



# OLR RESEARCH REPORT

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## CHANGES TO LAW ENFORCEMENT RECORDS DISCLOSURE REQUIREMENTS

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You asked for a legislative history of provisions in the Freedom of Information Act (FOIA) that allow agencies to withhold from disclosure law enforcement investigatory records that (1) would identify witnesses not otherwise known whose safety would be endangered or (2) consist of signed witness statements. You also asked whether the legislative history elaborates on or the courts have interpreted these provisions.

### SUMMARY

FOIA allows agencies to withhold from disclosure law enforcement investigatory records, that are not otherwise available to the public if disclosure is not in the public interest due to one of several reasons specified in statute.

In 1994, legislation added to this list of reasons the provisions you asked about, which allow an agency to withhold records that (1) disclose the identify of witnesses not otherwise known whose safety would be endangered or who would be subject to intimidation or (2) consist of signed witness statements.

These provisions were part of legislation generally increasing the amount of arrest record information that must be disclosed, in response to a 1993 Connecticut Supreme Court ruling interpreting FOIA. In *Gifford v. Freedom of Information Commission*, the court ruled that FOIA (1) did not require disclosure of an arrest report during a pending prosecution and (2) required only the release of limited arrest record information specified in statute (the arrestee's name and address; the date, time, and place of arrest; and the arrest offense).

The legislation responding to the case (PA 94-246):

1. required an agency to release at least (a) the arrest report, (b) the incident report, or (c) a news release or similar report of the arrest;
2. subjected arrest records to the same disclosure rules that apply to other law enforcement investigative records; and
3. added the witness-related exceptions.

In debate on the bill, legislators commented on the appropriate balance between public access to information and protecting investigative records. They debated whether to change the balance struck by FOIA as interpreted in *Gifford*. The discussion does not elaborate on what qualifies as a signed witness statement but does discuss the need to protect witnesses in certain circumstances.

We did not find any cases or Freedom of Information Commission decisions interpreting these provisions.

## **COURT RULING INTERPRETING FOIA AND ACCESS TO ARREST RECORDS**

In *Gifford v. Freedom of Information Commission*, 227 Conn. 641 (1993), the Connecticut Supreme Court considered whether FOIA at that time required the disclosure of a police report during a pending criminal prosecution. The court examined two FOIA provisions. The first is the general provision exempting law enforcement investigatory records from disclosure under certain circumstances (CGS § 1-19, now codified as § 1-210(b)(3)). The second was a specific provision requiring disclosure of arrest records regardless of other statutes. This statute specified that an arrest record was the person's name and address; date, time, and place of arrest; and offense (CGS § 1-20b, now codified as § 1-215).

The court stated that for the types of records covered by the specific statute on arrest records, that statute controlled their disclosure because its provisions applied regardless of any other statutes. The court determined that an arrest report qualified as an arrest record under this statute and thus the statute exclusively governed the disclosure of arrest reports. Because the statute limited the type of information that had to be disclosed in arrest records to specific information about the arrestee and arrest circumstances and offense, the statute did not require disclosure of a police report beyond this limited information.

The court stated that the statute's legislative history shows it was enacted after certain police departments refused to disclose arrestees' names and addresses. The statute was intended to address this problem but limited the extent that police were obligated to disclose an arrest report. The legislature specifically addressed the issues and policy concerns related to disclosure of arrest reports.

#### **LEGISLATIVE RESPONSE (PA 94-246)**

The legislature enacted PA 94-246 in response to the court's ruling in *Gifford*. The act increased the information that must be disclosed when someone seeks arrest records under FOIA.

Previously, as interpreted by the Supreme Court in *Gifford*, the law required an agency to disclose only the name and address of the person arrested; the date, time and place of the arrest; and the offense for which he or she was arrested. The act expanded this to require the agency to release at least (1) the arrest report, (2) the incident report, or (3) a news release or similar report of the arrest.

The act made the statutory list of reasons not to disclose law enforcement records apply to arrest records, which were previously not covered by this exemption. It also expanded that list so as to allow agencies to refuse to disclose (1) the identity of witnesses whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known and (2) signed statements of witnesses.

#### **LEGISLATIVE DEBATE**

The legislature adopted these FOI provisions by adding amendments to another bill. In House of Representatives and Senate debate on the bill and amendments that became PA 94-246, legislators commented on the appropriate balance between public access to information and protecting investigative records. Legislators stated that the bill was a response to

the ruling in *Gifford* and they debated whether to change the balance struck by FOIA as interpreted in *Gifford*. For example, Senators Jepsen and Kissel spoke in favor of the bill.

1. Senator Jepsen stated that the bill “overturns the so-called *Gifford* case in which arrest records—the full content of the arrest records of any individual in any event is left to the discretion of the local police and makes arrest records subject to FOI as existed prior to the *Gifford* case.”
2. Arguing in favor of the bill, Senator Jepsen stated that sometimes it “is difficult or more difficult to understand the importance of protecting fundamental civil liberties and protecting those institutions and laws and rights that make it difficult for the police to abuse the rights of the average citizen.” He looked back historically and stated that police have used arrests at times “as a mechanism to harass people on the basis of race or political perspective” and that closing off access to arrest records opens “an avenue for abuse of civil rights because it will no longer be necessary for the police to defend an arrest on the basis of the information that would be immediately available to public scrutiny.”
3. Senator Kissel stated that when striking a balance on public access, it is better “erring on the side of full disclosure to the extent possible rather than limiting the amount of information that the public can be aware of.”

Some of those opposed to the bill believed that *Gifford* struck the appropriate balance. Opponents also raised concerns about witness safety. For example, Senator DiBella and Representative Radcliffe opposed the bill.

1. Senator DiBella argued that *Gifford* gave police the control over information that they needed to conduct investigations. He stated that public access to police records would allow gangs to identify witnesses and others named in police reports. Gangs could then intimidate people to prevent their participation in the criminal justice system.
2. Rep. Radcliffe raised concerns that police might be forced to release information that “on reflection might be information they would not wish to be disseminated publicly and this is not a decision when making out an arrest report that an officer should make at the close of a tour of duty.” He argued that the public’s

right to know was protected by the information that FOIA and *Gifford* already required the police to provide and there was “no constitutional right...to give a full report and a full narrative to members of the Fourth Estate.” He argued that the bill “tips the scale too far in favor of disclosure of information that could affect, not in all cases it will, but could affect police investigations and compromise our local and state police departments.”

3. Senator DiBella also raised concerns about whether police could determine whether a witness was at risk at the time it needed to decide about disclosing a document.

In response to these concerns, Senator Jepsen stated that “the only substantive issue raised in opposition...is the issue of protecting witnesses.” He stated that this problem “is taken care of in this amendment because the police have the discretion to withhold the identity of potential witnesses who could be placed in jeopardy.” He added that witness protection arises only in a small number of cases and that the police are in a position to make a judgment when it does (Senate Transcript, April 28, 1994; House Transcript, May 3, 1994).

The discussion does not elaborate on what qualifies as a signed witness statement or when it is appropriate to withhold information to protect a witness.

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