

**FREEDOM OF INFORMATION COMMISSION STATEMENT IN  
OPPOSITION TO PROPOSED SENATE BILL 38,  
AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT AND  
DIVISION OF PUBLIC DEFENDER SERVICES**

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The Freedom of Information Commission (FOIC) submits this statement in opposition to Proposed Bill 38 concerning the records of the Division of Public Defender Services, for the reasons set forth below.

**1. Proposed Senate Bill 38 sweeps too broadly would hide from public view most records of the Division of Public Defender Services.** The proposed exemption applies to “any documents ... pertaining to the legal representation of an indigent client.” In reality, the representation of indigent clients is the whole of the Public Defenders’ business. Nearly everything the Division of Public Defender Services does “pertains to the representation of an indigent client.”

Criminal case files of clients are already protected from disclosure. These records are not subject to the FOI Act and are not open to the public, because they are adjudicative records and part of the Judicial Branch. SB 38 would bar disclosure not merely of client case files, but also many administrative records of the agency that are now accessible to the public.

No other state or municipal agency – including the Division of Criminal Justice - is shielded from public view as thoroughly as the Division of Public Defender Services would be if the General Assembly enacts this proposed bill.

**2. Attorney-Client Privileged Communications are Already Exempt From Disclosure under the FOI Act.** The FOI Act has long protected records that are confidential because they are privileged communications between an attorney and a client. Under current law, any communication between an attorney and a client that is made in confidence and, generally, contains legal advice, is protected from disclosure. There are sound policy reasons for protecting attorney-client communications, whether the client is a government agency, a public employee, or an indigent client of the Public Defenders Services.

There are also sound policy reasons for requiring disclosure of records pertaining to legal representation that do NOT divulge privileged communications.

Complaints about an attorney’s competence are subject to disclosure – except for any information that is privileged – in the same manner and for the same reasons that almost all personnel and disciplinary information about public employees is available for public scrutiny.

The Division of Public Defender Services is a government agency, funded by taxpayer dollars. The Division is charged with a task of utmost public importance – protecting the constitutional rights of indigent people charged with serious crimes. The public has a compelling interest in knowing that its tax dollars are being spent effectively and that the Division of Public Defender Services is meeting its responsibilities. The only way to guarantee accountability is to preserve transparency – EXCEPT where transparency would divulge privileged communications.

Complaints about attorney misconduct to the Division of Public Defender Services are public records and should be accessible to the public EXCEPT for any information in the complaints that is privileged. But the complaints themselves must remain a matter of public record, much as complaints against police officers are of legitimate public interest, and a matter of public record – except for any information that is otherwise confidential, and complaints about teacher misconduct are open to the public, except for any information concerning performance evaluations.<sup>1</sup>

3. **Private Personnel and Medical Information is Already Exempt.** The FOI Act already exempts from disclosure any personnel – i.e., work-related – information and medical information where disclosure would constitute an invasion of personal privacy. The employees of the Division of Public Defender Services, as well as the employees of the Division of Criminal Justice, have been protected by this exemption for years. In addition, residential addresses, social security numbers, and other personal information is already protected by the FOI Act and other statutes.

Hiring decisions, disciplinary matters, commendations, timesheets – all are public records whose accessibility to the public helps ensure accountability of all public employees – including judges, prosecutors, and public defenders.

4. **Exempting the Division of Public Defender Services from all fees is Unnecessary.** The FOIC takes no position on this subsection of the proposed bill. However, singling out one agency for such special treatment may place an unfair burden on all other agencies. In addition, the FOI Act already permits an agency to waive fees for copies of records in any case where the person making the request is indigent or where a waiver would serve the general welfare.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel, 860-566-5682.

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<sup>1</sup> The issue is now the subject of an administrative appeal pending in the Superior Court: *Division of Public Defender Services, et al. v. FOIC, et al*, No. CV10-6006148S. In that case, the Division of Public Defender Services refused even to confirm or deny the existence of complaints about attorneys, claiming that to confirm that complaints were made would violate attorney privilege and ethics. The Public Defenders also refused to provide the complaints for an in camera review by the hearing officer, which is the method sanctioned by the Connecticut Supreme Court for the FOIC to adjudicate whether a public record is exempt. The FOIC, which was prepared to exempt all privileged information in the complaints but to order disclosure of all other non-exempt information, was forced to conclude that the Division of Public Defenders failed to prove its case because it chose not to present the necessary evidence.