

# Testimony in Support of House Bill 5548

Submitted to Government Administration and Elections Committee

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I hereby submit this written testimony in support of [House Bill No. 5548](#). I am the Roger Sherman Professor of Law at the University of Connecticut and affiliated faculty at its School of Public Policy. Because others have well explained the benefits of section 1 of the bill, I focus here on section 2 of the bill.

Third-party harassment of university faculty includes third parties who use state freedom of information (FOI) statutes to target faculty at public universities to discourage research and teaching they don't like (Quinn 2025; Moran et al. 2025; Polsky 2019; Greenberg 2019; Halpern 2015), including professors at the University of Connecticut (e.g., Brenick 2025; Dudden 2024; Baudoin 2023).

Section 2 of H.B. 5548 responds with a narrowly-tailored FOI exemption. For it to apply to a public record kept by a public university, one must simply ask: (1) Is that record kept “by or for the faculty or staff” of that university?; (2) Does it “aris[e] out of teaching or research on . . . scholarly issues”?; and (3) Is it *not* a “financial” record of that university?

With H.B. 5548, Connecticut can reduce FOI-harassment risk faced by faculty and, as a result, compete more effectively for academic talent and investment with other States that already exempt from their FOI laws any records arising out of public university research, teaching, or both, but without going as far as some States that largely exempt some universities altogether. Compare, e.g., [R.I. Gen. Laws § 38-2-2\(4\)\(K\)](#), [N.J. Stat. Ann. § 47:1A-1.1](#) (higher education exceptions); [Md. General Provisions Code § 4-346\(a\)-\(b\)](#); [Va. Code § 2.2-3705.4\(4\)](#); [N.D. Cent. Code § 44-04-18.4\(8\)-\(10\)](#); 5 [Ill. L CS § 140/7\(1\)\(j\)\(iv\)](#); [Ohio Stat. 149.43\(A\)\(1\)\(m\), \(5\)](#); 65 [Pa. Stat. § 67.708\(b\)\(14\)](#); [S.C. Code Ann. § 30-4-40\(14\)\(A\)-\(C\)](#), [Neb. Stat. § 84-712.05\(3\)](#) with 65 [Pa. Stat. §§ 67.1501 - 67.1503](#) (Temple University, Pennsylvania State University, University of Pittsburgh, and Lincoln University); 29 [Del. C. § 10002\(l\)](#) (University of Delaware and Delaware State University).

In this testimony, I describe the problem that section 2 of H.B. 5548 addresses and then explain why opponents' arguments lack merit.

## **The Problem**

Under current Connecticut FOI law, public university faculty face high legal uncertainty when it comes to FOI coverage of records arising out their research and teaching. That makes it hard for them to know how best they can reduce the risk that FOI harassment poses to themselves, their classroom instruction, their research teams, the people that participate in their studies, as well as non-university partners in public-private research collaborations.

Indeed, as currently interpreted, the FOI statute was never intended to cover faculty research and teaching records. While a public university is a "public agency" under the FOI law, see *Univ. of Connecticut v. Freedom of Info. Comm'n*, 303 Conn. 724, 733 (2012), any individual faculty member is neither a "public agency" nor its "functional equivalent" under that FOI statute. *Fromer v. Freedom of Info. Comm'n*, 90 Conn. App. 101, 106-107 (2005). Accordingly, the faculty member's research or teaching materials do not count as "public records" under the FOI statute if not otherwise "prepared, owned, used, received or retained by" the university *itself*, Conn. Gen. Stat. § 1-200(5). See *Fromer*, 90 Conn. App. at 109.

The problem: Records arising out of faculty research and teaching are routinely and often inescapably transmitted or stored using university information technology, including the university's servers, cloud storage solutions, and laptop computers. If they are, then they are to that extent arguably "maintained or kept on file by" the public university itself, Conn. Gen. Stat. § 1-210(a), and thus arguably "public records" under the FOI law.

Examples of such research-related or teaching-related items of information include:

1. any such item stored on a server provided to faculty by the university via Microsoft (OneDrive), Google (Google Drive) or another similar "cloud storage" vendor.
2. any such item stored on a laptop, smartphone, or similar device owned by the university and provided to the instructor for research and teaching activities.
3. any such item collected or used by university faculty that is covered by a memorandum of understanding between a third party (including but not limited to a government agency) and the university or any university faculty
4. any application for human-subjects research submitted by a faculty member to the university's Institutional Review Board, whether or not such application is approved by that Board or deemed exempt within the meaning of 45 C.F.R. pt. 46, and regardless of how vulnerable those in the study population may be.

