



330 Main Street, Hartford, Connecticut 06106
860-523-9146 | www.acluct.org

Testimony Opposing Senate Bill 388, An Act Implementing the Recommendations of the Task Force on Victim Privacy and the Public's Right to Know

March 10, 2014

Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee, my name is David McGuire. I'm the staff attorney for the American Civil Liberties Union of Connecticut and I'm here to testify against Senate Bill 388, An Act Implementing the Recommendations of the Task Force on Victim Privacy and the Public's Right to Know.

We're grateful for the hard work of the task force and conscious of the extremely difficult and sensitive assignment its members faced. Their choices were painful. We remain mindful, as well, of the anguish suffered by victims of violence and their families. We must help these families without undermining government transparency and the Freedom of Information Act. Government secrecy, in the end, hurts everyone. The ACLU of Connecticut must therefore oppose this legislation.

This bill would limit access to public information in Connecticut in an unprecedented, deeply troubling and discriminatory way. It creates unnecessary hurdles to inspect the kinds of records that have been public information for the past 38 years under the Freedom of Information Act in Connecticut. It imposes additional barriers to the long-established right to duplicate those records. It repeatedly cites a broad and undefined standard of "an unwarranted invasion of personal privacy" that is applicable to any person, not just the families of crime victims, and is sure to cause confusion and discord. Further, this problematic standard would also shift the burden to the person seeking to copy certain crime scene photographs, 911 calls or emergency responder communication by requiring them to prove that disclosure is "warranted."

First, this bill would require members of the public to travel to a specified location during office hours just to look at certain public records. This introduces barriers that are particularly challenging for people with limited mobility and limited resources. People should not be denied access to public information because they are homebound, because they don't have a car or because they have a job that does not permit them time off during a workday. Examining government records can be time-consuming and taking accurate notes even more so. As an investigation comes together— whether it is carried out by a journalist, a government watchdog or a private citizen—the investigator may need access to the same records again and again. Even those who can travel freely will find it more difficult to inspect and analyze large volumes of information in a government office than it would be in their own homes or offices.

The prohibition against reproducing public records is also unacceptable for several reasons. Journalists and others who seek public records often do so to bring the government's actions into public

view. It's not good policy to leave the only evidence of those actions solely in the hands of the agencies and people under scrutiny. A description of a document that can't be produced is a dubious aid in the pursuit of truth. A reporter's unverifiable account of a 911 call can hardly be as powerful and credible as the recording of that call itself. Also worrisome is the element of intimidation introduced by the inspection-only rules, which would require a government employee to watch the person exercising the right to inspect public documents. The ACLU of Connecticut has encountered this problem in investigations of deaths in custody. When we asked to inspect death certificates, some local officials sharply questioned our staff and intern, argued about our intentions and physically obscured parts of documents.

We must also protest any scheme in which the right to copy public records is contingent on the permission of the parties involved in creating that record. Under this bill, if an audio recording revealed that a law enforcement official had behaved inappropriately that same official could simply veto its distribution. This is a direct assault on the public interest. It's difficult to envision how it could be carried out in practice, and the inevitable result would be confusion, delays and yet further unnecessary erosion of the Freedom of Information Act.

Some of the truths revealed in public records are painful. Yet the release of the Sandy Hook 911 calls ultimately served the public interest. They conveyed a narrative of heroism and professionalism that shed light on how police and educators reacted to that horrible tragedy. There is something to learn from that, just as there would have been if the recordings had revealed deficiencies in the response. The whole public deserves a chance to evaluate and learn from this information. While the matter is extremely delicate, this principle must apply across the board, even to crime scene photographs. And it's worth pointing out that these have always been handled with delicacy and that no such photographs have ever been released by order of the Freedom of Information Commission. Even when explicit crime scene photographs have been necessarily exposed at criminal trials in Connecticut, they have not been published or broadcast.

At the core of all this is an exacting principle: the personal privacy we prize so much and that we protect so carefully must sometimes yield to the public interest. This happens when criminal suspects are brought to trial and exercise the right to confront the evidence against them and when our society needs to understand a crime and the police response to it. What happens to each of us, even in our own homes, becomes entwined with the public interest when the police must intervene. Our interactions with the police become a part of the public record. Our right to examine that record concerns not only the victims of a particular crime but all members of the public who rely on the police to protect them from crime in the future.

The Freedom of Information Act already protects personal information that is not related to the public interest, and the Freedom of Information Commission has consistently acted to protect that information. We respectfully contend that another study and more recommendations for more exemptions would be detrimental. In the quest to solve problems that have already been solved or that never existed, this legislation would do no good and a great deal of harm.

We appreciate the opportunity to bring these concerns to the committee. We ask you to reject this bill.