

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

CONNECTICUT

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE
OPEN RECORDS AND MEETINGS LAWS IN
CONNECTICUT

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CONNECTICUT

**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

The Connecticut General Assembly unanimously adopted the Connecticut Freedom of Information Act (“FOIA”) in 1975. Prior to that time, Connecticut had an open record and open meeting law, but FOIA was noted for making “sweeping changes” in that law so as to “mark a new era in Connecticut with respect to opening up the doors of the city and state government to the people of Connecticut.” *Bd. of Trustees v. FOIC*, 181 Conn. 544, 550, 436 A.2d 266 (1980).

FOIA covers both access to public records and access to public meetings, and it expresses a strong legislative policy in favor of open conduct of government and free public access to government records. This policy has been found to have “strong federal constitutional underpinnings.” *Lieberman v. State Bd. of Labor Relations*, 216 Conn. 253, 579 A.2d 505 (1990). As stated by Representative Martin B. Burke, one of the bill’s sponsors:

The legislature finds and declares that . . . the people do not yield their sovereignty to the agencies which serve them. That the people in delegating authority do not give their public servants the right to decide what is good for them to know and that it is the intent of this law that actions taken by public agencies be taken openly and their deliberations be conducted openly and that the records of all public agencies be open to the public except in those instances where superior public interest requires confidentiality.

One of the cornerstones of FOIA is the creation of a specific administrative agency, the Freedom of Information Commission (the “FOIC”), that is empowered to review alleged violations of FOIA and issue appropriate orders in response to violations. This provides a relatively simple avenue for redress of violations of FOIA, and as a result, greatly strengthens the utility and effect of FOIA. Moreover, since individuals can often represent themselves before the FOIC, the FOIC truly transforms FOIA into a “people’s law.”

The opinions of the FOIC may be accessed on its website.

The General Assembly has amended FOIA several times since it was first adopted in 1975, but these amendments have only served to strengthen FOIA’s commitment to open government.

In 1999, the General Assembly re-codified FOIA by establishing a new Chapter 14 to Title 1 of the General Statutes. FOIA is now found at Conn. Gen. Stat. § §1-200 through 1-241.

Open Records**I. STATUTE — BASIC APPLICATION****A. Who can request records?**

FOIA provides that “every person shall have the right to (1) inspect [public] 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.” Conn. Gen. Stat. §1-210(a) (emphasis added).

1. Status of requestor.

FOIA specifically applies to “every person” without reference to citizenship. Conn. Gen. Stat. §1-210(a).

Conn. Gen. Stat. §1-210(c) states “[w]henver a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Division facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Division facility of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act.” The commissioners have the right to withhold the record if it is exempt under Conn. Gen. Stat. §1-210(b)(18) as a safety, escape or disorder risk.

2. Purpose of request.

The Supreme Court has held that whether records are disclosable under FOIA “does not depend in any way on the status or motive of the applicant for disclosure, because the act vindicates the public’s right to know, rather than the rights of any individual.” *Chief of Police v. FOIC*, 252 Conn. 377, 387, 746 A.2d 1264 (2000). *See also Grotton Police Dep’t. v. FOIC*, 104 Conn. App. 150, 931 A.2d 989 (2007) (disclosure does not depend on status or motive of person requesting record). The Superior Court has also held that there is no requirement under FOIA that a requester give a “good reason” for the request in order to appeal to the FOIC. *Wildin v. FOIC*, No. CV 97-0572290, 1998 WL 345539 (Conn. Super. June 17, 1998), *aff’d*, 56 Conn. App. 683, 746 A.2d 175 (2000); *Town of Bloomfield v. FOIC*, 4 Conn. L. Trib. No. 31 (Conn. Super. 1978); *see also Town of Glastonbury v. FOIC*, 9 Conn. L. Trib. No. 6 (Conn. Super. 1982) (disclosure of teacher names and addresses is not an invasion of privacy even if used for commercial purposes). The FOIC has also held that the requester’s purpose is irrelevant under FOIA. *See Edwards v. Town of Glastonbury*, Do. #FIC 85-142 (Jan. 6, 1986). In *Conn. Alcohol and Drug Abuse Comm’n v. FOIC*, 11 Conn. L. Rptr. No. 7, 208 (Conn. Super. 1994), *rev’d on other grounds*, 233 Conn. 28, 657 A.2d 630 (1995), the Superior Court held that under Conn. Gen. Stat. §1-213(b), a litigant against a public agency may avail itself of rights under FOIA regardless of the availability of discovery procedures in the pending civil suit. *See also Conn. Gen. Stat. §1-213(b)(1)* (FOIA does not limit discovery rights of litigants); *Chief of Police v. FOIC*, 252 Conn. 377, 746 A. 2d 1264 (2000) (FOIA and discovery rules are independent methods for obtaining information).

3. Use of records.

There are no reported court decisions on whether FOIA imposes any restrictions on the subsequent use of the information provided to the requester.

B. Whose records are and are not subject to the act?

FOIA applies to all “public agencies” as defined in Conn. Gen. Stat. §1-200(1): “Public agency” or “agency” means (A) Any executive, administrative or legislative office of the state or any political subdivision of the state or of 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 with respect to its or their administrative functions; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any “implementing agency”, as defined in section 32-222.” In *Nastro v. FOIC*, 2008 Conn. Super. LEXIS (2008), the court held that records possessed by a public agency must be produced even if the same records would be exempt when possessed by a different public agency.

1. Executive branch.

The executive branch is subject to FOIA. Conn. Gen. Stat. §1-200(1).

a. Records of the executives themselves.

Records of executives are subject to FOIA unless they fall within one of the categories of exemptions. See Conn. Gen. Stat. §1-200(1); see also *Lewin v. FOIC*, No. CV 03-0522443, 2004 WL 2284250 (Conn. Super. Sept. 20, 2004) (holding that handwritten notes made by acting chairman of town ethics committee were exempt from disclosure under Conn. Gen. Stat. §1-210(b)(1)); see generally *Records Outline* at II.A.

b. Records of certain but not all functions.

See above.

2. Legislative bodies.

The legislative branch is subject to FOIA. Conn. Gen. Stat. §1-200(1). See also Conn. Gen. Stat. §2-23 (copies of bills, resolutions, and records of hearings and proceedings shall be kept at state library for public inspection).

3. Courts.

The judiciary is subject to FOIA, but only with respect to its “administrative functions.” Conn. Gen. Stat. §1-200(1)(A). See also *Clerk of the Superior Court v. FOIC*, 278 Conn. 28, 37, 895 A.2d 743 (2006) (docket sheets are not administrative records subject to FOIA); *Rules Comm. of the Superior Court v. FOIC*, 192 Conn. 234, 472 A.2d 9 (1984) (holding that the Rules Committee does not perform an “administrative function”); *Conn. Bar Examining Comm. v. FOIC*, 209 Conn. 204, 550 A.2d 663 (1988) (holding that some functions of the Bar Examining Committee are “administrative” and remanding to the trial court to determine which these are); *Fromer v. FOIC*, 43 Conn. Supp. 246 (1993), *aff’d*, 36 Conn. App. 155, 649 A.2d 540 (1994) (holding that court monitor’s official tape recording of trial was adjudicative record of judicial proceedings by official performing nonadministrative function, and hence not covered by FOIA); *Clerk v. FOIC*, No. CV 03-0518871S, 2003 WL 22853742, at *3 (Conn. Super. Nov. 14, 2003) (holding that FOIA did not require a court to allow an attorney to inspect its records of cases pending, since the judicial branch must have an opportunity to determine whether the records are judicial or administrative before allowing them to be viewed).

4. Nongovernmental bodies.

In *Bd. of Trustees v. FOIC*, 181 Conn. 544, 436 A.2d 266 (1980), the Supreme Court established the following four-part functional equivalent test to determine whether hybrid public/private entities are subject to FOIA: (1) whether the entity performs a governmental function; (2) the level of governmental funding; (3) the extent of governmental involvement or regulation; and (4) whether the entity was created by the government. The Supreme Court held in *Bd. of Trustees* that the plaintiff was a public agency since it met each part of this test.

See also *Conn. Humane Soc’y v. FOIC*, 218 Conn. 757, 591 A.2d 395 (1991) (plaintiff is not a public agency; case also held all four factors need not be present to constitute entity a “public agency,” contrary

to theory of *Hallas*); *Domestic Violence Servs. v. FOIC*, 47 Conn. App. 466, 704 A.2d 827 (1998) (plaintiff is not a public agency); *Hallas v. FOIC*, 18 Conn. App. 291, 557 A.2d 568 (1989) (private law firm acting as town’s bond counsel is not a public agency); *Londregan v. FOIC*, Nos. 526105, 529345, 1994 WL 385951 (Conn. Super. July 13, 1994) (distinguishing *Hallas* and holding that plaintiff, who maintained a private law practice but also served as city’s Director of Law, a position created under the city charter and designated as a department head, was a “public agency” and therefore court required to maintain all city files at the town clerk’s office or some other public place rather than in his law firm); *Baron v. FOIC*, No. CV 97-0342975S, 1999 WL 1001119 (Conn. Super. Oct. 26, 1999) (Superior Court reversed the FOIC, holding that Conn. Gen. Stat. §1-210(a) does not require the director of finance for the city of Bridgeport to keep and maintain records concerning law firm payments and payments for medical and legal services when these records are kept by a third-party private contractor); *David v. FOIC*, No. CV 97-0395384, 1998 WL 83685 (Conn. Super. Feb. 19, 1998) (New Haven Community Television Inc. is not a public agency); *Marci v. New Haven Private Industry Council*, Do. #FIC 84-183 (Mar. 13, 1985) (respondent is a public agency); *Razzler v. Governor’s Blue Ribbon Comm’n on Higher Educ.*, Do. #FIC 82-4 (July 7, 1983) (respondent is a public agency); *Polman v. UConn School of Law*, Do. #FIC 83-68 (Oct. 26, 1983) (respondent is a public agency); *Yantic Volunteer Fire Dep’t v. FOIC*, 42 Conn. App. 519, 679 A.2d 989 (1996) (plaintiffs are the functional equivalent of a public agency); *Meri Weather Inc. v. FOIC*, No. CV 99-0494415S, 2000 WL 351351 (Conn. Super. Mar. 27, 2000) (plaintiff organization was virtually an alter ego of the Meriden community action agency, a public agency, and therefore was itself a public agency; key is “whether the government is really involved in the core of the program”); *Fromer v. FOIC*, 90 Conn. App. 101, 875 A.2d 590 (2005) (instructors at a public university are not public agencies because they have no power to govern, regulate, or make decisions affecting government; rather, they provide instruction per their contractual obligations).

a. Bodies receiving public funds or benefits.

The level of governmental funding is relevant to the determination of whether a nongovernmental body is subject to FOIA. See above; see also *Bd. of Trustees v. FOIC*, 181 Conn. 544, 436 A.2d 266 (1980) (creating a four-part functional equivalent test to determine whether hybrid public/private entities are subject to FOIA). See also *Winton Park Association v. FOIC*, 2009 Conn. Super. LEXIS 2603 (2010), where the court agreed that the four point test under *Board of Trustees* was not appropriate where the plaintiff was a “political subdivision” created by the General Assembly. See also *Perez v. FOIC*, 2009 Conn. Super. LEXIS 1511 (2009) (functional equivalence test does not apply to a committee “created by” the public agency since the committee is a public agency under Conn. Gen. Stat. §1-200(1)(A)).

b. Bodies whose members include governmental officials.

There are no reported court decisions addressing whether a nongovernmental body with members including governmental officials would be subject to FOIA. But see Conn. Gen. Stat. §1-202 (“The FOIC, on petition by a public agency contemplating creation of a committee composed entirely of individuals who are not members of the agency, may exempt the committee from compliance with FOIA.”).

5. Multi-state or regional bodies.

FOIA applies to regional bodies, but there are no provisions or reported authority concerning multistate bodies. See Conn. Gen. Stat. §1-200(1)(A).

6. Advisory boards and commissions, quasi-governmental entities.

Advisory boards and commissions and other quasi-governmental entities are subject to FOIA if they meet the four-part test set forth in *Bd. of Trustees v. FOIC*, 181 Conn. 544, 436 A.2d 266 (1980).

7. Others.

1. The Division of Criminal Justice is subject to FOIA, but only with respect to its “administrative functions;” it is not otherwise deemed a public agency. Conn. Gen. Stat. §1-201.

2. Through P.A. 93-195, the General Assembly amended Conn. Gen. Stat. §1-200(1) to state that any committee “created by” a public agency is itself a public agency. This amendment effectively reversed the Supreme Court’s decision in *Elections Review Comm. of the Eighth Utilities District v. FOIC*, 219 Conn. 685, 595 A.2d 313 (1991).

3. The FOIC, on petition by a public agency contemplating creation of a committee composed entirely of individuals who are not members of the agency, may exempt the committee from compliance with FOIA. Conn. Gen. Stat. §1-202.

4. In *Envirotest Sys. Corp. v. FOIC*, 59 Conn. App. 753, cert. denied, 254 Conn. 951, 762 A.2d 900 (2000), the Appellate Court held that the plaintiff, a private corporation providing auto emissions testing for the public under a contract with the state, was not a public agency. The court also rejected the argument that the plaintiff could be bifurcated and treated as a public agency for some purposes, but not others. *Id.* at 762 n.9. It held that where funds received from the government were “consideration for the services it provided pursuant to a contract,” the government funding prong of the *Bd. of Trustees* test was not met. *Id.* at 760.

C. What records are and are not subject to the act?

1. What kind of records are covered?

FOIA applies to all public records as defined in Conn. Gen. Stat. §1-200(5): “Public records or files’ means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostatted, photographed or recorded by any other method.”

In *Windham v. FOIC*, 48 Conn. App. 522, 711 A.2d 738, cert. denied, 245 Conn. 913, 718 A.2d 18 (1998), the Appellate Court held that affidavits by town employees that the town attorney, a private attorney, prepared for an FOIC hearing but which were not admitted into evidence were not public records under Conn. Gen. Stat. §1-200(5).

The Electronic and Voicemail Management and Retention Guide For State and Municipal Government Employees issued by the Office of the Public Records Administrator and State Archives states that e-mail messages and voicemail messages sent or received in the conduct of public business are public records.

Some Superior Court decisions have considered whether a public agency is required to do “research” regarding public records as part of its FOIA obligations. In *Book v. FOIC*, Nos. CV 96-0566436, CV 97-0567176, 1998 WL 46439 (Conn. Super. Jan. 28, 1998), the Superior Court held that research was not required. In *Wildin v. FOIC*, No. CV 97-0572290, 1998 WL 345539 (Conn. Super. June 17, 1998), *aff’d*, 56 Conn. App. 683, 746 A.2d 175 (2000), the Superior Court accepted the parties’ position that FOIA did not require a public agency to do research, but then held that retrieving a large number of documents from a large number of files did not constitute research because the agency did not have to scrutinize the contents of each document to determine if it was responsive to the request.

Lesson plans of public schools are not public records because they are not records prepared, owned, used, received, or retained by schools or other public agencies. *Edelman v. Superintendent of Schools*, Do. #FIC 99-408 (Mar. 22, 2000); *see also Fromer v. FOIC*, 90 Conn. App. 101, 875 A.2d 590 (2005) (holding that PowerPoint presentations created by instructors at a public university are not public records because the instructors, who maintain control over the files, are not themselves public agencies).

2. What physical form of records are covered?

FOIA provides that a “public agency which maintains public records in a computer storage system shall provide . . . a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person” if reasonably possible. Conn. Gen. Stat. §1-211(a).

3. Are certain records available for inspection but not copying?

Public records are available for both inspection and copying under FOIA. Conn. Gen. Stat. §1-210(a). In *Conn. Dep’t of Pub. Safety v. FOIC*, 1992 WL 31931 (Conn. Super. Feb. 5, 1992) *aff’d*, 29 Conn. App. 821, 618 A.2d 565 (1993), the Superior Court held that while a written request for copies is required under Conn. Gen. Stat. §1-212, no written request is necessary to inspect under Conn. Gen. Stat. §1-210(a), so copies must be provided if orally requested as part of the request to inspect under Conn. Gen. Stat. §1-210(a). The same decision required motor vehicle accident reports to be made available for inspection at the originating state police barracks, rather than only at the Central Records Division in Meriden.

In *Office of the Municipal Clerk v. FOIC*, No. CV 00-0500645S, 2001 WL 417341 (Conn. Super. Apr. 3, 2001) the court held that the word “inspect” does not allow a title searcher to copy land records with a battery-operated, hand-held scanner. In response, the legislature added subsection (g) to Conn. Gen. Stat. §1-212, which expressly permits the copying of records through the use of a hand-held scanner. In accordance with the statute, “[a] public agency may establish a fee structure not to exceed ten dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner.” Conn. Gen. Stat. §1-212(g). Such a scanner must be a battery operated electronic scanning device that leaves no mark or impression on the record and does not unreasonably interfere with the operation of the public agency. *Id.* In *Borough of Woodmont v. FOIC*, 2007 Conn. Super. LEXIS 2450 (2007), the court held that a municipal public agency either must maintain regular business hours where its records are available for inspection or it must maintain its records at the office of the town clerk.

D. Fee provisions or practices.

1. Levels or limitations on fees.

With respect to state agencies, FOIA provides that the “fee for any copy provided in accordance with [FOIA] . . . shall not exceed twenty-five cents per page;” for all other public agencies, the fee “shall not exceed fifty cents per page.” Conn. Gen. Stat. §1-212(a). There is no fee for inspection of public records. Sales tax is not imposed and certified copies cost one dollar for the first page and fifty cents for each additional page. Conn. Gen. Stat. §1-212(c) and (e). Different fees are imposed for copies of certain motor vehicle records and criminal history searches. *See* Conn. Gen. Stat. § §14-50 and 29-11. *See also Williams v. FOIC*, 108 Conn. App. 471, 948 A.2d 1058 (2008) (page refers to each side of a document that is copied; not both sides of a single piece of paper).

2. Particular fee specifications or provisions.

a. Search.

The FOIC has held that public agencies are not permitted to impose a service charge in addition to the statutory fees. *Pearl v. Town of Newington*, Do. #FIC 83-57 (Aug. 26, 1983).

b. Duplication.

For non-state public agencies, duplication charges are generally fifty cents per page. *See above*.

c. Other.

If a person applies for a “transcription of a public record,” the fee “shall not exceed the cost thereof to the public agency.” Conn. Gen.

Stat. §1-212(a)(2); *see also Maher v. FOIC*, 192 Conn. 310, 472 A.2d 321 (1984) (requester must pay costs of new computer program to access computer storage system).

The fee for computer/electronic records “shall not exceed the cost thereof to the public agency” taking into consideration certain factors. Conn. Gen. Stat. §1-212(b). *See Assessor, Town of Franklin v. FOIC*, No. CV 97-0113250, 1998 WL 305420 (Conn. Super. June 2, 1998). *See also Records Outline* at III.

See also Williams v. FOIC, 108 Conn. App. 471, 948 A.2d 1058 (2008) (discussion of what is a certified public record).

3. Provisions for fee waivers.

The public agency is required to waive the fee if (1) the requester is indigent, (2) the records when located are found to be exempt from disclosure under Conn. Gen. Stat. §1-210, (3) the public agency determines that disclosure benefits the general welfare, or (4) the requester is an elected official of a political subdivision of the state who obtains the record as part of his or her duties. Conn. Gen. Stat. §1-212(d). In *Hartford v. FOIC*, 2010 Conn. Super. LEXIS 2643 (2010), the court held that the FOIC could not substitute its judgment for the judgment of the City as to whether a waiver benefitted the public welfare. *See also Lucarelli v. FOIC*, 2010 Conn. Super. LEXIS (2010) for a discussion of issues related to indigent status.

4. Requirements or prohibitions regarding advance payment.

Prepayment can be required by the public agency if the fee is estimated to be ten dollars or more. Conn. Gen. Stat. §1-212(c).

5. Have agencies imposed prohibitive fees to discourage requesters?

The FOIC has held that search fees or fees in addition to the per page fee are not permitted. *See Pearl v. Town of Newington*, Do. #FIC 83-57 (Aug. 26, 1983).

Pursuant to Section 1-212(f) the Secretary of State has submitted to the General Assembly a fee structure for copies of public records provided to inmates. The fee structure for these records will be the fee structures already in place under the statutes.

E. Who enforces the act?

1. Attorney General’s role.

The attorney general has no role in enforcing FOIA.

2. Availability of an ombudsman.

An ombudsman is assigned to each appeal to the FOIC to act as a liaison between the parties and to attempt to effect settlement prior to hearing.

3. Commission or agency enforcement.

FOIA is enforced by the Freedom of Information Commission (FOIC), which consists of five members appointed by the governor with the approval of the legislature. *See* Conn. Gen. Stat. §1-205. The FOIC is charged with promptly reviewing any alleged violation of FOIA and issuing orders regarding such allegations. The commission has the power to investigate allegations, including the power to hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses, and require the production of books and papers it deems relevant to the investigation. Conn. Gen. Stat. §1-205.

F. Are there sanctions for noncompliance?

The FOIC has the authority to impose civil penalties of not less than twenty dollars and not more than one thousand dollars against any custodian or other official upon a denial of a right under FOIA “without reasonable grounds.” Conn. Gen. Stat. §1-206(b)(2). *See Nastro v. FOIC*, 2008 Conn. Super. LEXIS 1892 (2008) (affirming im-

position of civil penalty).

Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47 or 871, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense. Conn. Gen. Stat. §1-240(a).

Any member of any public agency who fails to comply with an order of the Freedom of Information Commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense. Conn. Gen. Stat. §1-240(b).

A public agency may also bring an action in Connecticut Superior Court against any person whose appeal to the FOIC was denied because the FOIC determined that the “appeal or the underlying request would perpetrate an injustice or would constitute an abuse of the commission’s administrative process.” Conn. Gen. Stat. §1-241. The court may issue an injunction prohibiting the person from bringing further appeals to the FOIC; if the person continues to appeal, he or she will be conclusively in contempt of the order and the agency may seek further relief from the court. *Id. See also Hodge v. FOIC*, 2008 Conn. Super. LEXIS 2906 (2008), for a discussion regarding procedures for imposition of a civil penalty.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

FOIA contains twenty-five specific exemptions. *See* Conn. Gen. Stat. §1-210(b). Exemptions under FOIA are narrowly construed in light of the general rule of disclosure under FOIA. *See Wilson v. FOIC*, 181 Conn. 324, 435 A.2d 353 (1980); *Maher v. FOIC*, 192 Conn. 310, 472 A.2d 321 (1984). The exemptions reflect “a legislative intention to balance the public’s right to know what its agencies are doing, with the governmental and private needs for confidentiality.” *Wilson*, 181 Conn. at 328. The burden of proving the applicability of an exemption rests upon the agency claiming it. *Id.* at 329; *Maher*, 192 Conn. at 315.

b. Mandatory or discretionary?

The exemptions are in general discretionary with the public agency, as indicated by opening the language of Conn. Gen. Stat. §1-210(b): “Nothing in [FOIA] shall be construed to require disclosure of . . .” Therefore, the agency *may* disclose material that is exempt but need not. *See* Conn. Gen. Stat. §1-210(b).

c. Patterned after federal Freedom of Information Act?

The Connecticut exemptions are to some degree patterned after the federal Freedom of Information Act. *See Bd. of Trustees v. FOIC*, 181 Conn. 544, 436 A.2d 266 (1980) (appropriate to look to federal act for guidance in interpreting FOIA).

2. Discussion of each exemption.

a. Exemption One — “Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.” Conn. Gen. Stat. §1-210(b)(1).

(1) In 1980, the Supreme Court held that this exemption covers “advisory opinions, recommendations, and deliberations comprising part of the process by which governmental decisions and policies are formulated.” *Wilson v. FOIC*, 181 Conn. 324, 435 A.2d 353 (1980).

(2) In 1981, the General Assembly effectively overruled *Wilson* by amending FOIA to state that “[n]otwithstanding the provisions of [Conn. Gen. Stat. §1-210(b)(1) and (16)], disclosure shall

be required of: (1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising 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 a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.” Conn. Gen. Stat. §1-210(e)(1).

(3) In *Shew v. FOIC*, 245 Conn. 149, 714 A.2d 664 (1998), the Supreme Court discussed the meaning of the term “preliminary notes or drafts” and held that it does not depend on whether the record is subject to further alteration. The court also held that an attorney hired by a public agency to provide legal advice was analogous to a staff member under Conn. Gen. Stat. §1-210(e)(1), and drafts prepared by her are exempt. Despite this, the record-keeper must review documents to conduct a balancing test as to public interest. See also *Coalition to Save Horsebarn Hill v. FOIC*, 73 Conn. App. 89, 806 A.2d 1130 (2002), cert. denied, 262 Conn. 932, 815 A.2d 132 (2003) (abandonment of a contemplated project does not automatically require disclosure of preliminary drafts relating thereto; public interest must still be weighed).

(4) In *Van Norstrand v. FOIC*, 211 Conn. 339, 559 A.2d 200 (1989), the Supreme Court held that a summary of data collected by the Speaker of the House of Representatives concerning judges not scheduled for House consideration for reappointment, which he had not submitted to House members in connection with reappointment deliberations, was exempt (but would not have been if the purpose of the survey had been to compile data on all judges for future House use).

(5) In *East Lyme Bd. of Educ. v. FOIC*, No. 700617, 1991 WL 28098 (Conn. Super. Jan. 29, 1991), in upholding an order that the board disclose a summary of its oral evaluation of the school superintendent, following which negotiations continued on a mutually acceptable format for the evaluation, the Superior Court held that even when §1-210(b)(1) would exempt a record from disclosure, “if that record crosses the initial threshold for disclosure under [section 1-210(b)(1)] and is not then exempted under the second part of [section 1-210(b)(1)], the record must be disclosed.”

(6) In *Bd. of Trustees v. FOIC*, No. CV 91-05030535, 1992 WL 154367 (Conn. Super. June, 18, 1992), the Superior Court held that the responsibility for making the requisite public interest determination is vested by §1-210(b)(1) in the agency, and its decision to withhold can only be overruled if the FOIC finds it abused its discretion or its reasons for withholding are frivolous or patently unfounded. See *Shew v. FOIC*, 245 Conn. 149 (1998), where the Supreme Court noted that “the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded” (quoting *Wilson v. FOIC*, 181 Conn. 324 (1980)).

(7) The FOIC has held that a budget director’s notes on a yellow legal pad, from which he prepared a memorandum, are exempt from disclosure under Conn. Gen. Stat. §1-210(b)(1) as preliminary drafts. *Williams v. City of Hartford*, Do. #FIC 85-101 (Oct. 23, 1985); see also *Boynton v. Town of Westport*, Do. #FIC 86-248 (May 27, 1986) (preliminary notes are exempt from disclosure; *Lewin v. FOIC*, No. CV 03-0522443, 2004 WL 2284250 (Conn. Super. Sept. 20, 2004) (holding that handwritten notes made by acting chairman of town ethics committee were exempt from disclosure under Conn. Gen. Stat. §1-210(b)(1)).

(8) In *Hartford Bd. of Educ. v. FOIC*, No. CV 95-0550463, 1996 WL 176354 (Conn. Super. Mar. 29, 1996) the Superior Court ruled that a draft request for proposals submitted by a task force to the plaintiff board was not exempt under Conn. Gen. Stat. §

§1-210(b)(1) or (e) because it was not a preliminary draft of what the task force might submit to the board, but rather the text of its final recommendation. The exemption for preliminary drafts under Conn. Gen. Stat. §1-210(b) is only for drafts that the submitter may revise before submission to the agency to which the draft is to be submitted. See also *Comm’r of Pub. Works v. FOIC*, No. CV 01-0509953S, 2002 WL 853593 (Conn. Super. Apr. 8, 2002) (“last draft” of a contract between the city of Bridgeport and the state that had been submitted to the city council for its action is not preliminary).

(9) In *Woodbridge Town Plan & Zoning Comm’n v. FOIC*, No. CV 95-0374751, 1996 WL 62643 (Conn. Super. Jan. 25, 1996), the Superior Court held that under Conn. Gen. Stat. §1-210(b)(1) the public interest determination as to disclosure may be made by the agency after it consults with legal counsel and may be based on counsel’s advice.

(10) Public records consisting of preliminary draft documents may be exempt from disclosure under Conn. Gen. Stat. §1-210(b)(1) regardless of their provenance. In *Coalition to Save Horsebarn Hill v. FOIC*, 73 Conn. App. 89, 806 A.2d 1130 (2002), cert. denied, 262 Conn. 932, 815 A.2d 132 (2003), the Appellate Court held that documents could be labeled preliminary drafts whether initiated by a public agency or private organization. The court upheld the FOIC’s decision that draft agreements between a pharmaceutical company and a public university for construction of a research facility were exempt from disclosure as preliminary drafts despite a dispute about which party had initiated the drafts.

(11) In *Strillacci v. FOIC*, 2009 Conn. Super. LEXIS 1046 (2009), the court held that a list of lawsuits prepared by the Chief of Police was not preliminary because it was a completed document used by the Chief of Police in his public duties.

b. Exemption Two — “Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.” Conn. Gen. Stat. §1-210(b)(2).

(1) In *City of Hartford v. FOIC*, 201 Conn. 421, 518 A.2d 49 (1986), the Supreme Court held that a public agency must meet “a twofold burden of proof to establish the applicability” of this exemption. First, it must establish that the file is a “personnel or medical or similar file,” and second it must establish that disclosure “would constitute an invasion of privacy.” The court also held that certain internal affairs records of the plaintiff’s police department were not exempt from disclosure.

(2) In *Perkins v. FOIC*, 228 Conn. 158, 635 A.2d 783 (1993) and *Kureczka v. FOIC*, 228 Conn. 271, 636 A.2d 777 (1994), the Supreme Court interpreted the statutory phrase “invasion of personal privacy” in accordance with the common law tort standard for disclosure of private but embarrassing facts as reflected in 3 Restatement (Second) Torts, §652D. Therefore, disclosure may be denied only when the information sought does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person (and not merely offensive to the person the data concerns). No public agency can shield public records from disclosure merely by promising to keep them confidential.

(3) In *Chairman v. FOIC*, 217 Conn. 193, 585 A.2d 96 (1991), which *Perkins* and *Kureczka* would appear to supersede, the Supreme Court had held that “a person’s reasonable expectation of privacy and the potential for embarrassment” were “significant factors in determining if disclosure would constitute an invasion of privacy.” *Id.* at 198. In considering the Chief State’s Attorney’s “aptitude, attitude, basic competence . . . trustworthiness, ethics, [and] interpersonal relationships . . .” incident to his consideration for reappointment, the court held “disclosure of the report would carry significant potential for embarrassment and that [the Waterbury State’s Attorney] entertained a reasonable expectation of privacy in the information contained in the evaluation,” mak-

ing disclosure an invasion of privacy “as a matter of law.” *Id.* at 199-200. The court also ruled that with respect to this exemption, unlike the one in Conn. Gen. Stat. §1-210(b)(1), no balancing test should be applied, thereby overruling its decision in *Bd. of Educ. v. FOIC*, 210 Conn. 590, 556 A.2d 592 (1989). *Id.* at 200-201; see also *First Selectman v. FOIC*, No. CV 99-0493041S, 1999 WL 595726 (Conn. Super. July 28, 1999) (reconciling *Perkins* and *Chairman*).

(4) In *Rocque v. FOIC*, 255 Conn. 651, 774 A.2d 957 (2001) the Supreme Court reiterated that one claiming the exemption must prove both prongs, the facts of each case must be analyzed, and no type of data is always exempt.

(5) In *Dep’t of Transp. v. FOIC*, No. CV 01-0508810S, 2001 WL 1734436 (Conn. Super. Dec. 21, 2001), the Superior Court acknowledged that a summary of a sexual harassment investigation was a “similar document” for the purposes of Conn. Gen. Stat. §1-210(b)(2), but held that it must be disclosed, with certain identifying information redacted. In reaching its decision, the court followed *Rocque* and *Perkins*.

(6) In *West Hartford v. FOIC*, 218 Conn. 256, 588 A.2d 1368 (1991), the Supreme Court held that the FOIC could take judicial notice of the fact that, as a general rule, addresses are available in public directories, so that disclosure of retirees’ addresses would not *per se* constitute an invasion of personal privacy. The court recognized, however, that if a retiree took significant efforts to keep his or her name inaccessible, that retiree might have a reasonable expectation of privacy in the address so that disclosure would in fact constitute an invasion of privacy. See also *Dir., Retirement & Benefit Servs. Div. v. FOIC*, 256 Conn. 764, 775 A.2d 981 (2001) (holding that home addresses of employees of the state banking department were exempt from disclosure because the employees had also taken significant efforts to keep their addresses private).

(7) In *First Selectman v. FOIC*, No. CV 99-0493041S, 1999 WL 595726 (Conn. Super. July 28, 1999), the Superior Court held that certain employee evaluations were not legitimate subjects of public concern because they were conducted in confidential circumstances, but that the evaluations were not exempt because the plaintiffs had failed to demonstrate that disclosure would be highly offensive to a reasonable person.

(8) In *Chairman, Bd. of Educ. v. FOIC*, No. CV 97-0575674, 1998 WL 832415 (Conn. Super. Nov. 20, 1998), the Superior Court held that a public agency did not have standing to assert this exemption and that only the employee had this right under Conn. Gen. Stat. §1-214 (which provides a procedure for notifying an employee of a request for a personnel or medical file or similar file). The court also held that records pertaining to the evaluation of the superintendent of schools were not exempt under this exemption. See also Conn. Gen. Stat. §10-151c (teacher performance records are exempt; applies to all employees “below the rank of superintendent”).

(9) In *Dep’t of Children & Families v. FOIC*, 48 Conn. App. 467, 710 A.2d 1378 (1998), *cert. denied*, 245 Conn. 911, 718 A.2d 16 (1998), the Appellate Court held that the names of disciplined employees were a matter of public concern, and therefore not exempt under this exemption. Note that Conn. Gen. Stat. §1-217(a)(8) provides that the residential address of an employee of the Department of Children and Families is not subject to FOIA.

(10) In *Conn. Alcohol & Drug Abuse Comm’n v. FOIC*, 233 Conn. 28, 657 A.2d 630 (1995), the Supreme Court found that an investigative file of a sexual harassment complaint by an employee against a coworker was a file “similar” to a “personnel file” in that it may contain information that would ordinarily be considered in making personnel decisions regarding the individuals involved. See also *Almeida v. FOIC*, 39 Conn. App. 154, 664 A.2d 322 (1995);

Armstrong v. FOIC, Nos. CV 96-0563608, CV 96-0565853, 1997 WL 433957 (Conn. Super. July 23, 1997).

(11) In *Corporation Counsel’s Office v. FOIC*, 3 CSCR 337 (1988), a pre-*Chairman* decision, the Superior Court upheld release of data on the criminal record and physical defects and major illnesses in the last five years contained in a policeman’s pre-employment application. The court also ruled that the motives of the one seeking the data are irrelevant. See also *Pers. Dir. v. FOIC*, 3 CSCR 338 (1988).

(12) In *City of Bristol v. FOIC*, 9 Conn. L. Trib. No. 40 (1983), the Superior Court held that park employees did not assume the role of a public official so as to relinquish their right to privacy and that the employees’ discipline records were exempt from disclosure under this exemption.

(13) In *Town of Glastonbury v. FOIC*, 9 Conn. L. Trib. No. 6 (1982), the Superior Court held that a directory listing the names and addresses of teachers is not exempt from disclosure under this exemption since the information is neither vital nor intimate and the disclosure would not constitute an invasion of privacy, even if used for commercial purposes.

(14) In *Town of Wallingford v. FOIC*, 7 Conn. L. Trib. No. 29 (1981), the Superior Court held that a list of delinquent water accounts was not exempt from disclosure since it was not a “similar file” within the meaning of this exemption.

(15) In *Town of South Windsor v. FOIC*, 5 Conn. L. Trib. No. 5 (1979), the Superior Court held that teachers are “limited public officials” and therefore relinquish certain privacy rights. The Superior Court also applied a five-part balancing test with respect to the teachers’ right of privacy versus the public’s right to know and held that the names of nontenured teachers whose contracts were not renewed were not exempt from disclosure.

(16) In *Town of Bloomfield v. FOIC*, 4 Conn. L. Trib. No. 31 (1978), the Superior Court held that this exemption should be analyzed under the common-law tort doctrine of the right to privacy; i.e., has there been (1) an intrusion upon the plaintiff’s seclusion or solitude, or into his private affairs, (2) a public disclosure of embarrassing private facts about the plaintiff, (3) publicity which places the plaintiff in a false light in the public eye, or (4) appropriation for the defendant’s advantage, of the plaintiff’s likeness. The Superior Court also held that public officials — in this case police officers — relinquish at least a portion of their right to privacy and that the information requested, the names of the police officers, which was contained in the officers’ personnel files, was not exempt from disclosure under this exemption.

(17) In *New Haven Chief of Police v. FOIC*, 2 Conn. Ops. 572 (Conn. Super. 1996), the Superior Court held that under Conn. Gen. Stat. §1-210(b)(2), unless the character of the documents in question is conceded by the parties, the FOIC may be required to inspect them *in camera* (citing *Wilson v. FOIC*, 181 Conn. 324, 340 (1980)).

(18) In *Cracco v. FOIC*, Nos. CV 94-0705369S, CV 94-0705370S, CV 94-0705371S, 1995 WL 514468 (Conn. Super. Aug. 18, 1995), the Superior Court held that copies of records of complaints filed against a local school teacher and the result of any investigation and action taken were not exempt under either Conn. Gen. Stat. §1-210(b)(2) or §10-151c.

(19) In *Dep’t of Pub. Safety, Div. of State Police v. FOIC*, 242 Conn. 79, 698 A.2d 803 (1997), the Supreme Court affirmed the trial court, holding that reports regarding a citizen’s complaint of police assault and use of excessive force by a police officer were not exempt from disclosure under Conn. Gen. Stat. §1-210(b)(2); however, reports regarding a citizen’s complaint that state trooper was involved in an inappropriate relationship with the complainant’s wife were exempt from disclosure.

(20) In *Hemmings v. FOIC*, No. CV 96-0561457S, 1996 WL 715405 (Conn. Super. Dec. 4, 1996), the Superior Court affirmed the FOIC's decision that it did not have subject matter jurisdiction over a complaint pursuant to Conn. Gen. Stat. §17a-548(b), which addresses the rights of a patient to access his or her own medical records.

(21) The FOIC has held that only certain information in a job application is disclosable as a result of this exemption in order to protect the employee's privacy rights: (1) name; (2) address; (3) business telephone number; (4) previous employment history; (5) educational background; (6) references; (7) motor vehicle conduct; (8) military information; and (9) the employee's signature and date of the application. *Mozzochi v. Town of Glastonbury*, Do. #FIC 86-253 (Dec. 16, 1986).

(22) When a public agency receives a request for personnel or medical files and similar files and the agency reasonably believes that disclosure would legally constitute an invasion of privacy, FOIA requires the agency to put the employee and the employee's collective bargaining representative, if any, on notice of the request and provide an opportunity for objection. If the employee or representative does object, the public agency is required not to disclose the documents unless ordered to do so by the FOIC. Conn. Gen. Stat. §1-214(b) and (c).

(23) In *Davis v. FOIC*, 787 A.2d 530, 259 Conn. 45 (2002), a case of first impression, the Connecticut Supreme Court held that a town tax assessor was not prohibited from disclosing information contained in records received from the Department of Motor Vehicles to an insurance investigator. The insurance investigator wished to examine the town's motor vehicle "grand list," which contained the names and addresses of motor vehicle owners, and the court concluded that this information was not exempt under FOIA.

(24) In *Dep't. of Public Safety v. FOIC*, 2009 Conn. Super. LEXIS 509 (2009), the court held that a police report of a suicide was not a personnel, medical or similar file under Conn. Gen. Stat. §1-210(b)(2).

c. Exemption Three — "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) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (F) 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, or (G) uncorroborated allegations subject to destruction pursuant to section 1-216." Conn. Gen. Stat. §1-210(b)(3).

(1) In *Kirschner v. FOIC*, No. CV 97-0567162, 1998 WL 27829 (Conn. Super. Jan. 15, 1998), the Superior Court held that the plaintiff failed to prove the applicability of this exemption to an internal investigation report. See also *Davis v. FOIC*, 47 Conn. Sup. 309, 790 A.2d 1188 (2001), *aff'd* 259 Conn. 45, 787 A.2d 530 (2002).

(2) In *Bona v. FOIC*, No. CV 94-0123411S, 1995 WL 491386 (Conn. Super. Aug. 10, 1996), the Superior Court held that a police report concerning an alleged incident at the home of the ex-wife of a gubernatorial candidate was exempt under Conn. Gen. Stat. § 1-210(b)(3)(G) and 1-202 after the court conducted an

in camera review of the documents in question and found that the report contained an allegation that an individual had engaged in criminal activity, though no arrest was made. The Appellate Court affirmed this decision, holding that records of uncorroborated allegations are not to be disclosed during the 15-month period in which corroboration is sought, that disclosure would not be in the public interest, and that no balancing is required. *Bona v. FOIC*, 44 Conn. App. 622, 691 A.2d 1 (1997).

(3) In *Maber v. FOIC*, 192 Conn. 310, 472 A.2d 321 (1984), the Supreme Court held that the Department of Income Maintenance was not a law enforcement agency for purposes of this exemption even though it transmits information to a state fraud control unit.

(4) In *Comm'r of Motor Vehicles v. FOIC*, 6 Conn. L. Trib. No. 6 (1979), the Superior Court held that the term "crime" should be construed according to its commonly understood usage and that an infraction is a crime within the meaning of this exemption. See also *Records Outline* at III.J.

(5) In *Dep't of Pub. Safety v. FOIC*, 51 Conn. App. 100, 720 A.2d 268 (1998), the Appellate Court held that subsection (C) is not satisfied by a mere good faith assertion that the matter is potentially criminal. There must be an "evidentiary showing" that the "actual information sought is going to be used in a law enforcement action" and "that the disclosure of that information would be prejudicial to that action."

d. Exemption Four — "Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled." Conn. Gen. Stat. §1-210(b)(4). See also Conn. Gen. Stat. §1-200(8) and (9) (defining "pending claim" and "pending litigation").

(1) Conn. Gen. Stat. §1-200(8) and (9) define "pending claims" and "pending litigation" as follows:

(i) "Pending claim" means a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted." Conn. Gen. Stat. §1-200(8).

(ii) "Pending litigation" means (A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right." Conn. Gen. Stat. §1-200(9).

