



Senate

General Assembly

File No. 428

February Session, 2024

Senate Bill No. 355

Senate, April 11, 2024

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 bill ought to pass.

***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
FREEDOM OF INFORMATION COMMISSION FOR REVISIONS TO THE
FREEDOM OF INFORMATION ACT.***

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

1 Section 1. Section 1-200 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2024*):

3 As used in this chapter, the following words and phrases have the
4 following meanings, except where such terms are used in a context
5 which clearly indicates the contrary:

6 (1) "Public agency" or "agency" means:

7 (A) Any executive, administrative or legislative office of the state or
8 any political subdivision of the state and any state or town agency, any
9 department, institution, bureau, board, commission, authority or official
10 of the state or of any city, town, borough, municipal corporation, school
11 district, regional district or other district or other political subdivision of

12 the state, including any committee of, or created by, any such office,
13 subdivision, agency, department, institution, bureau, board,
14 commission, authority or official, and also includes any judicial office,
15 official, or body or committee thereof but only with respect to its or their
16 administrative functions, and for purposes of this subparagraph,
17 "judicial office" includes, but is not limited to, the Division of Public
18 Defender Services;

19 (B) Any person to the extent such person is deemed to be the
20 functional equivalent of a public agency pursuant to law; or

21 (C) Any "implementing agency", as defined in section 32-222.

22 (2) "Meeting" means any hearing or other proceeding of a public
23 agency, any convening or assembly of a quorum of a multimember
24 public agency, and any communication by or to a quorum of a
25 multimember public agency, whether in person or by means of
26 electronic equipment, to discuss or act upon a matter over which the
27 public agency has supervision, control, jurisdiction or advisory power.
28 "Meeting" does not include: Any meeting of a personnel search
29 committee for executive level employment candidates; any chance
30 meeting, or a social meeting neither planned nor intended for the
31 purpose of discussing matters relating to official business; strategy or
32 negotiations with respect to collective bargaining; a caucus of members
33 of a single political party notwithstanding that such members also
34 constitute a quorum of a public agency; an administrative or staff
35 meeting of a single-member public agency; and communication limited
36 to notice of meetings of any public agency or the agendas thereof. A
37 quorum of the members of a public agency who are present at any event
38 which has been noticed and conducted as a meeting of another public
39 agency under the provisions of the Freedom of Information Act shall not
40 be deemed to be holding a meeting of the public agency of which they
41 are members as a result of their presence at such event.

42 (3) "Caucus" means (A) a convening or assembly of the enrolled
43 members of a single political party who are members of a public agency
44 within the state or a political subdivision, or (B) the members of a

45 multimember public agency, which members constitute a majority of
46 the membership of the agency, or the other members of the agency who
47 constitute a minority of the membership of the agency, who register
48 their intention to be considered a majority caucus or minority caucus, as
49 the case may be, for the purposes of the Freedom of Information Act,
50 provided (i) the registration is made with the office of the Secretary of
51 the State for any such public agency of the state, in the office of the clerk
52 of a political subdivision of the state for any public agency of a political
53 subdivision of the state, or in the office of the clerk of each municipal
54 member of any multitown district or agency, (ii) no member is
55 registered in more than one caucus at any one time, (iii) no such
56 member's registration is rescinded during the member's remaining term
57 of office, and (iv) a member may remain a registered member of the
58 majority caucus or minority caucus regardless of whether the member
59 changes his or her party affiliation under chapter 143.

60 (4) "Person" means natural person, partnership, corporation, limited
61 liability company, association or society.

62 (5) "Public records or files" means any recorded data or information
63 relating to the conduct of the public's business prepared, owned, used,
64 received or retained by a public agency, or to which a public agency is
65 entitled to receive a copy by law or contract under section 1-218, as
66 amended by this act, whether such data or information be handwritten,
67 typed, tape-recorded, videotaped, printed, photostated, photographed
68 or recorded by any other method.

