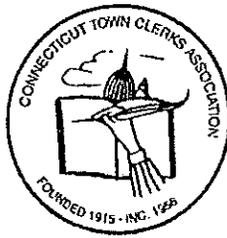


Connecticut Town Clerks Association, Inc.

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2012 Legislative Committee

Testimony Planning & Development Committee February 22, 2012

Good morning distinguished members of the Planning & Development Committee. My name is Joyce Mascena and I am testifying on behalf of the Connecticut Town Clerk's Association (CTCA). I am the President of the Association and the Town Clerk of Glastonbury. Also joining me is Joseph Camposeo, the immediate past President of the Town Clerks Association and Town Clerk of Manchester. He as well is very familiar with this subject and has testified numerous times in his tenure as President. I am here today to testify in support of the Governor's Language in Bill 5035 with additional wording to reflect "No public agency may disclose, from their personnel and medical records,..." We greatly appreciate the Governor raising awareness to this very important issue.

We are also aware of the potential E-Cert amendment to FOIA Section 1-217 proposed by the House and Senate as set forth in a Memorandum from Christy Scott to the co-chairs of the GAE Committee. We would support the provision in the memo which states, the "Public agency employer is prohibited from releasing the residential address of its own protected employee from personnel, medical and similar files." We also would support the suggestion that the Department of Labor explore ideas on how the protected employees can proactively protect their addresses from disclosure as well as the provision that states, "Land Records, grand lists and voter registry lists will not be required to be redacted before disclosure."

However, land records, grand lists and voter registry lists are the main sources for obtaining address information in municipal public records. Exempting these three main public records renders it pointless to redact from any other public records. These three public records are also online in many municipalities or available from private vendors.

There are other provisions in the potential E-Cert amendment that will lead to further confusion, restricted access to public records and most assuredly lawsuits from individuals seeking access to public records and from protected employees seeking to restrict access to their records. These provisions are based upon incorrect assumptions that would further complicate an already impossible and unworkable task.

There is an "opt-in" provision, which fails to consider how long someone is on this list and what the process is for removing an individual from the list. Who would be responsible for maintaining this list? Would the protected person need to identify himself or herself to each public agency? Would this be a retroactive provision requiring research in many prior years worth of public records?

There is an assumption that FOI requests are always written requests when in reality many town clerk records are self-accessed by the consumers in public vaults and computers. Some municipalities may get thousands of requests in any given week. This may be through telephone, mail and over the counter requests.

Municipalities do not have a centralized database for all town clerk records, much less all municipal public records. Within town clerk records, different databases exist for vital records, trade names, dog & absentee ballot lists, just to name a few. Other public records may be indexed in card catalogues or held in paper format including minutes, notary registrations, campaign finance reports and petition pages, again just to name a few. For a more detailed list of effected public records, please see the list contained in the Coalition Position Paper that is attached hereto. It is unmanageable to check the "opt in list" for thousands of requests a week and make redactions in databases that may not permit such an action.

Another provision would hold the public agencies harmless for any civil liability if they made a reasonable good, faith, effort. The terms "reasonable effort" and "good faith effort" leave room for an inevitable future court challenge that a public agency failed to make reasonable efforts.

As far as a task force being created that would consider the redaction of names from land records, grand lists and voter files, that would not be productive. These are public records that must remain free from redaction.

Let us also not forget, you can search the Internet to find out basic information on just about anyone. For free, you can find out a person's residence history, family members, phone number & age. For a small fee, a further in-depth search can expose a person's employment history, social security number, lawsuits, court documents and much more. Those wishing to do harm are not using municipal public records to find this information. Municipal public records are now considered an outdated source of information compared to the information that is readily available on the Internet. In actuality, they don't even need the Internet or your name or address. They can simply follow you home from work.

If acceptable alternative language to what has already been proposed by the Governor and the House and Senate is not adopted, then this will leave municipal governments with no other choice but to take the advice of their legal counsels and shutdown all access to public records because of these potential impacted records.

Thank you for this opportunity to testify. We would be happy to answer any questions you may have at this time.