5. any teaching materials created by faculty and posted by or for that faculty member via learning management systems (LMS) (e.g., Blackboard, Canvas), including but not limited to any audiovisual recording of a class meeting or lecture by a faculty member made at the request of the faculty member and posted for enrolled students only via an LMS, regardless of whether any personally-identifiable-information about any student appearing in such recording is later redacted.
6. research details in any grant application reviewed and/or submitted by or for a university faculty member to an external funder via the university
7. any such item if in, or affixed as an attachment to, an email sent from or to a university email address.

Accordingly, section 2 of H.B. 5548 is critical to reducing FOI-facilitated harassment risk faced by faculty at Connecticut's public universities.

## Debunking Opponents' Arguments

In past years, this Committee has considered proposed FOI exemptions much like section 2 of H.B. 5548, i.e., [S.B. 1226](#) (2025), [S.B. 394](#) (2024), and [S.B. 1153](#) (2023). In opposing those bills, FOI Commission staff have argued that existing FOI exemptions already addressed any concerns. For this proposition, they cited, among other things, to Conn. Gen. Stat. §§ 1-210(b)(1),(2),(5),(10),(17),(19) as well as *Fromer*, 90 Conn. App. 101 (2005), but always without actually explaining how these provisions plausibly apply (Murphy 2025, pg. 2; Murphy 2024, pg. 2; Murphy 2023, pg. 1; Pearlman 2023, pg. 6 n.4).

In fact, those FOI provisions either (1) cover only a small subset of records arising out of faculty research and teaching or (2) impose *more* legal uncertainty for public faculty members and universities by comparison. For details, see the Appendix. And *Fromer* only underscores even more how the FOI statute was never intended to cover records arising out of faculty research and teaching in the first place. See *Fromer*, 90 Conn. App. at 106-107.

Opponents' remaining arguments are also misleading at best.

First, despite vague assertions about the FOI law and open government, since it enacted that law in 1975, the Legislature has aimed to calibrate *tradeoffs* for *and against* FOI disclosure – balancing, for example, its anti-corruption benefits in particular contexts with its risk to privacy, safety, and a workplace free from harassment. That is why the original 1975 FOI law had *ten* exemptions, and it currently has many more (Burke 2018). As new circumstances and technologies (e.g. social media) arise, the Legislature has updated the FOI law to recalibrate the tradeoffs for and against disclosure. With this in mind, we can distinguish between

precise FOI exemptions (like the ones in H.B. 5548) from other proposed FOI exemptions that may go too far.

Second, a bill like H.B. 5548 does *not* hide research from scrutiny. FOI requests have no bearing on research scrutiny and accountability because, as Bailey (2023) has put it:

For university faculty, the point is to publish their research for *all the world* to see. Faculty are judged by how well their published research stands up to *criticism* by their peers and anyone else and to read those publications all you need is an internet connection or a library card, not a FOI request.

FOI-harassment risk arises because more and more FOI request filers want not to evaluate completed faculty research but to disrupt and discourage ongoing faculty research and teaching in the first place. To do that, they need only file the request or, indeed, threaten to do so, to produce the chilling effect they seek.

Third, while taxpayer dollars cover faculty salaries at public universities, this is irrelevant. Section 2 of H.B. 5548 does not affect the transparency of university funding, because its text expressly provides that it does *not* exempt from FOI disclosure “any financial records” of the university, even if those records arise out of research or teaching on scholarly issues. Moreover, since taxpayer dollars cover *all* public employee salaries, this argument is doubly unsound. If taken seriously, it supports repealing almost every FOI exemption. E.g. Conn. Gen. Stat. § 1-201 (exempting Division of Criminal Justice in its non-administrative functions); *id.* § 1-217(1),(4),(10) (exempting residential addresses of judges, prosecutors, and judicial branch employees).

Finally, opponents assert that FOI harassment is not bad enough to warrant a FOI exemption. Not true. When one of them said this a few years ago in an op-ed, UConn history professor Alexis Dudden replied in print with her own horrific story of FOI harassment (Dudden 2024). And then she wrote:

How much is enough? How many faculty must suffer FOI-based harassment, and how badly, before you are willing to take the problem seriously? And why must public university faculty in Connecticut face the risk of such harassment just because they use their university email accounts or work-provided computers to do their job?

In the coming weeks, as you are pressed behind closed doors to let H.B. 5548 die like the previous bills, ask them Professor Dudden’s questions and insist on real answers.

