

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

Presentation by:
Office of Legislative Research
October 16, 2013

Outline

- Other states' Freedom of Information (FOI) exemptions protecting personal privacy (2013-R-0384)
- Legislative history of Freedom of Information Act (FOIA) exemptions for certain witness-related records (2013-R-0401)
- Interviewing minors and disclosure of juvenile records (2013-R-0406)

**Other States' FOI Exemptions
Protecting Personal Privacy**

Privacy Exemptions

- OLR's previous presentation described state laws that directly address the disclosure of crime scene photos, 911 tapes or transcripts, and autopsy reports
- Access to these records may also be affected by state laws that protect personal privacy more generally
- These laws establish:
 1. general personal privacy exemptions,
 2. personal privacy exemptions that potentially extend to the records listed above, or
 3. personal privacy exemptions for certain law enforcement records

General Privacy Exemptions

- Eleven states have general exemptions in their FOI laws limiting disclosure of documents to protect personal privacy
- Seven of these states limit disclosure where it would be an unwarranted invasion of privacy (five use the phrase "clearly unwarranted")
- Some of these states further define what constitutes an invasion of privacy

Invasion of Privacy Defined

- **Hawaii**- Disclosure is not a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual (Haw. Rev. Stat. §§ 92F-13(1) and -14)
- **Illinois**- An unwarranted invasion of personal privacy means disclosing information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information (5 ILCS 140 § 7)
- **Kansas**- A clearly unwarranted invasion of personal privacy is revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property, and is not of legitimate public concern (Kan. Stat. §§ 45-221 (a)(30) and -217)

**Privacy Exemptions that Potentially
Extend to the Relevant Records**

- Four states have personal privacy exemptions that apply to specified records
- These four states' laws do not specifically cover crime scene photos, 911 tapes and transcripts, or autopsy reports
- However, because these laws specify a non-exhaustive list of records, the exemptions may extend to other records (e.g., 911 tapes)

**Privacy Exemptions Law Enforcement
Records**

- Most state FOI laws limit disclosure of law enforcement investigatory records
- The exemptions may be limited to certain time periods and circumstances
- Eight states consider personal privacy interests when determining whether to disclose law enforcement investigatory records
- Five of these states limit disclosures that constitute an unreasonable invasion of personal privacy

**Legislative History of Connecticut's
FOIA Exemptions for Certain
Witness-Related Records**

Connecticut's FOIA Exemption

- Under FOIA, certain law enforcement investigatory records are exempt from disclosure
- These records include those that would reveal:
 1. the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known or
 2. witnesses' signed statements (CGS 1-210(b)(3)(A and C))

Legislative History

- These provisions were added in PA 94-246
- The act was in response to a 1993 Connecticut Supreme Court decision, *Gifford v. Freedom of Information Commission*
- In *Gifford*, the court held that FOIA required law enforcement agencies to release only limited information about an arrest (i.e., arrestee's name and address; date, time, and place of arrest; and offense for which he or she was arrested)

Legislative History

- PA 94-246 required law enforcement agencies to additionally disclose at least one of the following: (1) arrest report, (2) incident report, (3) news release, or (4) other similar report
- The act also added both witness-related exemptions

Legislative History

- The debate in the House and Senate focused on access to arrest-related information
- Opponents raised concerns about the act's impact on witness safety
- The debate does not provide any evidence of legislative intent concerning the interpretation of the witness-related exemptions

Freedom of Information Commission (FOIC) and Court Decisions

- The witness-related exemptions have been asserted in numerous FOIC cases
- We did not find any FOIC decisions that were appealed because the commission rejected the assertion of these exemptions
- We did not find any court cases that interpret these exemptions

Interviewing Minors and Disclosure of Juvenile Records

Interviewing Minors

- The law *does not* establish conditions on interviewing minors after a crime

- The law *does* establish conditions governing the admissibility of a minor's statement in a delinquency proceeding involving the minor

- The conditions differ based on whether the minor is younger than 16, or is 16 or 17

Minors Younger than 16

- A statement made to a police officer or juvenile court official is inadmissible in a delinquency proceeding involving the minor unless it was made:
 1. in a parent or guardian's presence and
 2. after the parent or guardian and minor have been advised (a) of the minor's right to counsel and right to remain silent and (b) that statements may be used as evidence against the minor (CGS § 46b-137(a))

16 and 17 Year Olds

- A statement made to a police officer or juvenile court official is inadmissible in a delinquency proceeding involving the minor unless:
 1. the officer or official makes reasonable efforts to contact a parent or guardian and
 2. the minor has been advised (a) of his or her right to contact and have a parent or guardian present, right to counsel, and right to remain silent and (b) that statements may be used as evidence against the minor

16 and 17 Year Olds

- The law requires a court to consider several factors when deciding whether to admit a 16 or 17 year old's statement
- These factors include the child's:
 1. age, experience, education, background, and intelligence;
 2. capacity to understand his or her rights; and
 3. opportunity to speak with a parent, guardian, or other suitable person

Access to Juvenile Offender Records

- Juvenile arrest records and associated investigatory files are covered by FOIA's law enforcement records exemption (CGS § 1-210(b)(3)(F))
- The law also limits disclosure of certain records used in juvenile court proceedings

Juvenile Court Proceedings

- Records used in court proceedings, including law enforcement records, are confidential and available only to various people and entities such as:
 1. those with an interest in the proceeding,
 2. law enforcement officials conducting investigations,
 3. those providing services to juveniles,
 4. victims, and
 5. anyone with a legitimate interest in the record who gets a court order granting access to the record
- With limited exceptions, these people and entities must not disclose the record further if it pertains to a delinquency proceeding (CGS § 46b-124)

Questions and Answers