Respectfully submitted,
Joyce Mascena, Glastonbury Town Clerk
President, CT Town Clerks Association

State Statute Imposes Onerous Burden on Public Agencies

Coalition Urges General Assembly to Introduce a Legislative Remedy

Coalition Members:

*CT Association of Assessor Officers
CT Association of Municipal Attorneys
CT Association of Realtors
CT Attorneys Title Insurance Company
CT Bankers Association
CT Bar Association
CT Conference of Municipalities
CT Council of Small Towns
CT Council on Freedom of Information
CT Daily Newspaper Association*

*CT Mortgage Bankers Association
CT State Library
CT Tax Collectors Association
CT Title Association
CT Town Clerks Association
CT Freedom of Information Commission
Registrar of Voters Association of CT
Secretary of the State of CT
State Elections Enforcement Commission*

State Supreme Court Rules on FOI Case

A recent State Supreme Court decision confirms the interpretation of a Freedom of Information Act provision which prohibits disclosure of residential addresses of certain Federal, State and Municipal employees. The impact of this decision could be crippling to state and local agencies and could undermine public confidence in the integrity of many government records.

Though the court's decision narrowly applies to motor vehicle records, legal counsel for state and municipal agencies, as well as attorneys for the FOI Commission, are advising that the court's decision will apply to all public records, including land records, voter lists, and tax rolls, as well as all other records in every office of every public agency in the state; and it applies to all formats of records, both printed and electronic.

The impact of this decision has an immediate effect on state agencies and municipalities and a legislative remedy is urgently needed and should be acted upon without delay.

Agencies Will Not be Able to Comply with the Court's Decision

Compliance with the court's decision promises to create immediate havoc by disrupting, for example, title searches, service of process, collection of debts, and notification of adjoining landowners in planning and zoning matters. Access to voter lists will be compromised, as will the records of tax assessors, municipal clerks, the Secretary of the State, and the State Elections Enforcement Commission. If a legislative remedy is not acted upon clerks, assessors, and registrars will not be able to meet their duties under the law to certify the accuracy and completeness of their records that must be open to the public. In addition they will no longer be able to comply with other Statutes that prohibit the alteration of certain public records.

Long Standing Access to Public Records in Jeopardy

Public agencies will not be able to ensure that all their records comply with the Supreme Court's decision; therefore many of these records will not be available to the public for viewing which is a concern to the users of these public records.

This decision has broad implications from the affect on government and commerce to the integrity of voting and town records. Redacting addresses that are integral to the purpose of the records that contain them irreparably damages the people's right to know that their government is functioning competently and fairly.

The coalition is in agreement that:

- With the Supreme Court's interpretation of CGS § 1-217 it places an unrealistic burden of identifying and redacting all public documents where protected individuals may appear.
- The costs associated with this unfunded mandate are extreme due to the scope and volume of public records that are in print, electronic and microfilm formats.
- It is impossible for any agency to ensure ongoing compliance, causing potential liability for municipal and state agencies.
- CGS § 1-217 conflict with other State Statutes (§ 1-240 and § 53-153) which prohibit the redaction or alteration of original public records.
- The Court's decision grievously harms our commercial and government institutions, which for centuries have relied on land records, tax rolls, voter lists, and other public records to be complete, accurate and open to the public.

Proposed Language:

§ 1-217. Nondisclosure of residential addresses of certain individuals

(a) No [public agency] state department, agency, board, council, commission or institution may disclose from its personnel records, under the Freedom of Information Act, the residential address of any of the following persons employed thereby, if such person submits a written request for such nondisclosure and furnishes his business address to the executive head of such department, agency, board, council, commission or institution.

This revision reverts to the pre-1999 text of the statute, but also clarifies the statute only applies to an agency's own employees and explicitly limits its scope to the personnel records of the state agency in question. There is also the requirement of a written request.

PUBLIC RECORDS WITH ADDRESSES HELD BY OFFICE

TOWN CLERK

Land Records
Maps
Voter Lists
Dog License Owner Listings
Petitions
Campaign Finance Reports
Absentee Ballot Applications
Notary Filings
Elected and Appointed Listing
Sporting Licenses
General Correspondence
Trade Name Certificates
Meeting Minutes – Public Hearings
Vital Records
Dial-A-Ride applications
Landfill Pass Applications
Conveyance Forms
Grand Lists
Daybooks
Indexes
Annual Disclosure Statements

REVENUE DEPT.

Rate Books
Suspense Listings
Bank Code Book
Sewer use and assessment lists
Sewer connections
Sewer cards
Tax warrants
Lien lists
Paid tax receipts
Certificate of corrections and refunds

POLICE DEPT.

