



# Senate

General Assembly

**File No. 325**

February Session, 2006

Substitute Senate Bill No. 71

*Senate, April 4, 2006*

The Committee on Government Administration and Elections reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE DISCLOSURE OF SENSITIVE RECORDS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-210 of the 2006 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2006*):

4 (a) Except as otherwise provided by any federal law or state statute,  
5 all records maintained or kept on file by any public agency, whether or  
6 not such records are required by any law or by any rule or regulation,  
7 shall be public records and every person shall have the right to (1)  
8 inspect such records promptly during regular office or business hours,  
9 (2) copy such records in accordance with subsection (g) of section 1-  
10 212, or (3) receive a copy of such records in accordance with section 1-  
11 212. Any agency rule or regulation, or part thereof, that conflicts with  
12 the provisions of this subsection or diminishes or curtails in any way  
13 the rights granted by this subsection shall be void. Each such agency

14 shall keep and maintain all public records in its custody at its regular  
15 office or place of business in an accessible place and, if there is no such  
16 office or place of business, the public records pertaining to such agency  
17 shall be kept in the office of the clerk of the political subdivision in  
18 which such public agency is located or of the Secretary of the State, as  
19 the case may be. Any certified record hereunder attested as a true copy  
20 by the clerk, chief or deputy of such agency or by such other person  
21 designated or empowered by law to so act, shall be competent  
22 evidence in any court of this state of the facts contained therein. Each  
23 such agency shall make, keep and maintain a record of the proceedings  
24 of its meetings.

25 (b) Nothing in the Freedom of Information Act shall be construed to  
26 require disclosure of:

27 (1) Preliminary drafts or notes provided the public agency has  
28 determined that the public interest in withholding such documents  
29 clearly outweighs the public interest in disclosure;

30 (2) Personnel or medical files and similar files the disclosure of  
31 which would constitute an invasion of personal privacy;

32 (3) Records of law enforcement agencies not otherwise available to  
33 the public which records were compiled in connection with the  
34 detection or investigation of crime, if the disclosure of said records  
35 would not be in the public interest because it would result in the  
36 disclosure of (A) the identity of informants not otherwise known or the  
37 identity of witnesses not otherwise known whose safety would be  
38 endangered or who would be subject to threat or intimidation if their  
39 identity was made known, (B) signed statements of witnesses, (C)  
40 information to be used in a prospective law enforcement action if  
41 prejudicial to such action, (D) investigatory techniques not otherwise  
42 known to the general public, (E) arrest records of a juvenile, which  
43 shall also include any investigatory files, concerning the arrest of such  
44 juvenile, compiled for law enforcement purposes, (F) the name and  
45 address of the victim of a sexual assault under section 53a-70, 53a-70a,  
46 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or

47 impairing of morals under section 53-21, or of an attempt thereof, or  
48 (G) uncorroborated allegations subject to destruction pursuant to  
49 section 1-216;

50 (4) Records pertaining to strategy and negotiations with respect to  
51 pending claims or pending litigation to which the public agency is a  
52 party until such litigation or claim has been finally adjudicated or  
53 otherwise settled;

54 (5) (A) Trade secrets, which for purposes of the Freedom of  
55 Information Act, are defined as information, including formulas,  
56 patterns, compilations, programs, devices, methods, techniques,  
57 processes, drawings, cost data, or customer lists that (i) derive  
58 independent economic value, actual or potential, from not being  
59 generally known to, and not being readily ascertainable by proper  
60 means by, other persons who can obtain economic value from their  
61 disclosure or use, and (ii) are the subject of efforts that are reasonable  
62 under the circumstances to maintain secrecy; and

63 (B) Commercial or financial information given in confidence, not  
64 required by statute;

65 (6) Test questions, scoring keys and other examination data used to  
66 administer a licensing examination, examination for employment or  
67 academic examinations;

68 (7) The contents of real estate appraisals, engineering or feasibility  
69 estimates and evaluations made for or by an agency relative to the  
70 acquisition of property or to prospective public supply and  
71 construction contracts, until such time as all of the property has been  
72 acquired or all proceedings or transactions have been terminated or  
73 abandoned, provided the law of eminent domain shall not be affected  
74 by this provision;

