

**FREEDOM OF INFORMATION COMMISSION STATEMENT CONCERNING
SENATE BILL 884, AN ACT ESTABLISHING PENALTIES FOR VIOLATION
OF THE FREEDOM OF INFORMATION ACT**

This bill is not a Freedom of Information (“FOI”) Commission sponsored bill. The bill’s purpose is to establish the mandatory imposition of civil penalties against public agencies for second and third violations of the FOI Act. While the FOI Commission is generally in favor of any amendment that would strengthen the provisions of the FOI Act and encourage compliance, the FOI Commission respectfully requests that the following be considered before amending the law.

At present, the FOI Act authorizes the FOI Commission, upon finding a violation of the FOI Act, to: order an agency to provide relief that the FOI Commission believes appropriate to rectify the denial of any right conferred by the FOI Act; declare null and void any action taken at any meeting at which a person was denied the right to attend; require the production or copying of any public record; and, upon the finding that a denial of any right created by the FOI Act was without reasonable grounds, *impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.* [See Conn. Gen. Stat. §§1-206(2)]

As outlined above, the statute already provides a range of options to remedy a violation of the FOI Act and permits the FOI Commission to use its discretion to determine, on a case-by-case basis, which option is the most appropriate remedy under the unique facts and circumstance of each case. In determining when to apply the most severe remedy available, the imposition of a civil penalty, the FOI Commission’s assessment includes: the number of times a public agency has been found in violation of the *same provision* of the FOI Act; whether members of the public agency are the same members that were found to have violated the FOI Act previously; and whether the previous violation was recent or not (which indicates whether the agency really should have known better). In this way, the FOI Commission reserves the use of its most severe remedy for public agencies that deliberately and obstinately violate the FOI Act. If mandatory civil penalties are established in the FOI Act, the FOI Commission’s ability to exercise its discretion to fine only the most egregious violators will be curtailed. Mandatory penalties mean that the facts and circumstances, or mitigating factors, of a given case cannot be taken into account.

The FOI Commission has established a process that is educational rather than punitive. In that regard, it is the FOI Commission’s belief that fines should only be imposed when the agency’s conduct warrants it. Therefore, the FOI Commission respectfully requests that the imposition of civil penalties, even if incremental and raised higher than the law currently provides (as contemplated by the language of this bill), remain at the discretion of the FOI Commission.

Contact: Colleen M. Murphy, Executive Director and General Counsel, Tracie C. Brown, Principal Attorney, or Hank Pawlowski, Legislative Liaison, Freedom of Information Commission, 860-566-5682