69 (6) "Executive sessions" means a meeting of a public agency at which
70 the public is excluded for one or more of the following purposes: (A)
71 Discussion concerning the appointment, employment, performance,
72 evaluation, health or dismissal of a public officer or employee, provided
73 that such individual may require that discussion be held at an open
74 meeting; (B) strategy and negotiations with respect to pending claims or
75 pending litigation to which the public agency or a member thereof,
76 because of the member's conduct as a member of such agency, is a party
77 until such litigation or claim has been finally adjudicated or otherwise

78 settled; (C) matters concerning security strategy or the deployment of
79 security personnel, or devices affecting public security; (D) discussion
80 of the selection of a site or the lease, sale or purchase of real estate by the
81 state or a political subdivision of the state when publicity regarding such
82 site, lease, sale, purchase or construction would adversely impact the
83 price of such site, lease, sale, purchase or construction until such time as
84 all of the property has been acquired or all proceedings or transactions
85 concerning same have been terminated or abandoned; and (E)
86 discussion of any matter which would result in the disclosure of public
87 records or the information contained therein described in subsection (b)
88 of section 1-210, as amended by this act.

89 (7) "Personnel search committee" means a body appointed by a public
90 agency, whose sole purpose is to recommend to the appointing agency
91 a candidate or candidates for an executive-level employment position.
92 Members of a "personnel search committee" shall not be considered in
93 determining whether there is a quorum of the appointing or any other
94 public agency.

95 (8) "Pending claim" means a written notice to an agency which sets
96 forth a demand for legal relief or which asserts a legal right stating the
97 intention to institute an action in an appropriate forum if such relief or
98 right is not granted.

99 (9) "Pending litigation" means (A) a written notice to an agency which
100 sets forth a demand for legal relief or which asserts a legal right stating
101 the intention to institute an action before a court if such relief or right is
102 not granted by the agency; (B) the service of a complaint against an
103 agency returnable to a court which seeks to enforce or implement legal
104 relief or a legal right; or (C) the agency's consideration of action to
105 enforce or implement legal relief or a legal right.

106 (10) "Freedom of Information Act" means this chapter.

107 [(11) "Governmental function" means the administration or
108 management of a program of a public agency, which program has been
109 authorized by law to be administered or managed by a person, where

110 (A) the person receives funding from the public agency for
111 administering or managing the program, (B) the public agency is
112 involved in or regulates to a significant extent such person's
113 administration or management of the program, whether or not such
114 involvement or regulation is direct, pervasive, continuous or day-to-
115 day, and (C) the person participates in the formulation of governmental
116 policies or decisions in connection with the administration or
117 management of the program and such policies or decisions bind the
118 public agency. "Governmental function" shall not include the mere
119 provision of goods or services to a public agency without the delegated
120 responsibility to administer or manage a program of a public agency.]

121 [(12)] (11) "Electronic equipment" means any technology that
122 facilitates real-time public access to meetings, including, but not limited
123 to, telephonic, video or other conferencing platforms.

124 [(13)] (12) "Electronic transmission" means any form or process of
125 communication not directly involving the physical transfer of paper or
126 another tangible medium, which (A) is capable of being retained,
127 retrieved and reproduced by the recipient, and (B) is retrievable in paper
128 form by the recipient.

129 Sec. 2. Section 1-218 of the general statutes is repealed and the
130 following is substituted in lieu thereof (*Effective October 1, 2024*):

131 (a) For purposes of this section, "governmental function" means the
132 administration or management of a program of a public agency, which
133 program has been authorized by law to be administered or managed by
134 a person, where (1) the person receives funding from the public agency
135 for administering or managing the program, (2) the public agency is
136 involved in or regulates to a significant extent such person's
137 administration or management of the program, whether or not such
138 involvement or regulation is direct, pervasive, continuous or day-to-
139 day, and (3) the person participates in the formulation of governmental
140 policies or decisions in connection with the administration or
141 management of the program and such policies or decisions bind the
142 public agency. "Governmental function" does not include the mere

143 provision of goods or services to a public agency without the delegated
144 responsibility to administer or manage a program of a public agency.

145 (b) Each contract in excess of two million five hundred thousand
146 dollars between a public agency and a person for the performance of a
147 governmental function shall (1) provide that the public agency is
148 entitled to receive a copy of records and files related to the performance
149 of the governmental function, and (2) indicate that such records and files
150 are subject to the Freedom of Information Act and may be disclosed by
151 the public agency pursuant to the Freedom of Information Act. No
152 request to inspect or copy such records or files shall be valid unless the
153 request is made to the public agency in accordance with the Freedom of
154 Information Act. Any complaint by a person who is denied the right to
155 inspect or copy such records or files shall be brought to the Freedom of
156 Information Commission in accordance with the provisions of sections
157 1-205, as amended by this act, and 1-206.

