



Senate

General Assembly

File No. 601

January Session, 2011

Senate Bill No. 38

Senate, April 20, 2011

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT AND DIVISION OF PUBLIC DEFENDER SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of section 1-200 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2011*):

4 (1) "Public agency" or "agency" means:

5 (A) Any executive, administrative or legislative office of the state or
6 any political subdivision of the state and any state or town agency, any
7 department, institution, bureau, board, commission, authority or
8 official of the state or of any city, town, borough, municipal
9 corporation, school district, regional district or other district or other
10 political subdivision of the state, including any committee of, or
11 created by, any such office, subdivision, agency, department,
12 institution, bureau, board, commission, authority or official, and also

13 includes any judicial office, official, or body or committee thereof but
14 only with respect to its or their administrative functions, and for
15 purposes of this subparagraph, "judicial office" includes, but is not
16 limited to, the Division of Public Defender Services;

17 (B) Any person to the extent such person is deemed to be the
18 functional equivalent of a public agency pursuant to law; or

19 (C) Any "implementing agency", as defined in section 32-222.

20 Sec. 2. Section 18-101f of the general statutes is repealed and the
21 following is substituted in lieu thereof (*Effective October 1, 2011*):

22 A personnel or medical file or similar file concerning a current or
23 former employee of the Division of Public Defender Services,
24 Department of Correction or the Department of Mental Health and
25 Addiction Services, including, but not limited to, a record of a security
26 investigation of such employee by the department or an investigation
27 by the department of a discrimination complaint by or against such
28 employee, shall not be subject to disclosure under the Freedom of
29 Information Act, as defined in section 1-200, as amended by this act, to
30 any individual committed to the custody or supervision of the
31 Commissioner of Correction or confined in a facility of the Whiting
32 Forensic Division of the Connecticut Valley Hospital. For the purposes
33 of this section, an "employee of the Department of Correction" includes
34 a member or employee of the Board of Pardons and Paroles within the
35 Department of Correction.

36 Sec. 3. Subsection (d) of section 1-212 of the general statutes is
37 repealed and the following is substituted in lieu thereof (*Effective*
38 *October 1, 2011*):

39 (d) The public agency shall waive any fee provided for in this
40 section when:

41 (1) The person requesting the records is an indigent individual;

42 (2) The records located are determined by the public agency to be

43 exempt from disclosure under subsection (b) of section 1-210;

44 (3) In its judgment, compliance with the applicant's request benefits
45 the general welfare; [or]

46 (4) The person requesting the record is an elected official of a
47 political subdivision of the state and the official (A) obtains the record
48 from an agency of the political subdivision in which the official serves,
49 and (B) certifies that the record pertains to the official's duties; or

50 (5) The person requesting the records is a member of the Division of
51 Public Defender Services or an attorney appointed by the court as a
52 special assistant public defender under section 51-296 and such
53 member or attorney certifies that the record pertains to the member's
54 or attorney's duties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	1-200(1)
Sec. 2	October 1, 2011	18-101f
Sec. 3	October 1, 2011	1-212(d)

GAE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Pub. Defender Serv. Com.	GF - Savings	5,000	5,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill will result in a savings of less than \$5,000 to the Public Defenders Services Commission by exempting public defenders from paying a fee for copies obtained under the Freedom of Information Act.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 38*****AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT AND DIVISION OF PUBLIC DEFENDER SERVICES.*****SUMMARY:**

This bill exempts from disclosure under the Freedom of Information Act (FOIA) personnel, medical, or similar files about current or former employees of the Division of Public Defender Services to people in the custody or supervision of the Department of Corrections or confined in a facility of the Whiting Forensic Division of Connecticut Valley Hospital. It is unclear if the exemption includes records of (1) security investigations of such employees and (2) investigations of discrimination complaints by or against the employees.

The bill also requires public agencies to waive any fees for providing records requested under FOIA if the requestor (1) is a member of the Division of Public Defender Services or an attorney appointed by a court as a special assistant public defender and (2) certifies that the records pertain to his or her duties.

Lastly, the bill specifies that, for purposes of FOIA, the Division of Public Defender Services is considered to be a judicial office. By law, a judicial office is subject to FOIA only with respect to its administrative functions.

EFFECTIVE DATE: October 1, 2011

BACKGROUND***Disclosure of Personnel, Medical, or Similar Files***

By law, unless specifically exempted, personnel, medical, and similar files are subject to disclosure under FOIA unless disclosure

would constitute an invasion of personal privacy (CGS § 1-210(b)(2)). Under case law, disclosing these files is an invasion of privacy if the (1) records are not of legitimate public concern and (2) information in the files would be highly offensive to a reasonable person (*Perkins v. FOI*, 228 Conn. 158 (1993)).

Personnel, medical, or similar files about current or former employees of the (1) Department of Correction (DOC), including members and employees of the Board of Pardons and Paroles, and (2) Department of Mental Health and Addiction Services (DMHAS) are exempt from disclosure under FOIA to people in DOC custody or supervision or confined in a facility of the Whiting Forensic Division of Connecticut Valley Hospital. The exemption includes records of (1) the departments' security investigations of such employees and (2) investigations of discrimination complaints by or against the employees.

Administrative Functions

In *Clerk of the Superior Court, Geographical Area Number Seven et al. v. Freedom of Information Commission*, 278 Conn. 28 (2006), the Connecticut Supreme Court ruled that, for purposes of FOIA, a judicial office's administrative functions consist of activities relating to its budget, personnel, facilities, and physical operations.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 10 Nay 5 (04/01/2011)