(2) In *ECAP Construction Co. v. FOIC*, No. CV 97-0574054, 1998 WL 470640 (Conn. Super. July 30, 1998), the Superior Court held that a "pending claim" can exist without specifically threatening a lawsuit. A demand for damages under a contract suffices.

(3) In *City of Stamford v. FOIC*, 241 Conn. 310, 696 A.2d 321 (1997), the Supreme Court held that an investigative report prepared for the City of Stamford concerning issues related to litigation involving Stamford is exempt pursuant to Conn. Gen. Stat. §1-210(b)(4) as "records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party."

(4) In *City of New Haven v. FOIC*, 205 Conn. 767, 535 A.2d 1297 (1988), the Supreme Court held that the plaintiff had failed to present evidence showing that invoices for legal services that bear only the attorney's name and the amount of the billing "pertain to strategy and negotiations" and that the invoices were therefore

not exempt from disclosure under this exemption. *See also Maxwell v. FOIC*, No. CV 99-0497390S, 1999 WL 219874 (Conn. Super. Feb. 15, 2001), *aff'd on other grounds*, 260 Conn. 143, 794 A.2d 535 (2002) (ordering the disclosure of town counsel's legal bills despite the relation of some invoices to pending litigation).

e. Exemption Five — “(A) Trade secrets, which for purposes of the Freedom of Information Act, are 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, and not being 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, not required by statute.” Conn. Gen. Stat. §1-210(b)(5).

(1) In *Dep't of Pub. Utilities v. FOIC*, 55 Conn. App. 527, 739 A.2d 328 (1999), the Appellate Court held that a natural gas study was not exempt under this exemption as a trade secret because there was no evidence of a formal confidentiality agreement regarding the study or other discernable measures taken to guard its secrecy.

(2) In *Chief of Staff v. FOIC*, No. CV 98-0492654S, 1999 WL 643373 (Conn. Super. Aug. 12, 1999), the Superior Court held that this exemption contains two components: trade secrets and commercial or financial information. (Note that this decision was prior to P.A. 00-136, which split this exemption into subsections (A) and (B)).

(3) In *Holbrook v. FOIC*, No. CV 96-0563515S, 1997 WL 187177 (Conn. Super. Apr. 9, 1997), the Superior Court held that individual reports from shellfish harvesters are exempt from disclosure pursuant to Conn. Gen. Stat. §1-210(b)(5), as the reports are “commercial or financial information given in confidence, not required by statute.”

(4) The Supreme Court found in *Dir., Dep't of Info. Tech. v. FOIC*, 274 Conn. 179, 874 A.2d 785 (2005) that computerized data from a town's geographic information system was not a trade secret because it was data readily available to the public from several other town departments; the requested database was simply a convenient compilation of the information in one place.

(5) In *University of Connecticut v. FOIC*, 2010 Conn. Super. LEXIS 996 (2010), the court held that lists of supporters and potential supporters created by the athletic department and other university departments could be exempt as a trade secret customer list.

f. Exemption Six — “Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations.” Conn. Gen. Stat. §1-210(b)(6).

(1) In *Stamford v. FOIC*, No. CV 99-0497667S, 1999 WL 1212439 (Conn. Super. Dec. 6, 1999), the Superior Court held that a psychological report of a police officer candidate is not exempt under this exemption.

(2) In *Washington v. FOIC*, No. CV 98-0492644S, 1999 WL 711509 (Conn. Super. Aug. 31, 1999), the Superior Court held that written answers, taped oral answers, and the panelists' scoring sheets for a fire department promotional examination were “examination data” and therefore exempt from disclosure.

(3) In *Town of Glastonbury v. FOIC*, 39 Conn. Supp. 257, 476 A.2d 1090 (1984), the Superior Court held that this exemption applies to tests that have already been administered and to tests that have yet to be administered.

(4) In *Chairman, Merit Promotional Comm. v. FOIC*, 4 CSCR 16 (1988), the Superior Court held that disclosure to those taking merit promotion exams of the evaluation rating forms completed

by each rater, showing the name of the rater, does not violate Conn. Gen. Stat. §§5-225 or 1-210(b)(6).

(5) In *Conn. Bar Examining Comm. v. FOIC*, 4 CSCR 225 (1989), the Superior Court sustained an FOIC order requiring disclosure of the names of those who read, graded, and scored bar exam essay questions. On appeal, the Supreme Court held that records relating solely to the committee's administrative functions must be made available to the public unless doing so would interfere with performance of committee's judicial functions, and remanded the case for further findings regarding the impact upon the committee of complying with disclosure order and reasonableness of committee's refusal in respect to each item sought. *Conn. Bar Examining Comm. v. FOIC*, 209 Conn. 204, 550 A.2d 663 (1988).

g. Exemption Seven — “The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision.” Conn. Gen. Stat. §1-210(b)(7).

(1) In *City of Hartford v. FOIC*, 41 Conn. App. 67, 674 A.2d 462 (1996), the Appellate Court sustained the FOIC's finding that responses submitted in response to a request for proposals for a construction manager to oversee a school renovation and expansion project were not exempt under Conn. Gen. Stat. §1-210(b)(7).

h. Exemption Eight — “Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish the applicant's personal qualification for the license, certificate or permit applied for.” Conn. Gen. Stat. §1-210(b)(8).

(1) There are no reported court decisions on this exemption.

i. Exemption Nine — “Records, reports and statements of strategy or negotiations with respect to collective bargaining.” Conn. Gen. Stat. §1-210(b)(9).

(1) In *Bloomfield Educ. Ass'n v. Frabm*, 35 Conn. App. 384, 646 A.2d 247 (1994), the Appellate Court held that grievances filed under a teacher's employment contract are not exempt under Conn. Gen. Stat. §1-210(b)(9).

(2) In *East Lyme Teachers Ass'n v. FOIC*, No. CV 97-0571973, 1998 WL 310827 (Conn. Super. June 5, 1998), the Superior Court held that the school principal's response to a grievance was not exempt under this exemption.

j. Exemption Ten — “Records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship.” Conn. Gen. Stat. §1-210(b)(10). See also Conn. Gen. Stat. §52-146(r) (statute governing confidential attorney-client communications regarding public agencies).

(1) In *Shew v. FOIC*, ___ Conn. ___ 245 Conn. 149, 714 A.2d 664 (1998), the Supreme Court held that the attorney-client privilege applied to municipal entities and it set forth the requirements of the privilege: (i) the attorney must be acting in a professional capacity for the agency; (ii) the communications must be made to the attorney by current employees or officials of the agency; (iii) the communications must relate to the legal advice sought by the agency from the attorney; and (iv) the communications must be made in confidence.

(2) In *Lasb v. FOIC*, 14 A.3d 998 (2011), the Supreme Court held that certain documents were exempt from disclosure under the FOIA because they met the four part test set forth in *Shaw*.

(3) In *Grosso v. FOIC*, 4 CSCR 300 (1989), the Superior Court

held that Conn. Gen. Stat. §12-15 exempts from disclosure applications filed with the Department of Revenue Services for tax registration numbers.

(4) In *City of New Haven v. FOIC*, 4 Conn. App. 216, 493 A.2d 283 (1985), the Appellate Court held that the plaintiff had not established that certain attorney invoices submitted to a public agency were within the purview of the attorney-client privilege and that the invoices were therefore not exempt from disclosure under this exemption.

(5) In *Lucarelli v. FOIC*, No. CV 93-0068988, 1995 WL 151911 (Conn. Super. Mar. 29, 1995), the Superior Court ruled that determining whether certain documents were protected by the attorney-client privilege required an *in camera* review of them by the FOIC.

(6) In *Maxwell v. FOIC*, 260 Conn. 143, 794 A.2d 535 (2002), the Supreme Court rejected a plaintiff's argument that the Conn. Gen. Stat. §1-210(b)(10) was an unconstitutional delegation of power by the legislature to the FOIC in violation of the separation of powers doctrine. The Supreme Court found that the statute did not provide the FOIC with the authority to define the attorney-client privilege.

(7) The Appellate Court ruled that a selectman's intentional disclosure of a letter from town counsel that was written for the purpose of providing information to the public about a case affecting their beach access rights did not expressly or impliedly waive privilege with respect to any communications regarding the same subject. *McLaughlin v. FOIC*, 83 Conn. App. 190, 850 A.2d 254, *cert denied*, 270 Conn. 916, 853 A.2d 530 (2004). The court found that although the letter was created by an attorney hired by the town, it was not privileged because it was created to help a political leader explain the implications of a court decision; therefore, its disclosure did not constitute a waiver.

(8) In *Division of Criminal Justice v. FOIC*, 2010 Conn. Super. LEXIS 497 (2010), the court held that subpoenas issued to a public agency in connection with an investigatory grand jury were not exempt under Conn. Gen. Stat. §§1-210(b)(10) and 54-47e.

(9) In *Danaber v. FOIC*, 2008 Conn. Super. LEXIS 2255 (2008), the court held that the reference in the exemption to "federal law" only applies to federal law that "prohibits disclosure." The court held that the requested documents, which were prepared by the Department of Homeland Security, were not exempt from disclosure. See also *Chief of Police v. FOIC*, 252 Conn. 377, 746 A.2d 1264 (2000) (apply exemption ten by implication).

k. Exemption Eleven — "Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age, provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school." Conn. Gen. Stat. §1-210(b)(11).

(1) In *Univ. of Conn. v. FOIC*, 217 Conn. 322, 585 A.2d 690 (1991), the Supreme Court held that this section exempted from disclosure the names of all employees of the University who were also students and whose employment was conditioned on their being students.

(2) In *Hartford Bd. of Educ. v. FOIC*, No. CV 95-0555646, 1997 WL 15422 (Conn. Super. Jan. 9, 1997), the trial court held that the board was not required to disclose the names and addresses of parents of Hartford school children to the public, because doing so would violate Conn. Gen. Stat. §1-210(b)(11). The court reasoned that "it requires no stretch of imagination to see that the

disclosure of the names and addresses of parents will more often than not reveal at least the surnames and the addresses of their children." *Id.* at *2.

(3) In *Eastern Conn. State Univ. v. FOIC*, No. CV 96-0556097, 1996 WL 580966 (Conn. Super. Sept. 30, 1996), the Superior Court affirmed the FOIC's decision that audio tapes of a student disciplinary hearing are public records and subject to public disclosure.

l. Exemption Twelve — "Any information obtained by the use of illegal means." Conn. Gen. Stat. §1-210(b)(12).

(1) In *State Dep't of Admin. Servs. v. FOIC*, No. CV 95-550049, 1996 WL 88490 (Conn. Super. Feb. 9, 1996), the Superior Court upheld the decision of the FOIC rejecting the premise that if illegally obtained information is illegally disclosed the collection of the information would be rendered illegal. The FOIC had ordered disclosure of data sheets provided to applicants who sat for a Librarian 1 examination which indicated handicapped status. The Superior Court stated that the argument amounts to a claim that disclosure is illegal, a separate issue from the legality of the collection of the information, which the court determined was legal.

m. Exemption Thirteen — "Records of an investigation or the name of an employee providing information under the provisions of section 4-61dd [disclosure of information to auditors of public accounts]." Conn. Gen. Stat. §1-210(b)(13).

(1) Note that this exemption is referred to by courts as the whistle-blower exemption and is significant for its coverage of both the "records of an investigation" and the name of the employee providing information under the statute. *Rocque v. FOIC*, No. CV 98-0492734S, 1999 WL 1268150 (Conn. Super. Nov. 30, 1990), *aff'd in part, rev'd in part*, 255 Conn. 651, 774 A.2d 957 (2001).

(2) In *Office of the Attorney General v. FOIC*, 2011 Conn. Super. LEXIS 129 (2011), the court held that by its plain language and its relationship to Conn. Gen. Stat. §1-210(b)(13), Conn. Gen. Stat. §4-61dd(a) does not require the release of records of a whistle-blower investigation upon the conclusion of the investigation.

n. Exemption Fourteen — "Adoption records and information provided for in sections 45a-746, 45a-750 and 45a-751 [certain information pertaining to adoption]." Conn. Gen. Stat. §1-210(b)(14).

(1) There are no reported court decisions on this exemption.

o. Exemption Fifteen — "Any page of a primary petition, nominating petition, referendum petition or petition for a town meeting submitted under any provision of the general statutes or of any special act, municipal charter or ordinance, until the required processing and certification of such page has been completed by the official or officials charged with such duty after which time disclosure of such page shall be required." Conn. Gen. Stat. §1-210(b)(15).

(1) There are no reported court decisions on this exemption.

p. Exemption Sixteen — "Records of complaints, including information compiled in the investigation thereof, brought to a municipal health authority pursuant to chapter 368e or a district department of health pursuant to chapter 368f, until such time as the investigation is concluded or thirty days from the date of receipt of the complaint, whichever occurs first." Conn. Gen. Stat. §1-210(b)(16).

(1) There are no reported court decisions on this exemption.

q. Exemption Seventeen — "Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g." Conn. Gen. Stat. §1-210(b)(17).

(1) There are no reported court decisions on this exemption.

r. Exemption Eighteen — "Records, the disclosure of which the

Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

(A) Security manuals, including emergency plans contained or referred to in such security manuals;

(B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers.” Conn. Gen. Stat. §1-210(b)(18).

(1) In *Dep’t. of Correction v. FOIC*, 2008 Conn. Super. LEXIS 2724 (2008), the court stated that the FOIC may review the Commissioner’s determination under this exemption for “reasonableness.” The court held that the Commissioner’s determination must be upheld unless it was pretextual and not bona fide or irrational.

(2) In *Tillman v. FOIC*, 2008 Conn. Super. LEXIS 2120 (2008), the court held that the “risk of harm” referred to in the exemption did not include purely psychological harm unrelated to issues of prison safety and security.

(3) In *Dep’t. of Correction v. FOIC*, 2007 Conn. Super. LEXIS 1742 (2007), the court held that the Commissioner of Corrections is the person to determine whether there is “reasonable grounds” for the exemption to apply.

s. Exemption Nineteen — “Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) with respect to records concerning any executive branch agency of the state or any municipal, district or regional agency, by the Commissioner of Public Works, after consultation with the chief executive officer of the agency; (B) with respect to records concerning Judicial Department facilities, by the Chief Court Administrator; and (C) with respect to records concerning the Legislative Department, by the executive director of the Joint Committee on Legislative Management. As used in this section, ‘government-owned or leased institution or facility’ includes, but is not limited to, an institution or facility owned

or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and ‘chief executive officer’ includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

(i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel at government-owned or leased institutions or facilities;

(viii) Emergency plans and emergency recovery or response plans; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply.” Conn. Gen. Stat. §1-210(b)(19).

(1) Only one court decision has discussed this exemption, which was amended significantly in 2002. A town’s director of information technology refused a request for copies of computerized data from a town’s geographic information system based on exemptions including Conn. Gen. Stat. §1-210(b)(19). *Dir., Dep’t of Info. Tech. v. FOIC*, 274 Conn. 179, 874 A.2d 785 (2005). The Appellate Court held that the IT director failed to meet his burden of seeking a determination from the commissioner of public works that the GIS information fell under the public safety exception, and so affirmed the earlier decisions requiring disclosure. *Id.* at 189.

t. Exemption Twenty — “Records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system.” Conn. Gen. Stat. §1-210(b)(20).

(1) This exemption was discussed briefly in the context of general public safety concerns regarding the disclosure of a town’s geographic information system, but has not been addressed in detail by any court. *See Dir., Dep’t of Info. Tech. v. FOIC*, 274 Conn. 179, 874 A.2d 785 (2005); see also Records Outline at II.A.2.s.1.

u. Exemption Twenty-One — “The residential, work or school address of any participant in the address confidentiality program established pursuant to sections 54-240 to 54-240o, inclusive [establishing substitute mailing addresses for victims of family violence, injury to a child, sexual assault or stalking].” Conn. Gen. Stat. §1-210(b)(21).

(1) There are no reported court decisions on this exemption.

v. Exemption Twenty-Two — “The electronic mail address of any person that is obtained by the Department of Transportation in connection with the implementation or administration of any plan to inform individuals about significant highway or railway incidents.”

(1) There are no reported court decisions on this exemption.

w. Exemption Twenty-Three — “The name or address of any minor enrolled in any parks and recreation program administered or sponsored by any public agency.”

(1) There are no reported court decisions on this exemption.

x. Exemption Twenty-Four — “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 the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file.”

(1) There are no reported court decisions on this exemption.

y. Exemption Twenty-Five — “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.”

(1) There are no reported court decisions on this exemption.

B. Other statutory exclusions.

FOIA states that records must be disclosed “[e]xcept as otherwise provided by any federal law or state statute.” Conn. Gen. Stat. §1-210(a). Consequently, there are a variety of statutory provisions not specifically set forth in FOIA that have the effect of exempting records from FOIA.

1. In *Comm’r, Dep’t of Pub. Safety v. FOIC*, 204 Conn. 609, 529 A.2d 692 (1987), the Supreme Court held that information gathered by the statewide organized crime investigative task force is exempt from public disclosure under Conn. Gen. Stat. §29-170.

2. In *Galvin v. FOIC*, 201 Conn. 448, 518 A.2d 64 (1986), the Supreme Court held that autopsy reports are exempt from disclosure under Conn. Gen. Stat. §19a-411.

3. In *Maher v. FOIC*, 192 Conn. 310, 472 A.2d 321 (1984), the Supreme Court held that information concerning medication prescribed for state Medicaid recipients was exempt from disclosure under Conn. Gen. Stat. §17-83(b).

4. In *Comm’r of Consumer Prot. v. FOIC*, 207 Conn. 698, 542 A.2d 321 (1988), the Supreme Court held that Conn. Gen. Stat. §21a-306 bars disclosure of information received by the Commissioner of Consumer Protection under specified statutes concerning pharmacists, prescription records, food, drugs and cosmetics, and dependency-producing drugs, and the bar is not lifted upon the holding of a compliance conference.

5. In *Healy v. FOIC*, 18 Conn. App. 212, 557 A.2d 561 (1989), the Appellate Court held that Conn. Gen. Stat. §1-83 exempted monthly statements of expenses and income provided to high sheriffs by their deputies.

6. Conn. Gen. Stat. §2-53g(b) states that certain records in the custody of, obtained by, or prepared by the legislative program review and investigations committee, or its staff, are exempt from disclosure until the investigation is completed.

7. Conn. Gen. Stat. §5-200(f) provides that statements of former

employers of applicants shall be considered confidential and are not open to inspection.

8. In *Pers. Dir., Dep’t of Income Maint. v. FOIC*, 214 Conn. 312, 572 A.2d 312 (1990), the Supreme Court construed Conn. Gen. Stat. §5-225 and 5-237, guaranteeing the rights of state employees to inspect promotional examination materials and service ratings, as barring disclosure to others. In *Chairman, Merit Promotional Comm. v. FOIC*, 4 CSCR 16 (1988), the Superior Court held that disclosure to those taking merit promotion exams of the evaluation rating forms completed by each rater, showing the name of the rater, does not violate Conn. Gen. Stat. §5-225 or 1-210(b)(6).

9. Conn. Gen. Stat. §10-151c states that records of teacher performance and evaluation are not public records. In *Rose v. FOIC*, 221 Conn. 217, 602 A.2d 1019 (1992), the Supreme Court held that this statute does not prevent public disclosure of the substance of votes of a public agency that happen to concern matters of personnel, teacher performance, or evaluation. In *Ottobian v. FOIC*, 221 Conn. 393, 604 A.2d 351 (1992), the Supreme Court held that this statute did not exempt those portions of a document concerning nonevaluative information even though the portions containing matters of teacher performance and evaluation were exempt. Disciplinary records and records of personal misconduct are not records of teacher performance and evaluation and so are not exempt from disclosure. See *Carpenter v. FOIC*, 59 Conn. App. 20, 755 A.2d 364 (2000), cert. denied, 254 Conn. 933, 761 A.2d 752 (2000) (records pertaining to alleged incidents of student access to pornographic material not exempt under Conn. Gen. Stat. §10-151c); *Wiese v. FOIC*, 82 Conn. App. 604, 847 A.2d 1004 (2004) (a “last chance agreement” between a teacher and school administrators relating to his showing of a film to students and future discipline that may be imposed is a disciplinary record and so is not exempt from disclosure); *Cracco v. FOIC*, Nos. CV 94-0705369S, CV 94-0705370S, CV 94-0705371S, 1995 WL 514468 (Conn. Super. Aug. 18, 1995) (copies of records of complaints filed against a local school teacher and the result of any investigation and action taken not exempt under either Conn. Gen. Stat. §10-151c or §1-210(b)(2)); *Newtown Bd. of Educ. v. FOIC*, No. CV 96-05558171, 1997 WL 625438 (Conn. Super. Oct. 3, 1997).

10. Conn. Gen. Stat. §11-25(b) states that personally identifiable information contained in the circulation records of public libraries is confidential.

11. In *Grosso v. FOIC*, 4 CSCR 300 (1989), the Superior Court held that Conn. Gen. Stat. §12-15 exempts from disclosure applications filed with the Department of Revenue Services for tax registration numbers.

12. Conn. Gen. Stat. §46a-11c states that certain reports regarding mentally retarded persons who have allegedly been abused or neglected are not public records.