158 Sec. 3. Subsection (b) of section 1-211 of the general statutes is
159 repealed and the following is substituted in lieu thereof (*Effective October*
160 *1, 2024*):

161 (b) Except as otherwise provided by state statute, no public agency
162 shall enter into a contract with, or otherwise obligate itself to, any person
163 if such contract or obligation impairs the right of the public under the
164 Freedom of Information Act to inspect or copy the agency's nonexempt
165 public records existing on-line in, or stored on a device or medium used
166 in connection with, a computer system owned, leased or otherwise used
167 by the agency. [in the course of its governmental functions.]

168 Sec. 4. Subsection (e) of section 1-205 of the general statutes is
169 repealed and the following is substituted in lieu thereof (*Effective October*
170 *1, 2024*):

171 (e) The Freedom of Information Commission shall conduct training
172 sessions, at least annually, for members of public agencies for the
173 purpose of educating such members as to the requirements of this
174 section and sections [1-7 to 1-14, inclusive, 1-16 to 1-18, inclusive,] 1-200

175 to 1-202, inclusive, as amended by this act, [1-205,] 1-205a, 1-206, 1-210
176 to [1-217] 1-219, inclusive, as amended by this act, 1-225 to 1-232,
177 inclusive, as amended by this act, and 1-240 [, 1-241 and 19a-342] to 1-
178 242, inclusive.

179 Sec. 5. Subdivision (17) of subsection (b) of section 1-210 of the 2024
180 supplement to the general statutes is repealed and the following is
181 substituted in lieu thereof (*Effective October 1, 2024*):

182 (17) [Educational] Education records which are not subject to
183 disclosure under the Family Educational Rights and Privacy Act, 20
184 USC 1232g;

185 Sec. 6. Subsection (g) of section 1-212 of the general statutes is
186 repealed and the following is substituted in lieu thereof (*Effective October*
187 *1, 2024*):

188 (g) Any individual may copy a public record through the use of a
189 hand-held scanner. A public agency may establish a fee structure not to
190 exceed twenty dollars for an individual to pay each time the individual
191 copies records at the agency with a hand-held scanner. As used in this
192 section, "hand-held scanner" means a battery operated electronic
193 scanning device the use of which (1) leaves no mark or impression on
194 the public record, and (2) does not unreasonably interfere with the
195 operation of the public agency. "Hand-held scanner" includes, but is not
196 limited to, a mobile telephone, camera or any other portable device
197 capable of capturing an image of a public record.

198 Sec. 7. Subsection (d) of section 1-225 of the general statutes is
199 repealed and the following is substituted in lieu thereof (*Effective October*
200 *1, 2024*):

201 (d) Notice of each special meeting of every public agency, except for
202 the General Assembly, either house thereof or any committee thereof,
203 shall be posted not less than twenty-four hours before the meeting to
204 which such notice refers on the public agency's Internet web site, if
205 available, and given not less than twenty-four hours prior to the time of

206 such meeting by filing a notice of the time and place thereof in the office
207 of the Secretary of the State for any such public agency of the state, in
208 the office of the clerk of such subdivision for any public agency of a
209 political subdivision of the state and in the office of the clerk of each
210 municipal member for any multitown district or agency. The secretary
211 or clerk shall cause any notice received under this section to be posted
212 in his or her office, and in the case of a notice of a public agency of the
213 state filed with the secretary, on the Secretary of the State's Internet web
214 site. Such notice shall be given not less than twenty-four hours prior to
215 the time of the special meeting; provided, in case of emergency, except
216 for the General Assembly, either house thereof or any committee
217 thereof, any such special meeting may be held without complying with
218 the foregoing requirement for the filing of notice but a copy of the
219 minutes of every such emergency special meeting adequately setting
220 forth the nature of the emergency and the proceedings occurring at such
221 meeting shall be filed with the Secretary of the State, the clerk of such
222 political subdivision, or the clerk of each municipal member of such
223 multitown district or agency, as the case may be, not later than seventy-
224 two hours following the holding of such meeting. The notice shall
225 specify the time and place of the special meeting and the business to be
226 transacted. No other business shall be considered at such meetings by
227 such public agency. In addition, such written notice shall be delivered
228 by electronic transmission or by mail to the usual place of abode of each
229 member of the public agency so that the same is received prior to such
230 special meeting. The requirement of delivery of such written notice may
231 be dispensed with as to any member who at or prior to the time the
232 meeting convenes files with the clerk or secretary of the public agency a
233 written waiver of delivery of such notice. Such waiver may be given by
234 [telegram] electronic transmission or by mail. The requirement of
235 delivery of such written notice may also be dispensed with as to any
236 member who is actually present at the meeting at the time it convenes.
237 Nothing in this section shall be construed to prohibit any agency from
238 adopting more stringent notice requirements.

