

February 5, 2007

P. O. Box 71
Windsor, CT 06095

Co-chairman and Members
Government Administrations and Elections Committee
Room 2200, Legislative Office Building
Hartford, CT 06106

Re: **S.B. 884. An Act Establishing Penalties For Violation Of The Freedom Of Information Act.**
And
H.B. 7001. AAC The Definition Of "Administrative Functions" Under The Freedom Of Information Act.

Dear Co-Chairs and Members:

S.B. 884:

I strongly support S.B. 884 because of the Freedom of Information Commission's (FOIC) long history of ineffective deterrence to violations of the Freedom of Information Act (Act).

The FOIC has been severely negligent in levying penalties contributing to the heavy caseload. I obtained the history of penalties from the FOIC's website. In FIC #1996-301, the FOIC issued a \$1,000.00 penalty while in FIC #s 86-215, 1996-523, 1996-076, -101, 1995-267, 1994-362, 1994-063, 1989-093, and 1987-313, it merely warned the respondents that subsequent violations may result in a \$1,000.00 penalty.

The FOIC issued: (a) \$500.00 penalties in FIC #s 1997-167, 1995-115, 1992-321, 1992-276, 1992-216, 1992-204, 1992-168, and 1990-376; (b) \$300.00 penalties in FIC #s 1998-035, and 1993-308; (c) \$200.00 penalties in FIC #s 2005-143, 2001-384, 1995-001, 1994-118, and 1994-04; and (d) \$100.00 penalties in FIC #s 93-236, 92-272, 2001-492, 2001-439, 2000-304, 1999-561, 1996-048, 1995-115, and 1993-104.

Compared to the number of cases, the penalties don't serve the purpose of deterrence. The Commission's discretion to levy penalties should be replaced with a statute mandating minimum penalties with increasing levels for repeated violations. This would also serve to reduce, perhaps significantly, the Commission's caseload.

Another issue of particular concern is the one-year period it took for the Hearing Officer in Docket Number FIC 2005-590, *David Bingham and Robert Fromer v. State Properties Review Board* to prepare the proposed decision even though it is allowed by statute. While the Commission may grant expedited hearings, it rarely does so. So, I recommend a revision in the law to establish

standards for the conduct of preliminary hearings to determine whether an expedited hearing is warranted.

H.B. 7001:

Attached for your information is a copy of an Affidavit submitted in the case of Docket Number FIC 2006-414, *Robert Fromer and David Bingham v. Town of Preston*, held before the Freedom of Information Commission. However, the Act requires further amendment based on my personal experience with the Freedom of Information Commission concerning a complaint about an ongoing practice of a town agency holding illegal executive sessions. As stated in Paragraphs 13 and 14 of the Affidavit:

13. "The Chairman then pointedly stated that he had read the file and agreed with the denial. He asked whether evidence would be taken at the hearing and answered his own question with a "no." He then asked whether there would be a hearing and, again, answered his own question with a "no."; and

14. He left the scheduled preliminary hearing without ever being given an opportunity to speak and address the Commission.

The Act should be revised to address my concerns by providing definitions of terms used in Section 1-206(b)(1) of the General Statutes. Consequently, I seek the following revisions to Section 1-200 of the General Statutes to read as provided below:

Sec. 1-200. Definitions. As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context, which clearly indicates the contrary:

(New) (12) "An ongoing practice of conducting executive sessions" means two or more executive sessions held for the same purpose or different purposes by a public agency.

(New) (13) "Preliminary hearing" shall be an agency hearing in accordance with chapter 54 for contested cases.

Cordially,



Robert Fromer

Attachments: (1) Affidavit

IN THE MATTER OF:

DOCKET NUMBER: FIC 2006-414

ROBERT FROMER

v.

