



General Assembly

Substitute Bill No. 1149

January Session, 2013



**AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE
CONCERNING ACCESS TO PUBLIC RECORDS.**

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

1 Section 1. Section 1-206 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) Any denial of the right to inspect or copy records provided for
4 under section 1-210 shall be made to the person requesting such right
5 by the public agency official who has custody or control of the public
6 record, in writing, [within] not later than four business days [of] after
7 such request, except when the request is determined to be subject to
8 subsections (b) and (c) of section 1-214, in which case such denial shall
9 be made, in writing, [within] not later than ten business days [of] after
10 such request. Failure to comply with a request to so inspect or copy
11 such public record within the applicable number of business days shall
12 be deemed to be a denial.

13 (b) (1) Any person denied the right to inspect or copy records under
14 section 1-210 or wrongfully denied the right to attend any meeting of a
15 public agency or denied any other right conferred by the Freedom of
16 Information Act may appeal [therefrom] such denial to the Freedom of
17 Information Commission, by filing a notice of appeal with said
18 commission. A notice of appeal shall be filed not later than thirty days
19 after such denial, except in the case of an unnoticed or secret meeting,
20 in which case the appeal shall be filed not later than thirty days after

21 the person filing the appeal receives notice in fact that such meeting
22 was held. For purposes of this subsection, such notice of appeal shall
23 be deemed to be filed on the date it is received by said commission or
24 on the date it is postmarked, if received more than thirty days after the
25 date of the denial from which such appeal is taken. Upon receipt of
26 such notice, the commission shall serve upon all parties, by certified or
27 registered mail, a copy of such notice together with any other notice or
28 order of [such] said commission. In the case of the denial of a request
29 to inspect or copy records contained in a public employee's personnel
30 or medical file or similar file under subsection (c) of section 1-214, the
31 commission shall include with its notice or order an order requiring
32 the public agency to notify any employee whose records are the subject
33 of an appeal, and the employee's collective bargaining representative,
34 if any, of the commission's proceedings and, if any such employee or
35 collective bargaining representative has filed an objection under said
36 subsection (c), the agency shall provide the required notice to such
37 employee and collective bargaining representative by certified mail,
38 return receipt requested or by hand delivery with a signed receipt. A
39 public employee whose personnel or medical file or similar file is the
40 subject of an appeal under this subsection may intervene as a party in
41 the proceedings on the matter before the commission. Said commission
42 shall, after due notice to the parties, hear and decide the appeal
43 [within] not later than one year after the filing of the notice of appeal.
44 The commission shall adopt regulations in accordance with chapter 54,
45 establishing criteria for those appeals which shall be privileged in their
46 assignment for hearing. Any such appeal shall be heard not later than
47 thirty days after receipt of a notice of appeal and decided not later than
48 sixty days after the hearing. If a notice of appeal concerns an
49 announced agency decision to meet in executive session or an ongoing
50 agency practice of meeting in executive sessions, for a stated purpose,
51 the commission or a member or members of the commission
52 designated by its chairperson shall serve notice upon the parties in
53 accordance with this section and hold a preliminary hearing on the
54 appeal not later than seventy-two hours after receipt of the notice,
55 provided such notice shall be given to the parties at least forty-eight

56 hours prior to such hearing. During such preliminary hearing, the
57 commission shall take evidence and receive testimony from the parties.
58 If after the preliminary hearing the commission finds probable cause to
59 believe that the agency decision or practice is in violation of sections 1-
60 200 and 1-225, the agency shall not meet in executive session for such
61 purpose until the commission decides the appeal. If probable cause is
62 found by the commission, it shall conduct a final hearing on the appeal
63 and render its decision not later than five days after the completion of
64 the preliminary hearing. Such decision shall specify the commission's
65 findings of fact and conclusions of law.

66 (2) In any appeal to the Freedom of Information Commission under
67 subdivision (1) of this subsection or subsection (c) of this section, the
68 commission may confirm the action of the agency or order the agency
69 to provide relief that the commission, in its discretion, believes
70 appropriate to rectify the denial of any right conferred by the Freedom
71 of Information Act. The commission may declare null and void any
72 action taken at any meeting which a person was denied the right to
73 attend and may require the production or copying of any public
74 record. In addition, upon the finding that a denial of any right created
75 by the Freedom of Information Act was without reasonable grounds
76 and after the custodian or other official directly responsible for the
77 denial has been given an opportunity to be heard at a hearing
78 conducted in accordance with sections 4-176e to 4-184, inclusive, the
79 commission may, in its discretion, impose against the custodian or
80 other official a civil penalty of not less than twenty dollars nor more
81 than one thousand dollars. If the commission finds that a person has
82 taken an appeal under this subsection frivolously, without reasonable
83 grounds and solely for the purpose of harassing the agency from
84 which the appeal has been taken, after such person has been given an
85 opportunity to be heard at a hearing conducted in accordance with
86 sections 4-176e to 4-184, inclusive, the commission may, in its
87 discretion, impose against that person a civil penalty of not less than
88 twenty dollars nor more than one thousand dollars. The commission
89 shall notify a person of a penalty levied against him pursuant to this

