



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

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CHRO

"Equality and Justice"

**Testimony of Raymond P. Pech
Executive Director
Commission on Human Rights and Opportunities**

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**Proposed Bill 884, an Act Establishing Penalties for Violation of the
Freedom of Information Act**

This bill would mandate that the Freedom of Information Commission (FOIC) levy ever-increasing fines against an agency following a second violation of the Freedom of Information Act (FOIA). The Commission on Human Rights and Opportunities (CHRO) fully supports the mission of the FOIC – to insure that the decision-making processes of state government are transparent to the public we serve. The CHRO annually receives hundreds of requests under the FOIA, and in fact has one employee whose primary responsibility is to respond to such requests. Nevertheless, we must oppose this bill for three reasons.

The FOIA requires that requests for information be responded to within four business days. Simply due to the volume of requests received, the CHRO – and perhaps other agencies as well – occasionally exceeds this deadline. In such cases, when there is no intent whatsoever to flout the provisions of the FOIA, it would be unfair, and fiscally imprudent, to mandate that the agency be penalized for this technical infraction.

The CHRO, like many agencies, has a designated FOIC liaison who has been trained by the FOIC in the provisions of the Act. The FOIC makes its staff available to answer liaison inquiries on the applicability of the FOIA to certain circumstances. Occasionally the FOIC does not have a ready answer, and there is no statutory or court decision that addresses the inquiry. Because there is no controlling precedent, and based on a legitimate concern about disclosure, an agency may deny access to a particular document. Should such denial be challenged, and the agency subsequently be found in violation of the FOIA, this bill would mandate that the agency be financially penalized. If the agency had reasonable grounds for denying access, it should not face such penalties.

Finally, the FOIA at CGS § 2-206(b)(2) currently authorizes the FOIC, in its discretion, to levy a fine of up to \$1,000 against an agency that had no reasonable grounds to deny access. This bill removes such discretion, making such fines mandatory, even when there existed reasonable grounds to deny access. The CHRO therefore opposes this bill.

I thank the Committee for the opportunity to express our views on this bill.