

**FREEDOM OF INFORMATION COMMISSION STATEMENT  
IN OPPOSITION TO HB 5935,  
AN ACT CONCERNING THE DISCLOSURE OF POLICE AND OTHER  
PUBLIC RECORDS AND THE TOLLING OF TIME PERIODS FOR BRINGING  
A CIVIL ACTION WHILE POLICE INVESTIGATIONS ARE PENDING.**

**SECTION 1. OF THE BILL IS UNNECESSARY**

The FOI Commission has no idea why there is any necessity for this Section of the bill.

The FOI Act currently provides that the FOI Act does not “limit” the rights of litigants. In this regard, Conn. Gen. Stat. Section 1-213(b)(1), currently provides in relevant part:

Nothing in the Freedom of Information Act shall be deemed in any manner to ...*limit* the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state. [Emphasis added].

The proposed language of the bill would, for reasons unexplained, change the word “limit” to “affect.” The statement of purpose merely indicates that the change is designed to provide that the Freedom of Information (FOI) Act does not “affect” the rights of litigants in criminal or civil cases under the law of discovery.

The law concerning rights of access under the FOI Act versus rights of access under the laws of discovery is clear and well settled. The Supreme Court has ruled that a public agency must disclose records under the FOI Act even if those records are, or might be, subject to the rules of discovery in either federal or state court proceedings. Chief of Police, Hartford Police Department v. Freedom of Information Commission et al., 252 Conn. 377 (2000).

In Chief of Police, the plaintiff claimed that requiring disclosure of the records at issue, which had also been the subject of discovery proceedings in a civil rights action in the United States District Court, would “limit” the rights of the plaintiff as a litigant under the laws of discovery in violation of §1-213(b)(1), G.S. The Court concluded that requests for records under the FOI Act are to be determined by reference to the provisions of the FOI Act, irrespective of whether they are or otherwise would be disclosable under the rules of state discovery, whether civil or criminal. The Court further concluded that the phrase “to limit the rights of litigants under the laws of discovery of this state” should be interpreted as prohibiting the use of the FOI Act to restrict the rights of parties seeking information through discovery. In other words, the exemptions to disclosure under the FOI Act cannot be used as a shield to disclosure in discovery proceedings.

Interestingly, the suggested language change would mean a reversion to language that existed in the FOI Act prior to the passage of Public Act (“P.A.”) 94-246. In P.A. 94-246, the language was actually changed from “affect” to “limit” after the Supreme Court reached a decision in Gifford v. Freedom of Information Commission, 227 Conn. 651 (1993) wherein it stated, in

dictum, that the conclusion reached in that case (not to disclose arrest reports while a criminal prosecution is pending, a conclusion that was altered by the passage of P.A. 94-26 in other respects) was bolstered by the language in Section 1-19b(b) (now Section 1-213(b)(1)) because “public access to arrest reports while the prosecution is pending would “affect” the rights of litigants under the laws of discovery.” Gifford at 663. In the Chief of Police case (at 396), the Court makes reference to that dictum, stating that it was “ill advised”, and then goes on to conclude that it found nothing to indicate that the new language meant anything different from what it meant when it was originally enacted, i.e., that the FOI Act and discovery provide two separate and distinct avenues of access.

The FOI Commission believes that the explicit language of the statute, coupled with its longstanding interpretation by the Supreme Court, makes a language change wholly unnecessary. If, on the other hand, the true intent of the bill is to reverse the interpretation of the statute, the Commission would object even more loudly, since it would prohibit people from exercising their rights under the FOI Act, if they are currently involved in litigation or may be involved in future litigation. As noted in the Chief of Police decision (at 387) “whether records are disclosable under the [FOI] Act does not depend in any way on the status or motive of the applicant for disclosure, because the act vindicates the public’s right to know, rather than the rights of any individual.” Thus, passage of a bill that actually makes motive relevant, would run counter to the entire spirit and intent and longstanding interpretation of the FOI Act.

For the reasons stated above, the FOI Commission urges rejection of Section 1. of this bill.

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