



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
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**Testimony of Michelle Cruz, State Victim Advocate
Submitted to the Government, Administration and Elections Committee
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Good morning Senator Slossberg, Representative Spallone and distinguished members of the Government, Administration and Elections Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. I would like to thank the committee for the opportunity to provide testimony concerning:

Raised Bill No. 1152, An Act Concerning the Disclosure of Certain Reports and the Definition of Invasion of Personal Privacy Under the Freedom of Information Act (PROPOSED AMENDMENT)

The Office of the Victim Advocate (OVA) was established to protect and promote the constitutional rights of crime victims in Connecticut. Among the many duties of the OVA is to review the procedures established by any state agency and to recommend changes in state policies or undertake legislative advocacy to improve the treatment towards crime victims in the state. Many times, legislative proposals are derived from complaints received by the OVA from crime victims.

In August of 2008, the OVA formed a focus group to study the possibility of creating a privacy exception to the freedom of information act that would protect crime victims from being exposed to the public release of certain sensitive information that does not serve a genuine public purpose. There were nineteen (19) participants, including representatives of the Freedom of Information Commission (FOIC), various victim service provider organizations, crime victims, the Office of the Chief State's Attorney, law enforcement and the media. My goal in forming the focus group was to identify concerns that may be raised regarding the creation of a privacy exception and to better understand the impact on other agencies resulting from a privacy exception.

Ultimately my hope was to learn from the FOIC that we were on the same page and that the FOIC was sensitive to the privacy issues of crime victims—that was and is not the case. In fact, during the pendency of the focus group, there were several opinions handed down from the FOIC that stood in stark contrast to the protection of these very important privacy rights of crime victims.

The impetus for the creation of the FOIC in Connecticut, and similar agencies throughout the country, was to provide the public access to the inner-workings of their government to prevent governmental indiscretions such as the Watergate scandal. In the state of Connecticut, the FOIC has discretionary authority to determine, alone, whether information is privy to a freedom of information request. The concept behind FOI requests is that the public may gain access to documents that reveal governmental inner-

workings. This access, allegedly, provides the public with a means to gauge the government's actions within a public agency and hold questionable practices or even corrupt officials accountable for misconduct. For instance, an individual who believes that an indiscretion has occurred can make a FOI request to the public agency and bring to light the actions of that agency. A FOI request could be sent to a police department or correctional institution to determine whether there was abuse of a detainee, or in the case of courts, whether the courts are fair and impartial. By reviewing these documents, the public can determine whether the governmental agency is conducting itself appropriately.

Now more than ever it is apparent that there is a strong need for this practice. However, in some cases, the freedom of information act is being used as a tool for media outlets and for inmates within correctional facilities to perpetrate "fishing expeditions" at the expense and harm of crime victims and employees of the Department of Correction. Requests for information are being made in cases that have nothing to do with the inner-workings of government and where there is no allegation of wrong doing by any public official or agency.

A prime example of this problem is the tragic murder of thirteen year old Jajuana Cole of New Haven in 2006. All defendants arrested in connection with the killing of young Jajuana accepted plea agreements and have been sentenced. During the course of the police investigation, a cell phone video recording of Jajuana's killing was recovered from one of the defendants. The New Haven Register newspaper has now requested, through the freedom of information act, a copy of the cell phone video. It is important to note that there is no allegation of any wrong doing by any official or public agency relating to this tragedy. In addition, there was no criminal trial where the video was presented as evidence, therefore, did not become a part of the court record. The FOIC ordered the release of the video recording by the police department, which was appealed. At this time, the appeal continues to work its way through the court system.

The tragedy here lies with the decision of the FOIC to release this offensive video. What legitimate concern to the public would this video present? We are a curious society by nature; how many times have you slowed down to look at a car accident? We challenge authority and demand answers. These are the very reasons that the freedom of information act was established. Unfortunately, it has become necessary to have a process to ensure that public agencies and officials are held accountable and transparent in their actions. However, a freedom of information request for documents or other materials that do not serve a legitimate concern to the public is purely an abuse of its purpose. In addition, when documents or other materials are requested that only serve to exploit the suffering of crime victims, it is shameful.

It is common knowledge within the legislative world, that oftentimes sound and well-thought out legislation has unforeseen consequences. Many times, despite diligent research, statistical analysis, and field studies, legislative initiatives and their collateral ramifications cannot be seen at the fore front. The problem in the case of FOI requests is that crime victims are paying a heavy price. Their lives are being laid out in newspapers, televisions, and radio stations and their privacy is being trampled upon.