13. In *Shulansky v. FOIC*, No. CV 92-0703520, 1993 WL 410144 (Conn. Super. Oct. 8, 1993), the Superior Court held that neither Conn. Gen. Stat. §36-16(a) nor §1-210(b)(10) nor any federal statute were intended to shield from public scrutiny information generated by the Bank Commissioner about the manner in which or the frequency with which he performed his examinations. See also *State of Conn. Dep’t of Banking v. FOIC*, No. CV 95-0554467S, 1996 WL 636472 (Conn. Super. Oct. 29, 1996) (Superior Court construed Conn. Gen. Stat. §36a-21 to apply to information obtained by the Department of Banking relating to personal business, financial and investment information of financial institutions and/or their customers, but not to administrative information obtained by the Department from its own employees, such as their home addresses).

14. Conn. Gen. Stat. §17a-452 states that certain reports regarding elderly persons who have allegedly been abused or neglected are not public records.

15. In *Conn. Comm’n on Human Rts. & Opportunities v. FOIC*, 3 CSCR 861 (1988), the Superior Court held that Conn. Gen. Stat.

§46a-83(b), barring disclosure of what occurs in CHRO discrimination conciliation endeavors, exempts disclosure of an affidavit of a witness in a since-dismissed CHRO discrimination proceeding.

16. Conn. Gen. Stat. §51-44a(j) states that the files and records of the judicial selection commission are not open to the public or subject to disclosure.

17. Conn. Gen. Stat. §54-142c states that certain criminal records which have been erased (i.e., sealed) pursuant to statute are not to be disclosed.

18. Conn. Gen. Stat. §54-142k states that criminal nonconviction information shall not be available to the public.

19. Conn. Gen. Stat. § 54-76l and 54-76o state that certain records pertaining to youthful offenders are confidential and should be erased (i.e., sealed).

20. Public Act No. 92-225 extended the right of privileged communications, previously accorded psychiatrists and psychologists under Conn. Gen. Stat. § 52-146c and 52-146f, to social workers and marital and family therapists.

21. Conn. Gen. Stat. §17a-28(b) provides that FOIA does not apply to certain records maintained by the Department of Children and Families. See *Marlow v. FOIC*, No. CV 99-0493141S, 1999 WL 966471 (Conn. Super. Oct. 12, 1999); *Dep't of Pub. Health v. FOIC*, No. CV 98-0492649S, 1999 WL 966634 (Conn. Super. Oct. 12, 1999) (records pertaining to child abuse or neglect are exempt under Conn. Gen. Stat. §17a-101k); Conn. Gen. Stat. §17a-101.

22. Conn. Gen. Stat. §7-314(b) provides that records of a volunteer fire department are not subject to FOIA if the records “concern fraternal or social matters.” Other records are open to the public. See *Yantic Volunteer Fire Co. v. FOIC*, 42 Conn. App. 519, 679 A.2d 989 (1996); *O’Connell v. FOIC*, 54 Conn. App. 373, 735 A.2d 363 (1999) (fire department’s charters, by-laws, policies, procedures, and names and addresses did not concern fraternal or social matters and so were not exempt from disclosure).

23. The Economic Development and Manufacturing Assistance Act states that all information contained in applications for financial assistance submitted to the Department of Economic and Community Development or the Connecticut Development Authority prior to October 1, 2000 are exempt from disclosure. Conn. Gen. Stat. §32-244a.

24. Conn. Gen. Stat. §7-232a provides that a municipal utility may withhold any commercially valuable, confidential or proprietary information from public disclosure under the Freedom of Information Act.

25. Conn. Gen. Stat. §7-479h states that “[t]he meetings, minutes and records of an interlocal risk management agency pertaining to claims shall not be subject to [FOIA].”

26. Tenant statements provided to developers regarding their income for the purpose of certifying a housing development meets statutory affordable housing requirements are not public records under FOIA. Conn. Gen. Stat. §8-30h.

27. Conn. Gen. Stat. §9-7b provides that the Elections Enforcement Commission shall be deemed a law enforcement agency for the purposes of §1-210(b)(3) under certain circumstances.

28. Social Security numbers provided to the tax collector shall not be subject to disclosure under FOIA. Conn. Gen. Stat. §12-148.

29. Conn. Gen. Stat. §12-659 exempts from disclosure any information contained in a report or a return required under Chapter 228b (Marijuana and Controlled Substances Tax).

30. Conn. Gen. Stat. §12-810 exempts from disclosure new lottery games, serial numbers of unclaimed tickets, financial credit, and proprietary information submitted by outside parties in connection with a proposal.

31. No municipal utility shall be required to disclose records “which identify or could lead to identification of the utility usage or billing information of individual customers, to the extent such disclosure would constitute an invasion of privacy.” Conn. Gen. Stat. §16-262c.

32. Information provided to the Commission of Transportation regarding the shipment of radioactive waste is exempt from disclosure under FOIA prior to completion of the shipment. Conn. Gen. Stat. §16a-106.

33. Conn. Gen. Stat. §22a-6 exempts from disclosure under FOIA any “information relating to secret processes or methods of manufacture or production” observed by the Commission of Environmental Protection during an inspection or investigation.

34. Information received by Commissioner of Environmental Protection from the U.S. Environmental Protection Agency shall be kept confidential. Conn. Gen. Stat. §22a-424.

35. The location of any essential habitat or the location of any threatened or endangered species or species of special concern may be withheld by the Commissioner of Environmental Protection. Conn. Gen. Stat. §26-313.

36. Records of a delinquent insurer are not subject to disclosure under FOIA. Conn. Gen. Stat. §38a-913a.

37. Records of ownership of or security interest in registered public obligations are not subject to FOIA. Conn. Gen. Stat. §42b-10.

38. Information and identity of a person making a complaint with the Office of the Victim Advocate is not subject to the disclosure under FOIA. Conn. Gen. Stat. §46a-13e.

39. Conn. Gen. Stat. §8-360 exempts from disclosure “any information indicating the location of a shelter or transitional housing for victims of domestic violence.”

40. A court of probate may not disclose, except under certain circumstances, estate tax returns and estate tax return information provided to such court. Conn. Gen. Stat. §12-398.

41. Conn. Gen. Stat. §2-40a provides that performance evaluations of judges shall be provided to the joint standing committee on judiciary and members of the Judicial Selection Commission and to no one else.

42. Conn. Gen. Stat. §2-53g exempts information in the custody of or obtained or prepared by the Legislative Program Review and Investigations Committee during the course of an investigation.

43. The Connecticut Commission on Culture and Tourism may withhold from disclosure to the public the locations of archaeological sites under consideration for listing by the Connecticut Historical Commission if disclosure would create a risk of destruction or harm to the sites. Conn. Gen. Stat. §10-409.

44. Records of the performance and evaluations of faculty or professional staff which are kept on file by a board of trustees of a constituent unit of the state system of higher education are not public records and shall not be disclosed unless the faculty or staff member consents. Conn. Gen. Stat. §10a-154a.

45. All financial credit and proprietary information submitted to the University of Connecticut Health Center Finance Corporation in connection with a joint venture or shared service agreement is exempt under FOIA. Conn. Gen. Stat. §10a-253. See also Conn. Gen. Stat. §32-40; Conn. Gen. Stat. §32-345; Conn. Gen. Stat. §32-601.

46. Information related to actual rental and rental-related income and expenses and not a matter of public record shall not be subject to FOIA. Conn. Gen. Stat. §12-63c.

47. Taxpayer information submitted to the state shall remain confidential. Conn. Gen. Stat. §12-242vv.

48. Conn. Gen. Stat. §16a-14 provides that local distribution patterns of energy resources, inventories of energy resources and volume of sales of energy resources, shall be exempt from FOIA.

49. Reports or complaints of abuse of a long-term care resident are not public records and not subject to FOIA. Information derived from such reports or complaints for which reasonable grounds are determined to exist after investigation may be disclosed, but the name of the resident or the complainant is not subject to disclosure unless such person specifically requests such disclosure or unless a judicial proceeding results from such report or complaint. Conn. Gen. Stat. §17b-407.

50. Records obtained by the Department of Public Health in connection with an investigation of a person or faculty over which such department has jurisdiction, other than a physician, shall not be subject to disclosure. Conn. Gen. Stat. §19a-14; *see also* Conn. Gen. Stat. §19a-17a; Conn. Gen. Stat. §19a-87a; Conn. Gen. Stat. §19a-87e; Conn. Gen. Stat. §19a-180; Conn. Gen. Stat. §20-204a.

51. Investigations of veterinarians are confidential and not subject to disclosure. If an investigation leads to a finding that grounds for disciplinary action exist, the allegation and the entire record of the investigation shall be deemed a public record. Conn. Gen. Stat. §20-204a.

52. Any schedule of stocking or release of fish or animal into the wild is exempt from disclosure until such stocking or release has taken place. Conn. Gen. Stat. §26-25b.

53. No person shall obtain or disclose information derived from reports of birds or animals taken by hunting or trapping. Conn. Gen. Stat. §26-67a; *see also* Conn. Gen. Stat. §26-157b.

54. The name and address of persons issued a permit to carry or sell pistols and revolvers are confidential and not to be disclosed. Conn. Gen. Stat. §29-28. *See Records Outline* at IV.H; *see also* Conn. Gen. Stat. §53-202d (permits to carry assault weapons likewise confidential).

55. Information contained in notices supplied by employers regarding the presence or elimination of hazardous materials in its establishment shall not be disclosed. Conn. Gen. Stat. §29-307a.

56. Child abuse records are confidential and exempt from disclosure under Conn. Gen. Stat. §17a-101k. *See Groton Police Dep't. v. FOIC*, 104 Conn. App. 150, 931 A.2d 989 (2007).

57. Conn. Gen. Stat. §1-217 prohibits the disclosure of the residential address of certain specified persons. In *Dep't. of Public Safety v. FOIC*, 2009 Conn. Super. LEXIS 2872 (2009), the court held that this exemption does not apply to the preparation and dissemination of the grand list of all personal property in a town pursuant to Conn. Gen. Stat. §12-55.

58. Conn. Gen. Stat. §4-258(a)(4) exempts from disclosure “registration information” regarding a sexual offender “the dissemination of which has been restricted by court order.” *See also Dep't of Public Safety v. FOIC*, 2009 Conn. Super. LEXIS 805 (2009) (holding that this must be determined on a case-by-case basis).

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

In *State Library v. FOIC*, 50 Conn. App. 491, 717 A.2d 842 (1998), the Appellate Court held that the contract clause of the Constitution prohibited disclosure of certain transcripts. The transcripts were taken during a 1964 hearing regarding the Norwich Police Department. In 1973, the city and the public records administrator entered into an agreement which provided the state library would retain the transcripts and prevent their disclosure for 50 years. Under the facts of this particular case, the court found that the application of FOIA would not be “reasonable or appropriate” under the circumstances. *Id.* at 501.

D. Are segregable portions of records containing exempt material available?

The Superior Court has held that segregable portions of public records that contain exempt material are disclosable after deletion of the exempt material. *Town of Trumbull v. FOIC*, 5 Conn. L. Trib. No. 34 (1979); *Shedd v. FOIC*, 4 Conn. L. Trib. No. 19 (1978).

E. Homeland Security Measures.

In 2002, FOIA was amended to include an exemption for “[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk.” Conn. Gen. Stat. §1-210(b)(19). The amended section addresses security concerns regarding disclosure of sensitive documents including engineering drawings, operational specifications, security training manuals, and emergency plans of government-owned or leased institutions or facilities and vulnerability assessments and risk management plans of water companies. No court has yet discussed the application of the amended exemption in the context of homeland security. *See also Records Outline*, II.A.2.s.

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Yes. The agency shall provide the requested information on “paper, disk, tape or any other electronic storage device or medium requested by the person, if the agency can reasonably make such copy or have such copy made.” Conn. Gen. Stat. §1-211(a).

Based on FOIA’s legislative history, the Connecticut Supreme Court has construed Conn. Gen. Stat. §1-211(a) and §1-211(b) to require an agency to perform formatting or programming functions or to contract with an outside entity to perform such tasks in order to comply with a request for electronic records. *Hartford Courant Co. v. FOIC*, 261 Conn. 86, 93-94, 801 A.2d 759 (2002). If an agency cannot itself comply with a request for a specific format because it does not have the technological capability to separate exempt from nonexempt data and the requester is not satisfied with an alternate medium for satisfying the request, the agency is required to offer to contract the job out and charge the requester for cost of doing so. *Id.* at 94-95.

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Yes. If an agency has the information sought within its database, it must provide that information in the form requested if the requester is willing to pay the cost of developing any new software to do so. In *Hartford Courant Co. v. FOIC*, 261 Conn. 86, 801 A.2d 759 (2002), the plaintiff newspaper requested an electronic copy of all adult criminal history records minus any exempt information from the department of public safety. The department argued that complying with the request would require it to develop a new computer program and create new records; the Connecticut Supreme Court found that because the department was in possession of the information requested and the plaintiff was willing to bear the extra cost of extracting the nonexempt data, the request was not outside the scope of FOIA. *Id.* at 95; *see also Maher v. FOIC*, 192 Conn. 310, 472 A.2d 321 (1984).

C. Does the existence of information in electronic format affect its openness?

No. The existence of information in electronic format may affect the cost to the requester, however. *See* Conn. Gen. Stat. §1-212(b); *see also Records Outline* at I.D.

Conn. Gen. Stat. §1-211(b) provides that “no public agency shall enter into a contract with, or otherwise obligate itself to, any person if such contract or obligation impairs the right of the public under [FOIA] to inspect or copy the agency’s nonexempt records existing online in, or stored on a device or medium in connection with, a computer system used, leased or otherwise used by the agency in the course of its governmental functions.” Additionally, Conn. Gen.

Stat. §1-211(c) requires public agencies to consider whether any new computer system, equipment or software for the retrieval or storage of public records will “adequately provides for the rights of the public under [FOIA] at the least cost possible to the agency and to persons entitled to access nonexempt public records.” In order to comply with that duty, agencies must consult with the Department of Information Technology before acquiring such a system. Conn. Gen. Stat. §1-211(c); *see also Office of Health Care Access v. FOIC*, Nos. CV 03-0521573S, CV 03-0521574S, 2005 WL 1095361 (Conn. Super. Apr. 19, 2005) (requiring an agency to purchase a new computer program and provide an electronic spreadsheet of data free of charge to the requesters after the agency changed to a new computer system that would not no longer permit the production of such an electronic record, in violation of Conn. Gen. Stat. §1-211(c)).

D. How is e-mail treated?

“[A]ny 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” is defined as a “meeting” under FOIA. Conn. Gen. Stat. §1-200(2) (emphasis added).

The Electronic and Voicemail Management and Retention Guide For State and Municipal Government Employees issued by the Office of the Public Records Administrator and State Archives states that e-mail messages sent or received in the conduct of public business are public records.

1. Does e-mail constitute a record?

Yes. See definition of public record Conn. Gen. Stat. §1-200(5).

2. Public matter on government e-mail or government hardware

These are public records, subject to exemptions.

3. Private matter on government e-mail or government hardware

No cases.

4. Public matter on private e-mail

These are public records, subject to exemptions.

5. Private matter on private e-mail

No cases, but not likely public records.

E. How are text messages and instant messages treated?

No cases. Should be treated as e-mail.

F. How are social media postings and messages treated?

No case law on this issue.

G. How are online discussion board posts treated?

No case law, but see definition of meeting.

H. Computer software

See Conn. Gen. Stat. §1-211.

1. Is software public?

No cases.

2. Is software and/or file metadata public?

No cases.

I. How are fees for electronic records assessed?

See Conn. Gen. Stat. §1-212(b) – cannot exceed cost to public agency.

J. Money-making schemes.

No case law.

K. On-line dissemination.

No cases.

IV. RECORD CATEGORIES — OPEN OR CLOSED

A. Autopsy reports.

In *Galvin v. FOIC*, 201 Conn. 448, 518 A.2d 64 (1986), the Supreme Court held that autopsy reports are exempt from disclosure under Conn. Gen. Stat. §19a-411.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

There are no specific provisions or reported authorities regarding administrative enforcement records.

C. Bank records.

Conn. Gen. Stat. §36a-42 states that a financial institution may not disclose any financial records relating to a customer unless the customer or his agent authorizes disclosure or unless it is in response to certain legal procedures (i.e. a subpoena or court order). *See also* Conn. Gen. Stat. §36a-44 (exceptions re: confidential treatment of customer records).

There are no reported court decisions on the issue of whether a bank is a “public agency” within the meaning of Conn. Gen. Stat. §1-200(1). *See Records Outline* at II.A.2.h and j (certain financial records held by a public agency are exempt from disclosure).

D. Budgets.

There are no specific provisions or reported authorities regarding budgets.

E. Business records, financial data, trade secrets.

See Conn. Gen. Stat. §1-210(b)(5),(8) and (10) as discussed above in *Records Outline* at II.A.2.e, h, and j.

F. Contracts, proposals and bids.

See Conn. Gen. Stat. §1-210(b)(7) as discussed above in *Records Outline* at II.A.2.g.

FOIA states that disclosure is required of the “names of firms obtaining bid documents from any state agency.” Conn. Gen. Stat. §1-210(d)(3).

FOIA also states that “[a]ny contract of employment to which the state or a political subdivision of the state is a party shall be deemed to be a public record . . .” Conn. Gen. Stat. §1-214(a).

Conn. Gen. Stat. §4-137e(c) states that general bids for public building contracts “shall be publicly opened and read by the awarding authority forthwith.”

Under Conn. Gen. Stat. §7-314(b), the records and meetings of a volunteer fire department which is established by municipal charter or constituted as a non-profit Connecticut corporation are exempt from FOIA if they concern fraternal and social matters, but not if they concern matters of public safety, expenditures of public funds, or other public business. For a decision under an earlier statute, see *Cos Cob Volunteer Fire Co. No. 1 v. FOIC*, 212 Conn. 100, 561 A.2d 429 (1989); *see also O’Connell v. FOIC*, 54 Conn. App. 373, 735 A.2d 363 (1999).

G. Collective bargaining records.

See Conn. Gen. Stat. §1-210(b)(9) as discussed above in *Records Outline* at II.A.2.i.

H. Coroners reports.

See Autopsy Reports, *Records Outline* at IV.A.

I. Economic development records.

There are no specific provisions or reported authorities regarding economic development records.

J. Election records.

See Conn. Gen. Stat. §1-210(b)(15) as discussed above in *Records Outline* at II.A.2.o.

Conn. Gen. Stat. §9-333j(c)(4) states that financial statements filed by a campaign treasurer “shall remain public records of the state for five years.”

Conn. Gen. Stat. § 9-36 and 9-39 state that preliminary and final voter registry lists shall be available for public use.

K. Gun permits.

In 1994, the Connecticut legislature passed Conn. Gen. Stat. §29-28(d), making the names and addresses of people with permits to sell and carry pistols and revolvers exempt from FOIA. Prior to the enactment, the Connecticut Supreme Court ruled in *Superintendent of Police v. FOIC*, 222 Conn. 621, 609 A.2d 998 (1992), that municipal pistol permits and all information contained therein are public records not “similar” to medical or personnel files so as to be exempt from disclosure under Conn. Gen. Stat. §1-210(b)(2).

The name and address of a person issued a certificate of possession of an assault weapon are likewise exempt from disclosure under FOIA. Conn. Gen. Stat. §53-202d. Both statutes contain exceptions allowing law enforcement agencies and the Commissioner of Mental Health and Addiction Services to access the information. Conn. Gen. Stat. §29-28(d) also permits the disclosure of such information to the extent necessary to comply with a request for verification that a permit is valid and not suspended or revoked.

L. Hospital reports.

See Conn. Gen. Stat. §1-210(b)(2) as discussed above in *Records Outline* at II.A.2.b.

Conn. Gen. Stat. §19a-25 imposes certain limitations on the disclosure of information and records obtained by the department of health services in connection with studies of morbidity and mortality. In general, such information is “confidential” and is not available to the public.

Conn. Gen. Stat. §4-104 states that a hospital shall permit a patient, or his physician or his attorney, to examine his hospital records, and it provides a procedure for subpoenaing hospital records.

In *Director of Health Affairs, UConn Health Center v. FOIC*, 293 Conn. 164, 977 A.2d 148 (2009), the Supreme Court held that records relating to peer review proceedings were not exempt under Conn. Gen. Stat. §19a-17b and were therefore disclosable under FOIA.

M. Personnel records.

See Conn. Gen. Stat. §1-210(b)(2) as discussed above in *Records Outline* at II.A.2.b.

1. Salary.

There are no provisions regarding salary records in general. Thus, these should be treated as any other record under FOIA and presumed open unless a record comes within a specific exemption — for example, if disclosure of the record in question would constitute an “invasion of privacy” under Conn. Gen. Stat. § 1-210(b)(2). See *Records Outline* at II.A.2.b.

2. Disciplinary records.

There are no provisions regarding disciplinary records in general. Thus, these should be treated as any other record under FOIA and

presumed open unless a record comes within a specific exemption — for example, if disclosure of the record in question would constitute an “invasion of privacy” under Conn. Gen. Stat. § 1-210(b)(2). See *Perkins v. FOIC*, 228 Conn. 158, 635 A.2d 783 (1993) (sick leave records); *Records Outline* at II.A.2.b. Records of teacher performance and evaluation are not public records. See Conn. Gen. Stat. § 10-151c as discussed above in *Records Outline* at II.A.2 and II.B.9.

