



Senate

General Assembly

File No. 525

January Session, 2023

Substitute Senate Bill No. 1221

Senate, April 12, 2023

The Committee on Government Administration and Elections reported through SEN. FLEXER of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ENFORCEMENT OF VIOLATIONS OF 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2 repealed and the following is substituted in lieu thereof (*Effective October*
3 *1, 2023*):

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 notice
9 of appeal shall be filed not later than thirty days after such denial, except
10 in the case of an unnoticed or secret meeting, in which case the appeal
11 shall be filed not later than thirty days after the person filing the appeal
12 receives actual or constructive notice that such meeting was held. For
13 purposes of this subsection, such notice of appeal shall be deemed to be

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

49 the parties. If after the preliminary hearing the commission finds
50 probable cause to believe that the agency decision or practice is in
51 violation of sections 1-200 and 1-225, the agency shall not meet in
52 executive session for such purpose until the commission decides the
53 appeal. If probable cause is found by the commission, it shall conduct a
54 final hearing on the appeal and render its decision not later than five
55 days after the completion of the preliminary hearing. Such decision shall
56 specify the commission's 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 record.
65 In addition, upon the finding that a denial of any right created by the
66 Freedom of Information Act was without reasonable grounds and after
67 the custodian or other official directly responsible for the denial has
68 been given an opportunity to be heard at a hearing conducted in
69 accordance with sections 4-176e to 4-184, inclusive, the commission
70 may, in its discretion, impose against the custodian or other official a
71 civil penalty of not less than twenty dollars nor more than [one] ten
72 thousand dollars. If the commission finds that a person has taken an
73 appeal under this subsection frivolously, without reasonable grounds
74 and solely for the purpose of harassing the agency from which the
75 appeal has been taken, after such person has been given an opportunity
76 to be heard at a hearing conducted in accordance with sections 4-176e to
77 4-184, inclusive, the commission may, in its discretion, impose against
78 that person a civil penalty of not less than twenty dollars nor more than
79 one thousand dollars. The commission shall notify a person of a penalty
80 levied against [him] such person pursuant to this subsection by written
81 notice sent by certified or registered mail or electronic transmission. If a
82 person fails to pay the penalty [within] not later than thirty days [of]
83 after receiving such notice, the Superior Court shall, on application of

84 the commission, issue an order requiring the person to pay the penalty
85 imposed. If the executive director of the commission has reason to
86 believe an appeal under subdivision (1) of this subsection or subsection
87 (c) of this section (A) presents a claim beyond the commission's
88 jurisdiction; (B) would perpetrate an injustice; or (C) would constitute
89 an abuse of the commission's administrative process, the executive
90 director shall not schedule the appeal for hearing without first seeking
91 and obtaining leave of the commission. The commission shall provide
92 due notice to the parties and review affidavits and written argument
93 that the parties may submit and grant or deny such leave summarily at
94 its next regular meeting. The commission shall grant such leave unless
95 it finds that the appeal: (i) Does not present a claim within the
96 commission's jurisdiction; (ii) would perpetrate an injustice; or (iii)
97 would constitute an abuse of the commission's administrative process.
98 Any party aggrieved by the commission's denial of such leave may
99 apply to the superior court for the judicial district of New Britain,
100 [within] not later than fifteen days of the commission meeting at which
101 such leave was denied, for an order requiring the commission to hear
102 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; (C) the nature, content,
111 language or subject matter of other verbal and written communications
112 to any agency or any official of any agency from the person making the
113 request or taking the appeal; (D) any history of nonappearance at
114 commission proceedings or disruption of the commission's
115 administrative process, including, but not limited to, delaying
116 commission proceedings; and (E) the refusal to participate in settlement
117 conferences conducted by a commission ombudsman in accordance
118 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, in the case of
130 an appeal to the commission of a denial by a public agency where, after
131 a hearing, the commission finds the public agency is engaging in a
132 practice or pattern of conduct that constitutes an obstruction of the
133 public's right to access information under the Freedom of Information
134 Act or reckless, wilful or wanton misconduct with regard to the delay
135 or denial of responses to requests for public records under said act, the
136 commission may apply to the superior court for the judicial district of
137 New Britain for further injunctive and equitable relief, damages,
138 attorney's fees and costs, as the court may order.