At first glance, the use of the FOI doesn't appear to a lay person or even a legally trained individual as problematic. And in fact there are many instances where there are no problems. The issue arises when the news media or even an inmate in a correctional facility utilizes the FOI to obtain information regarding crime victims which is highly personal or detailed and then publishes the information or dispenses it to others. The issue arises in the following manner: When processing a crime scene, police officers are cognizant that they have one opportunity to gather evidence of a crime and collect it. A crime scene is often difficult to process and can take many officers hours or even days to clear. The information gathered often comes in the way of documents such as letters, legal documents, emails, life insurance policies, financial paper work and so forth. Additionally, with the advances in technology, evidence can be found in a number of forms, such as a computer hard drive, text messaging, voice mails, photographs or videos from cell phones, internet photos and videos (You Tube), the list is endless. The idea behind careful collection of evidence is that once the processing of the scene is completed, keeping in mind that a crime scene is often a home, a store, or a car, the scene is no longer secure. Any evidence taken after the initial search is questionable, at best. The police officers are well aware that they get one bite at the apple.

After processing the scene, the police officers take the evidence they have collected in their investigation, catalogue and store it at the police department. In a large majority of cases throughout Connecticut there will be a plea bargain. Therefore much of the evidence that has been collected from the scene will never see the light of a courtroom since it will not be presented at a motion or in a trial. Here lies the problem. Regardless of the nature of the information housed at the police station, if it was collected by the police in an investigation it is subject to a FOI request. By way of clarity, this information often includes crime scene photographs of a deceased victim, videotapes of a murder in progress, financial records of the crime victim and so forth. When a FOI request is directed at a police department, anything and everything which has been housed at the police department, a public agency becomes accessible to the requester.

There are many states that permit a balancing test, including the Federal government. Additionally, Connecticut already has a privacy exemption for people like me – state employees. Why are we not protecting the citizens of Connecticut in their darkest hours from having their private information splattered all over the front page of a news paper? Why am I afforded more protection simply because I draw a check from the state? A large portion of the FOI requests have nothing to do with challenges or allegations of wrong doing directed at the inner-workings of a public agency, the original reason FOI laws were necessary.

Section 3 of Senate Bill No. 1152 creates a definition of invasion of personal privacy. As proposed, this legislation **will not** provide the protection to crime victims as I intended. I have included an amendment to my testimony that **must** be adopted to fulfill this purpose. I **am not** suggesting a blanket refusal of information, as the media would lead one to believe. Rather, it is specific objection(s) directed at certain portions of a FOI request such as photographs, video tapes etc. This is about common sense. I

want to be clear, the information I am concerned about is not evidence from a trial or motion. Obviously this information is public information. Furthermore, I am not suggesting that summarily this information be withheld. I am simply asking that the victim, and in cases of a homicide, the victim's family, be included in the balancing of needs. I am advocating for the creation of a reasonable person's standard balancing test between the public's right to know what is occurring in their public agencies and the victim's right to privacy. Why does the media need a crime scene photo of a deceased victim that was taken during an autopsy? Why does the media need a video of a beating or murder of a young person? Why does the media need the names and addresses of sexual assault victims? I advocate for the public to learn about their public agencies through FOI; however, there is a difference between community empowerment and exploiting crime victims. When the FOI requests include private and horrific details the disclosure of which would be offensive to a reasonable person, we have ventured outside

The proposal, with the amendment, **DOES NOT** keep information of legitimate concern to the public a secret. The proposal, with the amendment, **DOES NOT** automatically prohibit the disclosure of information to the public. The proposal, with the amendment, **DOES NOT** interfere with the public's inspection of information relating to the interworking of a public agency. The proposal, with the amendment, **DOES NOT** obstruct the gathering of information regarding the actions of a public agency. The proposal, with the amendment, **DOES NOT** limit the disclosure of information presented during a court proceeding. The proposal, with the amendment, simply allows for a public agency to raise an objection to the request for information when the agency is of the belief that the disclosure of such information would be an invasion of personal privacy, based on a reasonable person standard.

Over the last few years Connecticut has made great strides towards transparency in the Courts: a movement geared towards openness of courthouses, through videotaped arraignments, trials, parole hearings, as well as accessibility to arrest warrants and search warrants. The idea stems from a desire to provide the public with a better understanding of the criminal justice system. The impact, however, realized or unintentional, is that crime victims, the innocent families and children who are involuntarily thrust into the center of the criminal justice system, are becoming the show piece for many of these events. The courts are and will continue to be open to the public, with the exception of child protection cases and juvenile matters. However, the issue of crime victims' privacy as it relates to the private painful details of their shattered lives continues to be a point of contention especially in regards to Freedom Of information Requests (FOI).