3. Applications.

There are no provisions regarding job applications in general. Thus, these should be treated as any other record under FOIA and presumed open unless a record comes within a specific exemption — for example, if disclosure of the record in question would constitute an invasion of privacy under Conn. Gen. Stat. § 1-210 (b)(2). See *Records Outline* at II.A.2.b; see also *Kureczka v. FOIC*, 228 Conn. 271, 636 A.2 777 (1994) and *Mozzochi v. Town of Glastonbury*, Do. #FIC 86-253 (Dec. 16, 1986) (job applications are disclosable with certain information masked out to protect applicant’s privacy).

4. Personally identifying information.

Conn. Gen. Stat. §1-217 prohibits public agencies from disclosing the home addresses of various federal, state and local government officials and employees. See also, *Comm’r of Pub. Safety v. Freedom of Info. Comm’n*, 301 Conn. 323 (2011) (holding that Conn. Gen. Stat. §1-217 applies to motor vehicle grand lists and effectively supercedes Conn. Gen. Stat. §14-163). The disclosure of such records also could constitute an “invasion of privacy.” See *Records Outline* at V.A.2.b.

5. Expense reports.

There are no provisions regarding expense reports in general. Thus, these should be treated as any other record under FOIA and presumed open unless a record comes within a specific exemption — for example, if disclosure of the record in question would constitute an invasion of privacy under Conn. Gen. Stat. § 1-210 (b)(2). See *Records Outline* at II.A.2.b; see also *Kureczka v. FOIC*, 228 Conn. 271, 636 A.2 777 (1994) and *Mozzochi v. Town of Glastonbury*, Do. #FIC 86-253 (Dec. 16, 1986) (job applications are disclosable with certain information masked out to protect applicant’s privacy).

6. Other.

Conn. Gen. Stat. § 1-213(a)(2) states that FOIA shall be construed to require a public agency to disclose “information in its personnel files, birth records or confidential tax records to the individual who is the subject of the information.”

Conn. Gen. Stat. § 4-193 states that an “agency” shall disclose “personal data” relating to an individual to that individual and establishes a procedure if the agency refuses to disclose the information.

Conn. Gen. Stat. §§ 31-128b and 31-128c permit an employee to inspect his personnel file and his medical file maintained by his employer, and Conn. Gen. Stat. § 31-128f imposes certain limitations upon an employer in disclosing “individually identifiable information” in such files without the written authorization of the employee or in response to other specific circumstances. In *City of Hartford v. FOIC*, 201 Conn. 421, 518 A.2d 49 (1986), however, the Supreme Court held that municipal corporations (i.e., public agencies) are not employers within the meaning of Conn. Gen. Stat. § 31-128f.

Conn. Gen. Stat. § 1-217 prohibits state agencies from disclosing the residential addresses of: certain individuals including federal and state judges and magistrates; local and state police officers; employees of the state department of correction; an attorney who has served as a criminal prosecutor or public defender; inspectors in the Division of Criminal Justice; and employees of the judicial branch. The statute does not apply to motor vehicle department records. Conn. Gen. Stat. § 1-217(b).

Public Act No. 96-133, amending § 19a-17a, exempts from FOIA any document filed with the state department of public health disclos-

ing a medical malpractice award against or settlement with doctors, dentists and psychologists unless the department decides that further investigation or disciplinary action is warranted.

N. Police records.

See Conn. Gen. Stat. §1-210(b)(3) as discussed above in *Records Outline* at II.A.2.c.

1. Accident reports.

See Conn. Gen. Stat. § 14-50a regarding fees for copies of accident reports from the commissioner of motor vehicles.

In *Calibey v. State Police*, Do. #FIC 86-310 (Jan. 28, 1987), the FOIC held that a report of a fatal motor vehicle accident was not exempt from disclosure under FOIA.

2. Police blotter.

In *Town of Trumbull v. FOIC*, 5 Conn. L. Trib. No. 34 (1979), the Superior Court held that daily activity sheets, after the deletion of certain exempt information, were not exempt from disclosure under FOIA.

3. 911 tapes.

There are no specific provisions or reported authorities regarding 911 tapes. See also Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption); *Records Outline* at II.A.2.c.

4. Investigatory records.

In *City of Hartford v. FOIC*, 201 Conn. 421, 518 A.2d 49 (1986), the Supreme Court held that certain police department internal affairs records were not exempt from disclosure under Conn. Gen. Stat. § 1-210(b)(2). See also Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption); *Dep't of Pub. Safety v. FOIC*, 51 Conn. App. 100, 720 A.2d 268 (1998); *Kirschner v. FOIC*, No. CV 97-0567162, 1998 WL 27829 (Conn. Super. Jan. 15, 1998); *Records Outline* at II.A.2.c.

a. Rules for active investigations.

FOIA exempts from disclosure any “information to be used in a prospective law enforcement action if prejudicial to such action.” Conn. Gen. Stat. § 1-210(b)(3). There are no other specific provisions or reported authorities regarding rules for active investigations. See also Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption); *Records Outline* at II.A.2.c.

b. Rules for closed investigations.

There are no specific provisions or reported authorities regarding rules for closed investigations. See also Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption); *Records Outline* at II.A.2.c.

5. Arrest records.

In *Gifford v. FOIC*, 227 Conn. 641, 631 A.2d 252 (1993) the Supreme Court ruled that reports prepared by police in connection with arrests were not required to be disclosed to the public during the pendency of the related criminal prosecution; and that Conn. Gen. Stat. § 1-215(a) exclusively regulates the disclosure of arrest reports, to the exclusion of § 1-210(b)(3); and as it then existed required the police to disclose only limited data: the name and address of the person arrested, the date, time and place of the arrest, and the offense for which the person was arrested. In 1994 § 1-215 was amended to provide that in addition to the aforesaid required disclosures, the police must, subject to the provisions of Conn. Gen. Stat. § 1-210(b)(3), also disclose one of the following: “arrest report, incident report, news release or other similar report of the arrest of a person.” See however, Conn. Gen. Stat. § 1-216, mandating destruction of records of uncorroborated allegations of criminal activity upon review one year after compilation.

6. Compilations of criminal histories.

See Conn. Gen. Stat. §§ 54-142c and 52-142k as discussed above in

Records Outline at II.B.17 and 18 and Conn. Gen. Stat. §§ 54-76l and 54-76o as discussed above in *Records Outline* at II.B.19.

7. Victims.

See Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption) in *Records Outline* at II.A.2.c.

8. Confessions.

See Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption) in *Records Outline* at II.A.2.c.

9. Confidential informants.

See Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption) in *Records Outline* at II.A.2.c.

10. Police techniques.

See Conn. Gen. Stat. § 1-210(b)(3) (law enforcement exemption) in *Records Outline* at II.A.2.c.

11. Mug shots.

There are no specific provisions or reported court decisions on these records. Therefore, they should be treated as any other record and are presumed open unless a specific exemption applies.

12. Sex offender records.

See *Groton Police Dep't v. FOIC*, 104 Conn. App. 150, 931 A.2d 989 (2007) (child abuse records exempt from disclosure under Conn. Gen. Stat. §§1-210(b)(3) and 17a-101k).

O. Prison, parole and probation reports.

There are no specific provisions or reported court decisions on these records. Therefore, they should be treated as any other record and are presumed open unless a specific exemption applies.

P. Public utility records.

There are no specific provisions or reported court decisions on these records. Therefore, they should be treated as any other record and are presumed open unless a specific exemption applies.

Q. Real estate appraisals, negotiations.

See Conn. Gen. Stat. § 1-210(b)(4) and (7) as discussed above in *Records Outline* at II.A.2.d and g.

R. School and university records.

See Conn. Gen. Stat. § 1-210(b)(11) as discussed above in *Records Outline* at II.A.2.k; see also *Polman v. UConn School of Law*, Do. #FIC 83-68 (Oct. 26, 1983) (respondent is a public agency).

1. Athletic records.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

2. Trustee records.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

3. Student records.

The names or addresses of any student enrolled in any public school or college may not be disclosed without the student's consent, if eighteen years of age, or the student's parent's consent, if a minor. Conn. Gen. Stat. § 1-210(b)(11).

S. Vital statistics.

1. Birth certificates.

Conn. Gen. Stat. § 7-51 limits access to birth records to a municipality's chief executive officer or his agent, local director of health,

title examiners, members of legally incorporated genealogical societies, the subject of the record or the parent or guardian of a minor subject. Conn. Gen. Stat. § 7-53 limits access to birth certificates of adopted persons. Conn. Gen. Stat. § 7-51a permits those acting under the direction of a legally incorporated genealogical society to copy birth records of a municipality for pre-1900 events. Conn. Gen. Stat. § 7-41a provides access to all records of vital statistics to any member of a legally incorporated genealogy society.

2. Marriage & divorce.

Conn. Gen. Stat. § 7-51a permits those acting under the direction of a legally incorporated genealogical society to copy marriage records of a municipality for pre-1900 events. Conn. Gen. Stat. § 7-41a provides access to all records of vital statistics to any member of a legally incorporated genealogy society.

3. Death certificates.

Conn. Gen. Stat. § 7-51a permits those acting under the direction of a legally incorporated genealogical society to copy death records of a municipality for pre-1900 events. Conn. Gen. Stat. § 7-41a provides access to all records of vital statistics to any member of a legally incorporated genealogy society.

4. Infectious disease and health epidemics.

See Conn. Gen. Stat. §19a-581 et. Seq. re: confidential HIV-related information.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

FOIA states that: “[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.” Conn. Gen. Stat. §1-212.

1. Who receives a request?

The request should be addressed to the public agency in question, and it is the public agency’s responsibility to respond to the request.

2. Does the law cover oral requests?

An oral request for copies of public records need not be complied with; however, an oral request is sufficient to inspect public records. See Conn. Gen. Stat. §1-210(a). In *Conn. Dep’t of Pub. Safety v. FOIC*, 1992 WL 31931 (Conn. Super. Feb. 5, 1992), *aff’d*, 29 Conn. App. 821, 618 A.2d 565 (1993), the Superior Court held that while a written request for copies is required under Conn. Gen. Stat. §1-212, no written request is necessary to inspect under Conn. Gen. Stat. §1-210(a). The court also ruled that copies must be provided if orally requested as part of the request to inspect under Conn. Gen. Stat. §1-210(a). In *Planning and Zoning Commission v. FOIC*, 2009 Conn. Super. LEXIS 3004 (2009) the court held that the Planning and Zoning Commission did not have to provide copies of certain public records during an evening meeting, even though the records were readily available, because the request was not made during “regular office or business hours” as stated in Conn. Gen. Stat. §1-210(a). See also *Hodge v. FOIC*, 2008 Conn. Super. LEXIS 3162 (2008), for discussion of the absence of a need to complete a form to inspect public records.

a. Arrangements to inspect & copy.

See above.

b. If an oral request is denied:

There are no specific provisions or reported court decisions discussing the denial of oral requests.

3. Contents of a written request.

a. Description of the records.

The written request should describe the public records with suf-

ficient particularity so that the public agency can retrieve the records. See *Perkins v. FOIC*, 228 Conn. 158, 635 A.2d 783 (1993) (it would be “unreasonable” to deny access to FOIA “simply because of arguable imperfections in the form in which a request for public records is couched.”).

b. Need to address fee issues.

Fee issues need not be addressed; however, a fee waiver can be requested. See *Records Outline* at I.D.3.

c. Plea for quick response.

The records must be made available “promptly;” if a response is not given within four days, it is deemed a presumptive denial of access. See *Records Outline* at V.B.

d. Can the request be for future records?

There are no specific provisions or reported court decisions discussing requests for future records.

e. Other.

Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed ten dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner. As used in this section, “hand-held scanner” means a battery operated electronic scanning device the use of which (1) leaves no mark or impression on the public record, and (2) does not unreasonably interfere with the operation of the public agency. Conn. Gen. Stat. §1-212(g); see also *Records Outline* at I.C.3.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

FOIA states that: “[a]ny denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case denial shall be made in writing within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.” Conn. Gen. Stat. §1-206(a). An agency may not defend its decision to ignore a request on the grounds that the request was made simply for the purposes of harassing the agency. *Mayor v. FOIC*, No. CV 01-0511803S, 2002 WL 523086 (Conn. Super. Mar. 19, 2002).

2. Informal telephone inquiry as to status.

There are no specific provisions or reported court decisions discussing telephone inquiries.

3. Is delay recognized as a denial for appeal purposes?

Yes, failure to comply with a request to inspect or copy a public record within the applicable number of business days shall be deemed to be a denial. Conn. Gen. Stat. §1-206(a).

4. Any other recourse to encourage a response.

FOIA does not address any other recourse.

C. Administrative appeal.

FOIA states that any person denied the right to inspect or copy a public record may appeal to the FOIC. Conn. Gen. Stat. §1-206(b).

1. Time limit.

The notice of appeal must be filed within thirty days of the denial, and the notice of appeal is deemed filed on the date it is received by the

FOIC or on the date it is postmarked, if received more than thirty days after the date of the denial. Conn. Gen. Stat. §1-206(b).

In *West Hartford v. FOIC*, 218 Conn. 256, 588 A.2d 1368 (1991), the Supreme Court held that one who received written denial of a request for documents may appeal to the FOIC within 30 days of the written denial even though more than 30 days had elapsed since the fourth day after the date the request had been made. The court also held that FOIA does not bar successive requests or successive denials for public records and that there is no requirement that the appeal to the FOIC be taken from the first denial. *See also Mayor v. FOIC*, No. CV 01-0511803S, 2002 WL 523086 (Conn. Super. Mar. 19, 2002) (holding that an agency may not defend its decision to ignore a request on the grounds that the request was made simply for the purposes of harassing the agency).

2. To whom is an appeal directed?

The appeal is brought by filing a notice of appeal with the FOIC. Upon receipt of notice of appeal, the FOIC will serve notice of the appeal upon interested parties. Conn. Gen. Stat. §1-206(b). If the appeal involves a public employee's personnel or medical file or similar file, then the FOIC will require the public agency to notify the employee and his collective bargaining representative of the appeal, and the employee then has the right to appear as a party. Conn. Gen. Stat. §1-206(b).

The hearing before the FOIC is governed by FOIC regulations which allow for the presentation of evidence and cross-examination of witnesses, among other things. The FOIC evidentiary hearing is held before a single commissioner of the FOIC, who prepares a proposed decision which is subsequently ruled on by the entire FOIC. In *Bd. of Educ. v. FOIC*, 208 Conn. 442, 545 A.2d 1064 (1988), the Supreme Court held that before the FOIC may order an agency to disclose records, it must find that those records exist, and must pursue the data-gathering process provided for in Conn. Gen. Stat. §1-205(d) rather than requiring the respondent agency to provide affidavits as to the existence *vel non* of the requested records. In *Sinbak v. FOIC*, No. CV 03-0826293, 2004 WL 304185 (Conn. Super. Jan. 27, 2004), the court held that incarcerated persons who have no personal representative may participate in FOIC hearings by telephone.

The FOIC has the authority to impose civil penalties in certain circumstances. Conn. Gen. Stat. §1-206(b)(2). In *C.J. Mozzochi v. FOIC*, No. CV 90-0374538S, 1990 WL 265733 (Conn. Super. Dec. 21, 1990), the Superior Court overruled the FOIC's order barring plaintiff from filing further complaints without first getting its permission, ruling that only the legislature could provide for sanctions and this was one it had not enacted. Subsequently, §1-206(b)(2) was amended and (b)(3) was added to provide authority for the FOIC to decline to hear appeals in certain cases if they determine that doing so would perpetrate an injustice or constitute an abuse of administrative process. The FOIC's determination not to entertain an appeal is appealable to the Superior Court.

The FOIC's regulations allow any person to request to participate in the hearing before the FOIC either as a party or as an intervenor. Conn. Agencies Regs. §1-21j-28.

The FOIC's jurisdiction ends if an appeal is withdrawn. *Dep't. of Public Safety v. FOIC*, 103 Conn. App. 571, 930 A.2d 739 (2007).

a. Individual agencies.

See above.

b. A state commission or ombudsman.

The FOIC has an ombudsman program to resolve disputes.

c. State attorney general.

The attorney general plays no role in FOIA appeals.

3. Fee issues.

There are no specific provisions or reported court decisions discussing fee issues on appeal to the FOIC. See Records Outline at 1.D.

4. Contents of appeal letter.

The notice of appeal should request a hearing on the denial, and it should state (1) the date of the request; (2) the public agency involved; (3) the public records requested; and (4) the date of the denial. Conn. Gen. Stat. §1-206(b)(1).

a. Description of records or portions of records denied.

See above.

b. Refuting the reasons for denial.

FOIA does not require the plaintiff to refute the reasons for denial of access.

5. Waiting for a response.

The FOIC is required to hear and decide the appeal within one year. Conn. Gen. Stat. §1-206(b). (This statute was amended in 1986 to increase this time period from 30 days to one year in response to the Supreme Court's decision in *Town of North Haven v. FOIC*, 198 Conn. 498, 503 A.2d 1161 (1986) (FOIC must hear and decide appeal within statutory time limitations)).

6. Subsequent remedies.

Decisions of the FOIC may be appealed to the Superior Court in accordance with Conn. Gen. Stat. §4-183, the Uniform Administrative Procedure Act ("UAPA"). Notwithstanding the provisions of Conn. Gen. Stat. §4-183, in any such appeal of a decision of the FOIC, the court may conduct an in camera review of the original or a certified copy of the records which are at issue in the appeal but were not included in the record of the commission's proceedings, admit the records into evidence and order the records to be sealed or inspected on such terms as the court deems fair and appropriate, during the appeal. The commission shall have standing to defend, prosecute or otherwise participate in any appeal of any of its decisions and to take an appeal from any judicial decision overturning or modifying a decision of the commission. Conn. Gen. Stat. §1-206(c). *See id.*

D. Court action.

FOIA states that: "[a]ny party aggrieved by the decision of [the FOIC] may appeal therefrom, in accordance with the provisions of [Conn. Gen. Stat. §4-183]." Conn. Gen. Stat. §1-206(d). This appeal is to the Superior Court in accordance with UAPA. *See* Conn. Gen. Stat. §4-183.

1. Who may sue?

In *Rose v. FOIC*, 221 Conn. 217, 602 A.2d 1019 (1992), the Supreme Court held that the phrase "any party aggrieved" in Conn. Gen. Stat. §1-206(d) includes anyone who can show that he or she is aggrieved by an FOIC decision, and does not require that the person show that at the FOIC he or she was actually granted party status or was entitled as of right to be made a party. The person need merely show a specific, personal and legal interest in the subject matter of the FOIC decision which was specially and injuriously affected by that decision. *Id.* at 230. *See also Kelly v. FOIC*, 221 Conn. 300, 603 A.2d 1131 (1992) (aggrievement not restricted to persons to whom FOIC order is directed). In *Bd. of Pardons v. FOIC*, 210 Conn. 646, 556 A.2d 1020 (1989), the Supreme Court held the Board of Pardons to be "aggrieved" for appeal-standing purposes by an FOIC order requiring it to conduct its deliberations in the future in public because since Conn. Gen. Stat. §1-240(b) made noncompliance with an FOIC order a Class B misdemeanor, there existed "a genuine likelihood of criminal liability or civil incarceration" sufficient to confer standing and providing the in-

dividual members of the board with “a specific and personal” interest in the validity of the order. In *State Library v. FOIC*, 240 Conn. 824, 694 A.2d 1235 (1997), the Supreme Court held that a plaintiff may prove aggrievement without an evidentiary hearing in the trial court by relying on facts established in the record as a whole, including the administrative record.

2. Priority.

An appeal of an FOIC decision is privileged in respect to its assignment for trial over most other civil actions; the exceptions are writs of *habeas corpus* and actions by or on behalf of the state. Conn. Gen. Stat. §1-206(d).

3. Pro se.

Pro se appeals are possible, but since an administrative appeal must be done in strict compliance with UAPA, a *pro se* appellant runs the risk that he or she will lose the appeal for failing to observe certain technical procedures.

4. Issues the court will address:

The appeal is based on the FOIC record; the Superior Court may affirm the FOIC’s decision or remand for further proceedings. The Superior Court may also reverse or modify the FOIC’s decision if it is (1) in violation of constitutional or statutory provisions; (2) in excess of the FOIC’s statutory authority; (3) made upon unlawful procedure; (4) affected by an error of law; (5) clearly erroneous; or (6) arbitrary or capricious. *See* Conn. Gen. Stat. §4-183(g). The court may review the public records in issue in camera during the appeal. The Superior Court may not reverse an FOIC ruling based upon an argument (e.g., a claim of exemption) that had neither been raised before nor addressed by the FOIC. *Dortenzio v. FOIC*, 42 Conn. App. 402, 679 A.2d 978 (1996); *see also* Conn. Gen. Stat. §1-206(d).

5. Pleading format.

Pleading format is that of a regular civil action.

6. Time limit for filing suit.

The UAPA requires that the appeal be served upon the FOIC and all parties of record within forty-five days after mailing of the notice of the FOIC’s decision and that the appeal be filed with the court within forty-five days after mailing of the notice of the FOIC’s decision. *See* Conn. Gen. Stat. §4-183(b).

7. What court.

The appeal must be brought in the judicial district of Hartford-New Britain or in the judicial district where the aggrieved party resides. Conn. Gen. Stat. §4-183(b).

8. Judicial remedies available.

The Superior Court can affirm, reverse, modify, or remand the case

back to the FOIC for further proceedings.

9. Litigation expenses.

Court costs and fees of not more than \$1000 may be awarded to the prevailing party if the court finds the appeal frivolous or taken solely for the purpose of delay. Conn. Gen. Stat. §1-206(d).

