

**FREEDOM OF INFORMATION COMMISSION
STATEMENT ON RAISED BILL NO. 5173,
AN ACT PROTECTING THE PRIVACY OF VOTERS**

February 26, 2018

The Freedom of Information (“FOI”) Commission opposes Raised Bill No. 5173. Currently, Title 9’s statutory scheme is rife with provisions that explicitly mandate public access - provisions that have been law for decades. The Commission submits that this is because the legislature has long recognized that voting is a sacred right which must be zealously protected. The best disinfectant is transparency, which has been the hallmark of voter registration records over the years.

There are two general reasons why transparency in the area of voter information is important. The first reason is because transparency is meant to deter voter fraud and provide a means to detect it. The second reason for transparency is to ensure that registration and election officials, who are charged with entering, updating and maintaining voter data, are accountable and carry out their roles in accordance with the law. Accessibility to this information ought to assuage concerns about voter fraud and provide confidence in the voting system itself.

While the Commission recognizes that there may be a need to revisit this area in the era of electronic records, databases containing vast volumes of voter data, and the Internet, it ought to be done with consideration of the significant public policy and accountability factors that might be impacted by changing the laws regarding access to voter information.

Section 1(a)(2) of the bill restricts access to voter registration information according to the following purposes and people: for election, primary or referendum purposes to a candidate, referendum committee, political party or political committee; to a person verifying his or her own signature; to an election primary or referendum official; for scholarly or journalistic purposes, to the scholar or journalist; or for governmental purposes, to a government agency as determined by the Secretary of the State. Any information provided under this section would include only the year of birth, not the month and day, unless the recipient is a government agency, in which case the whole date is provided.

Creating classes of individuals, some of whom can, and some of whom cannot, access public records is problematic and subject to abuse and manipulation. Moreover, empowering one public official, such as the Secretary of the State, to be the sole determiner of which agencies are allowed access to public records is ripe for potential abuse. We must look beyond the current Secretary. To our knowledge, there has never been a suggestion that she performs her duties in anything but an ethical and professional manner. But who will be the Secretary fifty or one hundred years from now? We cannot predict the character of that individual.

Dates of birth are necessary to determine voter eligibility and to guard against voter fraud. A date of birth is an important identifier when more than one person with the same name (Example: John Smith) appears on the voter lists. Moreover, the bill, if passed, is sure to add to the burden of local registrars who would now be required to redact information, depending upon who is requesting the records, and why. Too, the FOI Commission can expect a number of new

appeals, since formerly accessible public records will now be withheld from view, thereby adding not only to the Commission's workload, but also causing the expenditure of the time and resources of those public agencies who will be required to attend contested case hearings at the FOI Commission, and quite possibly ensuing litigation.

Section 1(a)(1) of the bill prohibits the personal, private or commercial use of voter registration information. This section further prohibits the reproduction of such records in print or on the Internet. Section 2(c)(2) of the bill establishes a new class C felony punishable by a ten year term of imprisonment and a fine of ten thousand dollars for the obtaining, or the use, of voter information not in accordance with the new prohibitions. The Commission is concerned about the constitutional issues raised by this proposal – that is, the government making it a crime to publish public records. Such provision is alarming and could well impact the right to free speech under the First Amendment.

The Commission asks the Committee to carefully consider the consequences of this proposed change which would diminish electoral transparency. The FOI Commission has advocated for a deliberative approach when it comes to making comprehensive changes to the accessibility of voter information, particularly when you are contemplating upending Title 9's statutory scheme. We would be happy to work with the Committee on this legislation.

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.