

FREEDOM OF INFORMATION COMMISSION STATEMENT ON:
**SENATE BILL 1074, AN ACT CONCERNING VARIOUS PROVISIONS
RELATED TO GOVERNMENT ADMINISTRATION AND COVID-19 &**
**HOUSE BILL 6651, AN ACT RESPONDING TO ISSUES RELATED TO
COVID-19 AND GOVERNMENT ADMINISTRATION.**

March 26, 2021

The Freedom of Information (“FOI”) Commission supports the basic principles and concepts behind sections 1 through 5 of Senate Bill 1074 and House Bill 6651, which are designed to make all public agencies more accessible and transparent. In addition, the Commission supports section 6 of the bills, which proposes to extend certain statutory deadlines for filing and deciding appeals under the FOI Act.

Sections 1 through 5¹

It is said that necessity is the mother of invention. When the COVID-19 pandemic struck Connecticut in March 2020, it left state and local government agencies in what seemed like an untenable position. Town halls and state offices were closed to the public. Residents were told to stay home and not gather in large crowds. That meant public meetings, required by law to be held at one location in a public setting, could, in theory, not be held.

But the business of government could not grind to a screeching halt. The Governor’s Executive Order 7B sought to rectify the problem by temporarily removing the requirement under the FOI Act for in person meetings and allowing public agencies to meet remotely. Senate Bill 1074 and House Bill 6651 propose to codify significant elements of 7B.

Senate Bill 1074 and House Bill 6651 primarily seek to amend the FOI Act to allow public agencies to meet remotely, in addition to meeting in person. Public agencies, if meeting remotely, would be required to provide the public the ability to view or listen to the meeting simultaneously, using telephone, video or other technology. Public agencies would also be required to include information in the meeting notices and agendas about what technology will be used for the public meeting and by what method the public can access the meeting. Anecdotally, we have heard that “attendance” during remote meetings for some public agencies has been higher than in past years. Clearly, allowing public meetings to be held remotely has spurred more citizen participation in the governmental process.

In addition, Senate Bill 1074 and House Bill 6651 would require all public meetings held remotely to be recorded or transcribed and for those recordings and transcripts to be made available to the public. Currently, such recording and transcription requirements are not in the FOI Act. Again, this is another step toward increased transparency and access for the public.

¹ The Commission notes that Senate Bill 183, which is also before the Government Administration and Elections Committee, contains similar language regarding remote meetings as set forth in sections 1 through 5 of Senate Bill 1074 and House Bill 6651.

However, there are several aspects of the proposed legislation, as written, for which the FOI Commission would suggest clarification. First, at several points in both bills, the proposed language is ambiguous. For example, lines 10-11 refer to “within a reasonable period of time” with respect to the availability of recordings or transcripts; line 14 refers to “any materials relevant” with respect to matters on an agency’s agenda; line 20 refers to “to the extent feasible” with respect to exhibits submitted by the public at least 24 hours prior to the meeting. The Commission believes that all of these phrases are open to interpretation and suggests their inclusion could lead to confusion in practice at the agency level and, at the Commission level, to difficulty in adjudicating complaints based on alleged violations of those provisions, which will inevitably be filed.

Second, the FOI Act does not currently mandate that municipalities have websites, but line 8 of the bills could be read to mean that such websites are now required. If the intent of the bills is to require that municipalities have websites and that only minutes of remote meetings must be posted on municipal websites, we suggest that the language in lines 8, and 38-43 be clarified.

Third, the requirement in lines 23-24 of Senate Bill 1074 and House Bill 6651 requiring that any participant identify himself or herself before speaking is certainly a best practice, but may also be a difficult requirement with which to comply, even in the best of circumstances. The Commission believes that it is inevitable that participants will fail to identify themselves even when trying their best to comply and is concerned that numerous complaints would be filed with the Commission on these grounds. Perhaps it would be better to allow public agencies to establish their own rules and regulations for speaking at remote public meetings.

Finally, the Commission notes that references to the definition of “executive session” (e.g., lines 32-33) have been removed throughout the bills, but we are unclear as to why this is necessary.

James Madison once said, “a popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps, both.” The key components of Senate Bill 1074 and House Bill 6651 greatly increase the public’s ability to access popular information. The FOI Commission urges you to support this important legislation and would be glad to work with the Committee on any clarifying language.

Section 6

The FOI Commission supports section 6 of Senate Bill 1074 and House Bill 6651, which proposes to amend §1-206(b)(1) of the FOI Act and extend for a discrete period of time (until December 31, 2021) the suspension of statutory time requirements for filing an appeal with the FOI Commission, and the requirement that the Commission must hear and decide an appeal within one year after the filing of such appeal.

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