

**FREEDOM OF INFORMATION COMMISSION STATEMENT IN  
OPPOSITION TO RAISED BILL 5344, AN ACT CONCERNING THE  
NONDISCLOSURE OF INFORMATION REGARDING PERSONS ARRESTED FOR  
DOMESTIC VIOLENCE**

**March 4, 2010**

The Freedom of Information Commission (FOIC) submits this statement to object to proposed Raised Bill No. 5344, concerning the nondisclosure of information regarding persons arrested for domestic violence.

The FOI Commission strongly objects to the changes to the FOI Act proposed in Section 1 of this bill (lines 27-34). In what appears to be a misplaced attempt to protect crime victims, RB 5344 makes sweeping changes to what has been a narrow exemption in the FOI Act. If enacted, these changes could severely erode the well-established right guaranteeing public access to public records, but they will not give victims of crime the sense of privacy they seek.

The proposed change to the statute would broaden the types of records covered by the so-called law enforcement exemption in the FOI Act. Under current law, the exemption applies *only* to *some* records compiled in connection with the detection or investigation of crime. The exemption permits a law enforcement agency to withhold records whose disclosure would, generally, be prejudicial to a police investigation, or would endanger the safety of police informants, and witnesses to a crime. Under current law, arrest records of juveniles, and records which would disclose the name and address of the victim of a sexual assault, are also exempt from disclosure under the law enforcement exemption.

RB 5344 would add the name, address and arrest records of a person arrested for a very large number of offenses, including assault (first and second degree), sexual assault (first and second degree), sexual assault with a firearm, sexual assault in a spousal or cohabitating relationship, stalking (first, second and third degree), criminal violation of a protective order, and criminal violation of a standing criminal restraining order, if such offenses occur in a domestic situation, to the narrow list of records that are presently exempt from disclosure under the so-called law enforcement exemption. This proposal to exclude from public scrutiny such a broad category of criminal records, particularly at a time when domestic violence appears to be on the rise, must be rejected, as it is counter to the FOI Act's fundamental notions of open government.

Moreover, enabling a group of violent offenders to remain out of the public eye harms public safety and is hardly in the best interests of either the offenders' victims or the public.

Implicit in this bill is the belief that the FOI Act fails to protect victims of crime. We must disagree. The FOI Act recognizes the many explicit statutory protections given to crime victims; records that are confidential by law may not be disclosed under the FOI Act. For example, laws protect the confidentiality of information about stalking victims, child abuse victims, family violence victims, victims of sexual assault, and autopsies of homicide victims. Other statutes protect the confidentiality of information provided to the Office of the Victim

Advocate and the Office of the Child Advocate. The confidentiality of juvenile and youthful offender proceedings also shield the victims of crimes.

Furthermore, the proposed exemption is inartfully drafted. Its reference to records “compiled for law enforcement purposes” inadvertently expands application to civil law enforcement matters. Under current law, the exemption applies only to records compiled in connection with crime.

Those who advocate on behalf of victims often observe that crime victims are victimized twice – first by the perpetrator of the crime and then by “the system.” Clearly, the delays and other obstacles in the criminal justice system and sensational media coverage of crime are not always in a crime victim’s best interests. But that is where the problem lies and why this bill has gone astray. RB 5344’s proposed revision to our public records law does not address, or in any way remedy, those legitimate grievances.

The FOI law as it is now written works well and we don’t believe there is reason to change it in the manner suggested by RB 5344. However, if there is any specific area that needs protection, we’d like to know what that area is and to help craft a more narrow confidentiality provision.

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