

# Legal Assistance Resource Center

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### H.B. 6340 -- "Administrative functions" of the Judicial Branch under the Freedom of Information Act

Judiciary Committee public hearing -- March 26, 2009  
Testimony of Raphael L. Podolsky

<p><u>Recommended Committee action: AMENDMENT OF SECTION 13 OF THE BILL</u></p>
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Section 13 of this bill amends the Freedom of Information Act (FOIA) to limit the Judicial Branch meetings and records that are covered by the FOIA. It is apparently an effort to codify the 4-3 decision of the Supreme Court in Clerk of Superior Court v. Freedom of Information Commission, 278 Conn. 28 (2006). In this, it is in sharp contrast with S.B. 912, a bill in the Government Administration and Elections Committee (GAE), which expands the applicability of the FOIA to Judicial Branch administrative functions. In the past two years, the Judicial Branch has made huge strides toward opening its internal processes. This, however, is not sufficient reason to exempt those administrative processes from the FOIA. **We urge the Judiciary Committee to substitute the GAE version of the proposal for the one contained in this bill.**

The FOIA covers the Judicial Branch only in regard to its "administrative functions." This term has been construed extremely narrowly by the Supreme Court so as to exclude the process of making Practice Book rules (thus allowing the Rules Committee of the Superior Court to meet in secrecy) and the disclosure of the court's daybook, a list of cases filed in the court. The Supreme Court has construed "administrative" narrowly so as to refer only to records of budget, personnel, facilities, physical operations, and similar matters. In contrast, others have argued that the term "administrative" covers all Judicial Branch activities other than judicial decision-making in individual court cases and that, in particular, both rulemaking and recordkeeping are administrative functions. That is the interpretation reflected in the GAE bill, which at first glance looks like H.B. 6340 but in fact is very different. In particular, it includes as "administrative functions" (a) "All matters not directly related to judicial decision-making in individual court cases, and (b) rulemaking and recordkeeping, neither of which are listed in Section 13 of H.B. 6340.

When the FOIA was adopted in 1975, it was called the "Sunshine Act" because it was seen as a way to let some light into what seemed to be the secret functioning of government. Today, we call this "transparency." Democracy functions best when government is conducted in the open. The FOIA recognizes that statutes cannot constitutionally obstruct the operation of the Judicial Branch or exercise a function that is exclusively judicial. Rulemaking and recordkeeping, however, violate neither of these standards, and their inclusion within the FOIA is well within the constitutional power of the legislature. We hope that the Committee will make clear that these functions, and especially rule-making, are administrative under the FOIA.