

STATEMENT OF MITCHELL W. PEARLMAN IN OPPOSITION TO RAISED BILL 381

According to economist and statistician Howard Friedman, the United States has one of the lowest voter turnouts of any comparably wealthy country. So the question naturally arises, why do so few Americans exercise their right to vote?

One obvious answer is the high degree of cynicism people have toward politicians in general, tethered to a corresponding lack of confidence in the too often secretive processes of government itself. These attitudes have been confirmed in one public opinion poll after another.

To exacerbate this problem, our own Freedom of Information Act – which was enacted precisely to open the processes of government to public scrutiny – has been substantially weakened in recent years. For example, in the emotional wake of the Newtown tragedy, a hastily drafted and ill-considered bill created new categories of crime-related information to be kept secret from the public. That law essentially immunizes law enforcement officials from public scrutiny and accountability, all under the guise of hypothetical and speculative privacy concerns. It assumes that crimes are a private matter between law enforcement and putative victims only, and not a matter of legitimate public concern.

Raised Bill 381 is the product of a task force created by that law. Unfortunately, in trying to seek a compromise, the task force's recommendations, embodied in RB 381, would make a bad law even worse.

The task force recommended that access to crime scene media be further restricted, making 911 recordings and homicide photographs available for viewing or listening only. The task force went on to specify that a person could obtain a copy of the restricted media, but only if that person could prove that the copy did not constitute an "unwarranted" invasion of privacy.

Since the state FOI Act was first passed in 1975, the rule has been that government records are available for both inspection and copying, unless the government could show an applicable exemption in the law. The new standard of "unwarranted" invasion of privacy turns the presumption of openness upside down, and places the burden on the citizen to prove that even a minimal invasion of privacy is indeed warranted.

Of course, it's highly unlikely that a person requesting a copy of a crime scene photograph or a 911 recording can ever meet this extraordinary burden. After all, a person would need the copy of the photograph or recording in the first instance to establish that the request was warranted. For example, without first obtaining a digital copy of a crime scene photograph, how could a person establish whether that photograph had been altered by Photoshop-type software? Similarly, without actually having a copy of a 911 recording for forensic testing, how could a person establish that obtaining that copy is warranted because the person identified as speaking was actually someone else?

That is why notable experts have universally criticized the so-called "Favish" federal FOI decision, on which the task force based its "unwarranted" standard. In that case, the court said that unless FOI requesters could show that their requests were warranted by government wrongdoing, they could not obtain the government documents they sought. Of course, they first needed copies of those same documents to establish whether there was any government wrongdoing.

Twenty years ago, our state Supreme Court established the test for invasion of privacy under the Connecticut's FOI Act. It requires the government to show that disclosure would be both highly offensive to a reasonable person and does not pertain to a matter of legitimate public concern. I submit that this time-tested standard provides the proper balance between privacy and the fundamental necessity in a democracy for the people to have access to the information they need to determine whether their government is performing competently, effectively, or indeed honestly.

One reason so many people choose not to vote is because they feel that government officials are not straight with them; that they too often play hide the ball by keeping important information secret.

This committee can help correct this destructive perception by rejecting this bill in its current form. Instead, I urge the committee to use this bill as a vehicle to close the loopholes created last session in the dark of night. Unless the assault on Freedom of Information and the public's overarching right to know is restored, cynicism about government undoubtedly will continue to rise and public confidence in our political institutions will continue to erode.

As Thomas Jefferson wrote: "Whenever the people are well-informed, they can be trusted with their own government." On the other hand, if they're not well-informed, then democracy itself is in big trouble.