239 Sec. 8. Subdivision (1) of section 4d-30 of the 2024 supplement to the
240 general statutes is repealed and the following is substituted in lieu

241 thereof (*Effective October 1, 2024*):

242 (1) "Contract" means a contract for state agency information system
243 or telecommunication system facilities, equipment or services, which is
244 awarded pursuant to this chapter or [subsection (e) of section 1-205,]
245 subsection (c) of section 1-211, [subsection (b) of section 1-212, section 4-
246 5,] subsection (a) of section 10a-151b [,] or subsection (b) of section 19a-
247 110.

248 Sec. 9. Section 4d-47 of the 2024 supplement to the general statutes is
249 repealed and the following is substituted in lieu thereof (*Effective October*
250 *1, 2024*):

251 With respect to any state employee whose position is eliminated or
252 who is laid off as a result of any contract or amendment to a contract
253 which is subject to the provisions of this chapter and [subsection (e) of
254 section 1-205,] subsection (c) of section 1-211, [subsection (b) of section
255 1-212, section 4-5,] section 4a-50 [,] or 4a-51, subsection (b) of section 4a-
256 57, subsection (a) of section 10a-151b [,] or subsection (b) of section 19a-
257 110, or any subcontract for work under such contract or amendment, (1)
258 the contractor shall hire the employee, upon application by the
259 employee, unless the employee is hired by a subcontractor of the
260 contractor, or (2) the employee may transfer to any vacant position in
261 state service for which such employee is qualified, to the extent allowed
262 under the provisions of existing collectively bargained agreements and
263 the general statutes. If the contractor or any such subcontractor hires any
264 such state employee and does not provide the employee with fringe
265 benefits which are equivalent to, or greater than, the fringe benefits that
266 the employee would have received in state service, the state shall, for
267 two years after the employee terminates from state service, provide to
268 the employee either (A) the same benefits that such employee received
269 from the state, or (B) compensation in an amount which represents the
270 difference in the value of the fringe benefits that such employee received
271 when in state service and the fringe benefits that such employee receives
272 from the contractor or subcontractor.

273 Sec. 10. Section 4d-48 of the 2024 supplement to the general statutes

274 is repealed and the following is substituted in lieu thereof (*Effective*
275 *October 1, 2024*):

276 No contract or subcontract for state agency information system or
277 telecommunication system facilities, equipment or services may be
278 awarded to any business entity or individual pursuant to this chapter or
279 [subsection (e) of section 1-205,] subsection (c) of section 1-211,
280 [subsection (b) of section 1-212, section 4-5,] subsection (a) of section 10a-
281 151b [,] or subsection (b) of section 19a-110, if such business entity or
282 individual previously had a contract with the state or a state agency to
283 provide information system or telecommunication system facilities,
284 equipment or services and such prior contract was finally terminated by
285 the state or a state agency within the previous five years for the reason
286 that such business entity or individual failed to perform or otherwise
287 breached a material obligation of the contract related to information
288 system or telecommunication system facilities, equipment or services. If
289 the termination of any such previous contract is contested in an
290 arbitration or judicial proceeding, the termination shall not be final until
291 the conclusion of such arbitration or judicial proceeding. If the fact-
292 finder determines, or a settlement stipulates, that the contractor failed
293 to perform or otherwise breached a material obligation of the contract
294 related to information system or telecommunication system facilities,
295 equipment or services, any award of a contract pursuant to said chapter
296 or sections during the pendency of such arbitration or proceeding shall
297 be rescinded and the bar provided in this section shall apply to such
298 business entity or individual.

