FREEDOM OF INFORMATION COMMISSION STATEMENT ON HOUSE BILL 5250, AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE FREEDOM OF INFORMATION COMMISSION FOR REVISIONS TO THE FREEDOM OF INFORMATION ACT.

February 24, 2026

The Freedom of Information ("FOI") Commission submits this statement in strong support of House Bill 5250, which seeks to amend various provisions in the FOI Act. This is the fifth year we have submitted similar recommendations, which have no opposition and make technical and practical changes to the FOI Act.

Section 1

Section 1 of the bill proposes to revise the training requirements of the FOI Commission under §1-205(e) of the FOI Act.[1]

Section 1-205(e) requires the Commission to provide FOI training to public agencies. For reasons unknown, §1-205(e) also requires the Commission to train agencies on §§1-7 to 1-18, G.S., which are not part of the FOI Act and are under the purview of the Public Records Administrator. Additionally, pursuant to §1-205(e), the Commission is charged with training on §19a-342, G.S., which concerns smoking and vaping at public buildings, and not access to public records and meetings. The proposed revision to §1-205(e) is reasonable and straightforward.

Section 2

Section 2 of the bill amends §1-210(d) of the FOI Act, regarding appeals brought for denial of access to public records under §1-210(b)(19) of the Act.

Section 1-210(b)(19) provides, in relevant part, that disclosure is not required of:

> [r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility…. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive

[1] In sections 8, 9 and 10, the bill also proposes to delete references to §§1-205 and 1-212, G.S., from §§4d-30(1), 4d-47 and 4d-48, G.S., which concern contracts for state agency information system or telecommunication system facilities, equipment or services, and not access to public records and meetings under the FOI Act.

officer of a municipal, district or regional agency, with respect to records concerning such agency….

As currently written, §1-210(d) requires that the appeal be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold records.

For purposes of clarity, the Commission supports amending §1-210(d) to clarify that such appeal shall be against *both* the chief executive officer of the public agency that maintains or has custody of the requested records and the Commissioner of the Department of Emergency Services and Public Protection or the Commissioner of the Department of Administrative Services (as applicable) who issued the directive to withhold the records.

Section 3

Section 3 of the bill amends §1-212(g) of the FOI Act regarding the definition of hand-held scanner.

Section 1-212(g) permits any individual to copy a public record through the use of a hand-held scanner. The current definition of a hand-held scanner in the statute, however, is obsolete and does not align with modern day technology. Therefore, the Commission supports expanding the definition of hand-held scanner to include "a mobile telephone, camera or any other portable device capable of capturing an image of a public record."

Sections 4 and 5

Sections 4 and 5 of the bill seek to clarify the application of the definition of "governmental function" in §1-200(11) of the FOI Act to §1-218 of the Act.[2]

In response to an Appellate Court decision,[3] the General Assembly in 2001 enacted legislation[4] increasing public access to certain records related to contracts in excess of $2.5 million between a public agency and a nongovernmental entity, where such entity performs a "governmental function" (§1-218). The same legislation added a definition of "governmental function" (§1-200(11)) as it relates to such contracts. Over the years, there has been some confusion as to whether such definition of "governmental function" applies only to §1-218, or whether its

[2] The bill also proposes (in section 6) to delete the phrase "in the course of its governmental functions" from §1-211(b) of the FOI Act. Section 1-211(b) prohibits an agency from entering into a contract that impairs the public's right to access non-exempt public records existing on-line in, or stored in a computer system owned, leased or otherwise used by the agency. The proposed deletion in section 6 would clarify that the definition of "governmental function" in §1-200(11) does not apply to §1-211(b).

[3] In Envirotest Systems Corp v. FOIC, 59 Conn. App. 753 (2000), the court concluded that a for-profit corporation that operated the state's automobile emissions testing program under a contract for approximately $25 million a year was not the "functional equivalent" of a public agency.

[4] See House Bill 6636, Public Act 01-169, *An Act Concerning Privatized Public Records*.

application extends to the "functional equivalence test" adopted by the courts to determine whether an entity is the "functional equivalent" of a public agency.[5] The proposed language in sections 4 and 5 of House Bill 5250 would clarify that the definition of "governmental function" in §1-200(11) applies only to §1-218, as was intended by the General Assembly.

Section 7

Section 7 of the bill amends §1-225(d) of the FOI Act to allow for electronic transmission of special meeting notices to members of a public agency.

During the 2021 June Special Session, the General Assembly amended §§1-206 and 1-227 of the FOI Act[6] to allow public agencies to provide regular and special meeting notices by "electronic transmission" to a person who makes a written request for such notices; to allow a public agency to provide notice, by "electronic transmission", to an employee of an appeal to the FOI Commission involving the employee's personnel, medical, or similar file; and to allow the Commission to send certain documents to parties in an appeal before the Commission by "electronic transmission" (e.g., service of the appeal notice and orders). The "electronic transmission" language, however, appears to have been inadvertently left out of §1-225(d), which section requires that written notice of a special meeting "be delivered to the usual place of abode of each member of the public agency" prior to such special meeting. The Commission supports amending §1-225(d) to give public agencies the option of providing such notice by electronic transmission.

The FOI Commission thanks the Government Oversight Committee for raising these proposals.

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

[5] The Supreme Court in Board of Trustees of Woodstock Academy v. FOIC, 181 Conn. 544, 554 (1980) articulated four factors that must be considered to determine whether an entity is the "functional equivalent" of a public agency: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government.

[6] See Sections 148 and 150 Public Act 21-2 (June Special Session).