



Freedom of Information (FOIA) Workshop:

*Basic Overview of the FOI Act
for Public Agency Officials*

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Agenda

Topics to be discussed



- The Law
- Meetings
- Executive Sessions
- Records
- Exemptions
- Confidentiality



The Law



The Freedom of Information Act (“FOIA”)

Conn. Gen. Stat. § § 1-200 through 1-242, inclusive
(formerly § § 1-15 through 1-21k)

- Represents Connecticut’s commitment to open government and a **strong policy in favor of public access to meetings and records**

Subject to narrow exceptions, which are strictly construed, the FOIA mandates that the public has access to:

- **Meetings** of public agencies
- **Records** that are developed and/or maintained by public agencies



Meetings

“Public Agency” or “Agency”

“ ...Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, **board**, commission, authority or official of the state or of any city, town, borough, municipal corporation, **school district**, regional district or other district or other political subdivision of the state, including **any committee of, or created by**, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official and also includes any judicial office, official or body or committee thereof, but only in respect to its or their administrative functions ”

“Meetings”

“

...Any **hearing or other proceeding** of a public agency, any **convening or assembly of a quorum** of a multimember public agency, and any **communication by or to a quorum** of a multimember public agency **whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control jurisdiction or advisory power.**

”

FOIC – quorum not necessary, see e.g. McCreven v. Conservation Commission, et. al.,
FIC#2012-113 (February 21, 2013)
Conn. Gen. Stat. § 1-200

“Meeting” Does NOT Include:



Any meeting of a **personnel search committee** for executive level employment candidates



Any **chance meeting, or a social meeting** neither planned nor intended for the purpose of discussing matters relating to official business



Strategy or negotiations with respect to collective bargaining



A **caucus of members of a single political party** notwithstanding that such members also constitute a quorum of a public agency



An **administrative or staff meeting of a single-member public agency**; and communication limited to notice of meetings of any public agency or the agendas thereof

Meetings



In general, there is a meeting **anytime a quorum of a public agency convenes or engages in interactive communication to discuss or act upon a matter for which it has responsibility.** There can even be a statutory FOIA meeting where it is "anticipated" that a quorum will be present

Conn. Gen. Stat. § 1-200

Meetings



Note:

A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall **not** be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event

Conn. Gen. Stat. § 1-200(2)

Meetings



A **conference call or other communication by means of electronic equipment** may constitute a meeting



Agencies are cautioned to be particularly careful that **email exchanges** may constitute a meeting for FOIA purposes

Regular Meetings

Those for which the public agency must file a schedule with the Town Clerk(s) by January 31, for the ensuing year (Conn. Gen Stat. § 1-225(b))

The **agenda** of a regular meeting of every public meeting must be **posted** at least **24 hours prior** to the meeting in the public agency's regular office or place of business

Minutes of a regular meeting must be **available** for public inspection **within seven days** of the meeting

Other business may be **added** to the posted agenda by a **two-thirds vote** of those members present and voting

Special Meetings

Those meeting not included on the list of regular meetings filed with the Town Clerk(s)

Notice of a special meeting, including time, place and business to be transacted, must be posted at least **24 hours in advance**, and **agenda** must also be posted on agency's **website, "if available"**

Minutes of a special meeting must be **available** for public inspection **within seven days** of the meeting

No business other than that on posted agenda may be discussed at a special meeting. Items cannot be added to the agenda

Emergency Meetings

Emergency special meetings may be called in an emergency **without advance notice**. (Note: “Emergency” will be strictly construed.)
(Conn. Gen Stat. § 1-225(a))

Limited to the matter that requires “**emergency**” attention

Minutes must include a **statement** setting forth the **nature of the emergency**

Minutes of an emergency special meeting must be filed with the Town Clerk(s) **within 72 hours** of the meeting



Executive Sessions

Executive Sessions

Under circumstances narrowly prescribed by the FOIA, a public agency may exclude the public from a portion of its meeting by calling an **executive session**



“Executive Session”



...A meeting of a public agency at which the public is excluded for one or more of the following purposes:

- Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a **public officer or employee, provided such individual may require that discussion be held at an open meeting;**
- **Strategy negotiations with respect to pending claims or pending litigation** to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled;

(cont.)

