



General Assembly

January Session, 2017

Committee Bill No. 5354

LCO No. 5760



Referred to Committee on GOVERNMENT ADMINISTRATION
AND ELECTIONS

Introduced by:
(GAE)

***AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF
INFORMATION ACT.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Subsection (b) of section 1-206 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2017*):

4 (b) (1) Any person denied the right to inspect or copy records under
5 section 1-210 or wrongfully denied the right to attend any meeting of a
6 public agency or denied any other right conferred by the Freedom of
7 Information Act may appeal therefrom to the Freedom of Information
8 Commission, by filing a notice of appeal with said commission. A
9 notice of appeal shall be filed not later than thirty days after such
10 denial, except in the case of an unnoticed or secret meeting, in which
11 case the appeal shall be filed not later than thirty days after the person
12 filing the appeal receives notice in fact that such meeting was held. For
13 purposes of this subsection, such notice of appeal shall be deemed to
14 be filed on the date it is received by said commission or on the date it is
15 postmarked, if received more than thirty days after the date of the

16 denial from which such appeal is taken. Upon receipt of such notice,
17 the commission shall serve upon all parties, by certified or registered
18 mail, a copy of such notice together with any other notice or order of
19 [such] said commission. In the case of the denial of a request to inspect
20 or copy records contained in a public employee's personnel or medical
21 file or similar file under subsection (c) of section 1-214, the commission
22 shall include with its notice or order an order requiring the public
23 agency to notify any employee whose records are the subject of an
24 appeal, and the employee's collective bargaining representative, if any,
25 of the commission's proceedings and, if any such employee or
26 collective bargaining representative has filed an objection under said
27 subsection (c), the agency shall provide the required notice to such
28 employee and collective bargaining representative by certified mail,
29 return receipt requested or by hand delivery with a signed receipt. A
30 public employee whose personnel or medical file or similar file is the
31 subject of an appeal under this subsection may intervene as a party in
32 the proceedings on the matter before the commission. Said commission
33 shall, after due notice to the parties, hear and decide the appeal within
34 one year after the filing of the notice of appeal. The commission shall
35 adopt regulations in accordance with chapter 54, establishing criteria
36 for those appeals which shall be privileged in their assignment for
37 hearing. Any such appeal shall be heard not later than thirty days after
38 receipt of a notice of appeal and decided not later than sixty days after
39 the hearing. If a notice of appeal concerns an announced agency
40 decision to meet in executive session or an ongoing agency practice of
41 meeting in executive sessions, for a stated purpose, the commission or
42 a member or members of the commission designated by its
43 chairperson shall serve notice upon the parties in accordance with this
44 section and hold a preliminary hearing on the appeal not later than
45 seventy-two hours after receipt of the notice, provided such notice
46 shall be given to the parties at least forty-eight hours prior to such
47 hearing. During such preliminary hearing, the commission shall take
48 evidence and receive testimony from the parties. If after the
49 preliminary hearing the commission finds probable cause to believe

50 that the agency decision or practice is in violation of sections 1-200 and
51 1-225, the agency shall not meet in executive session for such purpose
52 until the commission decides the appeal. If probable cause is found by
53 the commission, it shall conduct a final hearing on the appeal and
54 render its decision not later than five days after the completion of the
55 preliminary hearing. Such decision shall specify the commission's
56 findings of fact and conclusions of law.

57 (2) In any appeal to the Freedom of Information Commission under
58 subdivision (1) of this subsection or subsection (c) of this section, the
59 commission may confirm the action of the agency or order the agency
60 to provide relief that the commission, in its discretion, believes
61 appropriate to rectify the denial of any right conferred by the Freedom
62 of Information Act. The commission may declare null and void any
63 action taken at any meeting which a person was denied the right to
64 attend and may require the production or copying of any public
65 record. In addition, upon the finding that a denial of any right created
66 by the Freedom of Information Act was without reasonable grounds
67 and after the custodian or other official directly responsible for the
68 denial has been given an opportunity to be heard at a hearing
69 conducted in accordance with sections 4-176e to 4-184, inclusive, the
70 commission may, in its discretion, impose against the custodian or
71 other official a civil penalty of not less than twenty dollars nor more
72 than one thousand dollars. If the commission finds that a person has
73 taken an appeal under this subsection frivolously, without reasonable
74 grounds and solely for the purpose of harassing the agency from
75 which the appeal has been taken, after such person has been given an
76 opportunity to be heard at a hearing conducted in accordance with
77 sections 4-176e to 4-184, inclusive, the commission may, in its
78 discretion, impose against that person a civil penalty of not less than
79 twenty dollars nor more than one thousand dollars. The commission
80 shall notify a person of a penalty levied against him pursuant to this
81 subsection by written notice sent by certified or registered mail. If a
82 person fails to pay the penalty within thirty days of receiving such
83 notice, the superior court for the judicial district of Hartford shall, on