10. Fines.

Not specified.

11. Other penalties.

A public agency may bring suit in Superior Court against anyone to whom the FOIC denied the right to appeal pursuant to §1-206(b)(2) and (3), seeking to enjoin the person from again bringing an appeal to the FOIC that would perpetrate an injustice or abuse the administrative process. If after an injunction is granted, the FOIC determines that such an appeal has been filed, the FOIC finding serves as a conclusive finding of violation of the injunction, entitling the agency to seek relief in Superior Court. Conn. Gen. Stat. §1-211.

12. Settlement, pros and cons.

Not specified.

E. Appealing initial court decisions.

In *Waterbury Teachers Ass’n v. FOIC*, 230 Conn. 441, 645 A.2d 978 (1994), the Supreme Court ruled that no appeal lies from the Superior Court’s denial of a stay of an FOIC order pending appeal of the order to the Superior Court.

1. Appeal routes.

Appeal of decisions of the Superior Court may be taken to the Connecticut Appellate Court and, by certification from the Appellate Court’s decision, to the Connecticut Supreme Court.

2. Time limits for filing appeals.

Appeals must be filed within 30 days.

3. Contact of interested amici.

Connecticut allows *amicus* briefs to be filed with the permission of the court.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues.

F. Addressing government suits against disclosure.

There are no specific provisions or reported court decisions discussing government suits against disclosure.

Open Meetings

I. STATUTE — BASIC APPLICATION.

A. Who may attend?

FOIA states that “[t]he meetings of all public agencies, except executive sessions as defined in subdivision (6) of section 1-200, shall be open to the public.” Conn. Gen. Stat. §1-225(a). FOIA also provides: “[n]o member of the public shall be required, as a condition to attendance at a meeting of [a public agency], to register the member’s name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to the member’s attendance.” Conn. Gen. Stat. §1-225(e).

B. What governments are subject to the law?

All state, regional, local, and municipal governments are subject to FOIA. See *Records Outline* at I.B.

C. What bodies are covered by the law?

FOIA applies to public agencies as defined in Conn. Gen. Stat. §1-200(1). See *Records Outline* at I.B.

1. Executive branch agencies.
4. Nongovernmental bodies receiving public funds or benefits.

The level of governmental funding is relevant to the determination of whether a nongovernmental body is subject to FOIA. See above. See also *Bd. of Trustees v. FOIC*, 181 Conn. 544, 436 A.2d 266 (1980) (creating a four-part functional equivalent test to determine whether hybrid public/private entities are subject to FOIA).

5. Nongovernmental groups whose members include governmental officials.

There are no reported court decisions addressing whether a nongovernmental body with members including governmental officials would be subject to FOIA. *But see* Conn. Gen. Stat. §1-202 (“The FOIC, on petition by a public agency contemplating creation of a committee composed entirely of individuals who are not members of the agency, may exempt the committee from compliance with FOIA.”).

6. Multi-state or regional bodies.

FOIA applies to regional bodies, but there are no provisions or reported authority concerning multistate bodies. See Conn. Gen. Stat. §1-200(1)(A).

7. Advisory boards and commissions, quasi-governmental entities.

FOIA applies to advisory boards and commissions, but only with respect to their administrative functions. See Conn. Gen. Stat. §1-200(1)(A).

8. Other bodies to which governmental or public functions are delegated.

In *Bd. of Trustees v. FOIC*, 181 Conn. 544, 436 A.2d 266 (1980), the Supreme Court established the following four-part functional equivalent test to determine whether hybrid public/private entities are subject to FOIA: (1) whether the entity performs a governmental function; (2) the level of governmental funding; (3) the extent of governmental involvement or regulation; and (4) whether the entity was created by the government. The Supreme Court held in *Bd. of Trustees* that the plaintiff was a public agency since it met each part of this test. See also Conn. Gen. Stat. §1-200(1)(A).

9. Appointed as well as elected bodies.

FOIA applies to appointed bodies. See Conn. Gen. Stat. §1-200(1)

(A).

D. What constitutes a meeting subject to the law.

FOIA defines a “meeting” as: “any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multi-member 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.” Conn. Gen. Stat. §1-200(2). Some types of meetings or gatherings are specifically excluded from the definition of “meeting” contained in FOIA and are thus not subject to FOIA, including, for example, personnel search committee meetings, chance or social meetings, and collective bargaining sessions. In *Smith v. FOIC*, 2009 Conn. Super. LEXIS 2671 (2009), the court held that a director of library services was an “executive level employment position” and that the exemption in Conn. Gen. Stat. §1-200(2) and (7) properly applied to the personnel search committee in issue.

In *State Bd. of Labor Relations v. FOIC*, 244 Conn. 487, 709 A.2d 1129 (1998), the court found that Conn. Gen. Stat. §31-100 exempts grievance arbitration proceedings from the open meeting requirements. In *Windham v. FOIC*, 48 Conn. App. 529, 711 A.2d 741, cert. granted, 245 Conn. 913, 718 A.2d 18, appeal dismissed, 249 Conn. 291, 732 A.2d 752 (1999), the Appellate Court held that a gathering of four selectmen of an eleven-member board to discuss whether to go into executive session at a scheduled meeting was not a meeting under FOIA because there was no quorum. In *Emergency Medical Servs. Comm’n v. FOIC*, 19 Conn. App. 352, 561 A.2d 981 (1989), the Appellate Court held that the presence of a quorum is not a prerequisite to there being a “hearing or other proceeding of a public agency” under Conn. Gen. Stat. §1-200(2). See *Meetings Outline* at II.A.2.a. for discussion of these “non-meetings.”

1. Number that must be present.

In *Supina v. Town of Ashford*, Do. #FIC 80-197 (Feb. 11, 1981), the FOIC held that when two out of three selectmen met to draft a letter, this gathering constituted a meeting.

In *Town of Bloomfield v. FOIC*, 9 Conn. L. Trib. No. 39 (1983), the Superior Court held that a town manager’s individual, sequential contacts with a majority of the town council to discuss an agenda item was a meeting.

In *Hauser v. City of New Haven*, Do. #FIC 82-88 (Nov. 16, 1982), the FOIC held that when less than a quorum of a public agency met to discuss matters over which the public agency had supervision and control, that constituted a “meeting” despite the lack of a quorum. *But see Windham v. FOIC*.

In *Frankl v. FOIC*, No. CV 97-0568431, 1998 WL 27831 (Conn. Super. Jan. 16, 1998), the Superior Court held that gatherings of a quorum of the Workers’ Compensation Board of Commissioners are meetings within the meaning of Conn. Gen. Stat. §1-200(2).

Under Conn. Gen. Stat. §7-314(b) the meetings of a volunteer fire department that is established by municipal charter or a non-profit Connecticut corporation are exempt from FOIA if they concern fraternal and social matters, but not if they concern matters of public safety, expenditures of public funds, or other public business. For a case under an earlier statute, see *Cos Cob Volunteer Fire Co. No. 1 v. FOIC*, 212 Conn. 100, 561 A.2d 429 (1989).

The FOIC, on petition by a public agency contemplating creation of a committee composed entirely of individuals who are not members of the agency, may exempt the committee from FOIA. Conn. Gen. Stat. §1-202.

a. Must a minimum number be present to constitute a “meeting”?

In *Hauser v. City of New Haven*, Do. #FIC 82-88 (Nov. 16, 1982),

the FOIC held that when less than a quorum of a public agency met to discuss matters over which the public agency had supervision and control, that constituted a “meeting” despite the lack of a quorum. *But see Windham v. FOIC*.

b. What effect does absence of a quorum have?

See above.

2. Nature of business subject to the law.

FOIA states that a meeting includes any discussion or action on “a matter over which the public agency has supervision, control, jurisdiction or advisory power.” Conn. Gen. Stat. §1-200(2). In *Glastonbury Educ. Ass’n v. FOIC*, 234 Conn. 704, 663 A.2d 349 (1995), the Supreme Court held that because the presentation by the parties of last best offers under the compulsory arbitration provisions of the Teacher Negotiation Act, Conn. Gen. Stat. §10-153a *et seq.*, resembled negotiations, the portions of the sessions involving the actual presentations were excluded by Conn. Gen. Stat. §1-200(2) from the definition of “meetings.” The court left open the possibility that the portions of the sessions in which evidence is produced might well be “meetings” and hence mandatorily open. In *Boone v. FOIC*, No. CV 96-0564971, 1997 WL 583628 (Conn. Super. Sept. 10, 1997), the Superior Court held that a conference which was not mandated or directed by statute and did not involve the presentation of evidence or argument before a decision maker was neither a hearing nor proceeding and thus not a meeting under FOIA. In *East Hartford Town Council v. FOIC*, No. CV 95-0549602, 1996 WL 62630 (Conn. Super. Jan. 24, 1996), the Superior Court found that the plaintiff, by implication and custom, had authorized two of its members who were the leaders of their respective political parties to meet and discuss the town budget and produce a proposed revision. The court held that when a multimember public agency authorizes, either expressly or by implication, two or more of its members to meet and discuss or act upon a subject that would ordinarily be discussed or acted upon by the agency as a whole and when those two members then meet for that purpose as authorized, they have engaged in a “proceeding” of the agency. *See also Common Council v. FOIC*, No. CV 95-0074406, 1996 WL 88243 (Conn. Super. Jan. 31, 1996). In *Town of Sprague PZC v. FOIC*, 3 CSCR 593 (1988), the Superior Court upheld an FOIC finding that the agency’s out-of-state field trip was a “meeting” under FOIA. *See also Lebanon Inland Wetlands Comm’n v. FOIC*, No. 101912, 1994 WL 86329 (Conn. Super. Mar. 4, 1994) (“site walks”). In *New London PZC v. FOIC*, 17 Conn. L. Rptr. No. 2, 70 (1996), the Superior Court held that an informal workshop organized and run by a zoning enforcement officer for the purpose of gathering information and informing a potential applicant of the requirements of the zoning regulations, voluntarily attended by members of the planning and zoning commission on their own time, did not constitute a PZC “meeting,” even though commission members offered their opinions on zoning issues during the workshop. In *Presnick v. FOIC*, No. CV 96-056777, 1998 WL 19911 (Conn. Super. Jan. 12, 1998), *aff’d*, 53 Conn. App. 162, 729 A.2d 236 (1999), the Superior Court held that a gathering of the members of the board of selectmen to decide whether to accept or reject an arbitrator’s decision on a teacher’s contract was not a meeting under Conn. Gen. Stat. §1-200(2) because it pertained to “strategy with respect to collective bargaining.” In *Meriden Bd. of Educ. v. FOIC*, No. CV 99-0496503S, 2000 WL 804597 (Conn. Super. June 6, 2000), the Superior Court held that under Conn. Gen. Stat. §1-200(2) an agency may “in some circumstances hold a ‘proceeding’ when it authorizes some of its members to meet during a recess to discuss Robert’s Rules of Order and that this will constitute a ‘meeting.’”

3. Electronic meetings.

Under FOIA, a meeting can occur either in person or “by means of electronic equipment.” Conn. Gen. Stat. §1-200(2).

a. Conference calls and video/Internet conferencing.

A telephone conference call among a quorum of a public agency

would constitute a meeting under FOIA.

b. E-mail.

There are also no reported court decisions on this issue, but see *Evans v. Freedom of Info. Comm’n*, 2005 Conn. Super. LEXIS 2116 (discussing possible email meeting).

c. Text messages.

There are no reported court decisions on this issue.

d. Instant messaging.

There are no reported court decisions on this issue.

e. Social media and online discussion boards.

There are also no reported court decisions on this issue.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

A “regular meeting” is not specifically defined in FOIA.

b. Notice.

(1). Time limit for giving notice.

(a) Not later than January 31 of each year, the chairman or secretary of each *public agency of the state* must file with the secretary of the state the schedule of the regular meetings of the public agency for the ensuing year. Conn. Gen. Stat. §1-225(b). This does not apply to the general assembly, either house thereof, or any committee thereof. Instead, the general assembly, at the commencement of each regular session in the odd-numbered years, must adopt rules to provide notice to the public of its regular, special, emergency, or interim committee meetings. Conn. Gen. Stat. §1-225(b).

(b) Not later than January 31 of each year, the chairman or secretary of each *public agency of a political subdivision of the state* must file with the clerk of the subdivision (i.e., the town clerk) the schedule of the regular meetings of the public agency for the ensuing year. Conn. Gen. Stat. §1-225(b). No regular meeting of such an agency can be held sooner than thirty days after the schedule has been filed; therefore, the schedule should be filed at least thirty days before the first regular February meeting is scheduled to be held. Conn. Gen. Stat. §1-225(b).

(c) Not later than January 31 of each year, the chief executive officer of any *multitown district or agency* must file with the clerk of each municipal member the schedule of the regular meetings of the agency for the ensuing year. Conn. Gen. Stat. §1-225(b). No regular meeting of such an agency can be held sooner than thirty days after the schedule has been filed; therefore, the schedule should be filed at least thirty days before the first regular February meeting is scheduled to be held. Conn. Gen. Stat. §1-225(b).

(2). To whom notice is given.

Conn. Gen. Stat. §1-227 states that the public agency, where practicable, shall give notice by mail of its regular meetings at least one week in advance to any person who has filed a written request for such notice.

[1] This does not apply to the general assembly, either house thereof, or any committee thereof.

[2] A request for notice filed pursuant to this section is valid for one year.

[3] Renewal requests for notice must be filed by January 31 of each year.

[4] The public agency can establish a reasonable charge for sending out these notices.

In determining the time within which to give notice or to file an agenda, Saturdays, Sundays, legal holidays, and days on which the office of the agency is closed are excluded. Conn. Gen. Stat. §1-225(g).

(3). Where posted.

Must be mailed to those who have requested it; *see above*.

(4). Public agenda items required.

The agenda of the regular meetings of every public agency, except the general assembly, must be available to the public and must be filed at least 24 hours before the meeting either in the agency's regular office or place of business, or if it has none, in the office of the secretary of the state (for state agencies), in the office of the clerk (for agencies of a political subdivision of the state), or in the office of the clerk of each municipal member (for multitywn agencies). Conn. Gen. Stat. §1-225(c).

If two-thirds of the members of the agency present and voting at the regular meeting vote in the affirmative, the agency may consider and act upon any subsequent business that was not included in the filed agendas. Conn. Gen. Stat. §1-225(c). In *Zoning Bd. of Appeals, Town of Plainfield v. FOIC*, 784 A.2d 383, 385, 66 Conn. App. 279, 281 (2001), the court held that an agency must hold a vote to determine whether an item should be added to the agenda before voting on the item itself; the requirement of a two-thirds vote for consideration of a matter not included on the agenda is *not* satisfied by a two-thirds vote on the proposal itself.

(5). Other information required in notice.

Location — The public agency must provide by regulation or ordinance or resolution for the place of its regular meeting. Conn. Gen. Stat. §1-230.

(6). Penalties and remedies for failure to give adequate notice.

If the notice and agenda requirements are not properly complied with, the FOIC can void any action taken at the improperly noticed meeting. Conn. Gen. Stat. §1-206(c).

c. Minutes.

The minutes of the meeting must be available for public inspection within seven days. Conn. Gen. Stat. §1-225(a). Information on votes must be made available within 48 hours. Conn. Gen. Stat. §1-225(a).

(1). Information required.

The minutes must record the votes of each member of the agency on any issue before the agency. Conn. Gen. Stat. §1-225(a).

(2). Are minutes public record?

Yes, meeting minutes are public record under FOIA. *See* Conn. Gen. Stat. §1-225(a).

2. Special or emergency meetings.

a. Definition.

A “special meeting” and an “emergency meeting” are not specifically defined in FOIA.

In *Board of Selectmen v. FOIC*, 294 Conn. 438, 984 A.2d 748 (2010), the Supreme Court held that the FOIC's construction of what constituted an emergency – an emergency meeting may be held only when there is no time for a special meeting notice to be posted twenty-four hours in advance – was reasonable. The court affirmed the FOIC's determination that the verbal altercation between public officials did not constitute an emergency. *See also Lebanon v. Wayland*, 39 Conn. Sup. 56, 61-62, 467 A.2d 1267 (1983).

In *Town of Hamden v. FOIC*, 3 CSCR 185 (1988), the Superior Court upheld the FOIC's voiding of a vote taken at an allegedly “emergency

meeting,” upholding the FOIC's finding that the agency could not prove its inability to give the 24-hour notice required by Conn. Gen. Stat. §1-225, because it could not show a “compelling necessity” to justify an emergency meeting.

b. Notice requirements.

(1). Time limit for giving notice.

Notice of each special meeting of every public agency must be given 24 hours in advance by filing a notice thereof in the office of the secretary of the state (for state agencies), in the office of the clerk (for agencies of a political subdivision of the state), or in the office of the clerk of each municipal member (for multitywn agencies). Conn. Gen. Stat. §1-225(d).

(a) This does not apply to the general assembly, either house thereof, or any committee thereof. Conn. Gen. Stat. §1-225(d).

(b) The secretary or clerk is required to post the notice. Conn. Gen. Stat. §1-225(d).

(c) In case of an emergency, these notice provisions need not be complied with, except that a copy of the minutes of the emergency special meeting must adequately describe the emergency and must be filed within 72 hours. Conn. Gen. Stat. §1-225(d).

(d) The notice of a special meeting must specify the time and place of the meeting and the business to be transacted. No other business may be considered. Conn. Gen. Stat. §1-225(d).

(e) In determining the time within which to give notice, Saturdays, Sundays, legal holidays, and days on which the office of the agency is closed are excluded. Conn. Gen. Stat. §1-225(g).

(2). To whom notice is given.

Notice to Agency Members — Written notice of a special meeting must be personally delivered to the members of the agency prior to the meeting, although this notice can be waived by the members by filing a written waiver. Conn. Gen. Stat. §1-225(d).

(3). Where posted.

Notice should be posted in the office of the secretary of state (for state agencies) and in the office of the clerk (for agencies of a political subdivision of the state).

(4). Public agenda items required.

Only items on the notice can be considered. Conn. Gen. Stat. §1-225(d).

(5). Other information required in notice.

Only the above information is required.

(6). Penalties and remedies for failure to give adequate notice.

The FOIC can impose civil penalties and can declare any action taken at an improperly noticed meeting void. Conn. Gen. Stat. §1-206(b)(2).

c. Minutes.

Not addressed.

3. Closed meetings or executive sessions.

a. Definition.

An executive session is defined in Conn. Gen. Stat. §1-200(6) as “a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) discussion concerning the ap-

pointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require the discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims and litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale or purchase would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.” In *Rocky Hill Town Council v. FOIC*, 4 CSCR 247 (1989), *rev'd on other grounds*, 20 Conn. App. 671, 569 A.2d 1149 (1990), the Superior Court held that an executive session was properly called to discuss a requested legal opinion from the agency’s attorney on legal issues related to the agency’s contemplated action on a public official’s employment and compensation. In *Bd. of Pub. Safety v. FOIC*, No. CV010506448S, 2001 WL 1560944 (Conn. Super. Ct. Nov. 20, 2001), the court upheld the FOIC’s determination that the Torrington Board of Public Safety had violated the terms of the FOIA by holding an executive session to discuss an individual’s employment without first giving him the opportunity to require that such discussion be conducted in public in accordance with Conn. Gen. Stat. §1-200(6) (A). In *Royce v. FOIC*, No. CV000505232, 2001 WL 752722 (Conn. Super. Ct. June 11, 2001), the court held that member of a town’s Board of Finance is a “public officer” within the meaning of Conn. Gen. Stat. §1-200(6)(A). In *Brodinsky v. FOIC*, No. CV030520584S, 2004 WL 3130229 (Conn. Super. Ct. Dec. 15, 2004), the court held that a town council member who had voted against holding executive session and subsequently voluntarily absented himself from the same executive session had not been “denied access” and did not have standing to appeal to the judicial system. In *Police Commission v. FOIC*, 2008 Conn. Super. LEXIS 123 (2008), the court discussed the interplay between Conn. Gen. Stat. §1-200(6)(E) and Conn. Gen. Stat. §1-210(b).

Attendance at executive sessions is limited to members of the public agency and persons invited by the agency to present testimony or opinion pertinent to matters before the agency. Conn. Gen. Stat. §1-231. The attendance of these invited persons must be limited to the period of time for which their presence is necessary to present such testimony or opinion, and when that time has expired, they must leave the executive session. Conn. Gen. Stat. §1-231(a). In *City of Middletown v. von Mahand*, 34 Conn. App. 772, 643 A.2d 888 (1994) the Appellate Court ruled that under Conn. Gen. Stat. §1-231(a) when an agency subpoenas a witness to testify in executive session, it implicitly invites his lawyer to attend as a matter of due process, and the agency cannot exclude the lawyer. In *East Lyme Water and Sewer Comm’n v. FOIC*, No. CV 96-0538605, 1997 WL 41241 (Conn. Super. Jan. 27, 1997), the Superior Court affirmed the decision of the FOIC and held that East Lyme had violated Conn. Gen. Stat. §1-231 when it allowed certain staff town officials and staff persons into executive session for the discussion of the outcome of a civil suit discussing the construction of a portion of the town’s sewer system, where the staff members offered no testimony or opinions there.

b. Notice requirements.

A planned executive session must be contained in the posted agenda.