“Executive Session”

- Matters concerning **security strategy** or the deployment of security personnel, or devices affecting public security;
- Discussion of the selection of a site or the **lease, sale or purchase of real estate** by the state or a political subdivision of the state **when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price** of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and
- **Discussion of any matter which would result in the disclosure of records that are exempt from disclosure** under Section 1-210(b)

”

Conn. Gen. Stat. § 1-200(6)

Executive Sessions: Requirements

There are specific requirements for conducting business in executive session



Two thirds of those members of the public agency present must vote at a public meeting to go into executive session and **state the reason(s)** for such executive session. (Conn. Gen. Stat. § 1-225(a))



Only members of the public agency and those persons whose presence is necessary to present testimony or give opinions may be present during the executive session. (Conn. Gen. Stat. § 1-231(a))

Executive Sessions: Requirements



Executive sessions may only be called for the **limited statutory purposes** set out previously



Only discussion is permitted in executive session; any votes must be taken in open session. There should not be a vote taken to come out of executive session



Minutes must include the vote to go into executive session; the reason for the executive session; and, the names of the persons in attendance at the executive session (subject to limited exceptions)

NOTE:

Multimember public agencies are specifically precluded from convening an executive session to receive oral communication privileged by the attorney-client relationship unless the executive session is for one of the explicitly permitted purposes



Meeting Requirements



Minutes:

Generally, minutes must be available for public inspection **within seven (7) days** of session to which they refer, and should **include**:

- When convened
- Which members of public agency present
- Short description of business transacted
- Listing of any action(s) taken, specifying the votes of each member
- Any executive session held, including statement of the reason(s) for the executive session and who was in attendance
- When adjourned

Conn. Gen. Stat. § 1-225(a) (formerly § 1-21(a))

Meeting Requirements

NOTE: Effective October 1, 2008, public agencies were required to post, on their websites, “if available,” their meeting dates and times, and their minutes required by law to be publicly disclosed.

However, Public Act 10-171, effective 10/01, 2010, now states “except that no public agency of a political subdivision of the state shall be required to post such minutes on an internet web site.” This now leaves it up to each political subdivision to determine whether to post such minutes on its website. The OLR summary for PA 10-171 notes that this change is limited, in that it only “exempts an agency of a town, city, borough, or district from the requirements to post minutes on the internet.” The statute still retains the language “if available.”

Public Act 08-3 (amending Conn. Gen. Stat. § 1-225(a))

Meeting Requirements



Agendas:

There is no clear guidance in the FOIA as to the level of detail that is required in an agenda, but, as a practical matter, the agenda should provide **reasonable notice of the business to be transacted**



Votes:

The votes (as distinguished from meeting minutes) of all members of the public agency must be reduced to writing and be **available for public inspection within 48 hours** of the meeting. There are **no secret ballots** under FOIA!



Records

“Public Records” Under FOIA

“ ...Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostatted, photographed or recorded by any other method.”

Conn. Gen. Stat. § 1-200(5) (formerly § 1-18a(d))

Records

FOIA



Except as otherwise provided by any federal or state law, all records maintained or kept on file by any public agency shall be public records



The FOIC has no authority to order a public agency to create records where none exist



The FOIA does not require a public agency to conduct legal research or to respond to questions. However, “research” or searching to locate public records is **always** required

Records

FOIA



A request must be made to the public agency official who has custody or control of public record.

NOTE: A request **only to inspect** records does **not** have to be made **in writing** and the public agency has no right to require the requestor to reveal his/her name or address. However, a public agency **may require a request for copies of records** to be **in writing**.

Records

FOIA (Conn. Gen. Stat § 1-210(a), formerly § 1-19(a))



Except as otherwise provided by any federal or state law, all records maintained or kept on file by any public agency shall be public records.

NOTE: This means that public agencies may rely on confidentiality or nondisclosure provision of federal or state statutes (but not regulations) that may apply to their public records, **in addition to** any exemptions, exclusions or exceptions from disclosure that are contained in the FOIA itself. Every person shall have the right to promptly inspect such records during regular business hours and the public agency must provide copies of any such documents on request, unless the records requested are exempt under the FOIA

Responding to Records Requests

1

Clear Process

There should be a clear process in place for processing and responding to FOI requests (including a designation of the individual(s) responsible for responding)

2

Prompt Disclosure

Disclosure must be made "**promptly.**"

"Promptness" will turn on the nature and extent of the specific request

Responding to Records Requests

3

Response Time

A person making a request is generally entitled to a **response within four business days**. (If the request involves employee personnel or medical files and the agency reasonably believes an invasion of privacy would occur, a response must be made within ten business days, and special notice requirements apply)

4

However...

