

Good Morning, my name is Morgan Rueckert, I am an attorney at Shipman & Goodwin. We represent, pro bono, 22 families and their children, mothers, sisters and brothers who were killed on December 14 in Sandy Hook. I represent them in the context of FOIA and disclosure of information in connection with the State Police Investigation.

Thank you all for your hard work here -- it means so very much to my families. They will be eternally grateful to the Legislature and staff and the Governor and his staff for the amazing and hard work that was done at the end of last session under very pressing and difficult circumstances.

My clients very much want the protections provided to images by the new public act 13-311 to remain in place, and they would like this task force to recommend that similar protections be provided to 911 calls -- before the Sandy Hook 911 calls can be ordered judicially disclosed under current FOIA law.

You heard from two of my clients, Dean Pinto and Mark Mattioli, last week in Bridgeport. I hope you understand how difficult it is for them to do that, and take that as a reflection of how important this issue is for them.

Having spent a considerable amount of time looking at these issues on behalf of the families, I thought it might be useful to provide you a brief technical legal analysis from our perspective.

And really, from our perspective, one solution, one that protects privacy while respecting open government, is surprisingly straightforward, and is reflected in the enabling legislation of this task force, which directs you to "consider and make recommendations regarding the balance between victim privacy . . . and the public's right to know."

Specifically, the balancing that is contained in the new statute as it pertains to images, should be extended to other materials, including audio and reports, including 911 calls. This would bring us in line with our neighboring states and the federal government. Let me explain. The new statute exempts from disclosure:

Images depicting the victim of a homicide

to the extent they could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members.

The key word in the new statute is "unwarranted" -- that word is the fulcrum, the point on which the balance is made. Unwarranted invasion of privacy -- implies necessarily that there is such a thing as a warranted invasion of privacy. In other words, the public interest in disclosure in a particular case may outweigh the individual's privacy interest.

But that's the thing; the exemption depends on the facts and circumstances of the particular case.

To talk about balancing in a vacuum, is literally and figuratively impossible, you have to have the gravity there to determine what weighs what. You have to have the facts of the case and the competing interests relevant in that case in order to properly balance them.

What we largely have had up to now in Connecticut, is a categorical approach. Look at 1-210(b), which lists categories of exemptions under FOIA: commercial information submitted to a public agency are private, statements of personal wealth submitted to a public agency are private, tax returns submitted to a public agency are private, yet 911 calls to an agency from panic stricken victims of mass murder with the sounds of the murder in the background, revealing intimate and disturbing details about the caller and the victims -- are not private -- why just because it is a 911 call, and such items have not been listed as a category. That makes no sense really.

All 911 calls are not the same -- it depends on the content, who's speaking, what happens to them, who they are, and what's in the background. To exclude them or anything as a category is not a balancing of privacy interests at all.

Similarly, with audio, video, reports, many things collected by law enforcement in a homicide investigation may contain private information. But every situation is different.

That is why the language of the new statute Public Act 13-311 is so functional and should be expanded.

Presently, it only protects images but even there is limited to the extent disclosure "could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members."

If the task force were to recommend that this same balancing language be extended to other types of records, it would simply and straightforwardly require a balancing on a case by case basis, which is as it should be, and is not the kind of radical change that some may fear.

Quite frankly, this would catch us up with NY, MA, RI and Federal FOIA: of the five of us, our three neighboring states, the federal government and us, we are the only one without such a provision, and it is past time we had one. The provisions are in the materials prepared for you by OLR but they all have that exact same balancing language -- "unwarranted invasion of personal privacy" without limiting its application to images.

5 USC § 552(b)(7)(C)). Exempts "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy"

(N.Y. Public Officers Law § 87(2)) Exempts records that “if disclosed would constitute an unwarranted invasion of personal privacy”

(MASSACHUSETTS GENERAL LAWS CHAPTER 4, SECTION 7, CLAUSE 26) Exempts “materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy”

(R.I. Gen. Laws § 38-2-2(4)(D)) Exempts law enforcement records that “could reasonably be expected to constitute an unwarranted invasion of personal privacy”

Prior to the new public act, unbelievably, there was no FOIA protection for crime scene photos in Connecticut and no recognition of privacy for crime victims. In fact, the only mention of personal privacy in FOIA in Connecticut was 1-210(b)(2) which exempts personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy. This exemption has been limited to just what it sounds like -- government employee personnel and medical records. That's it. And again, even there -- no balancing - just a categorical approach -that says personnel records and the like are private, the end - that kind of approach makes no sense anymore, if it ever did.

Times have changed. Digitization and the internet have frankly changed everything. Everyone with a computer is an editor, reporter and publisher in one, unbound by any professional responsibility. Privacy is so fleeting, so easily violated now, and information once disclosed, is disclosed forever. The law needs to change to keep up and bring Connecticut in line with our peers with respect to personal privacy, and this would be a big step in the right direction.

And because it incorporates a balancing, it would still recognize the public interest in open government.

I think all reasonable people can agree that all in this case the refusal of the state to disclose the photos videos and 911 calls thus far is driven not by a motive to conceal anything, but out of compassion for my clients and the other victims.

But, the next situation, with a different agency under different circumstances, could be different, and we don't know what the particular facts of that situation will be -- thus we do not want to categorically exempt items from disclosure. Instead, where there is an issue of personal privacy, we should legislate that “unwarranted invasion of personal privacy” are not required, and with that balancing built into the disclosure decision regarding audio and reports, not just images, you have accomplished your mission of balancing the two interests in all cases.

So, on behalf of my clients, I ask the task force to recommend that the balancing language in new public act 13-311, excluding from disclosure images that would constitute an unwarranted invasion of personal privacy, be extended to include audio, reports and other information, including 911 calls.