

## **Testimony of David Godbout before**

### **Task Force on Victim Privacy and the Public's Right to Know**

**1 OCT 13**

#### Current Law

The legislature last session limiting the public's access to records in respect to photos and other records were passed this session.

Under current law, a person could be shot 20 times in the chest and the state could say that they only shot the victim one time in the toe. And no one would be the wiser.

The laws passed in haste and in an emotional atmosphere (and many in secret creation) should be rescinded next session.

Deceased persons generally have not been thought to care much about privacy issues.

## Effectiveness of the Freedom of Information Commission

I would first compare our FOIA appeal process to other states.

Most states have an appeal of a denial of records performed by the same agency that denied access (usually another person other than the person who denied examines the appeal) and, if still denied, an administrative review case before a judge/court is the next step. In these states, most require a maximum of a 30 day appeal process. So one could file a request, get a denial, file an appeal, and get a denial, and then be able to seek out judicial review. All within about 30-60 days generally.

A few states have an agency like our FOIC. New York and Pennsylvania are two that have similar FOIA appeal procedures available to a requester. But in NY and PA they are required to hear and decide on appeal cases within 30 days. And, in the year 2012, NY accomplished 100% of appeals within 30 days (hearing about 300 cases). And PA accomplished 98% of their cases within 30 days (hearing about 1500 cases).

In our state, our FOIC commission is bound the just strive to hear cases within 30 days and to issue out final decisions 60 days thereafter; and the commission is to act in a “speedy manner”. Two FIC regulations are highlighted below:

1-21j-14 Construction and amendment

Sections 1-21j-1 to 1-21j-57, inclusive, of the Regulations of Connecticut State Agencies shall be so construed by the commission and any presiding officer as to secure just, speedy and inexpensive determination of the issues presented hereunder.

Section 1-21j-29 (a)-(d) Procedure in response to complaint

"...the commission shall strive to hear each contested case within thirty (30) days after the commencement of the contested case and to decide each such case within sixty (60) days after the conclusion of the hearing therein..."

Looking at FOIC records, available online, today, I discovered only a handful of cases that were filed with the FOIC (citizens already denied access to records and seeking administrative review of the denial) and discovered fifteen (15) cases have been decided for cases filed in 2013. And of those case, only 6 required a full hearing as the rest were either withdrawn or were actually no shows by people who were seeking the records and these accounted for 1/3<sup>rd</sup> of the finally decided cases.

And the commission has only begun issuing out rulings in August of 2013 regarding cases filed likely in January of this year. The earliest date of 2013 rulings was August 28, 2013. That's day 240 of the calendar year.

The 25 SEP 13 agenda of the FOIC shows twelve (12) cases being decided and this agenda is a typical "working day" for the commission and they meet 2 days a month, leading to a value of the commission hearing about 288 cases a year. So, just how much effort is made by the commission to "strive" to hear and decide cases within 90 days? None that I can see.

It used to be that the commission was required to hearing and decide cases within 30 or 90 days but some cases slipped through the cracks (parties illness etc) and the courts ruled that the commission lost its jurisdiction to further hear cases beyond that time period. So the legislature added a 1 year maximum time period to account for such occasions; the 1 year deadline was not meant to become the norm but that is exactly what has occurred at the commission.

So now, when a citizen asks for records (sometimes a month or two before getting a response) and gets a denial, now the citizen is *forced* by law to go to a FOIC hearing and this process takes 9 months to a year. So a citizen is now at about a year before an appeal is even heard let alone decided. And you can see the result: 1/3<sup>rd</sup> of people just say “forget it”! and don’t even bother to show. And towns and agencies take full advantage of the delays made by the FOIC process (and it is the commission who makes these delays ~ the commission could hear 100 cases a week if they choose ~ they choose not to).

As of this date, I have a FIC case filed in 2013 with a docket number of FIC 2013-548. When do you think this will actually be heard given the last case decided of 2013 was case 2013-088?

A summary of the 2013 heard by the commission is included on the final page; this is current to today’s date and the information was obtained via the FOI commission’s website.

The FOIC acknowledges that agencies and town’s compliance with our FOI Act is terrible; they have a document on their webpage even stating this and various audits by the state concerning this yields similar conclusions. But why should towns and agencies comply? After all, the request will not be adjudicated, administratively, for a year or so, if it gets to that point at all...towns and agencies know that most people will simply give up their quest for records. And even if one does persevere and get a favorable ruling from the FOIC, they get the records 1 year later and generally the records sought are of little value to the requester anymore. And the agency or town walks away smiling ~ the FOIC does not issue out very many, if any, sanctions.

Our FOI Act, in respect to the FOIC, needs a complete overhaul. The FOIC itself ignores its own regulations that result in undue delays in getting records and/or even having a hearing in a time frame that is useful. Connecticut’s appeal process of records denial is the longest, time-wise, of any other state in the union. And Colleen Murphy, in March

2011 testimony to our legislature, stated that time is a critical component associated with FOI requests and administrative appeal adjudications.

Our FOIA Act is broken in respect to the time-lines needed for administrative appeals. It needs an overhaul. The facts speak for themselves.

Thank you for your time. Please see final page attached for FOIC information.

Sincerely,

A handwritten signature in black ink, appearing to read "David Godbout", written in a cursive style.

David Godbout

15 Cardinal Rd.

East Lyme, CT 06333

860-691-8053

<u>FIC 2013-004</u>	Decided	28-Aug
<u>FIC 2013-019</u>	Decided	28-Aug
<u>FIC 2013-031</u>	Decided	25-Sep
<u>FIC 2013-037</u>	Decided	25-Sep
<u>FIC 2013-043</u>	No Show	28-Aug
<u>FIC 2013-048</u>	Decided	25-Sep
<u>FIC 2013-050</u>	Decided	11-Sep
<u>FIC 2013-055</u>	Withdrawn	25-Sep
<u>FIC 2013-063</u>	No Show	28-Aug
<u>FIC 2013-064</u>	Withdrawn	25-Sep
<u>FIC 2013-071</u>	Withdrawn	25-Sep
<u>FIC 2013-072</u>	No Show	11-Sep
<u>FIC 2013-075</u>	No Show	28-Aug
<u>FIC 2013-076</u>	No Show	28-Aug
<u>FIC 2013-088</u>	Withdrawn	25-Sep

CASE ID	Conclusion	Date
	(or reason)	(2013)

**2013 Cases Decided by FOIC**  
(As of 1 OCT 13)