

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON RAISED
BILL NO 126, AN ACT ADOPTING CERTAIN RECOMMENDATIONS OF THE
JUDICIAL BRANCH PUBLIC ACCESS TASK FORCE AND RAISED BILL NO.
5258, AN ACT ADOPTING CERTAIN RECOMMENDATIONS OF THE
GOVERNOR'S COMMISSION ON JUDICIAL REFORM**

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Good Afternoon Senator McDonald, Representative Lawlor and members of the committee. I am Colleen Murphy, the Executive Director and General Counsel of the Freedom of Information Commission. I would like to comment on a few of the provisions contained in Raised Bill 126 and Raised Bill 5528.

With respect to Raised Bill 5528, the Commission wishes to express its support for Section 1, which would define the term "administrative functions" within the FOI Act, as it applies to the judicial department. As indicated in previous testimony provided to the Governor's Commission on Judicial Reform, it is the FOI Commission's belief that legislation is essential to greater accessibility and transparency to the judicial system. And, the best legislative approach would be to amend the definition of administrative functions, thereby carving out those matters that are not part of the adjudication or judicial functions of the courts, and ensuring that such matters will be open to the public. A definition is clearly necessary based upon past court precedents. Without a definition, we will continue on the path that has been traveled for the past three decades. The courts will provide their own definition on a case-by-case basis and will modify it to suit particular needs or concerns in given cases. That hasn't worked very well as is evident from the most recent case, Clerk v. Freedom of Information Commission, 278 Conn. 28 (2006), wherein the Supreme Court determined that basic docketing information contained on the court's computer system was not "administrative" and could not be accessed pursuant to the FOI Act.

The proposed definition contained in Section 1. is as follows:

"Administrative functions", means (i) all matters not directly related to judicial activities in, and discussions concerning, court cases and (ii) those matters that relate to the management of the internal institutional machinery of the judicial branch, including, but not limited to, budgeting, accounting, rule-making, personnel, facilities, physical operations, docketing and scheduling.

The FOI Commission supports this definition, although item (i) is unnecessarily broad. The language would be better if it simply said "all matters not directly related to judicial decision-making in individual court cases." As for the remainder of the proposed language in (ii), the intent is to utilize what the Supreme Court has pointed to in cases prior to the Clerk decision as the kinds of matters that are encompassed by the term "administrative functions," and also includes the kind of information that was at issue in Clerk, but found not to be subject to the FOI Act.

The FOI Commission will soon recommend its own language to amend the definition of administrative functions, which will largely mirror the language proposed in this bill. The FOIC's proposal will include the revision suggested previously.

Turning to Raised Bill 126, it should be said at the outset, that the FOI Commission applauds the efforts of the Judicial Branch that are aimed at achieving more openness. But, a couple of the recommendations contained in the proposed bill warrant comment.

First, Section 4., consists of a separate attempt to define what records are "administrative records" that shall be open to the public.

That section provides:

"(a) For the purposes of this section, 'administrative record' means information maintained by the Judicial Branch pertaining to the administration of the Judicial Branch with respect to the budget, personnel, facilities and physical operations of the Judicial Branch that is not associated with any particular case and includes (1) summaries, indices, minutes and official records of any meeting, and (2) information maintained or stored by the Judicial Branch, not otherwise exempted, in all paper and electronic platforms and formats."

It is the commission's position that this definition accomplishes little. For under it, the records at issue in Clerk would remain unavailable pursuant to the FOI Act. The language seems to merely codify the limited reach of Clerk and adds nothing new, since it only includes budget, personnel, facilities and physical operations as administrative. Therefore, between this definition and the one contained in Raised Bill 5258, the Commission respectfully urges you to go forward with the latter.

Further, Sections 1. and 2. of Raised Bill 126 have some troublesome points. Subsection (a) of Section 1. begins by defining meetings fairly broadly. Subsection (c) then provides that all meetings shall be open to the public, except as otherwise provided by statute or rules of court. This is of concern because it leaves a large hole in the notion of openness, since the court can pass rules that require the closing of certain meetings. It will leave the matter of what is open and what is not up to the discretion of this and all future courts. This is not a very desirable result, particularly after so much has been done in the name of guaranteeing greater access.

In a similar vein, Section 2. permits members at a meeting, upon a two-thirds vote, to close a meeting (1) for any purpose permitted under the FOI Act and (2) when a public session would have a deleterious impact on debate or the receipt of information. This seems to provide too broad a brush for closure. Although subsection (c) of Section 2. provides examples of what would constitute a "deleterious impact" that would warrant closure, that list is not exhaustive and again leaves room for discretionary closures. Again, this is not a very desirable result.

In closing, thank you for the opportunity to testify concerning these important bills that will potentially have a meaningful impact on the transparency of the judicial system. I am happy to answer any questions you may have with regard to the aforementioned points or on other matters contained in these bills before you.