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## Appendix

To debunk opponents’ arguments about existing FOI law, here are key provisions that the FOI Commission and others have cited in the past with some clarifications or questions the Committee may wish to pose.

### § 1-210(b)(1)

FOIA exempts “[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure,” Conn. Gen. Stat. § 1-210(b)(1), except as otherwise provided, see Conn. Gen. Stat. § 1-210(e).

Legal uncertainty arises from the burden on the public agency (here, a public college or university) in showing that not disclosing the requested records “clearly outweighs the public interest in disclosure.” Why in any particular case would faculty research and teaching records satisfy this standard without significant expenditure of faculty and university time and effort to litigate this issue? By comparison, H.B. 5548 would only require showing that the requested records arise out of research or teaching on scholarly issues.

## § 1-210(b)(2)

Conn. Gen. Stat. § 1-210(b)(2) exempts “[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.” Conn. Gen. Stat. § 1-210(b)(2). Why should this exemption cover faculty records arising from teaching or research at all? For example, suppose one is worried that a research study participant’s medical files may become part of the data collected in some kinds of public university research studies, and thus not exempt from the FOI law. If so, the exemption in § 1-210(b)(2) would not clearly protect that person, because it carries a high burden and requires proving that “the information sought by a [FOI] request does not pertain to legitimate matters of public concern” and its disclosure would be “highly offensive to a reasonable person.” *Perkins v. Freedom of Info. Comm’n.*, 228 Conn. 158, 175 (1993) (borrowing legal standard for tort of unreasonable publicity in Restatement (Second) of Torts § 652D (1977)). E.g., *Handler v. Arends*, No. 0527732 S, 1995 WL 107328 (Conn. Super. Mar. 1, 1995) (triable issue of fact as to whether disclosure of CCSU’s denial of plaintiff’s tenure application would count as highly offensive).

## § 1-210(b)(3)

This FOI exemption covers certain “[r]ecords of law enforcement agencies . . . compiled in connection with the detection or investigation of crime.” Conn. Gen. Stat. § 1-210(b)(3). A public university, however, is *not* a “law enforcement agenc[y].” It does not suddenly become a “law enforcement agenc[y]” even if a faculty member, in response to FOI-based harassment, persuades a law enforcement agency to investigate the matter as a possible crime. That is because even then, public university continues to maintain and keep on file the requested records arising out of faculty research and teaching as a public university.

## § 1-210(b)(5)

This is the FOI exemption for trade secrets and for commercial or financial information given in confidence. Most faculty research and teaching records do not qualify for either. A trade secret requires that the information therein “derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.” Conn. Gen. Stat. § 1-210(b)(5)(A)(i). Faculty emails, notes, human-subjects research applications, and other research-and-teaching materials do not typically qualify as having at least “potential” economic value that others can “obtain” within the meaning of this provision.

Moreover, it is unclear how faculty teaching and research would satisfy the “not . . . readily ascertainable” requirement. For example, even though faculty often compile datasets from public sources as part of their research, those datasets would not seem to qualify as trade secrets under § 1-210(b)(5)(A). E.g., *Dir., Dep’t of Info. Tech. of Town of Greenwich v. Freedom of Info. Comm’n*, 274 Conn. 179, 195 (2005) (GIS database not a trade secret because it is “readily available to the public . . . [T]he GIS database is an electronic compilation of the records of many of the town’s departments. Members of the public seeking the GIS data could obtain separate portions of the data from various town departments, where that data is available for disclosure.”).

Nor is it clear for § 1-210(b)(5)(A) what faculty would have to do to ensure that they have undertaken reasonable efforts to “maintain secrecy” of such information, as required by Conn. Gen. Stat. § 1-210(b)(5)(A)(ii), given the “highly fact specific” nature of that inquiry, *Allco Renewable Energy Ltd. v. Freedom of Info. Comm’n*, 205 Conn. App. 144, 167 (2021). For instance, what steps would count as reasonable enough to satisfy this requirement as applied to a historian’s copies of archival documents and associated notes or to a political scientist’s survey data?

Furthermore, most research or teaching records are not “commercial or financial information given in confidence” under § 1-210(b)(5)(B). Even if they were, to prove that such information had been “given in confidence,” one would have to prove “an intent to give confidential information, based on context or inference, such as where there is an express or implied assurance of confidentiality, where the information is not available to the public from any other source, or where the information is such that [it] would not customarily be disclosed by the person who provided it.” *Allco*, 205 Conn. App. at 168 (cleaned up). In the context of research studies, if the data collected from, say, survey respondents as part of a research study were to qualify under § 1-210(b)(5)(B), how would faculty researchers go about satisfying this legal standard for “given in confidence”?

