Public Comment of Peter Sachs

Before the Planning & Development Committee On

Governor's H.B. No. 5035, Session Year 2012

AN ACT REDUCING MANDATES FOR MUNICIPALITIES

My name is Peter Sachs from Branford, CT, and I am here today to speak in support of Governor's Bill 5035, and specifically its proposed revisions to CGS Sec. 1-217.

In 2008, I started the whole controversy involving this statute, which resulted in arguments before and decisions by the Freedom of Information Commission, the Superior Court and ultimately the State Supreme Court.

Sec. 1-217 currently requires all public agencies to do the impossible— redact from all public records the residential addresses of any person, whether now living or long dead, who has ever been employed in any of twelve specific categories.

However well intentioned that statute might have been when enacted in 1995, it was not possible then, it is not possible now and it will never be possible for any public agency to comply with its provisions. There exists no method or mechanism for public agencies to use in determining which addresses should be redacted.

Currently those who enjoy the statute's protection need not inform any public agency of their special status. Rather, public agencies, using a method neither dictated nor described, must determine, in some arcane manner which persons are "protected."

Moreover, to ensure that public records are at all times accurate, *(as the law requires)*, public agencies must make this onerous determination at their own expense, each and every moment of each and every day— forever. No public agency can "magically" know the occupations of each person whose residential address might exist within public records it maintains.

Since it is not possible to comply with the statute, public agencies remain in the absurd position of deciding which law to break— Sec. 1-217, which *requires* them to alter public records, or Sec. 1-240, which *forbids* such alterations. I cannot imagine that the Legislature intended these bizarre consequences when it enacted this statute.

While both common sense and logic dictate that it is impossible to abide by Sec. 1-217, the Connecticut Supreme Court, *(apparently invoking neither common sense nor logic)*, found no problem with it. In its June 28, 2011 decision,[1] the Court found the statute to be entirely valid, and confirmed that public agencies must perform the impossible.

Given the unworkable nature of the statute and the ill-informed declaration by our State Supreme Court that it is nonetheless valid, I set out to prove that no public agency would be able to abide by either the statute or the decision of the Court. And I have proven it.

I submitted what has been dubbed, "the impossible request," to various large municipalities throughout the State. The impossible request sought exact electronic copies of several public records, including:

- *All existing motor vehicle grand lists;*
- *All existing real estate grand lists;*
- *All existing personal property grand lists;*
- *All existing trade names certificates;*
- *All existing dog license lists;*

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1 Commissioner of Public Safety v Freedom of Information Commission and Peter Sachs, Case No. SC 18617 (CT S.Ct., Jun. 28, 2011)

- *All existing lists of appointed and elected officials;*
- *All existing public meeting minutes;*
- *All existing petitions;*
- *All existing lists of registered voters; and*
- *All existing land record filings.*

I specifically requested copies of these records that had been properly redacted in accordance with Sec. 1-217.

In August 2011, I sent the "impossible request" to several major municipalities and each responded by stating they were unable to comply because that had no such redacted public records in their custody. Since it would have been unfair to demand that these municipalities incur any expenses in a vain attempt to do that which is impossible, in response to each municipality's declaration of impossibility, I retracted my request.

I next sent an FOI request to the Secretary of State, Division of Elections, requesting a copy of the Master Voter Database properly redacted in accordance with Sec. 1-217. On that same date, the Secretary of State responded that she was unable to comply because her office has no such redacted version of the database, and that no such version could ever exist because the law forbids any alterations. I then retracted that request.

I next sent an FOI request to the Department of Public Safety, requesting a copy of the SPRC Database properly redacted in accordance with Sec. 1-217. The Department responded that no such redacted version of the database existed. It should be noted that the Department of Public Safety had argued against the FOIC and me since 2008, that Sec. 1-217 was both valid and workable. Yet it has now admitted its own Department was not in compliance all the while.

It is abundantly clear from their uniform written responses to my requests, that public agencies simply cannot comply with Sec. 1-217. If this is not proof that the statute is unworkable, I don't know what is. Laws that are illogical; laws that are unworkable; laws that are impossible to comply with; and laws that force public agencies to break the law are nonsensical. Sec. 1-217 is <u>all</u> of these.

This statue in its current state is not only an unfunded mandate, any attempt to fund doing something that cannot be done is, by definition, a complete and utter waste of taxpayer dollars. The proposed changes to Sec. 1-217 found in Governor's Bill 5035 will eliminate this mandate and allow those wishing to be protected by the statute to do so without requiring public agencies to perform impossible tasks at their own expense.

I urge the Legislate to adopt the proposed changes to Sec. 1-217 and by doing so, preserve the traditional openness of public records in Connecticut.

Respectfully Submitted,

Peter Sachs, Esq.