- ▶ Issue declaratory rulings
- ▶ Public education and training of the public and public officials
- ▶ Makes recommendations to the legislature
- ▶ FOI Commission staff represents the Commission in court

THE FOI COMMISSION

- ▶ Order the disclosure of public records
- ▶ Declare null and void votes taken at meetings held in violation of the FOI Act
- ▶ Fine the responsible public officials for violation, without reasonable grounds, of the FOI Act
- ▶ Fine complainants who bring FOI complaints frivolously, without reasonable grounds and solely for the purpose of harassment

The Process

Filing a Complaint

- ▶ Clearly written letter of complaint (appeal) to the Commission (enclose the request letter and any other documents relevant to the request)
- ▶ File complaint with FOI Commission within *30 days* after denial of any right conferred by the FOI Act to avoid loss of subject matter jurisdiction (Commission's authority to hear the complaint).

The Process

The Ombudsman Program

- ▶ Form of mediation
- ▶ Attempt to reach amicable resolution of complaints
- ▶ Discussions are confidential, no carryover to hearing if negotiations are not successful
- ▶ Ombudsman may not discuss case with Hearing Officer
- ▶ Settlements can include: narrowing of issues, partial release of requested records or release of redacted records, written admission of FOI violation, scheduling of FOI workshops by Commission staff

The Process

The Hearings

- ▶ Contested case hearings are 90 minutes.
- ▶ Non-formal proceeding, however, preparation is important.
- ▶ No lawyer required
- ▶ Testimony, exhibits and arguments are presented
- ▶ Recommendations, called hearing officer reports, submitted to all parties and the Commission.
- ▶ Commission makes final decision at a meeting.

The Process

The Commission Meeting

- 10 minutes of legal argument permitted to each party.
- Time should be used to advocate for or against the hearing officer's report.
- No testimony or fact-finding permitted.
- Commission may accept the hearing officer's report, reject it, or change it.

The Public Meetings Provisions



"Everyone here? Good. Meeting topic: Setting world record for shortest meeting. All in favor say eye. Eyes have it. Meeting over."

What is a PUBLIC MEETING?

*See definition at §1-200(1), G.S.
(page 1 of the Act)*

Public Meetings – General Rule

The meetings of all public agencies, except executive sessions as defined in C.G.S. sec. 1-200(6) shall be open to the public....
Conn. Gen. Stat. sec. 1-225(a)



Executive Sessions



3 Types of Public Meetings

- ▶ Regular
- ▶ Special
- ▶ Emergency

NOTICE OF MEETINGS

Type	Notice	Agenda/ Notice Contents	Adding to Agenda/ Notice	Filing Record of Votes	Filing Minutes
Regular	File yearly schedule with Sec'y Of State (state) or Town Clerk (municipal) by Jan. 31 st .**	Agenda available at least 24hrs. before meeting.**	Agenda items may be added by 2/3 vote of those members present and voting.	Within 48 hrs. after meeting (if minutes not available within 48 hours).	Within 7 calendar days after meeting.***
Special	At least 24 hrs. before meeting, file at Sec'y Of State (state) or Town Clerk (municipal).*	At least 24 hrs. before meeting. Time, place and business must be included in notice.*	Not permitted	Within 48 hrs. after meeting (if minutes not available within 48 hours).	Within 7 business days after meeting.***
Emergency	None required if emergency is justified.	None required if emergency is justified.	Only emergency matters may be considered.	Within 48 hrs. after meeting (if minutes not available within 48 hours).	Within 72 hrs. after meeting. Must state reason for emergency.***

* Available with Sec'y Of State (state) or Town Clerk and in place of business. Also, must be posted on agency website.

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Emergency Meeting

**LACK OF PLANNING
ON YOUR PART
DOES NOT
CONSTITUTE
AN EMERGENCY ON
MY PART.**



Emergency = Unpredictable & Unavoidable



The Public Records Provisions

What is a public record?

See definitions at:

Conn. Gen. Stat. sec. 1-200(5)

Conn. Gen. Stat. sec. 1-210(a)

and

Conn. Gen. Stat, sec. 1-212(a)

PUBLIC RECORDS

GENERAL RULES

- ▶ Right to inspect records promptly during regular office or business hours
- ▶ Right to receive a copy promptly upon request
- ▶ No duty to conduct research
- ▶ No duty to create records that do not already exist
- ▶ Electronic scanning of records now recognized by statute

PUBLIC RECORDS PROMPTNESS

- ▶ Means “without undue delay”
- ▶ Take into account the agency’s workload
- ▶ Take into account the requester’s time requirements
- ▶ Take into account size and difficulty of the request

PUBLIC RECORDS

THE *4 BUSINESS DAY* RULE

- ▶ Denial of the right to inspect or copy records shall be made within four business days of a request
- ▶ Failure to comply with a request to inspect or copy public records within the applicable number of business days shall be deemed to be a denial from which an appeal can be taken
- ▶ Best practice: at minimum, agency should acknowledge request within four business days

Conn. Gen. Stat. sec. 1-206(a)

PUBLIC RECORDS COST OF COPIES

- State Agencies – no more than 25 cents per page
- All other public agencies – no more than 50 cents per page
- If any copy requires a transcription, or if any person applies for a transcription of a public record, the fee for such transcription shall not exceed the cost thereof to the public agency

Conn. Gen. Stat. sec. 1-212(a)(1) and (2)

PUBLIC RECORDS COST OF COPIES

Computer-Stored Public Records

- ▶ Any agency which maintains records in a computer storage system must provide a copy of any nonexempt data, on paper, disk, tape or any other electronic storage device or medium requested by the person, if the agency can reasonably make such copy or have such copy made
- ▶ Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of C.G.S. sec.1-212

Conn. Gen. Stat. sec. 1-211

PUBLIC RECORDS EXCEPTIONS, EXEMPTIONS & EXCLUSIONS

- ▶ Exemptions are permissive or discretionary – i.e., an agency need not invoke them
- ▶ Exemptions are listed and described in C.G.S. sec. 1-210(b) of the FOI Act

PUBLIC RECORDS EXCEPTIONS, EXEMPTIONS & EXCLUSIONS

- ▶ Exclusions are mandatory
- ▶ They're listed and described in other sections of the FOI Act (e.g., C.G.S. sec.1-217 which excludes residential addresses of certain public safety officials)

Frequently Claimed Exemptions

- ▶ Invasion of privacy [1-210(b)(2), G.S.]
- ▶ Law Enforcement records [1-210(b)(3), G.S.]
- ▶ Test Questions [1-210(b)(6), G.S.]
- ▶ Privileged communications [1-210(b)(10), G.S.]
- ▶ DOC & safety risk [1-210(b)(18), G.S.]
- ▶ DESPP & Safety Risk [1-210(b)(19), G.S.]

Invasion of Privacy

Karen Perkins v. FOIC

635 A.2d 783, 228 Conn. 158 (Conn. 1993)

Law Enforcement Records

Test Questions

DOC & Safety Risk

[1-210(b)(18), G.S.]

DESPP & Safety Risk [1-210(b)(19), G.S.]

Search v. Research

- ▶ Public agencies are required to search
- ▶ Public agencies are not required to perform research

BUT WHAT'S THE DIFFERENCE?



Wildin v. FOIC

56 Conn.App.683(Conn.App.2000)

“ A record request that is simply burdensome does not make that request one requiring research.” Id. at 687.

OVERLY BURDENSOME REQUESTS

See also 2005 -475 and 2012-405



IF WE HAVE TIME:

- ▶ The Address Exemption
- ▶ The new Arrest Records provisions

Q&A

Thank you for attending!