Case Reports
Investigations on vendors
Pistol Permits

ENGINEERING DEPT.

Street Files and Subdivision files
Excavation and sewer permits
FEMA LOMA applications
GIS – maps
Sewer and road project with addresses.

REGISTRARS OF VOTERS

Voter Cards
Canvass Lists (NOCA)
Check off Voter Lists
Monthly Detail Reports with new voters, removals and changes
Official Voter Lists
Alpha Lists
DMV Lists
Daily Log

RECREATION DEPT.

Recreation registration forms
Town pool membership applications
Permit applications for facility use
Garden Plot applications
Instructor proposals
Employment applications

BUILDING DEPT.

Building permits
Certificates of Occupancy
Construction drawings and site plans that contain addresses of owners.

ASSESSING

Grand Lists
Property Cards

HUMAN RESOURCES

Employment applications
I-9, W-4, CT W-4
Employee Information Updates
Health Insurance Enrollment
Dental Insurance Enrollment
Term life Insurance
ICMA (401a and 457)
ROTH

PLANNING AND COMMUNITY DEVELOPMENT

Applications for variances and special exceptions
Zoning meeting minutes
Inland Wetland Applications
Zoning Applications
Site and subdivision plans

** Section 1-217, G.S. provides:* No public agency may disclose, under the Freedom of Information Act, the residential address of any of the following persons:

(1) A federal court judge, federal court magistrate, judge of the Superior Court, Appellate Court or Supreme Court of the state, or family support magistrate;

(2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Public Safety or a sworn law enforcement officer within the Department of Environmental Protection;

(3) An employee of the Department of Correction;

(4) An attorney-at-law who represents or has represented the state in a criminal prosecution;

(5) An attorney-at-law who is or has been employed by the Public Defender Services Division or a social worker who is employed by the Public Defender Services Division;

(6) An inspector employed by the Division of Criminal Justice;

(7) A firefighter;

(8) An employee of the Department of Children and Families;

(9) A member or employee of the Board of Pardons and Paroles;

(10) An employee of the judicial branch;

(11) An employee of the department of Mental Health and Addiction Services who provides direct care to patients; or

(12) A member or employee of the Commission on Human Rights and Opportunities.

§1-217, G.S., ADDRESS EXEMPTION

CASE SUMMARY:

**Commissioner of Public Safety et al v.
Freedom of Information Commission and Peter Sachs**
301 Conn. 323 (June 28, 2011)

The Connecticut Supreme Court has settled the question of whether §1-217, G.S., which prohibits the disclosure of the residential addresses of 11 categories of public employees, applies to records such as grand lists, voter rolls, and other records that are required by law to be complete, accurate, and open to public inspection.

The answer is yes. In Commissioner of Public Safety et al v. Freedom of Information Commission and Peter Sachs, the Supreme Court held that §1-217, G.S., *requires* the redaction of residential addresses from the copy of the motor vehicle grand list that is open to the public.

The case arose in the town of North Stonington, when the assessor in 2007 refused to give a private investigator an unredacted copy of the motor vehicle grand list. Although state statute (§12-55, G.S.) requires the assessor to lodge a complete and accurate list for public inspection, a separate statute (§1-217, G.S.) prohibits disclosure of the residential addresses of eleven categories of government employees.

The FOI Commission, faced with resolving two apparently conflicting statutory mandates, reasoned that the legislature did not intend to repeal §12-55, G.S., by enacting §1-217, G.S., and concluded that the address exemption provision applied to all public records *except* those that the legislature determined, by enacting separate statutes, are to remain complete, accurate, and open. The Superior Court affirmed (*Comm'r v. FOI Commission*, 2009 Conn. Super. LEXIS 2872 (Conn. Super. Ct., Nov. 2, 2009)).

The Supreme Court overturned the Superior Court, and held that the address exemption supersedes §12-55, G.S. Specifically, the Supreme Court ruled that the FOIA requires disclosure of all public records except as otherwise provided by state law, and §1-217 is one such state law that requires non-disclosure.

Although the Supreme Court case pertained only to the motor vehicle grand list of North Stonington, we assume that the decision will apply to ALL public records, including the real estate grand list, all land records, voter enrollment lists, voter registries, dog licenses – in short, even including records that by law must be complete, accurate, and open to public inspection.