84 application of the commission, issue an order requiring the person to
85 pay the penalty imposed. If the executive director of the commission
86 has reason to believe an appeal under subdivision (1) of this subsection
87 or subsection (c) of this section (A) presents a claim beyond the
88 commission's jurisdiction; (B) would perpetrate an injustice; or (C)
89 would constitute an abuse of the commission's administrative process,
90 the executive director shall not schedule the appeal for hearing
91 without first seeking and obtaining leave of the commission. The
92 commission shall provide due notice to the parties and review
93 affidavits and written argument that the parties may submit and grant
94 or deny such leave summarily at its next regular meeting. The
95 commission shall grant such leave unless it finds that the appeal: (i)
96 Does not present a claim within the commission's jurisdiction; (ii)
97 would perpetrate an injustice; or (iii) would constitute an abuse of the
98 commission's administrative process. Any party aggrieved by the
99 commission's denial of such leave may apply to the superior court for
100 the judicial district of Hartford, within fifteen days of the commission
101 meeting at which such leave was denied, for an order requiring the
102 commission to hear such appeal.

103 (3) In making the findings and determination under subdivision (2)
104 of this subsection, the commission shall consider the nature of any
105 injustice or abuse of administrative process, including, but not limited
106 to: (A) The nature, content, language or subject matter of the request or
107 the appeal, including, among other factors, whether the request or
108 appeal is repetitious or cumulative; (B) the nature, content, language or
109 subject matter of prior or contemporaneous requests or appeals by the
110 person making the request or taking the appeal; [and] (C) the nature,
111 content, language or subject matter of other verbal and written
112 communications to any agency or any official of any agency from the
113 person making the request or taking the appeal; (D) any history of
114 nonappearance at commission proceedings or disruption of the
115 commission's administrative process, including, but not limited to,
116 delaying commission proceedings; and (E) the refusal to participate in
117 settlement conferences conducted by a commission ombudsman in

118 accordance with the commission's regulations.

119 (4) Notwithstanding any provision of this subsection to the
120 contrary, in the case of an appeal to the commission of a denial by a
121 public agency, the commission may, upon motion of such agency,
122 confirm the action of the agency and dismiss the appeal without a
123 hearing if it finds, after examining the notice of appeal and construing
124 all allegations most favorably to the appellant, that (A) the agency has
125 not violated the Freedom of Information Act, or (B) the agency has
126 committed a technical violation of the Freedom of Information Act that
127 constitutes a harmless error that does not infringe the appellant's rights
128 under said act.

129 (5) Notwithstanding any provision of this subsection, a public
130 agency may petition the commission for relief from a requester that the
131 public agency alleges is a vexatious requester. Such petition shall be
132 certified and shall detail the conduct which the agency alleges
133 demonstrates a vexatious history of requests, including, but not
134 limited to: (A) The number of requests filed and the total number of
135 pending requests; (B) the scope of the requests; (C) the nature, content,
136 language or subject matter of the requests; (D) the nature, content,
137 language or subject matter of other oral and written communications
138 to the agency from the requester; and (E) a pattern of conduct that
139 amounts to an abuse of the right to access information under the
140 Freedom of Information Act or an interference with the operation of
141 the agency. Upon receipt of such petition, the executive director of the
142 commission shall review the petition and determine whether it
143 warrants a hearing. If the executive director determines that a hearing
144 is not warranted, the executive director shall recommend that the
145 commission deny the petition without a hearing. The commission shall
146 vote at its next regular meeting after such recommendation to accept or
147 reject such recommendation. If the executive director determines that a
148 hearing is warranted, the commission shall serve upon all parties, by
149 certified or registered mail, a copy of such petition together with any
150 other notice or order of the commission. The commission shall, after

151 due notice to the parties, hear and either grant or deny the petition
152 within one year after its filing. Upon a grant of such petition, the
153 commission may provide appropriate relief commensurate with the
154 vexatious conduct, including, but not limited to, an order that the
155 agency need not comply with future requests from the vexatious
156 requester for a specified period of time, but not to exceed one year.
157 Any party aggrieved by the commission's granting of such petition
158 may apply to the superior court for the judicial district of Hartford,
159 within fifteen days of the commission meeting at which such petition
160 was granted, for an order reversing the commission's decision.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	1-206(b)

Statement of Purpose:

To permit the Freedom of Information Commission to grant relief from vexatious requesters to public agencies.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: REP. DUNSBY, 135th Dist.

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