

**FREEDOM OF INFORMATION COMMISSION STATEMENT ON
RAISED BILL NO. 943**

**AN ACT CONCERNING PRIVILEGED COMMUNICATIONS AND THE
FREEDOM OF INFORMATION ACT**

March 21, 2011

The Freedom of Information Commission ("FOIC"), while not opposed to the intent and purpose of Raised Bill No. 943, to exempt certain records containing privileged communications from disclosure, submits that this proposed amendment to the Freedom of Information Act ("FOI") is (1) unnecessary, and (2) should be clarified, for the reasons set forth below:

(1) Raised Bill 943 would, in part, exempt from disclosure "communications privileged by the "doctor-patient relationship" and the "therapist-patient relationship." The following privileges, relating to doctor and therapist relationships, have been codified in the General Statutes: Conn. Gen. Stat. §52-146c, psychologist-patient; Conn. Gen. Stat. §52-146d, psychiatrist-patient; Conn. Gen. Stat. §52-146o, physician, surgeon or health care provider-patient.

Even without the proposed language, the FOIC has, as far back as 1986, on numerous occasions, recognized the privileges in Conn. Gen. Stat. §§52-146c and 52-156d in contested cases, and concluded that such privileges precluded disclosure of certain requested records in those cases. The FOIC also recognized, in a contested case, the privilege codified in Conn. Gen. Stat. §52-146q, between a social worker and a client.

The FOI Act states that "[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency... shall be public records..." Because the privileges that have been codified in state statute would appear to fall under the "except as otherwise provided language," in the FOI Act, such communications would not be subject to disclosure if they were, in fact, privileged, within the meaning of such state statutes. Therefore, the FOIC submits that Raised Bill 943, which would amend the FOI Act to include exemptions for privileged communications already codified in the General Statutes, is unnecessary.

(2) The language in Raised Bill 943 provides an exemption for communications privileged by certain relationships identified in the proposal, but also states: "or any other privilege established by the common law or the general statutes." The FOIC submits that this quoted language is overly broad, and respectfully requests that it be eliminated or, that the proposal be amended to specify which common law privileges the proposal seeks to include.

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