

Testimony of the Connecticut Council on Freedom of Information opposing *Senate Bills 381 and 388, An Act Concerning the Task Force on Victim Privacy and the Public's Right To Know.*

March 10, 2014

Members of the committee:

My name is Claude Albert. I am the legislative chair of the Connecticut Council on Freedom of Information. CCFOI was instrumental in winning passage of the state Freedom of Information Act in 1975 and has worked for more than half a century to further government transparency and accountability. Thank you for giving us this opportunity to address you.

CCFOI opposes Senate Bills 381 and 388. As you well know, the question before you concerns where to draw the line between the interests of personal privacy and the public accountability of the criminal justice system in cases that involve killings.

The enormity of the Newtown tragedy weighs heavily on all and makes it difficult to examine these issues through any other lens. Nonetheless, it is critical to keep in mind that the bill before you now would apply to all homicides. CCFOI believes there is no area where public transparency is more vital than the administration of justice in such cases.

The public good requires a way to expose mistakes, inadequacies or misconduct in the criminal justice system. The vast majority of cases do not raise such questions, of course, but certainly, over time, there are homicide cases where police response should be evaluated; where the handling of an investigation or a decision not to prosecute is suspect; where a shooting by the police is questioned; or where some other shortcoming is alleged. When those cases arise, the public should be allowed to see and hear the best evidence in the search for the truth.

Such cases in which graphic crime scene photos are critical and have been made public are exceedingly rare. In fact, we are not aware of a single instance in which such material was obtained through a Connecticut FOI request and later published. Such material has long been public in the criminal courts but almost never published.

Cases involving 911 calls and other police recordings are much more common, however. The most obvious recent example of their public value has been in the Cheshire home invasion case. To our knowledge, police there still have not formally evaluated their response on that terrible day. Shouldn't the public at large have timely and unrestricted access to police recordings to make their own judgments about whether any emergency

was handled well or poorly? We believe they should, and that the legislature should not impose restrictions on access to 9-1-1 calls and other police communications.

The proposal before you allows individual members of the public to inspect crime scene photographs and to listen to police audio recordings, but they can obtain timely copies only if the police determine there is no "unwarranted invasion of personal privacy." If they determine there may be such an unwarranted invasion, they must contact the relatives or legal representatives of homicide victims or all those who are heard on a police recording to determine if they have any objection to copying of the materials. If they do, copying is not permitted.

This outcome can be appealed to the Freedom of Information Commission and ultimately the courts, but a final ruling on the public's legitimate interest in disclosure could take months or even years.

As a matter of principle, however, we at CCFOI are most troubled by an even more ill-advised provision affecting these restrictions: The "unwarranted invasion" language of this bill would – for the first time – require the person seeking material to make a legal showing that disclosure would be "warranted."

We oppose this legal sea change. This approach was considered and rejected by the legislature when it adopted the Freedom of Information Act in 1975. We believe the public should never have to prove the value of transparency. The government should always bear the burden of showing the need for secrecy. If a legal balancing test is to be applied to the kinds of documents at issue here, we believe the presumption should remain the invasion-of-privacy standard that Connecticut has long applied: that a document is public unless the government can show that the information it contains is both outrageous to a reasonable person and not a matter of legitimate public concern.