

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON
RAISED HOUSE BILL 5512, AN ACT AUTHORIZING ADDITIONAL FEES FOR MUNICIPAL
PUBLIC RECORDS REQUESTED FOR COMMERCIAL PURPOSES**

March 7, 2016

The Freedom of Information Commission **opposes** Raised House Bill 5512, An Act Authorizing Additional Fees for Municipal Public Records Requested for Commercial Purposes.

Raised Bill 5512 proposes a radical change to the Freedom of Information (“FOI”) Act. Since its enactment over 40 years ago, the Act’s bedrock principle has been equal access for all. Connecticut case law long ago established that the identity and motive of a requester is irrelevant to the right of access. Such equality of access proudly embraces the idea that government information belongs to us all unless a significant policy reason exists for nondisclosure.

The FOI Commission does recognize that municipalities have been recently confronted with requests from commercial enterprises where an agency’s compliance may consume limited office resources. Nevertheless, the Commission has some serious concerns about the proposed bill as written:

- The definition of “commercial purpose” sweeps too broadly. For instance, does the legislature intend it to apply to an attorney representing a client for a fee, even though the client may seek the public record for a non-commercial purpose?
- RB 5512 permits a municipality to enact a schedule of “reasonable” fees for records used for commercial purposes. Who determines whether the schedule is reasonable? If the FOI Commission is charged with such determination, would the remedy include refunding any unreasonable fee? If so, the FOI Act would need to be amended to permit such a remedy.
- RB 5512 permits a municipality to consider five factors in establishing fees; however, only two of the five factors are objective and quantifiable – the cost to the municipal public agency in producing a copy, and the cost to the agency of the creation, purchase, or acquisition of the public record. The other factors – the type of information requested, the purpose for which the information has been requested, and the commercial value of the information – are so difficult to assess as to place a time-consuming burden on the municipal public agency, and are so subjective as to easily result in inconsistent application of the fee schedule and the appearance of bias.
- RB 5512 also permits each municipality to enact its own schedule; however, this will result in inconsistent fees throughout the state, unlike the current fee structure in the FOI Act.
- Under the proposal, a person may be required to certify that a record will not be used for commercial purposes. What is the remedy and who adjudicates an alleged “wrongful” certification if a person certifies that a requested record will not be used for commercial purposes, but then does do so, or does so at some point in the future?

The Commission urges the legislature to reject Raised Bill 5512. We believe more study is necessary before making such a sweeping change to the FOI Act. Nevertheless, if the Committee wishes to move forward, the Commission would be happy to work with the legislature to craft a more workable and precise proposal.

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