

**FREEDOM OF INFORMATION COMMISSION STATEMENT IN  
OPPOSITION TO SB 221,  
AN ACT PROHIBITING THE DISCLOSURE OF EMPLOYEE  
FILES TO INMATES**

The Freedom of Information Commission (FOIC) submits this statement to object to proposed Senate bill 221 concerning the personnel records of Department of Correction (DOC) and Department of Mental Health and Addiction Services (DMHAS) records.

**1. The proposal is unnecessary.** The bill would provide a blanket prohibition, absent a court order, on the disclosure of “personnel or medical files or any similar file” of DOC and DMHAS employees (both current and former) to incarcerated individuals. The proposal is unnecessary because there are already two exemptions contained in the Freedom of Information (“FOI”) Act that can be utilized to withhold these kinds of records under appropriate circumstances. Section 1-210(b)(2) provides for the non-disclosure of personnel, medical or similar files that, if disclosed, would constitute an invasion of personal privacy. The Supreme Court has provided a standard that has withstood the test of time, to determine whether disclosure of such records would invade personal privacy (See Perkins v. FOI Commission, 228 Conn. 158 (1993)). Similarly, §1-210(b)(18) provides an exemption, specific to DOC and DMHAS, for records that the Commissioner of either DOC or DMHAS reasonably believe may result in a safety risk, if disclosed. Thus, both privacy interests and the unique safety and security concerns faced by correctional institutions are already taken into account under current law.

**2. The proposal is an end-run around decisions that have been appealed and are properly before the courts for review.** There are cases on appeal that involve personnel-type records of DOC employees, requested by incarcerated individuals, wherein the DOC essentially took the same approach before the FOIC that it now seeks to have codified by the legislature. It argued that personnel records should never be provided to an inmate. The FOIC feels that this is the wrong approach and that each case ought to be handled on an individual basis, applying existing law. The FOIC has ruled in at least four very fact-specific cases (see, #FIC 2006-502, Taylor v. DOC involving disciplinary records of correction officers; #FIC2006-537, Quint v. DOC involving records revealing the reason for dismissal of a Native American Religious Elder, a former employee; #FIC 2007-069, Taylor v. DOC involving records concerning the disciplinary history of a DOC employee); #FIC 2008-029, Taylor v. DOC involving disciplinary records of two correction officers) that the DOC failed to prove the applicable exemptions (DOC did not even offer the records at issue for in camera inspection by the FOIC to support their claims). DOC’s approach in each of these cases was to argue its general concerns and fears about releasing personnel-type records, without demonstrating a particularized concern or fear about the specific records or requestor at issue. The DOC appealed those decisions and they are pending in court. One additional appeal was filed this week by the DOC of #FIC 2009-020, Stevenson v. DOC, wherein the FOIC ordered limited disclosure of records listing the disposition of criminal cases against certain DOC employees (excluding any records that had been erased by operation of law, and with the names and other identifying information redacted). Clearly, the DOC is unhappy with the FOIC decisions in the cases it has appealed and this is a legislative attempt to undo them.

**3. The DOC’s security claims have been upheld by the FOI Commission, where appropriate, under existing law.** It should be noted that the FOIC’s case-by-case approach has, where proved by the DOC, resulted in rulings upholding DOC’s claims of exemption for certain records pertaining to DOC personnel and prison security. (See e.g., #FIC 2000-040, Jon T. Pepe

and Connecticut State Prison Employees, AFSCME Local 391 v. DOC ; #FIC 2004-248 Daniel Henderson v. DOC; #FIC2008-105 Jones v. DOC; #FIC2009-090 John Sylvia v. DOC; #FIC2008-62, Robin Elliott v. DOC; and #FIC2008-507, Robin Elliott v. DOC).

**4. The stated goal of this bill cannot be achieved because the proposal can be easily circumvented.** SB 221 is also flawed because the prohibition on disclosure could be thwarted easily. All an incarcerated person need do is ask someone else who is not incarcerated to request the records for him or her and the exemption would disappear.

**5. The arguments describing the need for this proposal are overstated.** In addition to stating safety concerns, supporters of this legislation cite increased workload for their agencies due to inmate requests. Requests for personnel files of DOC and DMHAS employees by incarcerated individuals are a tiny fraction of the FOI requests DOC and DMHAS respond to each year. And, to date, access to personnel files has not been a widespread area of interest among the inmate population. Approximately 10 complaints brought to the FOIC since 2006 have involved inmate requests for DOC employee personnel records and those complaints were made by the same four inmates.

**6. The proposal overlooks the countervailing public policy interest in disclosure.** There is an additional public policy reason why this proposal should be rejected. There are problems within correctional institutions that only the inmates know and can bring to light, highlighting the need for at least some of these kinds of records to be made available. For example, at least one of the pending court cases referenced above involves allegations of health and safety violations by employees of a correctional institution. Surely there is a public interest in this information. As previously stated, the exemptions that exist under current law strike the appropriate balance between the public interest and safety and security. The blanket exemption proposed under this bill would eviscerate those considerations.

**7. There is a technical drafting issue contained in the proposal.** The proposal aims to add a 25<sup>th</sup> exemption to Conn. Gen. Stat. §1-210(b) of the FOI Act. If the intention is to provide for a total exemption to disclosure of the personnel records, the provision should NOT be placed in Conn. Gen. Stat. §1-210. The exceptions to disclosure contained therein are discretionary in nature, meaning that an agency may choose to disclose such records in a given situation. If the aim of this bill is to provide a mandatory exemption to disclosure, the language would be better placed elsewhere, preferably outside of the FOI Act.

For the reasons set forth above, the FOIC urges rejection of SB 221.

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