299 Sec. 11. Subsection (d) of section 1-210 of the 2024 supplement to the
300 general statutes is repealed and the following is substituted in lieu
301 thereof (*Effective October 1, 2024*):

302 (d) Whenever a public agency, except the Judicial Department or
303 Legislative Department, receives a request from any person for
304 disclosure of any records described in subdivision (19) of subsection (b)
305 of this section under the Freedom of Information Act, the public agency
306 shall promptly notify the Commissioner of Administrative Services or

307 the Commissioner of Emergency Services and Public Protection, as
 308 applicable, of such request, in the manner prescribed by such
 309 commissioner, before complying with the request as required by the
 310 Freedom of Information Act. If the commissioner, after consultation
 311 with the chief executive officer of the applicable agency, believes the
 312 requested record is exempt from disclosure pursuant to subdivision (19)
 313 of subsection (b) of this section, the commissioner may direct the agency
 314 to withhold such record from such person. In any appeal brought under
 315 the provisions of section 1-206 of the Freedom of Information Act for
 316 denial of access to records for any of the reasons described in
 317 subdivision (19) of subsection (b) of this section, such appeal shall be
 318 against (1) the chief executive officer of the executive branch state
 319 agency or the municipal, district or regional agency that maintains or
 320 has custody of the requested record, and (2) the commissioner who
 321 issued the directive to the public agency that maintains or has custody
 322 of such record to withhold such record pursuant to subdivision (19) of
 323 subsection (b) of this section, [exclusively, or,] except in the case of
 324 records concerning Judicial Department facilities, such appeal shall be
 325 against the Chief Court Administrator [or] and, in the case of records
 326 concerning the Legislative Department, such appeal shall be against the
 327 executive director of the Joint Committee on Legislative Management.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2024	1-200
Sec. 2	October 1, 2024	1-218
Sec. 3	October 1, 2024	1-211(b)
Sec. 4	October 1, 2024	1-205(e)
Sec. 5	October 1, 2024	1-210(b)(17)
Sec. 6	October 1, 2024	1-212(g)
Sec. 7	October 1, 2024	1-225(d)
Sec. 8	October 1, 2024	4d-30(1)
Sec. 9	October 1, 2024	4d-47
Sec. 10	October 1, 2024	4d-48
Sec. 11	October 1, 2024	1-210(d)

GAE *Joint Favorable*

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: None

Municipal Impact: None

Explanation

The bill makes a variety of changes related to the Freedom of Information Act (FOIA), FOIA related process, and updates statute to meet current training practice for the Freedom of Information Commission and results in no fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**SB 355*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE FREEDOM OF INFORMATION COMMISSION FOR REVISIONS TO THE FREEDOM OF INFORMATION ACT.*****SUMMARY**

This bill makes several unrelated changes to the Freedom of Information Act (FOIA), including the following:

1. limits the applicability of FOIA's definition of "governmental function" so that it applies only to one statute on contracts for performing a governmental function, rather than throughout FOIA (§§ 1-3);
2. conforms the law on trainings given by the Freedom of Information Commission (FOIC) to current practice (§ 4);
3. explicitly allows the copying of public records using mobile telephones or cameras (§ 6);
4. allows notices of a special meeting to be sent to a public agency's members electronically (§ 7); and
5. clarifies which public agencies must be named in an appeal to FOIC when a request to inspect or copy a record is denied under FOIA's safety risk exemption (§ 11).

Additionally, the bill specifies that FOIA's disclosure exemption for records covered by the federal Family Educational Rights and Privacy Act (FERPA) applies to education records, rather than educational records as current law provides (§ 5). This conforms with terminology used in FERPA (20 U.S.C. § 1232g(4)).

Lastly, the bill makes technical and conforming changes. Among

other things, it amends provisions on the awarding of state government information technology contracts to remove erroneous references to (1) FOIC training and fees for copying public records and (2) the statutory list of department heads (§§ 8-10).

EFFECTIVE DATE: October 1, 2024

§§ 1-3 — GOVERNMENTAL FUNCTION

Under FOIA, “governmental function” generally includes a public agency program’s administration or management by a person that, among other things, participates in formulating governmental policies or decisions connected to the program’s administration or management. It does not include the mere provision of goods or services to a public agency without delegated program management or administration responsibilities.