If a notice of appeal concerns an announced agency decision to meet in executive session or an ongoing agency practice of meeting in executive sessions, for a stated purpose, the commission or a member or members of the commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal within seventy-two hours after receipt of the notice, provided such notice shall be given to the parties at least

forty-eight hours prior to such hearing. If after the preliminary hearing the commission finds probable cause to believe that the agency decision or practice is in violation of sections 1-200 and 1-225, the agency shall not meet in executive session for such purpose until the commission decides the appeal. If probable cause is found by the commission, it shall conduct a final hearing on the appeal and render its decision within five days of the completion of the preliminary hearing. Conn. Gen. Stat. §1-206(b)(1).

(6). Penalties and remedies for failure to give adequate notice.

In Ethics Commission, *Glastonbury v. FOIC*, 2007 Conn. Super. LEXIS 3095 (2007), the court upheld a sanction imposed by the FOIC that the public agency make and maintain electronic audio recordings of all its executive sessions for three years.

c. Minutes.

Same time limitations as for regular meetings. Conn. Gen. Stat. §1-231(a).

(1). Information required.

The minutes of an executive session must disclose the names of all persons in attendance, except job applicants who attend for the purpose of being interviewed. Conn. Gen. Stat. §1-231(a).

(2). Are minutes a public record?

There are no specific provisions or any reported authority discussing whether the minutes of an executive session are a public record.

d. Requirement to meet in public before closing meeting.

A public agency may hold an executive session only if two-thirds of the members present and voting so vote, and that vote is taken at a public meeting and the reasons for the executive session are publicly stated at that public meeting. Conn. Gen. Stat. §1-225(f). See *Durham Middlefield Interlocal Agreement Advisory Bd. v. FOIC*, No. CV 96-0080435, 1997 WL 491574 (Conn. Super. Aug. 12, 1997) (plaintiff violated Conn. Gen. Stat. §1-226 by convening an executive session without stating the reason for such executive session.) An executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to [Conn. Gen. Stat. §200(b)]. Conn. Gen. Stat. §1-231(b).

e. Requirement to state statutory authority for closing meetings before closure.

Reasons must be stated at a public meeting. See above, and Conn. Gen. Stat. §1-225(f).

f. Tape recording requirements.

There are no specific provisions regarding the tape recording of executive sessions.

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

A meeting open to the public may be photographed, broadcast, or recorded for broadcast, subject to rules prescribed by the agency. Conn. Gen. Stat. §1-226. A temporary injunction can be issued pursuant to Conn. Gen. Stat. §1-226 to enjoin a violation of this provision.

2. Photographic recordings allowed.

A meeting open to the public may be photographed, broadcast, or recorded for broadcast, subject to rules prescribed by the agency. Conn. Gen. Stat. §1-226. A temporary injunction can be issued pursuant to Conn. Gen. Stat. §1-226 to enjoin a violation of this provision.

G. Are there sanctions for noncompliance?

Anyone denied access to meetings may avail himself of the same appeals process used for denial of access to records. *See Records Outline* V.D.11.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Certain meetings or gatherings are specifically excluded from the definition of meeting contained in FOIA and thus need not be open. *See Meetings Outline* at II.A.2.a. Other meetings are permitted to be closed as executive sessions. *See Meetings Outline* at I.E.3.

b. Mandatory or discretionary closure.

The closure of meetings under FOIA is discretionary with the public agency.

2. Description of each exemption.

a. Non-Meetings — FOIA states that a “meeting” does not include: “[a]ny 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 related 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.” “Caucus” means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.” Conn. Gen. Stat. §1-200(2). These “non-meetings” are exempt entirely from the requirements of the FOIA. In *Giordano v. FOIC*, 36 Conn. Supp. 117, 413 A.2d 493 (1979), the Connecticut Superior Court held that a “caucus” cannot include individuals who are not members of the public agency and that the purpose of a caucus is to discuss and decide on positions to be taken by the caucusing members of the public agency at a subsequent meeting.

b. Executive Sessions — *See Meetings Outline* at I.E.3.

B. Any other statutory requirements for closed or open meetings.

None specified.

C. Court mandated opening, closing.

An appeal from a decision of the FOIC may be taken to the Superior Court. The procedure for such an appeal is discussed above. *Records Outline* at V.D.

III. MEETING CATEGORIES — OPEN OR CLOSED.

A. Adjudications by administrative bodies.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). *See Records Outline* at II.A.2 and IV.

1. Deliberations closed, but not fact-finding.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

2. Only certain adjudications closed, i.e. under certain statutes.

There are no specific provisions or exemptions in FOIA on this issue.

There are also no reported court decisions on this issue.

B. Budget sessions.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). *See Records Outline* at II.A.2 and IV.

C. Business and industry relations.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). *See Records Outline* at II.A.2 and IV.

D. Federal programs.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). *See Records Outline* at II.A.2 and IV.

E. Financial data of public bodies.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200 (6)(E). *See Records Outline* at II.A.2 and IV.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200 (6)(E). *See Records Outline* at II.A.2 and IV.

G. Gifts, trusts and honorary degrees.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). *See Records Outline* at II.A.2 and IV.

H. Grand jury testimony by public employees.

The judiciary is not subject to FOIA except in its administrative capacity. Conn. Gen. Stat. §1-200(1).

Investigatory grand jury proceedings are also conducted in private unless the judicial panel designated by statute votes to hold the proceedings in public in the public interest. Conn. Gen. Stat. §54-47e.

I. Licensing examinations.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). *See Records Outline* at II.A.2 and IV.

J. Litigation; pending litigation or other attorney-client privileges.

An executive session is allowed to discuss “strategy and negotiations with respect to pending claims or pending litigation to which the pub-

lic agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled.” Conn. Gen. Stat. §1-200(6)(E).

An executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to Conn. Gen. Stat. §1-200(6)(E). Conn. Gen. Stat. §1-231(b).

In *Ansonia Library Bd. of Dirs. v. FOIC*, 42 Conn. Sup. 84, 600 A.2d 1058 (1991), the Superior Court held that where the FOIC had issued a decision denying an appeal and the aggrieved party still had time to appeal to court but had given no written indication to the local board of his intent to do so, there was no “pending claim or pending litigation” under §1-200(6)(B) permitting an executive session to discuss the possibility of an appeal. The FOIC decision was held to have terminated the only pending claim. See also *Furbman v. FOIC*, 243 Conn. 427, 703 A.2d 624 (1997) (the Town of New Milford properly met in executive session to discuss strategy concerning pending litigation, including discussions concerning the hiring of a lobbyist, environmental consultants’ reports, and costs of attorneys and consultants).

K. Negotiations and collective bargaining of public employees.

1. Any sessions regarding collective bargaining.

A “meeting” does not include strategy or negotiations with respect to collective bargaining; therefore, these gatherings are excluded from FOIA. Conn. Gen. Stat. §1-200(2). See *State Bd. of Labor Relations v. FOIC*, 244 Conn. 487, 709 A.2d 1129 (1998) (“the confidentiality requirement of §31-100 exempts grievance arbitration proceedings from the definition of meetings”). See also *Waterbury Teachers Ass’n v. FOIC*, 240 Conn. 835, 694 A.2d 1241 (1997) (evidentiary portions of grievance hearings were not excluded from the public meeting requirement as “strategy or negotiations with respect to collective bargaining,” although portions of the hearing in which the parties discussed remedies and settlements were so excluded); *Presnick v. FOIC*, 53 Conn. App. 162, 729 A.2d 236 (1999) (a meeting by the town of Orange’s board of selectmen regarding an arbitration award involving a proposed teachers’ contract was not required to be open to the public, as it was within the meaning of Conn. Gen. Stat. §1-200(2)).

2. Only those between the public employees and the public body.

See above.

L. Parole board meetings, or meetings involving parole board decisions.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). See *Records Outline* at IIA.2 and IV.

M. Patients; discussions on individual patients.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). See *Records Outline* at IIA.2 and IV.

N. Personnel matters.

1. Interviews for public employment.

A “meeting” does not include any meeting of a personnel search committee for executive level employment candidates; therefore, these meetings are excluded from FOIA. Conn. Gen. Stat. §1-200(2).

2. Disciplinary matters, performance or ethics of public employees.

An executive session is allowed for “discussion concerning the appointment, employment, performance, evaluation, health, or dismissal of a public officer or employee . . .” Conn. Gen. Stat. §1-200(6). Note that the public officer or employee can require the above discussion to be held at an open meeting. Conn. Gen. Stat. §1-200(6). The filling of a board of education vacancy under Conn. Gen. Stat. §10-219 has been held to constitute an “appointment” under §1-200(6)(A). *Bd. of Educ. v. FOIC*, 213 Conn. 216, 566 A.2d 1362 (1989). See also *Dortenzio v. FOIC*, 48 Conn. App. 424, 710 A.2d 801 (1998) (predisciplinary conference for public employee under *Loudermill*, 470 U.S. 532, is excluded from the definition of meeting as “an administrative or staff meeting of a single-member public agency.”)

3. Dismissal; considering dismissal of public employees.

See above.

O. Real estate negotiations.

An executive session is allowed in some instances. See Conn. Gen. Stat. §1-200(6)(D). *Meetings Outline* at I.E.3. If records of appraisals, which are exempt from disclosure under Conn. Gen. Stat. §1-210(b) (7), would be disclosed at an open session, then an executive session can be held pursuant to Conn. Gen. Stat. §1-200(6)(E) to protect those records from disclosure. See *Records Outline* at IIA.2.g.

P. Security, national and/or state, of buildings, personnel or other.

An executive session is allowed in some instances. See Conn. Gen. Stat. §1-200(6). *Meetings Outline* at I.E.3.

Q. Students; discussions on individual students.

There are no specific provisions or exemptions in FOIA on this issue. There are also no reported court decisions on this issue.

An executive session may be allowed if an open session would result in the disclosure of exempt records. Conn. Gen. Stat. §1-200(6)(E). See *Records Outline* at IIA.2 and IV.

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

Any person wrongfully denied the right to attend a meeting under FOIA, or denied any other right under FOIA, may appeal therefrom to the FOIC. Conn. Gen. Stat. §1-206(b)(1).

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

FOIA does not contain any provisions for expedited procedure for reviewing request to attend upcoming meetings. *But see* Conn. Gen. Stat. §1-206(d) (“Any appeal taken pursuant to this section shall be privileged in respect to its assignment for trial over all other actions except writs of *habeas corpus* and actions brought by or on behalf of the state, including informations on the relation of private individuals.”).

2. When barred from attending.

In *Brodinsky v. FOIC*, No. CV030520584S, 2004 WL 3130229 (Conn. Super. Ct. Dec. 15, 2004), the court held that a town council member who had voted against holding executive session and subsequently voluntarily absented himself from the same executive session had not been “denied access” and did not have standing to appeal to the judicial system.

3. To set aside decision.

The FOIC has the power to set aside the decision of an agency to bar an individual from attending a meeting. See Conn. Gen. Stat. §1-206(b)(1) (“Any person wrongfully denied the right to attend a meet-

ing under FOIA, or denied any other right under FOIA, may appeal therefrom to the FOIC.”).

4. For ruling on future meetings.

FOIA does not contain any provisions for ruling on future meetings.

B. How to start.

1. Where to ask for ruling.

The appeal is brought by filing a notice of appeal with the FOIC.

Enforcement — The FOIC may impose civil penalties and declare null and void any and all actions taken at a meeting held in violation of FOIA. Conn. Gen. Stat. §1-206(b)(2).

a. Administrative forum.

(1). Agency procedure for challenge.

Not specified.

(2). Commission or independent agency.

Any person wrongfully denied the right to attend a meeting under FOIA, or denied any other right under FOIA, may appeal therefrom to the FOIC. Conn. Gen. Stat. §1-206(b)(1).

b. State attorney general.

Not specified.

c. Court.

An individual denied access to a meeting may appeal to the Superior Court following an adverse ruling by the FOIC.

2. Applicable time limits.

The notice of appeal must be filed within thirty days of the denial, except in the case of an unnoticed or secret meeting, when the notice must be filed within thirty days after receiving notice in fact that the meeting was held. Conn. Gen. Stat. §1-206(b)(1). The notice of appeal is deemed filed on the date it was received by the FOIC or on the date it is postmarked, if received more than thirty days after the date of the denial. Conn. Gen. Stat. §1-206(b)(1). Upon receipt of the notice of appeal, the FOIC will serve notice of the appeal upon interested parties. Conn. Gen. Stat. §1-206(b)(1).

3. Contents of request for ruling.

The notice of appeal should request a hearing on the denial or violation, and it should state:

- a. the public agency involved;
- b. the FOIA violation/denial; and
- c. the date of the violation.

4. How long should you wait for a response?

The general procedure before the FOIC is discussed above. *Records Outline* at V.C. If the appeal concerns an announced decision or an ongoing practice by an agency to meet in executive session, a preliminary hearing must be held by the FOIC within 72 hours. Conn. Gen. Stat. §1-206(b)(1). If the FOIC finds probable cause for a violation of FOIA by the public agency, then the agency shall not meet in the executive session pending the appeal. Conn. Gen. Stat. §1-206(b)(1). A final hearing must be held within five days. Conn. Gen. Stat. §1-206(b)(1).

5. Are subsequent or concurrent measures (formal or informal) available?

See discussion below. *Meetings Outline* at IV.C.

C. Court review of administrative decision.

An appeal from a decision of the FOIC may be taken to the Superior Court. The procedure for such an appeal is discussed above.

Records Outline at V.D.

1. Who may sue?

See *Records Outline* at V.D.

2. Will the court give priority to the pleading?

“Any appeal taken pursuant to this section shall be privileged in respect to its assignment for trial over all other actions except writs of *habeas corpus* and actions brought by or on behalf of the state, including informations on the relation of private individuals.” Conn. Gen. Stat. §1-206(d).

3. Pro se possibility, advisability.

FOIA does not contain provisions about *pro se* representation, nor are there any reported court decisions on the topic.

4. What issues will the court address?

a. Open the meeting.

The court may provide this remedy at its discretion.

b. Invalidate the decision.

The court may provide this remedy at its discretion.

c. Order future meetings open.

The court may provide this remedy at its discretion.

5. Pleading format.

See *Records Outline* at V.D.

6. Time limit for filing suit.

See *Records Outline* at V.D.

7. What court.

See *Records Outline* at V.D.

8. Judicial remedies available.

See *Records Outline* at V.D.

9. Availability of court costs and attorneys’ fees.

See *Records Outline* at V.D.

10. Fines.

See *Records Outline* at V.D.

11. Other penalties.

See *Records Outline* at V.D.

D. Appealing initial court decisions.

An appeal from a decision of the Superior Court may be taken to the Connecticut Appellate Court and, by certification from the Appellate Court’s decision, to the Connecticut Supreme Court. See *Records Outline* at V.E.

1. Appeal routes.

See *Records Outline* at V.E.

2. Time limits for filing appeals.

See *Records Outline* at V.E.

3. Contact of interested amici.

See *Records Outline* at V.E.

V. ASSERTING A RIGHT TO COMMENT.

FOIA does not provide any right for public comment or public participation at a meeting of a public agency. Instead, FOIA provides a right of access to watch and listen to a meeting of a public agency.

Statute

Open Records and Meetings

Connecticut General Statutes Annotated

Title 1. Provisions of General Application

Chapter 14. Freedom of Information Act

§ 1-200. Definitions

As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(1) “Public agency” or “agency” means:

(A) 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 with respect to its or their administrative functions;

(B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or

(C) Any “implementing agency”, as defined in section 32-222.

(2) “Meeting” means 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. “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. 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.

(3) “Caucus” means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision, or (B) the members of a multimember public agency, which members constitute a majority of the membership of the agency, or the other members of the agency who constitute a minority of the membership of the agency, who register their intention to be considered a majority caucus or minority caucus, as the case may be, for the purposes of the Freedom of Information Act, provided (i) the registration is made with the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of a political subdivision of the state for any public agency of a political subdivision of the state, or in the office of the clerk of each municipal member of any multi-town district or agency, (ii) no member is registered in more than one caucus at any one time, (iii) no such member’s registration is rescinded during the member’s remaining term of office, and (iv) a member may remain a registered member of the majority caucus or minority caucus regardless of whether the member changes his or her party affiliation under chapter 143.

(4) “Person” means natural person, partnership, corporation, limited liability company, association or society.

(5) “Public records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information

be handwritten, typed, tape-recorded, printed, photostatted, photographed or recorded by any other method.

(6) “Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and 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; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned;

(7) “Personnel search committee” means a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level employment position. Members of a “personnel search committee” shall not be considered in determining whether there is a quorum of the appointing or any other public agency.

(8) “Pending claim” means a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

(9) “Pending litigation” means (A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency’s consideration of action to enforce or implement legal relief or a legal right.

(10) “Freedom of Information Act” means this chapter.

(11) “Governmental function” means the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person’s administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program and such policies or decisions bind the public agency. “Governmental function” shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency.

§ 1-201. Division of Criminal Justice deemed not to be public agency, when

For the purposes of subdivision (1) of section 1-200, the Division of Criminal Justice shall not be deemed to be a public agency except in respect to its administrative functions.

§ 1-202. Application of freedom of information provisions to agency committee composed entirely of individuals who are not members of the agency

Any public agency may petition the Freedom of Information Commission before establishing a committee of the public agency which is to be composed entirely of individuals who are not members of the agency, to determine whether such committee may be exempted from the application of any provision of the Freedom of Information Act. If the commission, in its judgment, finds by reliable, probative and substantial evidence that the public interest in exempting the committee from the application of any such provision clearly outweighs the public interest in applying the provision to the committee, the commission shall issue an order, on appropriate terms, exempting the committee from the application of the provision.

§ 1-205. Freedom of Information Commission

(a) There shall be a Freedom of Information Commission consisting of five members appointed by the Governor, with the advice and consent of either

house of the General Assembly, who shall serve for terms of four years from the July first of the year of their appointment, except that of the members appointed prior to and serving on July 1, 1977, one shall serve for a period of six years from July 1, 1975, one shall serve for a period of four years from July 1, 1975, and one shall serve for a period of six years from July 1, 1977. Of the two new members first appointed after July 1, 1977, one shall serve from the date of such appointment until June 30, 1980, and one shall serve from the date of such appointment until June 30, 1982. No more than three members shall be members of the same political party.

(b) Each member shall receive fifty dollars per day for each day such member is present at a commission hearing or meeting, and shall be entitled to reimbursement for actual and necessary expenses incurred in connection therewith, in accordance with the provisions of section 4-1.

(c) The Governor shall select one of its members as a chairman. The commission shall maintain a permanent office at Hartford in such suitable space as the Commissioner of Public Works provides. All papers required to be filed with the commission shall be delivered to such office.

(d) The commission shall, subject to the provisions of the Freedom of Information Act promptly review the alleged violation of said Freedom of Information Act and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said Freedom of Information Act and may for the purpose of investigating any violation hold a hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production for examination of any books and papers which the commission deems relevant in any matter under investigation or in question. In case of a refusal to comply with any such subpoena or to testify with respect to any matter upon which that person may be lawfully interrogated, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) The Freedom of Information Commission, and the Department of Information Technology with respect to access to and disclosure of computer-stored public records, shall conduct training sessions, at least annually, for members of public agencies for the purpose of educating such members as to the requirements of sections 1-7 to 1-14, inclusive, 1-16 to 1-18, inclusive, 1-200 to 1-202, inclusive, 1-205, 1-206, 1-210 to 1-217, inclusive, 1-225 to 1-232, inclusive, 1-240, 1-241 and 19a-342.

(f) Not later than December 31, 2001, the Freedom of Information Commission shall create, publish and provide to the chief elected official of each municipality a model ordinance concerning the establishment by any municipality of a municipal freedom of information advisory board to facilitate the informed and efficient exchange of information between the commission and such municipality. The commission may amend the model ordinance from time to time.

(g) When the General Assembly is in session, the Governor shall have the authority to fill any vacancy on the commission, with the advice and consent of either house of the General Assembly. When the General Assembly is not in session any vacancy shall be filled pursuant to the provisions of section 4-19. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission and three members of the commission shall constitute a quorum.

(h) The commission shall, subject to the provisions of chapter 67, employ such employees as may be necessary to carry out the provisions of this chapter. The commission may enter into such contractual agreements as may be necessary for the discharge of its duties, within the limits of its appropriated funds and in accordance with established procedures.

(i) The commission shall make available to the public the printed reports of its decisions, opinions and related materials at a reasonable cost not to exceed the actual cost thereof to said commission but not less than twenty-eight dollars per item.

(j) The Freedom of Information Commission shall not be construed to be a commission or board within the meaning of section 4-9a.

§ 1-205a. Recommended appropriations. Allotments

(a) Notwithstanding any provision of the general statutes, the appropriations recommended for the Freedom of Information Commission, as established in section 1-205, shall be the estimates of expenditure requirements transmitted

to the Secretary of the Office of Policy and Management by the executive director of the commission and the recommended adjustments and revisions of such estimates shall be the recommended adjustments and revisions, if any, transmitted by said executive director to the Office of Policy and Management.

(b) Notwithstanding any provision of the general statutes, the Governor shall not reduce allotment requisitions or allotments in force concerning the Freedom of Information Commission.