75 (8) Statements of personal worth or personal financial data required  
76 by a licensing agency and filed by an applicant with such licensing  
77 agency to establish the applicant's personal qualification for the

78 license, certificate or permit applied for;

79 (9) Records, reports and statements of strategy or negotiations with  
80 respect to collective bargaining;

81 (10) Records, tax returns, reports and statements exempted by  
82 federal law or state statutes or communications privileged by the  
83 attorney-client relationship;

84 (11) Names or addresses of students enrolled in any public school or  
85 college without the consent of each student whose name or address is  
86 to be disclosed who is eighteen years of age or older and a parent or  
87 guardian of each such student who is younger than eighteen years of  
88 age, provided this subdivision shall not be construed as prohibiting the  
89 disclosure of the names or addresses of students enrolled in any public  
90 school in a regional school district to the board of selectmen or town  
91 board of finance, as the case may be, of the town wherein the student  
92 resides for the purpose of verifying tuition payments made to such  
93 school;

94 (12) Any information obtained by the use of illegal means;

95 (13) Records of an investigation or the name of an employee  
96 providing information under the provisions of section 4-61dd, as  
97 amended;

98 (14) Adoption records and information provided for in sections 45a-  
99 746, 45a-750 and 45a-751;

100 (15) Any page of a primary petition, nominating petition,  
101 referendum petition or petition for a town meeting submitted under  
102 any provision of the general statutes or of any special act, municipal  
103 charter or ordinance, until the required processing and certification of  
104 such page has been completed by the official or officials charged with  
105 such duty after which time disclosure of such page shall be required;

106 (16) Records of complaints, including information compiled in the  
107 investigation thereof, brought to a municipal health authority pursuant

108 to chapter 368e or a district department of health pursuant to chapter  
109 368f, until such time as the investigation is concluded or thirty days  
110 from the date of receipt of the complaint, whichever occurs first;

111 (17) Educational records which are not subject to disclosure under  
112 the Family Educational Rights and Privacy Act, 20 USC 1232g;

113 (18) Records, the disclosure of which the Commissioner of  
114 Correction, or as it applies to Whiting Forensic Division facilities of the  
115 Connecticut Valley Hospital, the Commissioner of Mental Health and  
116 Addiction Services, has reasonable grounds to believe may result in a  
117 safety risk, including the risk of harm to any person or the risk of an  
118 escape from, or a disorder in, a correctional institution or facility under  
119 the supervision of the Department of Correction or Whiting Forensic  
120 Division facilities. Such records shall include, but are not limited to:

121 (A) Security manuals, including emergency plans contained or  
122 referred to in such security manuals;

123 (B) Engineering and architectural drawings of correctional  
124 institutions or facilities or Whiting Forensic Division facilities;

125 (C) Operational specifications of security systems utilized by the  
126 Department of Correction at any correctional institution or facility or  
127 Whiting Forensic Division facilities, except that a general description  
128 of any such security system and the cost and quality of such system  
129 may be disclosed;

130 (D) Training manuals prepared for correctional institutions and  
131 facilities or Whiting Forensic Division facilities that describe, in any  
132 manner, security procedures, emergency plans or security equipment;

133 (E) Internal security audits of correctional institutions and facilities  
134 or Whiting Forensic Division facilities;

135 (F) Minutes or recordings of staff meetings of the Department of  
136 Correction or Whiting Forensic Division facilities, or portions of such  
137 minutes or recordings, that contain or reveal information relating to

138 security or other records otherwise exempt from disclosure under this  
139 subdivision;

140 (G) Logs or other documents that contain information on the  
141 movement or assignment of inmates or staff at correctional institutions  
142 or facilities; and

143 (H) Records that contain information on contacts between inmates,  
144 as defined in section 18-84, and law enforcement officers;

