

RAISED BILL 1152, AN ACT CONCERNING THE DISCLOSURE OF CERTAIN REPORTS
AND THE DEFINITION OF INVASION OF PERSONAL PRIVACY UNDER THE FOIA

*Government Administration and Elections Committee by:
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Good morning Senator Slossberg, Representative Spallone and members of the committee. My name is Sandra Sharr. I am the Director of Legal Affairs for the Department of Correction (DOC). I would like to both comment on Raised Bill 1152, AAC the Disclosure of Certain Reports and the Definition of Invasion of Personal Privacy under the FOIA and to offer an amendment to the bill.

I would specifically address Sec. 3 (lines 77-81) of the bill, which defines “invasion of personal privacy.” The DOC objects to this language because it is unnecessary as case law has already explored this definition, initially in *Perkins v. Freedom of Information Commission*, 228 Conn. 158 (1993) (“*Perkins*”), and subsequently in numerous cases that followed. It is the standard to which the FOIC cites. In terms of the common law, the right to privacy is recognized in the context of the tort of invasion of privacy. Section 652D of the Restatement (Second) of Torts defines a tort action for the invasion of personal privacy as being triggered by public disclosure of any matter that “(a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.” In *Perkins*, the Court recognized this two-part test for an invasion of personal privacy as necessary to establish the exemption granted by *C.G.S. Sec. 1-210(b)(2)*. Because the FOIC and the courts already apply the Perkins standard, an amendment of FOIA to incorporate the standard serves no purpose.

The DOC wishes to offer an amendment that was included in the Office of the Victims’ Advocate’s (OVA) original legislative proposal, which is currently not included in the proposed bill before us today. *C.G.S. 1-210(b)(2)* exempts from disclosure “personnel or medical files and similar files, the disclosure of which would constitute an invasion of personal privacy.” The OVA proposed to change the word “similar” to “other” and include “documents, materials, photographs, videos, recordings or other tangible objects.” [“(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.”]

The DOC supports this language. Inclusion of this language would broaden the exemption to cover other items that could be invasive of an individual’s personal privacy. It would, for example, prevent the release of graphic photos of victims of a homicide. Although the FOIC believes it protects victims of crime, on October 8, 2008¹, the Commission voted to release to a Connecticut inmate records from the Department of Public Safety (DPS), Forensic Crime Lab that consisted of a series of photographs of the victim of a homicide – the individual that this inmate murdered – taken both at the crime scene and during an autopsy. Providing these graphic photographs to the perpetrator of the crime, we believe, was an inappropriate invasion of the victim’s privacy, and also a re-victimization of the victim and the victim’s family. By the

¹ *Christopher Smith v. Commissioner, State of Connecticut, Department of Public Safety, Legal Affairs Unit; and State of Connecticut, Department of Public Safety, Legal Affairs Unit, Docket #FIC 2008-245*

way, the DPS was ordered to release the records “with no redactions, free of charge” as the inmate claimed he was indigent. This case is on appeal.

The State Victim Advocate in her testimony last week before the Judiciary Committee on House Bill 6670, AAC the Rights of Crime Victims and the Duties of the Office of the Victim Advocate, noted another example – the tragic murder of a 13-year-old girl in New Haven in 2006 that was recorded on a cell phone video. The New Haven Register requested a copy of that video through FOIA. The Commission voted the release of the video.² That decision is also on appeal.

This language would also grant protection to other materials not generally contained in “files,” such as videotapes taken of inmates being strip searched, or crimes being committed or photographs of crime victims. Inmates frequently use FOI to request documents, and they have not hesitated to request items that have been confiscated from them as contraband. For example, one inmate with a history of sexual assault drew pictures of himself sexually assaulting a correctional nurse and promptly filed an FOI request to re-obtain these drawings once they were taken from him.

The FOIC and the Connecticut Council on Freedom of Information have expressed concerns that this provision will expand to cover all government materials. Their fears are misplaced. The government would still be required to provide anything that did not meet the stringent definition of privacy. And if an item is truly highly offensive to a reasonable person and of no legitimate public concern, why should it be released just because it takes the form of a videotape, photograph or other material and is not a file “similar” to a personnel or medical file? This kind of distinction is truly arbitrary and results in the release of offensive and immaterial items.

For the reasons mentioned above, I urge the Committee to reject Sec. 3 of Raised Bill 1152 and to include the substitute language offered by the State Victim Advocate to Sec. 1-210(b)(2). Thank you for the opportunity to provide testimony on this bill.

² *Bill Kaempffer and the New Haven Register v. Chief, Police Department, City of New Haven*, Docket #FIC 2007-334.