TOWN OF PRESTON,
NORWICH HOSPITAL ADVISORY
COMMITTEE

STATE OF CONNECTICUT

FREEDOM OF INFORMATION
COMMISSION

OCTOBER 3, 2006

STATE OF CONNECTICUT)

COUNTY OF HARTFORD)

ss: Windsor

AFFIDAVIT

The undersigned being duly sworn deposes and says:

- 1. He is over the age of majority and understands the meaning of an oath;
- 2. He is the appellant-complainant in the above captioned matter;

3. In a letter dated August 17, 2006, he filed an appeal and amended appeal with the Connecticut Freedom of Information Commission ("Commission") from the decisions of the Town of Preston, Norwich Hospital Advisory Committee ("NHAC") to conduct the following: an emergency executive meeting at noon on August 9, 2006; executive meetings at 7:00 pm on August 9, 2006; and 7:00 pm on August 16, 2006;

- 4. In his appeal dated August 17, 2006 to the Commission, he stated the following:

The closed Committee meeting, also, concerns an ongoing practice of illegally meeting in executive sessions. I request a hearing on this matter within 72 hours of receipt of this appeal pursuant to Connecticut General Statutes, § 1-206(b)(1):

[I]f a notice of appeal concerns an announced agency decision to meet in executive session or an ongoing agency practice of meeting in executive sessions, for a stated purpose, the commission or a member or members of the commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal within seventy-two hours after receipt of

the notice, provided such notice shall be given to the parties at least forty-eight hours prior to such hearing;

5. By letter dated August 28, 2006, he filed with the Commission a motion for an expedited hearing from the ongoing practice of the NHAC conducting illegal executive meetings;

6. By order dated September 8, 2006, the Commission denied the motion for an expedited hearing without reason;

7. In his letter of September 18, 2006, he objected to the denial of his motion for an expedited hearing because the Commission: (1) lacks any discretion under Connecticut General Statutes § 1-206(b)(1); and (2) provided no reason or basis for the denial;

8. By order dated September 20, 2006, the Commission again denied the motion for an expedited hearing citing as a reason that “[S]ince the complainant’s notice of appeal did not concern an announced agency decision to meet in executive session or an ongoing practice of meeting in executive sessions, for a stated purpose⁴, within the meaning of the Freedom of Information Act.” The statement is merely negating a verbatim recitation of Connecticut General Statutes, § 1-206(b)(1) without showing how he failed to comply with the statutory requirement;

9. In his appeal letter dated September 21, 2006, he, “[O]bjected to the denial on the grounds that the Director: (1) lacks discretion under the Connecticut General Statutes § 1-206(b)(1) and the Regulations of Connecticut State Agencies (“RCSA”) § 1-21j-29(b) (except for § 1-206(b)(1)) because the requirement that the Commission conduct a hearing within seventy-two (72) hours is mandatory; and (2) provided no reason or basis for the denial.” He additionally claimed that “The action . . . may be a severe abuse . . . discretion, under the law and may violate the Appellant’s due process rights under the Federal and State Constitutions. The . . . [Commission] has no discretion because . . . [its] duty in this matter is purely ministerial.” Finally, he claimed that “The expedited hearing and decision are necessary because according to the Preston First Selectman Robert Congdon in the attached article published in the Day newspaper on September 21, 2006, “[t]he town should know by Nov. 20 if the project will be moving forward.” This decision will affect the option agreement of the State to sell 419 acres of land to the Town of Preston.”;

10. The Commission placed the appeal on the agenda for its meeting of September 27, 2006;

11. He attended the Commission meeting held on September 27, 2006 at 2 pm. and appeared in front of its three members to offer testimony and argument when it called his agenda item;

12. The Chairman of the Commission (“Chairman”) did not grant him a right of an opportunity to speak or address the Commission and did not ask him whether he wished the matter tape-recorded;

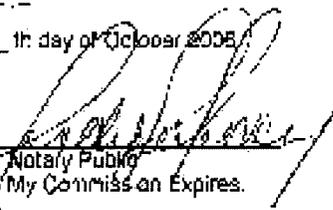
13. The Chairman then pointedly stated that he had read the file and agreed with the denial. He asked whether evidence would be taken at the hearing and answered his own question with a "no." He then asked whether there would be a hearing and, again, answered his own question with a "no."; and

14. He left the scheduled preliminary hearing without ever being given an opportunity to speak and address the Commission.

THE AFFIANT


ROBERT FROMER
Appellant-Complainant

Subscribed and sworn to before me this 11th day of October 2008.


Notary Public
My Commission Expires.

LINDALE LEMERY
NOTARY PUBLIC
MY COMMISSION EXPIRES 11/15/11 11:24