FREEDOM OF INFORMATION COMMISSION STATEMENT IN SUPPORT OF RAISED BILL 6750, AN ACT EXPANDING THE REQUIREMENT FOR DISCLOSURE OF ARREST RECORDS DURING A PENDING PROSECUTION UNDER THE FREEDOM OF INFORMATION ACT.
February 13, 2015

The Freedom of Information Commission **SUPPORTS** RB 6750, An Act Expanding the Requirement for Disclosure of Arrest Records during a Pending Prosecution under the Freedom Of Information Act. The purpose of the bill is to reverse the recent Connecticut Supreme Court decision in Commissioner of Public Safety v. FOI Commission, 312 Conn. 513 (July 14, 2014), and restore the standard for disclosure of law enforcement records during a pending prosecution to what had been the FOIC's interpretation of the law for many decades.

In Public Safety, the Supreme Court interpreted Gen. Stat. §1-215 as it now stands, and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose *no more than* basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person.

RB 6750 reflects, instead, the FOIC's time-tested interpretation of §1-215, which is based on the principle that arrests must not be shrouded in secrecy. The proposed bill requires that during the pendency of a criminal prosecution, a law enforcement agency must disclose *at least* basic police blotter information and one other piece of information, without redaction. All other records must be disclosed unless they fall within the FOI Act's "law enforcement exemption" (Conn. Gen. Stat. §1-210(b)(3)), which protects nondisclosure of law enforcement records where disclosure would, for example, prejudice a prospective law enforcement action, endanger witnesses, or reveal investigatory techniques.

In other words, RB 6750 would establish the minimum, not the maximum, that a police department is required to disclose to the public while a criminal prosecution is pending.

Many state and local police departments have long followed this standard without difficulty. During a pending prosecution, the police need only disclose the basic information required by Conn. Gen. Stat. §1-215 (blotter information and one other designated piece of information), and either disclose in full other records associated with the arrest or articulate a reason why any additional disclosures would prejudice a pending prosecution or otherwise fall into one of the several exemptions available under Conn. Gen. Stat. §1-210(b)(3).

Conn. Gen. Stat. §1-215 as it now stands – i.e., requiring disclosure of no records other than blotter information and a press release -- permits the police, *at their discretion*, to avoid public scrutiny of many aspects of an arrest, such as mug shots showing an arrestee's appearance at the time of arrest, videotapes or other recordings made at the scene or in the police station, and records indicating an arrestee's immigration status or whether the arrestee held a position of public trust, for example. Should the police have unchallengeable discretion to decide whether the public can learn this very important information, or should this decision be vested in the FOIC, as it had been for many decades prior to the Court's ruling? The Supreme Court expressly recognized in Public Safety "numerous salutary effects of requiring greater disclosure" than that established by the current version of Conn. Gen. Stat. §1-215, but stated that "articulating a coherent policy on this matter [is] a uniquely legislative function."

By reversing Public Safety and restoring broader disclosure requirements of law enforcement records after an arrest, RB 6750 strikes an appropriate balance between promoting transparency in law enforcement and preserving the integrity of pending prosecutions. The FOIC strongly urges the legislature to adopt this carefully crafted bill.

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FREEDOM OF INFORMATION COMMISSION STATEMENT ON RAISED BILL 876, AN ACT CONCERNING THE NONDISCLOSURE OF THE RESIDENTIAL ADDRESS OF SWORN MEMBERS OF A LAW ENFORCEMENT UNIT.

February 13, 2015

Raised Bill 876 provides that the residential address of "a sworn member of a law enforcement unit, as defined in section 7-294a, who has obtained certification, as defined in section 7-294a" should be exempt from disclosure under Conn. Gen. Stat. §1-217 of the Freedom of Information ("FOI") Act. The FOI Commission objects to inclusion of additional employees to the list set forth in §1-217 because: it is overly broad; it is unknown whether such employees are any more "at risk" than other public employees; and the proposal would provide very little protection to those employees.

The proposal, as written, appears to be wide-ranging regarding its application. Currently, Conn. Gen. Stat. §1-217(a)(2) is a limited exemption from disclosure of the residential address of a "sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Environmental Protection." The proposal would broaden the category to include a sworn member of:

> any agency, organ or department of this state or a subdivision or municipality thereof, or, if created and governed by a memorandum of agreement under section 2 of this act, of the Mashantucket Pequot Tribe or the Mohegan Tribe of Indians of Connecticut, whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection or investigation of crime.

See Conn. Gen. Stat. §7-294a.

Conn. Gen. Stat. §1-217 was originally enacted to provide some protection to a limited group of employees, who were identified as "at risk" because of the nature of the work they perform. For inclusion in §1-217, a showing ought to be required that the subject employees (for example, Department of Motor Vehicle inspectors, State Liquor Control agents, animal control officers) are "at risk." Otherwise, an argument can be made that all public employees should be afforded §1-217 protection.

In addition, adding a new class of public employees to the list in Conn. Gen. Stat. §1-217 would not be a blanket panacea. In March 2012, the General Assembly limited §1-217 (Public Act 12-3), recognizing that a complete prohibition on disclosure of certain residential addresses is unworkable, impossible and ignores the public policy behind certain other statutes that require the disclosure of residential addresses. Thus, under §1-217, land records (Conn. Gen. Stat. §7-35bb), voter lists (Title 9), and grand lists (Conn. Gen. Stat. §12-55) are no longer exempt under §1-217. (Conn. Gen. Stat. §1-217(d)).

STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION IN SUPPORT OF RAISED BILL 6746, AN ACT EXTENDING THE TERMS OF CERTAIN MEMBERS OF THE FREEDOM OF INFORMATION COMMISSION

February 13, 2015

The Freedom of Information ("FOI") Commission supports RB 6746, An Act Extending the Terms of Certain Members of the Freedom of Information Commission. The bill proposes to change the term of the legislatively appointed members of the FOI Commission from two years to four years. The number of FOI Commissioners increased from five to nine in 2011.[1] The four commissioners added in 2011 are appointed by the legislature, and currently serve two-year terms. This means that every two years, the terms of four of the nine commissioners come to an end at the very same time. The other five commissioners are appointed by the Governor to staggered four-year terms, meaning that their terms are twice as long and expire on a rotating basis rather than all at once.

This new structure is unwieldy. It also differs from that of two other watchdog agencies, the State Elections Enforcement Commission and the Office of State Ethics, neither of which have commissioner terms that are just two years long and neither of which are tied to the legislative political cycle. (*See* Conn Gen. Stat. §9-7a, five commissioners of the State Elections Enforcement Commission, with four legislative appointments and one gubernatorial appointment, wherein each member serves for three years; and Conn. Gen. Stat. §1-80, nine members of the Citizens Ethics Advisory Board, with six legislative appointments and three gubernatorial appointments, wherein each member serves a four year term).

Like these other watchdog agencies, as well as appointments of judges and other independent adjudicators, the FOI Commissioners' terms should be uniform and longer than two years. It takes time to develop the particular expertise required to perform well as a Freedom of Information Commissioner. Uniform four year terms will foster continuity of decision-making and generate valuable institutional knowledge among the members. Moreover, elongating the terms and cutting the tie to the political cycle of the legislature will vastly reduce the appearance that such legislative appointees are obligated to serve the interests of their appointing authority, a factor which is very important for public perception and the continued independence of the FOI Commission.

For these reasons, the FOI Commission strongly supports this bill.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Mary Schwind, Managing Director and Associate General Counsel at (860) 566-5682.

[1] *See* Public Act 11-48, An Act Implementing Provisions of the Budget Concerning General Government.