

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON  
RAISED BILL 1479, AAC JUDICIAL BRANCH OPENNESS**

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Good Afternoon Senator McDonald, Representative Lawlor and members of the Judiciary Committee. I am Colleen Murphy, the Executive Director and General Counsel of the Freedom of Information Commission. Thank you for the opportunity to comment on some of the provisions in RB 1479, An Act Concerning Judicial Branch Openness.

I note that this bill is a combination of two bills previously before you and on which I testified back in January. Those bills are RB 126, An Act Adopting Certain Recommendations of the Judicial Branch Task Force and RB 5258, An Act Concerning Recommendations of the Governor's Commission on Judicial Reform.

It is the FOI Commission's belief that a very important section of RB 5258 was eliminated in this bill -- that portion that defined "administrative functions" under the FOI Act in order to deal with the Supreme Court decision in Clerk v. FOI Commission, 278 Conn. 28 (2006). Instead, this bill includes those sections of RB 126 that constitute a separate attempt to define meetings and administrative records of the Judicial Branch. The bill essentially creates a second FOI Act, applicable only to the Judicial Branch. This approach does not make sense from a practical standpoint, as there would then be two FOI Acts contained in the general statutes. The greater concern with this approach is that the Judicial Branch gets to be the arbiter of itself, in determining whether a meeting is open to the public or whether a record must be disclosed. With all due respect, things would not be any better than they were before under this approach -- despite everyone's good intentions.

Beyond these general concerns, there are some specific weaknesses in the language that I would like to address.

First, Section 4., defines 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."

This definition accomplishes little. For under it, the records at issue in Clerk (basic docketing records) would not be subject to disclosure. 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. Further, there is language contained in another bill, SB 1064 (File No. 308) that defines “administrative functions” under the FOI Act and represents a more direct response to the Supreme Court’s decision in Clerk. I respectfully urge you to look at that language and to choose it over the language proffered in this bill.

Further, Sections 1. and 2. 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 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. Imagine if all boards and commissions were permitted that kind of discretion. This is not a very desirable result, particularly after so much has been done in the name of guaranteeing greater access.

Similarly, 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 this important bill. I am happy to answer any questions you may have.