I strongly urge the committee to support the proposal **along with the amendment** to ensure that the freedom of information act is not used to the detriment of innocent victims and their families. I would be happy to answer any questions that you may have.

Respectfully submitted,

Michelle Cruz, Esq.
State Victim Advocate

Proposed Amendment to Senate Bill No. 1152
An Act Concerning the Disclosure of Certain Reports and the Definition of Invasion of
Personal Privacy Under the Freedom of Information Act

After the last section, insert the following:

Section 1-210 of the General Statutes is repealed and the following is substituted in lieu thereof:

(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein. Each such agency shall make, keep and maintain a record of the proceedings of its meetings.

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;

(2) Personnel or medical files and [similar] other files, documents, materials, photographs, videos, recordings or other tangible objects the disclosure of which would constitute an invasion of personal privacy;

(3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (F) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals

under section 53-21, or of an attempt thereof, or (G) uncorroborated allegations subject to destruction pursuant to section 1-216;

(4) Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled;

(5) (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and (B) Commercial or financial information given in confidence, not required by statute;

(6) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations;

(7) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision;

(8) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish the applicant's personal qualification for the license, certificate or permit applied for;

(9) Records, reports and statements of strategy or negotiations with respect to collective bargaining;

(10) Records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship;

(11) Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age, provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school;

(12) Any information obtained by the use of illegal means;

(13) Records of an investigation or the name of an employee providing information under the provisions of section 4-61dd;

(14) Adoption records and information provided for in sections 45a-746, 45a-750 and 45a-751;

(15) Any page of a primary petition, nominating petition, referendum petition or petition for a town meeting submitted under any provision of the general statutes or of any special act, municipal charter or ordinance, until the required processing and certification of such page has been completed by the official or officials charged with such duty after which time disclosure of such page shall be required;

(16) Records of complaints, including information compiled in the investigation thereof, brought to a municipal health authority pursuant to chapter 368e or a district department of health pursuant to chapter 368f, until such time as the investigation is concluded or thirty days from the date of receipt of the complaint, whichever occurs first;

(17) Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g;

(18) Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities. Such records shall include, but are not limited to: (A) Security manuals, including emergency plans contained or referred to in such security manuals; (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities; (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed; (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment; (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities; (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision; (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and (H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers;

(19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request

of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Public Works, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Management and Homeland Security, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to: (i) Security manuals or reports; (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities; (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed; (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment; (v) Internal security audits of government-owned or leased institutions or facilities; (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision; (vii) Logs or other documents that contain information on the movement or assignment of security personnel; (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and (ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

(20) Records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system;

(21) The residential, work or school address of any participant in the address confidentiality program established pursuant to sections 54-240 to 54-240o, inclusive;

(22) The electronic mail address of any person that is obtained by the Department of Transportation in connection with the implementation or administration of any plan to inform individuals about significant highway or railway incidents;

(23) The name or address of any minor enrolled in any parks and recreation program administered or sponsored by any public agency;

(24) Responses to any request for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file.

(c) Whenever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Division facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Division facility of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility or Whiting Forensic Division facility.

(d) Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Public Works or the Commissioner of Emergency Management and Homeland Security, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management.

(e) Notwithstanding the provisions of subdivisions (1) and (16) of subsection (b) of this section, disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency;

(2) All records of investigation conducted with respect to any tenement house, lodging house or boarding house as defined in section 19a-355, or any nursing home, residential care home or rest home, as defined in section 19a-490, by any municipal building department or housing code inspection department, any local or district health department, or any other department charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation or occupancy of such buildings; and

(3) The names of firms obtaining bid documents from any state agency.

Section 3: (NEW)

(a) Whenever any public agency receives a freedom of information request to inspect or copy any files, pursuant to section 1-210 of the general statutes, as amended by this act, the public agency shall raise a privacy objection to obtain such records, if the item(s) sought in such request are reasonably determined to be an invasion of personal privacy, pursuant to subdivision (2) of subsection (b) of section 1-210 of the general statutes, as amended by this act.

(b) Any public agency raising an objection pursuant to subsection (a) of this section, shall notify the requestor of the objection, in writing on a form prescribed by the public agency. Upon the filing of an objection as provided in this subsection, the public agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206 of the general statutes.

(c) Any public agency shall not be held liable for fines or penalties for raising a "good faith" privacy objection for disclosure of such records that the public agency reasonably believes constitutes an invasion of personal privacy.