That **does not mean the public agency automatically has four days to respond to a request**. If a record is readily available for inspection or copying, it is an FOI violation to make the person requesting the record **wait four days**

Responding to Records Requests

5

Compliance – Prompt Access

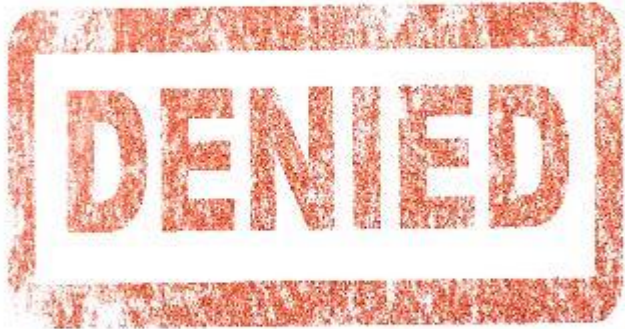
Compliance with the legal requirement of prompt access will depend upon the particular facts and specific request. Thus, the actual requirement for a timely FOIA disclosure is “as prompt as reasonably possible under all the circumstances.”

6

Denial

Any “denial of a right to inspect or copy records provided for by Section 1-210 shall be made to the person requesting such right by the public official who has custody or control of the public record, in writing, within four business days of such request” (except for the ten-day allowance for personnel or medical records requests).

Clarifications



- Failure to comply with a request within the applicable period is considered to be a denial of access, which can be appealed to the FOIC
- It is incorrect to infer that a public agency automatically has four days to respond to a request

If a record is **readily available** for inspection or copying, it is a **violation of the law to make the requestor wait four days.**

Clarifications



- Where a request is made for material in a personnel file, the public agency must first determine whether disclosure of the requested documents would legally constitute an invasion of privacy

Agencies may **not** simply leave it to the employee(s) to determine what will/will not be released. **If** the public agency **reasonably** believes that disclosure would be an invasion, it must **immediately** notify the employee and his/her bargaining representative (if any) in writing.



Perkins v. Freedom of Information Commission

228 Conn. 158, 175 (1993)

- The burden of proving an invasion of privacy under the FOIA is extremely difficult. In 1994, CT Supreme Court ruled that disclosure of records concerning a public employee would constitute an invasion of privacy **only** if the information sought:
 - Does not pertain to a matter of public concern **and**
 - Disclosure of the information would be highly offensive to a reasonable person.

Since test is stated in conjunctive, both elements must be established to claim the exemption

Records

FOIA



Agency shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, **within seven business days** from receipt by the employee or representative of the notice **or**, if there is no evidence of receipt of written notice, **not later than nine business days** from the date notice is actually mailed, sent, posted or otherwise given.



If the public agency does not receive any written objection within these limits, the requested documents must be disclosed. If an objection is filed, the documents may not be disclosed.

Conn. Gen. Stat. § 1-214(c) (formerly § 1-20a), emphasis added

Records

FOIA



Agency may charge a **fee not to exceed twenty-five [1] or fifty [2] cents per page for plain copies** of public records; **one dollar for the first page of a certified copy and fifty cents for each additional page** (where page is defined as only one side of a paper, and “certified” requires an official, with legal authority to do so, to attest in writing that the records at issue are true copies of originals).

[1] Applies to: executive, administrative or legislative office of the state, state agency or a department, institution, bureau, board, commission, authority or official of the state

[2] Applies to: “all other public agencies....”

Records



With limited exceptions, FOIA mandates that the public has access to all records that are developed and/or maintained by public agencies.

Conn. Gen. Stat § 1-210(a)

A public agency that maintains public records in a computer storage system must provide a copy of any nonexempt data contained in such records on paper, disk, tape or any other electronic storage device or medium requested if the agency can reasonably make such copy.

Conn. Gen. Stat § 1-211(a)

Records



Except as otherwise provided by state statute, public agency may include in the charge for a computer-stored public record **only** the following:

- **Hourly** salary of employees engaged in providing record (**but not** including search or retrieval costs)
- **Cost of professional** copying service if necessary
- **Actual cost of storage devices or media** provided
- **Computer time charges** incurred where another agency or contractor provides such storage and retrieval services (However the fee for any copy of the names of registered voters may not exceed three cents per name delivered)

Records



By statute, the Office of Information and Technology is required to monitor the calculation of the fees charged for copies of computer-stored records to ensure that such fees are reasonable and consistent among agencies. § 1-212(b)(4)



Public agencies are prohibited from entering into contracts that would impair the right of the public under the FOIA to inspect or copy the agency's nonexempt public records that exist in a computer system owned, leased or otherwise used by an agency § 1-19a(b)

