

**OVERVIEW OF CONCEPTUAL RECOMMENDATIONS
REGARDING THE FREEDOM OF INFORMATION LAW**

1. Protection of Minor Witnesses To Certain Criminal Offenses

The first conceptual recommendation embodied in the proposal is an amendment of General Statutes § 1-210 (b)(3)(B) which protects from disclosure the identity of a witness to a crime of violence, a sexual offense or a drug offense who, at the time of the crime, was a minor as that term is defined in section 1-1d.

2. Protection of Emergency 9-1-1 Callers Who Are Members Of the Public

The second conceptual recommendation embodied in the proposal is an amendment of General Statutes § 1-210 (b)(3) to include a new subdivision - (I), which will protect from disclosure information which would reveal the name, address, telephone number, or other identifier of a member of the public placing an emergency 9-1-1 call or other call for assistance.

3. Balanced Protection of Unrestricted Public Disclosure of the Content of Certain 9-1-1 Calls And Photographs of Injured, Deceased or Compromised Persons

The final conceptual recommendation embodied in the proposal is an amendment of General Statutes § 1-210 (b) to include new subsection (27), which seeks to provide fair and balanced protection for the unrestricted public disclosure of two types of records:

(a) An emergency 9-1-1 call or other call for assistance made by a member of the public which captures, conveys or relates the impaired physical condition or mental anguish of the caller or another person; and

(b) a photograph, film, video or digital or other visual image depicting the condition of a body, or any portion thereof, of an injured or deceased person or the subject of a medical or other emergency.

The balance occurs in providing, first, that all such records are automatically available for listening and for visual inspection at the agency holding the record without need of any special showing and, second, in protecting from further unrestricted public disclosure those records the

disclosure of which would constitute an unwarranted invasion of personal privacy. In the case of emergency 9-1-1 calls, a transcript of the call is automatically available upon request at reasonable cost.

Please note that, as drafted, the proposal uses the generic phrase "unwarranted invasion of personal privacy" as *an example* of what might be a workable standard. That phrase was selected because it is used in the federal FOI law and has been construed by the United States Supreme Court in Nat'l. Archives and Records Administration v. Favish, 541 U.S. (2004), as permitting public disclosure of records upon a showing by the requestor that, despite concerns of personal privacy, disclosure of the records is necessary because the record would warrant a belief in a reasonable person that a responsible official acted negligently or otherwise improperly in the performance of his or her duties.

New subsection (27) also gives those persons who are the subject of the record, or their next of kin in cases of death or disability, the right to notice and an opportunity to be heard prior to unrestricted disclosure, and it also affords them 24 hours advance notice before any decision or order calling for disclosure takes effect.

DECEMBER 17, 2013 DRAFT - FOR DISCUSSION PURPOSES

C.G.S.A. § 1-210

§ 1-210. Access to public records. Exempt records

(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein.

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

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(3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or 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, (B) the identity of a [minor] witness[es] to a crime of violence, a sexual offense or a drug offense who, at the time of the crime, was a minor as that term is defined in section 1-1d, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning

the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, (H) uncorroborated allegations subject to destruction pursuant to section 1-216, or (I) information which would reveal the name, address, telephone number, or other identifier of a member of the public placing an emergency 9-1-1 call or other call for assistance.

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(27) Any record created by a law enforcement agency or other federal, state, or municipal governmental agency consisting of a photograph, film, video or digital or other visual image depicting [the victim of a homicide to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members] the condition of a body, or any portion thereof, of an injured or deceased person or the subject of a medical or other emergency, and any record consisting of an audiotape or other recording of an emergency 9-1-1 call or other call for assistance made by a member of the public capturing, conveying or relating the impaired physical condition or mental anguish of the caller or another person, provided that:

(A) Subject to the provisions of section 1-206, subsection (b) (3) of section 1-210, and section 1-212, the agency shall make available for listening any emergency 9-1-1 call or other call for assistance made by a member of the public capturing, conveying or relating the impaired physical condition or mental anguish of the caller or any other person, and shall make available for visual inspection any photograph, film, video or digital or other visual image depicting the condition of a body, or any portion thereof, of an injured or deceased person or the subject of a medical or other emergency. Upon request, the agency shall, for a fee not to exceed the cost thereof to the agency, provide a transcript of any such emergency 9-1-1 call or other call for assistance;

(B) No person who listens to or inspects a record pursuant to subdivision (A) of subsection (27) of this section shall remove, photograph, record or otherwise duplicate or copy said record. Any person who so removes, photographs, records or otherwise duplicates or copies said record shall be guilty of a class D felony.

(C) Whenever a law enforcement agency or other federal, state, or municipal governmental agency receives a request for disclosure of the audiotape or other recording of an emergency 9-1-1 call or other call for assistance made by a

member of the public capturing, conveying or relating the impaired physical condition or mental anguish of the caller or another person, or a request for disclosure of any photograph, film, video or digital or other visual image depicting the condition of a body, or any portion thereof, of an injured or deceased person or the subject of a medical or other emergency, the disclosure of which would constitute an unwarranted invasion of personal privacy, it shall, within four days of such request, notify in writing the person or persons so recorded, described, or depicted, or, in the event that any such person is deceased or incapacitated, that person's nearest next of kin or legal representative. Nothing herein shall require an agency to withhold from disclosure any portion of the records the disclosure of which it does not believe would constitute an unwarranted invasion of personal privacy.

(D) Any agency which has provided notice under subsection (a) of this section shall disclose the records unless it receives in writing or electronically an objection from any person so notified within thirty business days from the date that the notice is actually mailed, sent, posted or otherwise given. Upon the receipt of an objection, the agency shall not disclose the records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to disclose records under this section shall constitute a denial for the purposes of section 1-206.

(E) No decision of an agency to disclose, and no order of the Freedom of Information Commission requiring the disclosure of, records under subdivision (D) of subsection (27) of this section shall take effect until twenty-four hours after the agency or the commission certifies that notice has been communicated to the person or persons who filed the written objection under subdivision (D) of subsection (27) of this section.