90 subsection by written notice sent by certified or registered mail. If a
91 person fails to pay the penalty within thirty days of receiving such
92 notice, the superior court for the judicial district of Hartford shall, on
93 application of the commission, issue an order requiring the person to
94 pay the penalty imposed. If the executive director of the commission
95 has reason to believe an appeal under subdivision (1) of this subsection
96 or subsection (c) of this section (A) presents a claim beyond the
97 commission's jurisdiction; (B) would perpetrate an injustice; or (C)
98 would constitute an abuse of the commission's administrative process,
99 the executive director shall not schedule the appeal for hearing
100 without first seeking and obtaining leave of the commission. The
101 commission shall provide due notice to the parties and review
102 affidavits and written argument that the parties may submit and grant
103 or deny such leave summarily at its next regular meeting. The
104 commission shall grant such leave unless it finds that the appeal: (i)
105 Does not present a claim within the commission's jurisdiction; (ii)
106 would perpetrate an injustice; or (iii) would constitute an abuse of the
107 commission's administrative process. Any party aggrieved by the
108 commission's denial of such leave may apply to the superior court for
109 the judicial district of Hartford, [within] not later than fifteen days [of]
110 after the commission meeting at which such leave was denied, for an
111 order requiring the commission to hear such appeal.

112 (3) In making the findings and determination under subdivision (2)
113 of this subsection the commission shall consider the nature of any
114 injustice or abuse of administrative process, including, but not limited
115 to: (A) The nature, content, language or subject matter of the request or
116 the appeal; (B) the nature, content, language or subject matter of prior
117 or contemporaneous requests or appeals by the person making the
118 request or taking the appeal; and (C) the nature, content, language or
119 subject matter of other verbal and written communications to any
120 agency or any official of any agency from the person making the
121 request or taking the appeal.

122 (4) Notwithstanding any provision of this subsection, [to the

123 contrary,] in the case of an appeal to the commission of a denial by a
124 public agency, the commission may, upon motion of such agency,
125 confirm the action of the agency and dismiss the appeal without a
126 hearing if it finds, after examining the notice of appeal and construing
127 all allegations most favorably to the appellant, that (A) the agency has
128 not violated the Freedom of Information Act, or (B) the agency has
129 committed a technical violation of the Freedom of Information Act that
130 constitutes a harmless error that does not infringe the appellant's rights
131 under said act.

132 (c) Any person who does not receive proper notice of any meeting
133 of a public agency in accordance with the provisions of the Freedom of
134 Information Act may appeal under the provisions of subsection (b) of
135 this section. A public agency of the state shall be presumed to have
136 given timely and proper notice of any meeting as provided for in said
137 Freedom of Information Act if notice is given in the Connecticut Law
138 Journal or a Legislative Bulletin. A public agency of a political
139 subdivision shall be presumed to have given proper notice of any
140 meeting, if a notice is timely sent under the provisions of said Freedom
141 of Information Act by first-class mail to the address indicated in the
142 request of the person requesting the same. If such commission
143 determines that notice was improper, it may, in its sound discretion,
144 declare any or all actions taken at such meeting null and void.

145 (d) Any party aggrieved by the decision of said commission may
146 appeal [therefrom] such decision, in accordance with the provisions of
147 section 4-183. Notwithstanding the provisions of section 4-183, in any
148 such appeal of a decision of the commission, the court may conduct an
149 in camera review of the original or a certified copy of the records
150 which are at issue in the appeal but were not included in the record of
151 the commission's proceedings, admit the records into evidence and
152 order the records to be sealed or inspected on such terms as the court
153 deems fair and appropriate, during the appeal. The commission shall
154 have standing to defend, prosecute or otherwise participate in any
155 appeal of any of its decisions and to take an appeal from any judicial

156 decision overturning or modifying a decision of the commission. If
157 aggrievement is a jurisdictional prerequisite to the commission taking
158 any such appeal, the commission shall be deemed to be aggrieved.
159 Notwithstanding the provisions of section 3-125, legal counsel
160 employed or retained by said commission shall represent said
161 commission in all such appeals and in any other litigation affecting
162 said commission. Notwithstanding the provisions of subsection (c) of
163 section 4-183 and section 52-64, all process shall be served upon said
164 commission at its office. Any appeal taken pursuant to this section
165 shall be privileged in respect to its assignment for trial over all other
166 actions except writs of habeas corpus and actions brought by or on
167 behalf of the state, including informations on the relation of private
168 individuals. Nothing in this section shall deprive any party of any
169 rights [he] such party may have had at common law prior to January 1,
170 1958. If the court finds that any appeal taken pursuant to this section or
171 section 4-183 is frivolous or taken solely for the purpose of delay, it
172 shall order the party responsible therefor to pay to the party injured by
173 such frivolous or dilatory appeal costs or attorney's fees of not more
174 than one thousand dollars. Such order shall be in addition to any other
175 remedy or disciplinary action required or permitted by statute or by
176 rules of court.

177 (e) [Within] Not later than sixty days after the filing of a notice of
178 appeal alleging violation of any right conferred by the Freedom of
179 Information Act concerning records of the Department of Energy and
180 Environmental Protection relating to the state's hazardous waste
181 program under sections 22a-448 to 22a-454, inclusive, the Freedom of
182 Information Commission shall, after notice to the parties, hear and
183 decide the appeal. Failure by the commission to hear and decide the
184 appeal within such sixty-day period shall constitute a final decision
185 denying such appeal for purposes of this section and section 4-183. On
186 appeal, the court may, in addition to any other powers conferred by
187 law, order the disclosure of any such records withheld in violation of
188 the Freedom of Information Act and may assess against the state
189 reasonable attorney's fees and other litigation costs reasonably

190 incurred in an appeal in which the complainant has prevailed against
191 the Department of Energy and Environmental Protection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	1-206

Statement of Legislative Commissioners:

In section 1(d) the provision changing "informations" to "information" was deleted for accuracy.

GAE *Joint Favorable Subst. -LCO*