139 [(5)] (6) Notwithstanding any provision of this subsection, a public
140 agency may petition the commission for relief from a requester that the
141 public agency alleges is a vexatious requester. Such petition shall be
142 sworn under penalty of false statement, as provided in section 53a-157b,
143 and shall detail the conduct which the agency alleges demonstrates a
144 vexatious history of requests, including, but not limited to: (A) The
145 number of requests filed and the total number of pending requests; (B)
146 the scope of the requests; (C) the nature, content, language or subject
147 matter of the requests; (D) the nature, content, language or subject
148 matter of other oral and written communications to the agency from the
149 requester; and (E) a pattern of conduct that amounts to an abuse of the
150 right to access information under the Freedom of Information Act or an
151 interference with the operation of the agency. Upon receipt of such
152 petition, the executive director of the commission shall review the

153 petition and determine whether it warrants a hearing. If the executive
 154 director determines that a hearing is not warranted, the executive
 155 director shall recommend that the commission deny the petition
 156 without a hearing. The commission shall vote at its next regular meeting
 157 after such recommendation to accept or reject such recommendation
 158 and, after such meeting, shall issue a written explanation of the reasons
 159 for such acceptance or rejection. If the executive director determines that
 160 a hearing is warranted, the commission shall serve upon all parties, by
 161 certified or registered mail or electronic transmission, a copy of such
 162 petition together with any other notice or order of the commission. The
 163 commission shall, after due notice to the parties, hear and either grant
 164 or deny the petition [within] not later than one year after its filing. Upon
 165 a grant of such petition, the commission may provide appropriate relief
 166 commensurate with the vexatious conduct, including, but not limited
 167 to, an order that the agency need not comply with future requests from
 168 the vexatious requester for a specified period of time, but not to exceed
 169 one year. Any party aggrieved by the commission's granting of such
 170 petition may apply to the superior court for the judicial district of New
 171 Britain, [within] not later than fifteen days [of] after the commission
 172 meeting at which such petition was granted, for an order reversing the
 173 commission's decision.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	1-206(b)

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Freedom of Information Com.	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill would create potential revenue gain for the Freedom of Information Commission. The bill's primary purpose would be to increase the maximum fine for violations from \$1,000 to \$10,000. The exact impact would depend on the number of fines imposed and the severity of the violations.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1221*****AN ACT CONCERNING THE ENFORCEMENT OF VIOLATIONS OF THE FREEDOM OF INFORMATION ACT.*****SUMMARY**

This bill increases, from \$1,000 to \$10,000, the maximum civil penalty that the Freedom of Information Commission (FOIC) may impose for certain Freedom of Information Act (FOIA) violations. As under existing law, the commission may impose the penalty against a records custodian or official responsible for denying a right conferred by FOIA (e.g., a request to inspect or copy a public record) if it finds that the denial was without reasonable grounds. FOIC may impose the penalty after giving the custodian or official an opportunity for a hearing.

The bill also allows FOIC to bring an action in court against certain public agencies. Under existing law, when a person files an appeal with FOIC against a public agency, the commission may confirm the agency's action or order it to provide relief that the commission believes is appropriate to rectify the denial. The bill additionally allows FOIC to bring an action in New Britain Superior Court if it finds that a public agency is engaging in (1) a practice or pattern of conduct that constitutes an obstruction of the public's right to access information under FOIA or (2) reckless, willful, or wanton misconduct in delaying or denying responses to public records requests.

Under the bill, FOIC may make these findings in an appeal to the commission of a denial by a public agency of a right conferred by FOIA and after a hearing. The bill allows FOIC to apply to the court for further injunctive and equitable relief, damages, attorney's fees, and costs as the court may order.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2023

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 16 Nay 3 (03/24/2023)