



# House of Representatives

General Assembly

**File No. 524**

*January Session, 2007*

Substitute House Bill No. 7044

*House of Representatives, April 17, 2007*

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, 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 Section 1-210 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

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

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

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

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

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

31 (3) Records of law enforcement agencies not otherwise available to  
32 the public which records were compiled in connection with the  
33 detection or investigation of crime, if the disclosure of said records  
34 would not be in the public interest because it would result in the  
35 disclosure of (A) the identity of informants not otherwise known or the  
36 identity of witnesses not otherwise known whose safety would be  
37 endangered or who would be subject to threat or intimidation if their  
38 identity was made known, (B) signed statements of witnesses, (C)  
39 information to be used in a prospective law enforcement action if  
40 prejudicial to such action, (D) investigatory techniques not otherwise  
41 known to the general public, (E) arrest records of a juvenile, which  
42 shall also include any investigatory files, concerning the arrest of such  
43 juvenile, compiled for law enforcement purposes, (F) the name and  
44 address of the victim of a sexual assault under section 53a-70, 53a-70a,  
45 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or  
46 impairing of morals under section 53-21, or of an attempt thereof, or

47 (G) uncorroborated allegations subject to destruction pursuant to  
48 section 1-216;

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

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

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

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

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

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

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

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

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

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

94 (13) Records of an investigation or the name of an employee  
95 providing information under the provisions of section 4-61dd;

96 (14) Adoption records and information provided for in sections 45a-  
97 746, 45a-750 and 45a-751;

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

104 (16) Records of complaints, including information compiled in the  
105 investigation thereof, brought to a municipal health authority pursuant  
106 to chapter 368e or a district department of health pursuant to chapter  
107 368f, until such time as the investigation is concluded or thirty days  
108 from the date of receipt of the complaint, whichever occurs first;

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

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

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

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

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

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

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

133 (F) Minutes or recordings of staff meetings of the Department of  
134 Correction or Whiting Forensic Division facilities, or portions of such  
135 minutes or recordings, that contain or reveal information relating to  
136 security or other records otherwise exempt from disclosure under this  
137 subdivision;

138 (G) Logs or other documents that contain information on the

139 movement or assignment of inmates or staff at correctional institutions  
140 or facilities; and

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

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

- 173 chief executive officer. Such records include, but are not limited to:
- 174 (i) Security manuals or reports;
- 175 (ii) Engineering and architectural drawings of government-owned  
176 or leased institutions or facilities;
- 177 (iii) Operational specifications of security systems utilized at any  
178 government-owned or leased institution or facility, except that a  
179 general description of any such security system and the cost and  
180 quality of such system, may be disclosed;
- 181 (iv) Training manuals prepared for government-owned or leased  
182 institutions or facilities that describe, in any manner, security  
183 procedures, emergency plans or security equipment;
- 184 (v) Internal security audits of government-owned or leased  
185 institutions or facilities;
- 186 (vi) Minutes or records of meetings, or portions of such minutes or  
187 records, that contain or reveal information relating to security or other  
188 records otherwise exempt from disclosure under this subdivision;
- 189 (vii) Logs or other documents that contain information on the  
190 movement or assignment of security personnel; [at government-owned  
191 or leased institutions or facilities;]
- 192 (viii) Emergency plans and emergency [recovery or response plans]  
193 preparedness, response, recovery and mitigation plans, including, but  
194 not limited to, plans provided by a person to a state agency or a local  
195 emergency management agency or official; 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 commissioners, after consultation with the chief executive officer of the  
243 applicable agency or after consultation with the chief executive officer  
244 of the applicable water company for information related to a water  
245 company, as defined in section 25-32a, [believes] believe the requested  
246 record is exempt from disclosure pursuant to subdivision (19) of  
247 subsection (b) of this section, the [commissioner] commissioners may  
248 direct the agency to withhold such record from such person. In any  
249 appeal brought under the provisions of section 1-206 of the Freedom of  
250 Information Act for denial of access to records for any of the reasons  
251 described in subdivision (19) of subsection (b) of this section, such  
252 appeal shall be against the [Commissioner of Public Works]  
253 commissioner of the state agency that issued the directive to withhold  
254 such record, exclusively, or, in the case of records concerning Judicial  
255 Department facilities, the Chief Court Administrator or, in the case of  
256 records concerning the Legislative Department, the executive director  
257 of the Joint Committee on 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  
266 the members of such agency;

267 (2) All records of investigation conducted with respect to any  
 268 tenement house, lodging house or boarding house as defined in section  
 269 19a-355, or any nursing home, residential care home or rest home, as  
 270 defined in section 19a-490, by any municipal building department or  
 271 housing code inspection department, any local or district health  
 272 department, or any other department charged with the enforcement of  
 273 ordinances or laws regulating the erection, construction, alteration,  
 274 maintenance, sanitation, ventilation or occupancy of such buildings;  
 275 and

276 (3) The names of firms obtaining bid documents from any state  
 277 agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	1-210

**Statement of Legislative Commissioners:**

In subdivision (19)(A)(ii), the words "by the Commissioner of Public Works" in the existing statutory language were bracketed and the words "and the Commissioner of Public Works" were added as new text earlier in the same sentence, for clarity.

**PS**            *Joint Favorable C/R*

GAE

**GAE**            *Joint Favorable Subst.*

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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 chamber 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****sHB 7044*****AN ACT CONCERNING THE DISCLOSURE OF SENSITIVE RECORDS.*****SUMMARY:**

The law exempts disclosure of certain records under the Freedom of Information Act (FOIA), 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, and it eliminates a requirement for him to consult with the agency head. 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 allows appeals against the DEMHS commissioner, as is currently allowed against the DPW commissioner, and makes conforming changes.

The bill broadens security-related exemptions under FOIA. Current law exempts emergency plans and emergency recovery and response plans from disclosure. The bill specifies that these include emergency preparedness and mitigation plans, including plans provided by anyone to a state or local emergency management agency or official.

The bill also exempts all logs and other documents that contain information on the movement or assignment of security personnel. Current law limits the exemption to logs and other documents at government-owned or leased facilities.

EFFECTIVE DATE: October 1, 2007

## **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 disclosure may result in a safety risk include:

1. security manuals or reports;
2. engineering and architectural drawings of government-owned or -leased institutions or facilities;
3. 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;
4. training manuals prepared for government-owned or -leased institutions or facilities that describe security procedures, emergency plans, or security equipment; and
5. internal security audits of government-owned or -leased institutions or facilities.

## **COMMITTEE ACTION**

Public Safety and Security Committee

Joint Favorable Change of Reference

Yea 20 Nay 0 (03/01/2007)

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/30/2007)