## **§ 1-210(b)(10)**

This section exempts:

Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes

For research-related or teaching-related records, this FOI exemption seems largely irrelevant. For example, it is not at all clear that this exemption covers the case files, client communications, attorney work product, and other records arising out of faculty teaching in any and all legal clinics at UConn’s law school. In contrast, section 2 of H.B. 5548 expressly covers records arising out teaching in “legal clinics”.

### **§ 1-210(b)(17)**

This provision exempts “[e]ducation records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g, revised to January 3, 2012.” In turn, FERPA defines “education records” as “those records, files, documents, and other materials which-(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A). And FERPA prohibits disclosure of “personally identifiable information” from a student’s “education records” without that student’s written consent, [34 CFR § 99.30\(a\)](#), absent certain exceptions, e.g., [34 CFR § 99.31\(b\)\(1\)](#) (release of education records absent student consent after “removal of all personally identifiable information” after “reasonable determination that a student’s identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information”).

This FOI FERPA exemption would not obviously cover faculty research and teaching records. Such records do not qualify as “education records” under FERPA if they contain no information directly related to a student. And if a requested record did contain that information, once that information is redacted, it is unclear that § 1-210(b)(17) still cover the rest of that record. To illustrate, consider audiovisual records of class meetings, which many faculty undertake to help students who are temporarily ill or have another excusable reason for missing class. (Such recordings were critical for students during the COVID-19 pandemic.) If a FOI request came in for a faculty member’s class recordings, would they count as exempt under § 1-210(b)(17)? If the university redacts personally identifiable student information (e.g., video and audio) from the requested recordings, would such recordings no longer fall within that subsection?

### **§ 1-210(b)(19)**

This FOI “safety risk” exemption applies “when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person,” as determined by the Commissioner of the Department of Administrative Services (CDAS) after consulting with the appropriate agency head. Conn. Gen. Stat. § 1-210(b)(19). The FOI statute says nothing more about the degree of “safety risk”, the type of “harm”, or what counts as “reasonable”.

Nonetheless, to rely on § 1-210(b)(19), the public university must ask and persuade CDAS to find that such “reasonable grounds” exist for *each and every* record requested. This requires not simply proof of a “general concern” about disclosure but actually proving “knowledge of a particular set of circumstances that would lead one to the conclusion that disclosure could result in harm to a person or to state property.” *People for the Ethical Treatment of Animals, Inc. v. Freedom of Info. Comm’n*, 321 Conn. 805, 819 n. 14 (2016)(quoting legislative history). Then, whatever CDAS decides, the FOI Commission, and later a trial court, can determine whether the CDAS decision was “frivolous, patently unfounded or in bad faith.” *Id.* at 819.

This FOI exemption covers far less than section 2 of H.B. 5548, because it is predicated at least on (1) the faculty member persuading the university to ask the CDAS for a safety-risk determination; (2) the university presenting its case to the CDAS; and (3) the CDAS determining whether the required “reasonable grounds” exist. This entails far more uncertainty and administrative burden than H.B. 5548’s query of whether the requested records arose out of faculty research or teaching. (There is no CDAS determination required for H.B. 5548.).

### **§ 10a-154a**

This provision exempts from the FOI law “[a]ny record maintained or kept on file by a board of trustees of a constituent unit of the state system of higher education which is a record of the performance and evaluation of a faculty or professional staff member of such constituent unit.” Conn. Gen. Stat. § 10a-154a. This provision is irrelevant, because such “performance and evaluation” records hardly overlap, if at all, with the records arising out research and teaching on scholarly issues that H.B. 5548 covers.

### **§ 1-206(b)(6)**

Not an FOI exemption, this provision authorizes a “public agency” – here, the public university, *not a faculty member* – to file a petition with the FOI Commission “for relief from a requester that the public agency alleges is a vexatious requester.” CGS 1-206(b)(6). Even if faculty member persuades the public university to file such a petition, the process is burdensome and the possible relief is quite limited. Any such petition has to “detail the conduct which the agency alleges demonstrates a vexatious history of requests.” *Id.* Once the FOI Commission receives it, the Commission’s executive director decides whether to recommend that it deserves a hearing. And even if the Commission holds a hearing and orders relief, at best it can order that the “public agency” does not have to comply with “future requests from the vexatious requester for a specified period of time, *but not to exceed one year.*” *Id.* (emphasis added).