The bill limits this definition’s applicability so that it applies only to one statute on contracts for performing a governmental function, rather than throughout FOIA as under current law (see BACKGROUND). In doing so, the bill clarifies that the statutory definition does not apply at common law, where “governmental function” has a similar (though not identical) meaning (see BACKGROUND).

Under current law, “governmental function” also appears in a FOIA provision that generally prohibits public agencies from entering into contracts that impair the public’s right to inspect or copy records stored in a computer system the agency owns, leases, or uses in the course of its governmental functions. The bill makes a conforming change by eliminating the reference to governmental functions.

§ 4 — FOIC TRAINING

The law requires FOIC to hold annual training sessions for members of public agencies on FOIA’s provisions (e.g., meeting-related requirements). The bill eliminates requirements for FOIC to hold training on (1) physical requirements for public records (e.g., standard ink) and (2) the general prohibition on smoking indoors (e.g., tobacco and cannabis). It adds requirements for the commission to hold training on (1) contracts for the performance of a governmental function, (2)

veterans' military records, (3) court actions involving FOIA, and (4) the commission's recommended budget appropriations and allotments.

§ 6 — USING MOBILE PHONES AND CAMERAS TO MAKE COPIES

The bill explicitly allows people to copy public records using mobile telephones, cameras, or other portable devices capable of capturing an image of a public record. It does so by deeming these devices to be "hand-held scanners" under FOIA's copies and scanning of public records provision, which also allows public agencies to set a fee structure for copying records with a hand-held scanner at the agency.

FOIA allows (1) individuals to use a hand-held scanner to copy records and (2) public agencies to charge up to \$20 each time an individual uses a scanner to copy records at the agency. Currently under FOIA, a "hand-held scanner" is a battery-operated electronic scanning device that leaves no mark or impression on the records and does not unreasonably interfere with the agency's operations.

§ 7 — NOTICES OF A SPECIAL MEETING

Under FOIA, public agencies must generally give at least 24 hours' notice of a special meeting, unless there is an emergency. A special meeting is one held to consider business that (1) was unforeseen when scheduling regular meetings and (2) should be addressed before the next regular meeting.

The bill allows notices of a special meeting to be sent to a public agency's members electronically or by mail to their homes. Current law requires that the notice be delivered to the member's home. Current law also allows members to waive delivery of the notice by filing a written waiver with the agency's clerk or secretary. The bill allows members to submit these waivers electronically or by mail and eliminates the option for them to submit by telegram.

§ 11 — SECURITY APPEALS

Under FOIA, an executive branch state agency that receives a request to disclose records potentially subject to FOIA's safety risk exemption (CGS § 1-210(b)(19)) must consult with the Department of Administrative Services (DAS) commissioner before disclosing the

records. A municipal, regional, or district agency must consult with the Department of Emergency Services and Public Protection (DESPP) commissioner. In both cases, FOIA allows the applicable commissioner to direct the custodial agency to withhold the record from disclosure.

Under current law, any FOIC appeal of a denial based on FOIA's safety risk exemption must be filed against the state, municipal, regional, or district agency that issued the directive to withhold the record. Under the bill, the appeal must be filed against both the agency with custody of the record and the commissioner (DAS or DESPP, as applicable) that directed the agency to withhold the record.

BACKGROUND

Contract for Performance of a Governmental Function

By law, each contract exceeding \$2.5 million between a public agency and a person for the performance of a "governmental function" must state that the public agency is entitled to a copy of records and files related to the performance of the governmental function. The contract must also indicate that these records or files are subject to FOIA and may be disclosed by the public agency under FOIA.

Governmental Function: Common Law

By law, FOIA applies to non-public entities to the extent they are deemed to be the functional equivalent of a public agency (CGS § 1-200(1)(B)). To determine whether a person is the "functional equivalent" of a public agency, courts and FOIC apply a four-part test established by the Connecticut Supreme Court in *Board of Trustees of Woodstock Academy v. FOI Commission*, 181 Conn. 544 (1980). One component of this test is whether the entity performs a governmental function.

In applying the functional equivalent test in a 1998 case, the Appellate Court held that "[p]erforming a government service pursuant to contract does not make an entity a public agency subject to [FOIA].... The key to determining whether an entity is a government agency or merely a contractor with the government is whether the government is really involved in the core of the program" (*Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 47 Conn. App. 466 (1998)).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 19 Nay 0 (03/26/2024)