Records



Before acquiring any computer system, equipment or software, a public agency must consider whether the proposed system, equipment or software adequately provides for the rights of the public under the FOIA at the least cost possible to the agency and to persons entitled to non-exempt public records



The Office of Information and Technology (OIT) is required by statute to adopt written guidelines to assist municipal agencies in carrying out this purpose and those agencies are supposed to consult with the OIT when looking into new computer systems § 1-211



Exemptions

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)

Examples from the complete list include the following:



Records exempt from disclosure under federal or state law (e.g. Section 10-151c of the Connecticut General Statutes, which exempts teacher evaluation records from disclosure)



Educational records not subject to disclosure under the federal Family Educational Rights and Privacy Act (**FERPA**)



Personnel or medical files and similar files, the disclosure of which would constitute an invasion of personal privacy. Note: The legal standard for invasion of privacy is very strict: 1) the record at issue does not pertain to a matter of public concern, and; 2) disclosure of the record would be highly offensive to a reasonable person

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



Communications privileged by the attorney/client relationship



Records, reports and statements of strategy or negotiations with respect to **collective bargaining**



Records pertaining to **strategy and negotiations with respect to pending claims or litigation** to which the public agency is a party until such litigation or claim is finally adjudicated or settled

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



Test questions, scoring keys and other data used to administer a licensing examination, examination for employment or academic examinations



Responses to any request for proposals or bid solicitation issued by a public agency, or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for such award have ended, whichever is earlier, provided the chief executive officer of such public agency certifies that the public interest in disclosure of such records is outweighed by the public interest in the confidentiality of such records

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



Preliminary drafts or notes provided that the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure



However, “disclosure shall be required of: interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report compromising part of the process by which governmental decisions and policies are formulated, except **disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of the public agency, which is subject to revision** prior to submission to or discussion among the members of such agency”

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



Names and addresses of students enrolled in any public school or college without the consent of each student



Record of **law enforcement agencies** not otherwise available to the public if the records were compiled in connection with the detection or investigation of a crime if the disclosure of such records would not be in the public interest; Note: Bona v. FOIC and Rowland v. FOIC, 44 Conn. App 622 (1997) have effectively removed any “balancing test” regarding the public interest in the statutorily specified categories of law enforcement records. The court concluded that the legislature has already determined that disclosure is not in the public interest for all items listed under § 1-200(b)(3)

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



Trade secrets – This provision has been interpreted by the courts to apply to a government agency’s trade secrets as well as trade secrets of private parties

However, the statute specifically limits the concept of trade secrets to two categories: (A) trade secrets defined as “information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, or customer lists that (i) derive independent economic value, actual or potential, from not being generally known to or readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy;” and (B) commercial or financial information given in confidence, but **not** required by statute

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



The contents of **real estate appraisals, engineering estimates and evaluations** made for or by an agency in connection with its acquisition of property until such time as the property has been acquired or all proceedings terminated



The **name and address of any minor enrolled in any parks and recreation program** administered or sponsored by a public agency

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



The **name, address, telephone number or electronic mail address of any person enrolled in any senior center program** or any member of a senior center administered or sponsored by any public agency



All records obtained **during the course of inspection, investigation, examination and audit activities of an institution**, as defined in section 19a-490, that are confidential pursuant to a contract between the Department of Public Health and the United States Department of Health and Human Services relating to the Medicare and Medicaid programs

Exemptions from Disclosure

Conn. Gen. Stat. § 1-210(b)



Informal advice from the FOIC staff indicates that if the personal notes are an agency member's own notes, thoughts, etc., and are **not disseminated to other members of the agency**, they may not be subject to disclosure

Exemptions from Disclosure

Conn. Gen. Stat. § 7-314(b)



A separate statute exempts from disclosure “records and meetings” of **certain volunteer fire departments** “if such records and meetings concern fraternal or social matters.”

However, charters, by-laws, policies, procedures and addresses of volunteer Fire Chiefs do not concern fraternal or social matters.

Exemptions from Disclosure

Conn. Gen. Stat. § 1-217



A separate statute prohibits a public agency from disclosing the **residential** address of:

- State and federal judges in Connecticut
- Sworn members of municipal police depts. and State Police
- State prosecutors
- State Public Defender Services attorneys or social workers
- Firefighters
- Employees of the Dept. of Children and Families
- Members or employees of Board of Pardons and Paroles
- Members or employees of Commission on Human Rights and Opportunities
- Sworn law enforcement officers within Dept. of Environmental Protection
- Employees of Dept. of Mental Health and Addiction Services who have direct client care contact

Questions?



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