145 (19) Records when there are reasonable grounds to believe  
146 disclosure may result in a safety risk, including the risk of harm to any  
147 person, any government-owned or leased institution or facility or any  
148 fixture or appurtenance and equipment attached to, or contained in,  
149 such institution or facility, except that such records shall be disclosed  
150 to a law enforcement agency upon the request of the law enforcement  
151 agency. Such reasonable grounds shall be determined (A) (i) by the  
152 Commissioner of Public Works, with respect to records the disclosure  
153 of which may result in a safety risk to any person at or on real property  
154 owned or leased by the state; (ii) by the Commissioner of Emergency  
155 Management and Homeland Security after consultation with the chief  
156 executive officer of the agency, with respect to records concerning any  
157 executive branch agency of the state or any municipal, district or  
158 regional agency; [, by the Commissioner of Public Works, after  
159 consultation with the chief executive officer of the agency;] (B) by the  
160 Chief Court Administrator, with respect to records concerning Judicial  
161 Department facilities; [, by the Chief Court Administrator;] and (C) by  
162 the executive director of the Joint Committee on Legislative  
163 Management, with respect to records concerning the Legislative  
164 Department. [, by the executive director of the Joint Committee on  
165 Legislative Management.] As used in this section, "government-owned  
166 or leased institution or facility" includes, but is not limited to, an  
167 institution or facility owned or leased by a public service company, as  
168 defined in section 16-1, as amended, a certified telecommunications  
169 provider, as defined in section 16-1, as amended, a water company, as  
170 defined in section 25-32a, or a municipal utility that furnishes electric,

171 gas or water service, but does not include an institution or facility  
172 owned or leased by the federal government, and "chief executive  
173 officer" includes, but is not limited to, an agency head, department  
174 head, executive director or chief executive officer. Such records  
175 include, but are not limited to:

176 (i) Security manuals or reports;

177 (ii) Engineering and architectural drawings of government-owned  
178 or leased institutions or facilities;

179 (iii) Operational specifications of security systems utilized at any  
180 government-owned or leased institution or facility, except that a  
181 general description of any such security system and the cost and  
182 quality of such system, may be disclosed;

183 (iv) Training manuals prepared for government-owned or leased  
184 institutions or facilities that describe, in any manner, security  
185 procedures, emergency plans or security equipment;

186 (v) Internal security audits of government-owned or leased  
187 institutions or facilities;

188 (vi) Minutes or records of meetings, or portions of such minutes or  
189 records, that contain or reveal information relating to security or other  
190 records otherwise exempt from disclosure under this subdivision;

191 (vii) Logs or other documents that contain information on the  
192 movement or assignment of security personnel at government-owned  
193 or leased institutions or facilities;

194 (viii) Emergency plans and emergency recovery or response plans;  
195 and

196 (ix) With respect to a water company, as defined in section 25-32a,  
197 that provides water service: Vulnerability assessments and risk  
198 management plans, operational plans, portions of water supply plans  
199 submitted pursuant to section 25-32d that contain or reveal

200 information the disclosure of which may result in a security risk to a  
201 water company, inspection reports, technical specifications and other  
202 materials that depict or specifically describe critical water company  
203 operating facilities, collection and distribution systems or sources of  
204 supply;

205 (20) Records of standards, procedures, processes, software and  
206 codes, not otherwise available to the public, the disclosure of which  
207 would compromise the security or integrity of an information  
208 technology system;

209 (21) The residential, work or school address of any participant in the  
210 address confidentiality program established pursuant to sections 54-  
211 240 to 54-240o, inclusive;

212 (22) The electronic mail address of any person that is obtained by  
213 the Department of Transportation in connection with the  
214 implementation or administration of any plan to inform individuals  
215 about significant highway or railway incidents.

216 (c) Whenever a public agency receives a request from any person  
217 confined in a correctional institution or facility or a Whiting Forensic  
218 Division facility, for disclosure of any public record under the  
219 Freedom of Information Act, the public agency shall promptly notify  
220 the Commissioner of Correction or the Commissioner of Mental Health  
221 and Addiction Services in the case of a person confined in a Whiting  
222 Forensic Division facility of such request, in the manner prescribed by  
223 the commissioner, before complying with the request as required by  
224 the Freedom of Information Act. If the commissioner believes the  
225 requested record is exempt from disclosure pursuant to subdivision  
226 (18) of subsection (b) of this section, the commissioner may withhold  
227 such record from such person when the record is delivered to the  
228 person's correctional institution or facility or Whiting Forensic  
229 Division facility.

