

**FREEDOM OF INFORMATION COMMISSION STATEMENT ON
SENATE BILL 1153, AN ACT ESTABLISHING AN EXEMPTION FROM
DISCLOSURE FOR CERTAIN HIGHER EDUCATION RECORDS PERTAINING TO
RESEARCH OR TEACHING UNDER THE FREEDOM OF INFORMATION ACT.**

March 6, 2023

The Freedom of Information (“FOI”) Commission opposes Senate Bill 1153, which seeks to exempt from disclosure records concerning studies and research conducted by faculty and staff of public universities. Specifically, Senate Bill 1153 provides that disclosure is not required of:

[a]ny data, record or information of a proprietary nature that is produced or collected by or for the faculty or staff of a public institution of higher education in the conduct of study or research on medical, scientific, technical or scholarly issues or constituting pedagogical materials, including records created by legal clinics for teaching purposes, but excluding any financial or administrative records of such institution or any data, record or information that has been publicly released, published, copyrighted or patented.

The Commission believes that the proposal is extremely broad and questions the purpose behind such broad confidentiality language. The proposal does not define such phrases as “proprietary information”, “pedagogical materials” and “scholarly issues”, which could be broadly construed. The proposal is also vague and does not describe what records constitute “financial or administrative” records; do such records include the study and research topics, and all funding amounts and sources?

There is great public interest in *all* studies and research conducted at public universities, including studies and research that are not published, copyrighted or patented; especially interest in significant (and potentially controversial) issues of our time require a high level of scrutiny and accountability. These issues include animal research, climate change, and impacts of the pandemic including vaccine hesitancy and mental health. Limiting access to such records, including underlying data, concerning studies and research being conducted at public universities, where there may be significant public funds being invested, may result in abuses, including hiding research misconduct. Senate Bill 1153 should be narrowed and defined so as to not compromise transparency and government accountability.

In addition, to the extent that there are concerns regarding the disclosure of preliminary drafts, trade secrets, commercial or financial information, attorney-client privileged communications, student records and/or concerns that disclosure of records would pose a safety and security risk, there are already exemptions to disclosure that address such concerns: §1-210(b)(1) (preliminary drafts and notes), §1-210(b)(5) (trade secrets and commercial or financial information), §1-210(b)(10) (attorney-client privileged communications), §1-210(b)(19) (safety and security risks), and §1-210(b)(17) and the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g (student records).¹

¹ The Commission notes that, in at least one instance, the University of Connecticut seemingly recognized that §1-210(b)(19) (safety and security exemption) may apply to research records, and consulted with the

The Commission submits that Senate Bill 1153 be rejected; however, if it is not, at a minimum, the Commission urges that the broad confidentiality language in the proposal be narrowed to make clear what records fall under its provisions (i.e., define the terms referenced above) and perhaps more importantly, provide a temporal limitation on the public agency's ability to withhold records from the public as is done in other states, including Alaska, Arizona and Michigan. Such approach would better serve the public interest.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Kathleen Ross, Managing Director and Associate General Counsel, at (860) 566-5682.

Department of Administrative Services regarding the disclosure of the names, titles, contact and other identifying information of individuals involved in such research. *See* attached letter submitted as a proposed exhibit in Docket #FIC 2021-0414; Morgan v. University of Connecticut, et. al. (February 23, 2022) (contested case was ultimately dismissed based on the complainant's failure to appear).

December 21, 2021

Josh Geballe
Commissioner
Department of Administrative Services
450 Columbus Boulevard, Suite 1501
Hartford, CT 06103

Re: Freedom of Information Act Request Regarding University of Connecticut Professor Alexis Dudden

Dear Commissioner Geballe:

Pursuant to Conn. Gen. Stat. §1-210(b)(19) and the January 2020 "Guidelines for Records Requests that Implicate Public Safety under the Freedom of Information Act (Executive Branch State Agencies)," the Commissioner of the Department of Administrative Services may determine after consultation with the chief executive officer of a State agency, that material related to a Freedom of Information (FOI) request may be exempted from disclosure. This exemption requires a determination that there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to person or property.

I write to you to request your department's assistance in reviewing documents found to be responsive to a Freedom of Information request received by the University of Connecticut (UConn) from Jason Morgan for emails of History Professor Alexis Dudden. I have enclosed a copy of the FOIA request (see Attachment 1).

In responding to this request, we believe the following information should be exempted from disclosure:

- Names, titles, contact and other identifying information of individuals involved in Professor Dudden's research related to Japan's historical state-sponsored system of militarized sexual slavery.

Enclosed as an example is a list of the names found within the first 200 pages of the responsive documents (see Attachment 2). Additionally, there are 30 pages of related emails which we believe should be withheld in their entirety as their release could create security concerns for those involved (see Attachment 3).

To assist in your review Dr. Dudden has provided a summary of relevant information and background (see Attachment 4). Since 2003, various right-wing individuals in Japan have openly targeted Dr. Dudden. These threats include, but are not limited to, death threats via landline telephone, cell phone, regular mail, and email. Given these concerns we have made redactions for the safety of Dr. Dudden as well as her colleagues whose correspondence is found within in the email records. Also enclosed are three other third party statements and a New York Times article relevant to the threat proposed by releasing unredacted versions of these records (see Attachments 5, 6, 7 and 8).

There is a long history of violence against scholars whose research relates to the “comfort women” topic. While we are not asserting that Mr. Morgan himself poses such a risk to our employee and her colleagues, we are aware that organizations with which he is associated routinely publish the information they obtain through public records requests. Our primary concern extends to this wider group of individuals. Additionally, the risk to our employee and this community that is presented by individuals promoting the denialist view of certain actions of the Japanese government and military in the 20th century has been well documented in the past.

If you have questions or concerns, please feel free to contact the UConn FOIA response coordinator, Megan Philippi at (860) 377-5699.

Thank you for your attention to this matter.

Very truly yours,



Andrew Agwunobi
Interim President, University of Connecticut
Chief Executive Officer, UConn Health

Enclosures

c: Michael Barrera, Staff Counsel, DAS
Raymond Philbrick, Director of Statewide Security, DAS
Megan Philippi, UConn Director of Public Records