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Toll free (CT only): (866) 374-3617 Tel: (860) 566-5682 Fax: (860) 566-6474 • www.ct.gov/foi • email: foi@ct.gov

March 18, 2014

Senator Anthony Musto, Co-Chair
Representative Ed Jutila, Co-Chair
Government Administration and Elections Committee
Room 2200, Legislative Office Building
Hartford, CT 06106

Re: RB 381, An Act Concerning the Task Force on Victim Privacy and the Public's Right to Know

Dear Senator Musto and Representative Jutila:

In the Commission's written testimony on RB 381, we stated that the Commission had never ordered the release of homicide crime scene images. On Friday evening, March 14, 2014, an Op-Ed piece authored by Garvin Ambrose, the state's Victim Advocate, appeared in the Hartford Courant, entitled "Keep Homicide Evidence from Publication". In that op-ed piece, Mr. Ambrose referenced a 2008 Freedom of Information Commission decision which ordered the release of homicide photographs. The case name was not identified.

Yesterday, we searched our databases and other computer records looking for any instance where homicide crime scene images were ordered released. We have identified only one decision among the many thousands issued by the Commission which fits the criteria - a case that we regrettably missed prior to filing our written testimony on RB 381. It is Docket #FIC 2008-245; Christopher Smith v. Commissioner, State of Connecticut, Department of Public Safety, Legal Affairs Unit; and State of Connecticut, Department of Public Safety, Legal Affairs Unit. Mr. Ambrose later confirmed that this is the case he referenced in his piece.

In reviewing this matter, the facts are somewhat unique. The case was brought by an attorney representing an individual imprisoned for murder. The attorney was in the midst of a habeas proceeding, wherein the inmate was alleging that his trial attorney had been ineffective because he neglected to challenge the state's forensic evidence. At issue were photographs which depicted the crime scene and the body of the victim, and a video taken by police at the crime scene.

At the administrative hearing, the attorney stated that the purpose for requesting the records was to provide them to a blood spatter expert. In pursuit of his habeas efforts on behalf of his client, the attorney intended to challenge the forensic evidence presented by the state at trial. In closing argument, the Assistant Attorney General who represented the respondents stated with respect to the complainant's reason for seeking the records: "I can't say that we

disagree with him. I fully understand his need to have some of these photographs for the purposes of conducting forensic analysis and determining whether the state met its burden at trial.” However, the Assistant Attorney General stated that the proper way to proceed would have been to go through the Chief State’s Attorney’s Office and use discovery, and not use the FOI law.

The Commission ordered disclosure, and the State Police initially appealed to Superior Court. However, shortly thereafter, the appeal was withdrawn, the records were provided to the attorney, and, to our knowledge, were never published.

Again, this is the only case which we have identified, out of the thousands of FOIC decisions, and the many that involved requests for homicide records, where the Commission ordered the release of homicide images. It was a case which illustrates that, depending on the facts and circumstances involved, there may be good reason to release such records. In the matter we describe, even the respondents acknowledged that the complainant should have the records. Ultimately, the matter was settled out of court.

The omission of the case was an oversight and we wanted to ensure that the Committee has all of the facts and history before considering this important piece of legislation. If you have any questions regarding this issue, please do not hesitate to contact me.

Sincerely,



Colleen M. Murphy
Executive Director and General Counsel
Freedom of Information Commission