230 (d) Whenever a public agency, except the Judicial Department or  
231 Legislative Department, receives a request from any person for

232 disclosure of any records described in subdivision (19) of subsection  
233 (b) of this section under the Freedom of Information Act, the public  
234 agency shall promptly notify the Commissioner of Public Works and  
235 the Commissioner of Emergency Management and Homeland Security  
236 of such request, in the manner prescribed by the [commissioner]  
237 commissioners, before complying with the request as required by the  
238 Freedom of Information Act and for information related to a water  
239 company, as defined in section 25-32a, the public agency shall  
240 promptly notify the water company before complying with the request  
241 as required by the Freedom of Information Act. If the commissioner,  
242 after consultation with the chief executive officer of the applicable  
243 agency or after consultation with the chief executive officer of the  
244 applicable water company for information related to a water company,  
245 as defined in section 25-32a, believes the requested record is exempt  
246 from disclosure pursuant to subdivision (19) of subsection (b) of this  
247 section, the commissioner may direct the agency to withhold such  
248 record from such person. In any appeal brought under the provisions  
249 of section 1-206 of the Freedom of Information Act for denial of access  
250 to records for any of the reasons described in subdivision (19) of  
251 subsection (b) of this section, such appeal shall be against the  
252 Commissioner of Public Works or the Commissioner of Emergency  
253 Management and Homeland Security, exclusively, or, in the case of  
254 records concerning Judicial Department facilities, the Chief Court  
255 Administrator or, in the case of records concerning the Legislative  
256 Department, the executive director of the Joint Committee on  
257 Legislative Management.

258 (e) Notwithstanding the provisions of subdivisions (1) and (16) of  
259 subsection (b) of this section, disclosure shall be required of:

260 (1) Interagency or intra-agency memoranda or letters, advisory  
261 opinions, recommendations or any report comprising part of the  
262 process by which governmental decisions and policies are formulated,  
263 except disclosure shall not be required of a preliminary draft of a  
264 memorandum, prepared by a member of the staff of a public agency,  
265 which is subject to revision prior to submission to or discussion among



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The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill exempts the disclosure of certain records under the Freedom of Information Act. The bill narrows the responsibility of the Commissioner of Public Works, and expands the responsibility of the Department of Emergency Management and Homeland Security for the purposes of determining exemptions of certain records. The bill is not anticipated to have a fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****sSB 71*****AN ACT CONCERNING THE DISCLOSURE OF SENSITIVE RECORDS.*****SUMMARY:**

The law exempts disclosure of certain records under the Freedom of Information Act, except to law enforcement agencies, if there are reasonable grounds to believe disclosure may result in a safety risk. Under current law, the Department of Public Works (DPW) commissioner determines what are reasonable grounds with regard to municipal, district, regional, or executive branch agency records.

The bill narrows the DPW commissioner's role, requiring him to make the determination for records that may result in a safety risk to people at or on state-owned or -leased property. It requires the Department of Emergency Management and Homeland Security (DEMHS) to make the determination for all other municipal, district, regional, or executive branch agency records, after consulting with the agency's chief executive officer.

Under current law, agencies must notify the DPW commissioner of FOIA requests. The bill requires them to notify the DEMHS commissioner also. It also allows appeals against the DEHMS commissioner, as is currently allowed against the DPW commissioner.

EFFECTIVE DATE: October 1, 2006

**BACKGROUND*****Safety Risk***

Under existing law, "safety risk" includes the risk of harm to anyone or any government-owned or -leased institution or facility or

any fixture or appurtenance and equipment attached to, or contained in, them. Government-owned or -leased institution or facility includes facilities owned or leased by a public service company, certified telecommunications provider, water company, or municipal utility that furnishes electric gas or water service. It does not include an institution or facility owned or leased by the federal government.

Records exempt from disclosure when there are reasonable grounds to believe they may result in a safety risk include:

1. emergency plans and emergency recovery or response plans;
2. security manuals or reports;
3. engineering and architectural drawings of government-owned or -leased institutions or facilities;
4. operational specifications of security systems used at any government-owned or -leased institution or facility, except for a general description and quality and cost of the system;
5. training manuals prepared for government-owned or -leased institutions or facilities that describe security procedures, emergency plans, or security equipment;
6. internal security audits of government-owned or -leased institutions or facilities; and
7. logs or other documents that contain information on the movement or assignment of security personnel at government-owned or -leased institutions or facilities.

**COMMITTEE ACTION**

Public Safety and Security Committee

Joint Favorable Substitute Change of Reference  
Yea 20 Nay 0 (03/07/2006)

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/17/2006)