

**THE FREEDOM OF INFORMATION COMMISSION
STATEMENT IN SUPPORT OF SB 1065 (LCO 3713)
AN ACT REVISING CERTAIN PROVISIONS OF
THE FREEDOM OF INFORMATION ACT**

Section 1 of this bill is critically important to the effective functioning of the Freedom of Information (FOI) Commission as an independent “watchdog” agency free from interference by politically appointed officials of the executive branch of state government.

In the past, former Governor Rowland drastically cut the appropriations available to the FOI Commission at a time when it was in the midst of deciding a number of cases involving his denial of access to records sought in connection with exposing corruption in his administration. This led to passage of Public Act 04-204, §11, which provides that the commission’s request for appropriations shall go directly to the legislature -- bypassing possible cuts by OPM and the Governor -- and which also provides that in no event, shall the Governor reduce any allotment to the FOI Commission.

Section 1 of this bill would prevent the Department of Administrative Services (DAS) from similarly interfering with necessary commission operations by denying, or unduly delaying, the commission’s ability to hire and retain the highest quality executive, managerial and confidential employees, who are free from political taint or the perception of political partisanship. Salaries for these classes of employees would be subject to legislative oversight because they would have to be established exclusively within the framework of appropriated funds. **The bill would not affect any personnel classes or actions that are subject to collective bargaining or collective bargaining agreements.**

Under the terms of this bill, the FOI Commission would continue to hire for an indefinite term, and evaluate, its executive director and general counsel. The commission itself, however, would set that position’s salary within the limits of its appropriation for that purpose, without DAS’s approval. The executive director will continue to appoint all other commission employees, as she currently does, within the limits of the commission’s appropriated funds. All other executive, managerial and confidential employees necessary to carry out the commission’s statutory duties also will continue to be appointed by the executive director to positions established by the commission, but without DAS’s approval. These employees would be exempt from the classified service, but could only be removed for “reasonable cause” in accordance with chapter 67 of the General Statutes (the State Personnel Act). Again, no classified position subject to collective bargaining would be affected by these new provisions. They would affect only executive, managerial and confidential employee positions established by the commission and funded by the legislature.

With regard to Section 2 of this bill, the Commission is unaware of its genesis or need. The section makes some apparently technical language changes in the FOI Act, concerning specific filing requirements and timeframes for holding hearings. For example, in connection with the filing of appeals (or complaints) with the commission, there is a change from requiring that such appeals be filed "within" thirty days to "not later than" thirty days. If the various changes from "within" to "not later than" are merely designed to use more precise language, the commission has no concern. However, if such changes are designed to have further significance, the legislative history should so indicate, since the existing terminology, as written, has already been given meaning in countless commission decisions and court cases.

The second change outlined in section 2, adds a sentence stating that during a preliminary hearing (to determine whether probable cause exists that a violation of the open meetings provisions of the FOI Act will occur), "the commission shall take evidence and receive testimony from the parties." While the commission believes it is unnecessary, it has no objection to this language, because it is in fact, what the commission already does, when it holds a preliminary hearing of this nature.

Respectfully submitted
Andrew J. O'Keefe, Chairman
Freedom of Information Commission