§ 1-206. Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Service of process upon commission. Frivolous appeals

(a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)

(1) Any person denied the right to inspect or copy records under section 1-210, or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed within thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed within thirty days after the person filing the appeal receives notice in fact that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken. Upon receipt of such notice, the commission shall serve upon all parties, by certified or registered mail, a copy of such notice together with any other notice or order of such commission. In the case of the denial of a request to inspect or copy records contained in a public employee's personnel or medical file or similar file under subsection (c) of section 1-214, the commission shall include with its notice or order an order requiring the public agency to notify any employee whose records are the subject of an appeal, and the employee's collective bargaining representative, if any, of the commission's proceedings and, if any such employee or collective bargaining representative has filed an objection under said subsection (c), the agency shall provide the required notice to such employee and collective bargaining representative by certified mail, return receipt requested or by hand delivery with a signed receipt. A public employee whose personnel or medical file or similar file is the subject of an appeal under this subsection may intervene as a party in the proceedings on the matter before the commission. Said commission shall, after due notice to the parties, hear and decide the appeal within one year after the filing of the notice of appeal. The commission shall adopt regulations in accordance with chapter 54, establishing criteria for those appeals which shall be privileged in their assignment for hearing. Any such appeal shall be heard within thirty days after receipt of a notice of appeal and decided within sixty days after the hearing. If a notice of appeal concerns an announced agency decision to meet in executive session or an ongoing agency practice of meeting in executive sessions, for a stated purpose, the commission or a member or members of the commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal within seventy-two hours after receipt of the notice, provided such notice shall be given to the parties at least forty-eight hours prior to such hearing. If after the preliminary hearing the commission finds probable cause to believe that the agency decision or practice is in violation of sections 1-200, and 1-225, the agency shall not meet in executive session for such purpose until the commission decides the appeal. If probable cause is found by the commission, it shall conduct a final hearing on the appeal and render its decision within five days of the completion of the preliminary hearing.

(2) In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend and may require the production or copying of any public record. In addition, upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after

the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars. If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars. The commission shall notify a person of a penalty levied against him pursuant to this subsection by written notice sent by certified or registered mail. If a person fails to pay the penalty within thirty days of receiving such notice, the superior court for the judicial district of Hartford shall, on application of the commission, issue an order requiring the person to pay the penalty imposed. If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process. Any party aggrieved by the commission's denial of such leave may apply to the superior court for the judicial district of Hartford, within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal.

(3) In making the findings and determination under subdivision (2) of this subsection the commission shall consider the nature of any injustice or abuse of administrative process, including but not limited to: (A) The nature, content, language or subject matter of the request or the appeal; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking the appeal; and (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal.

(4) Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act.

(c) Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of the Freedom of Information Act may appeal under the provisions of subsection (b) of this section. A public agency of the state shall be presumed to have given timely and proper notice of any meeting as provided for in said Freedom of Information Act if notice is given in the Connecticut Law Journal or a Legislative Bulletin. A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said Freedom of Information Act by first-class mail to the address indicated in the request of the person requesting the same. If such commission determines that notice was improper, it may, in its sound discretion, declare any or all actions taken at such meeting null and void.

(d) Any party aggrieved by the decision of said commission may appeal therefrom, in accordance with the provisions of section 4-183. Notwithstanding the provisions of section 4-183, in any such appeal of a decision of the commission, the court may conduct an in camera review of the original or a certified copy of the records which are at issue in the appeal but were not included in the record of the commission's proceedings, admit the records into evidence and order the records to be sealed or inspected on such terms as the court deems fair and appropriate, during the appeal. The commission shall have standing to defend, prosecute or otherwise participate in any appeal of any of its decisions and to take an appeal from any judicial decision overturning or modifying a decision of the commission. If aggravation is a jurisdictional prerequisite to the commission taking any such appeal, the commission shall be deemed to be aggrieved. Notwithstanding the provisions of section 3-125, legal

counsel employed or retained by said commission shall represent said commission in all such appeals and in any other litigation affecting said commission. Notwithstanding the provisions of subsection (c) of section 4-183, and section 52-64, all process shall be served upon said commission at its office. Any appeal taken pursuant to this section shall be privileged in respect to its assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. Nothing in this section shall deprive any party of any rights he may have had at common law prior to January 1, 1958. If the court finds that any appeal taken pursuant to this section or section 4-183, is frivolous or taken solely for the purpose of delay, it shall order the party responsible therefor to pay to the party injured by such frivolous or dilatory appeal costs or attorney's fees of not more than one thousand dollars. Such order shall be in addition to any other remedy or disciplinary action required or permitted by statute or by rules of court.

(e) Within sixty days after the filing of a notice of appeal alleging violation of any right conferred by the Freedom of Information Act concerning records of the Department of Environmental Protection relating to the state's hazardous waste program under sections 22a-448 to 22a-454, inclusive, the Freedom of Information Commission shall, after notice to the parties, hear and decide the appeal. Failure by the commission to hear and decide the appeal within such sixty-day period shall constitute a final decision denying such appeal for purposes of this section and section 4-183. On appeal, the court may, in addition to any other powers conferred by law, order the disclosure of any such records withheld in violation of the Freedom of Information Act and may assess against the state reasonable attorney's fees and other litigation costs reasonably incurred in an appeal in which the complainant has prevailed against the Department of Environmental Protection.

§ 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. Each such agency shall make, keep and maintain a record of the proceedings of its meetings.

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

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

(2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;

(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) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (F) 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, or (G) uncorroborated allegations subject to destruction pursuant to section 1-216;

(4) Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled;

(5)

(A) Trade secrets, which for purposes of the Freedom of Information Act, are 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, and not being 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, not required by statute;

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

(7) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision;

(8) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish the applicant's personal qualification for the license, certificate or permit applied for;

(9) Records, reports and statements of strategy or negotiations with respect to collective bargaining;

(10) Records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship;

(11) Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age, provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school;

(12) Any information obtained by the use of illegal means;

(13) Records of an investigation or the name of an employee providing information under the provisions of section 4-61dd;

(14) Adoption records and information provided for in sections 45a-746, 45a-750 and 45a-751;

(15) Any page of a primary petition, nominating petition, referendum petition or petition for a town meeting submitted under any provision of the general statutes or of any special act, municipal charter or ordinance, until the required processing and certification of such page has been completed by the official or officials charged with such duty after which time disclosure of such page shall be required;

(16) Records of complaints, including information compiled in the investigation thereof, brought to a municipal health authority pursuant to chapter 368e or a district department of health pursuant to chapter 368f, until such time as the investigation is concluded or thirty days from the date of receipt of the complaint, whichever occurs first;

(17) Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g;

(18) Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

(A) Security manuals, including emergency plans contained or referred to in such security manuals;

(B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers;

(19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) with respect to records concerning any executive branch agency of the state or any municipal, district or regional agency, by the Commissioner of Public Works, after consultation with the chief executive officer of the agency; (B) with respect to records concerning Judicial Department facilities, by the Chief Court Administrator; and (C) with respect to records concerning the Legislative Department, by the executive director of the Joint Committee on Legislative Management. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

(i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel at government-owned or leased institutions or facilities;

(viii) Emergency plans and emergency recovery or response plans; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in

a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

(20) Records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system;

(21) The residential, work or school address of any participant in the address confidentiality program established pursuant to sections 54-240 to 54-240o, inclusive;

(22) The electronic mail address of any person that is obtained by the Department of Transportation in connection with the implementation or administration of any plan to inform individuals about significant highway or railway incidents.

(c) Whenever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Division facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Division facility of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility or Whiting Forensic Division facility.

(d) Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Public Works of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the Commissioner of Public Works, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management.

(e) Notwithstanding the provisions of subdivisions (1) and (16) of subsection (b) of this section, disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising 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 a public agency, which is subject to revision prior to submission to or discussion among the members of such agency;

(2) All records of investigation conducted with respect to any tenement house, lodging house or boarding house as defined in section 19a-355, or any nursing home, residential care home or rest home, as defined in section 19a-490, by any municipal building department or housing code inspection department, any local or district health department, or any other department charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation or occupancy of such buildings; and

(3) The names of firms obtaining bid documents from any state agency.

§ 1-211. Disclosure of computer-stored public records. Contracts. Acquisition of system, equipment, software to store or retrieve nonexempt public records

(a) Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom

of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, if the agency can reasonably make such copy or have such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212.

(b) Except as otherwise provided by state statute, no public agency shall enter into a contract with, or otherwise obligate itself to, any person if such contract or obligation impairs the right of the public under the Freedom of Information Act to inspect or copy the agency's nonexempt public records existing on-line in, or stored on a device or medium used in connection with, a computer system owned, leased or otherwise used by the agency in the course of its governmental functions.

(c) On and after July 1, 1992, before any public agency acquires any computer system, equipment or software to store or retrieve nonexempt public records, it shall consider whether such proposed system, equipment or software adequately provides for the rights of the public under the Freedom of Information Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records under the Freedom of Information Act. In meeting its obligations under this subsection, each state public agency shall consult with the Department of Information Technology as part of the agency's design analysis prior to acquiring any such computer system, equipment or software. The Department of Information Technology shall adopt written guidelines to assist municipal agencies in carrying out the purposes of this subsection. Nothing in this subsection shall require an agency to consult with said department prior to acquiring a system, equipment or software or modifying software, if such acquisition or modification is consistent with a design analysis for which such agency has previously consulted with said department. The Department of Information Technology shall consult with the Freedom of Information Commission on matters relating to access to and disclosure of public records for the purposes of this subsection. The provisions of this subsection shall not apply to software modifications which would not affect the rights of the public under the Freedom of Information Act.

§ 1-212. Copies and scanning of public records. Fees

(a) Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record. The fee for any copy provided in accordance with the Freedom of Information Act:

(1) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page; and

(2) By all other public agencies, as defined in section 1-200, shall not exceed fifty cents per page. If any copy provided in accordance with said Freedom of Information Act requires a transcription, or if any person applies for a transcription of a public record, the fee for such transcription shall not exceed the cost thereof to the public agency.

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost

thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Information Technology shall monitor the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more. The sales tax provided in chapter 219 shall not be imposed upon any transaction for which a fee is required or permissible under this section or section 1-227.

(d) The public agency shall waive any fee provided for in this section when:

- (1) The person requesting the records is an indigent individual;
- (2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210;
- (3) In its judgment, compliance with the applicant's request benefits the general welfare; or
- (4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties.

(e) Except as otherwise provided by law, the fee for any person who has the custody of any public records or files for certifying any copy of such records or files, or certifying to any fact appearing therefrom, shall be for the first page of such certificate, or copy and certificate, one dollar; and for each additional page, fifty cents. For the purpose of computing such fee, such copy and certificate shall be deemed to be one continuous instrument.

(f) The Secretary of the State, after consulting with the chairperson of the Freedom of Information Commission, the Commissioner of Correction and a representative of the Judicial Department, shall propose a fee structure for copies of public records provided to an inmate, as defined in section 18-84, in accordance with subsection (a) of this section. The Secretary of the State shall submit such proposed fee structure to the joint standing committee of the General Assembly having cognizance of matters relating to government administration, not later than January 15, 2000.

(g) Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed ten dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner. As used in this section, "hand-held scanner" means a battery operated electronic scanning device the use of which (1) leaves no mark or impression on the public record, and (2) does not unreasonably interfere with the operation of the public agency.

§ 1-213. Agency administration. Disclosure of personnel, birth and tax records. Disclosure of voice mails by public agencies. Judicial records and proceedings

(a) The Freedom of Information Act shall be:

(1) Construed as requiring each public agency to open its records concerning the administration of such agency to public inspection; and

(2) Construed as requiring each public agency to disclose information in its personnel files, birth records or confidential tax records to the individual who is the subject of such information.

(b) Nothing in the Freedom of Information Act shall be deemed in any manner to:

(1) Affect the status of judicial records as they existed prior to October 1, 1975, nor to limit the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state;

(2) Require disclosure of any record of a personnel search committee which, because of name or other identifying information, would reveal the identity of an executive level employment candidate without the consent of such candidate; or

(3) Require any public agency to transcribe the content of any voice mail message and retain such record for any period of time. As used in this subdivision, "voice mail" means all information transmitted by voice for the sole purpose of its electronic receipt, storage and playback by a public agency.

§ 1-214. Public employment contracts as public record. Objection to disclosure of personnel or medical files

(a) Any contract of employment to which the state or a political subdivision of the state is a party shall be deemed to be a public record for the purposes of section 1-210.

(b) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

(c) A public agency which has provided notice under subsection (b) of this section 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 the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency.

§ 1-215. Record of an arrest as public record. Exception

(a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(b) For the purposes of this section, "record of the arrest" means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.

§ 1-216. Review and destruction of records consisting of uncorroborated allegations of criminal activity

Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

§ 1-217. Nondisclosure of residential addresses of certain individuals

(a) No public agency may disclose, under the Freedom of Information Act, the residential address of any of the following persons:

- (1) A federal court judge, federal court magistrate, judge of the Superior

Court, Appellate Court or Supreme Court of the state, or family support magistrate;

(2) A sworn member of a municipal police department or a sworn member of the Division of State Police within the Department of Public Safety;

(3) An employee of the Department of Correction;

(4) An attorney-at-law who represents or has represented the state in a criminal prosecution;

(5) An attorney-at-law who is or has been employed by the Public Defender Services Division or a social worker who is employed by the Public Defender Services Division;

(6) An inspector employed by the Division of Criminal Justice;

(7) A firefighter;

(8) An employee of the Department of Children and Families;

(9) A member or employee of the Board of Pardons and Paroles;

(10) An employee of the judicial branch; or

(11) A member or employee of the Commission on Human Rights and Opportunities.

(b) The business address of any person described in this section shall be subject to disclosure under section 1-210. The provisions of this section shall not apply to Department of Motor Vehicles records described in section 14-10.

§ 1-218. Certain contracts for performance of governmental functions. Records and files subject to Freedom of Information Act

Each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206.

§ 1-219. Veterans' military records

(a) As used in this section:

(1) "Armed forces" means the Army, Navy, Marine Corps, Coast Guard or Air Force of the United States;

(2) "veteran" means any person honorably discharged from, or released under honorable conditions from active service or reserve status in the armed forces;

(3) "military discharge document" means a United States Department of Defense form, including, but not limited to, a DD 214 form, or any valid paper that evidences the service, discharge or retirement of a veteran from the armed forces that contains personal information such as a service number or Social Security number;

(4) "person" means any individual or entity, including, but not limited to, a relative of a veteran, a licensed funeral director or embalmer, an attorney-at-law, an attorney-in-fact, an insurance company or a veterans' advocate; and

(5) "public agency" or "agency" means a public agency, as defined in section 1-200.

(b) A veteran or designee may file a military discharge document with the town clerk of the town in which the veteran resides or with any other public agency if the military discharge document is related to the business of the town or other agency, and the town or agency shall maintain and record the military discharge document in accordance with this section.

(c) Notwithstanding any provision of chapter 55 or any provision of section 11-8 or 11-8a, any military discharge document filed by or on behalf of a veteran with a public agency before, on or after October 1, 2002, except a military

discharge document recorded before October 1, 2002, on the land records of a town, shall be retained by the agency separate and apart from the other records of the agency. The contents of such document shall be confidential for at least seventy-five years from the date the document is filed with the public agency, except that:

(1) The information contained in the document shall be available to the veteran, or a conservator of the person of the veteran or a conservator of the estate of the veteran, at all times;

(2) Any information contained in such military discharge document which is necessary to establish, or that aids in establishing, eligibility for any local, state or federal benefit or program applied for by, or on behalf of, the veteran, including, but not limited to, the name of the veteran, the veteran's residential address, dates of qualifying active or reserve military service, or military discharge status, shall be available to the public at all times; and

(3) In addition to the information available under subdivision (2) of this subsection, any other information contained in the document shall be available to (A) any person who may provide a benefit to, or acquire a benefit for, the veteran or the estate of the veteran, provided the person needs the information to provide the benefit and submits satisfactory evidence of such need to the agency, (B) the State Librarian as required for the performance of his or her duties, and (C) a genealogical society incorporated or authorized by the Secretary of the State to do business or conduct affairs in this state or a member of such genealogical society.

(d) The provisions of this section concerning the maintenance and recording of Department of Defense documents shall not apply to the State Library Board or the State Librarian.

§ 1-225. Meetings of government agencies to be public. Recording of votes. Schedule and agenda of meetings to be filed. Notice of special meetings. Executive sessions

(a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken, which minutes shall be available for public inspection within seven days of the session to which they refer.

(b) Each such public agency of the state shall file not later than January thirty-first of each year in the office of the Secretary of the State the schedule of the regular meetings of such public agency for the ensuing year, except that such provision shall not apply to the General Assembly, either house thereof or to any committee thereof. Any other provision of the Freedom of Information Act notwithstanding, the General Assembly at the commencement of each regular session in the odd-numbered years, shall adopt, as part of its joint rules, rules to provide notice to the public of its regular, special, emergency or interim committee meetings. The chairperson or secretary of any such public agency of any political subdivision of the state shall file, not later than January thirty-first of each year, with the clerk of such subdivision the schedule of regular meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed. The chief executive officer of any multitown district or agency shall file, not later than January thirty-first of each year, with the clerk of each municipal member of such district or agency, the schedule of regular meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed.

(c) The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, in such agency's regular office or place of business or, if there is no such office or place of business, in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

(d) Notice of each special meeting of every public agency, except for the General Assembly, either house thereof or any committee thereof, shall be given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of

such subdivision for any public agency of a political subdivision of the state and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency, except for the General Assembly, either house thereof or any committee thereof, any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the Secretary of the State, the clerk of such political subdivision, or the clerk of each municipal member of such multitown district or agency, as the case may be, not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency. In addition, such written notice shall be delivered to the usual place of abode of each member of the public agency so that the same is received prior to such special meeting. The requirement of delivery of such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the public agency a written waiver of delivery of such notice. Such waiver may be given by telegram. The requirement of delivery of such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Nothing in this section shall be construed to prohibit any agency from adopting more stringent notice requirements.

(e) No member of the public shall be required, as a condition to attendance at a meeting of any such body, to register the member's name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to the member's attendance.

(f) A public agency may hold an executive session, as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

(g) In determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded.

§ 1-226. *Recording, broadcasting or photographing meetings*

(a) At any meeting of a public agency which is open to the public, pursuant to the provisions of section 1-225, proceedings of such public agency may be recorded, photographed, broadcast or recorded for broadcast, subject to such rules as such public agency may have prescribed prior to such meeting, by any person or by any newspaper, radio broadcasting company or television broadcasting company. Any recording, radio, television or photographic equipment may be so located within the meeting room as to permit the recording, broadcasting either by radio, or by television, or by both, or the photographing of the proceedings of such public agency. The photographer or broadcaster and its personnel, or the person recording the proceedings, shall be required to handle the photographing, broadcast or recording as inconspicuously as possible and in such manner as not to disturb the proceedings of the public agency. As used herein the term television shall include the transmission of visual and audible signals by cable.

(b) Any such public agency may adopt rules governing such recording, photography or the use of such broadcasting equipment for radio and television stations but, in the absence of the adoption of such rules and regulations by such public agency prior to the meeting, such recording, photography or the use of such radio and television equipment shall be permitted as provided in subsection (a) of this section.

(c) Whenever there is a violation or the probability of a violation of subsections (a) and (b) of this section the superior court, or a judge thereof, for the judicial district in which such meeting is taking place shall, upon application made by affidavit that such violation is taking place or that there is reasonable probability that such violation will take place, issue a temporary injunction against any such violation without notice to the adverse party to show cause why such injunction should not be granted and without the plaintiff's giving bond. Any person or public agency so enjoined may immediately appear and be heard by the court or judge granting such injunction with regard to dissolving

or modifying the same and, after hearing the parties and upon a determination that such meeting should not be open to the public, said court or judge may dissolve or modify the injunction. Any action taken by a judge upon any such application shall be immediately certified to the court to which such proceedings are returnable.

§ 1-227. *Mailing of notice of meetings to persons filing written request. Fees*

The public agency shall, where practicable, give notice by mail of each regular meeting, and of any special meeting which is called, at least one week prior to the date set for the meeting, to any person who has filed a written request for such notice with such body, except that such body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting. Such notice requirement shall not apply to the general assembly, either house thereof or to any committee thereof. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within thirty days after January first of each year. Such public agency may establish a reasonable charge for sending such notice based on the estimated cost of providing such service.

§ 1-228. *Adjournment of meetings. Notice*

The public agency may adjourn any regular or special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular meeting the clerk or the secretary of such body may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in section 1-225, for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular or special meeting was held, within twenty-four hours after the time of the adjournment. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings, by ordinance, resolution, by law or other rule.

§ 1-229. *Continued hearings. Notice*

Any hearing being held, or noticed or ordered to be held, by the public agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of such agency in the same manner and to the same extent set forth in section 1-228, for the adjournment of meeting, provided, that if the hearing is continued to a time less than twenty-four hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted on or near the door of the place where the hearing was held immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 1-230. *Regular meetings to be held pursuant to regulation, ordinance or resolution*

The public agency shall provide by regulation, in the case of a state agency, or by ordinance or resolution in the case of an agency of a political subdivision, the place for holding its regular meetings. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If it shall be unsafe to meet in the place designated, the meetings may be held at such place as is designated by the presiding officer of the public agency; provided a copy of the minutes of any such meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the Secretary of the State or the clerk of the political subdivision, as the case may be, not later than seventy-two hours following the holding of such meeting.

§ 1-231. *Executive sessions*

(a) At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes

of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

(b) An executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200.

§ 1-232. Conduct of meetings

In the event that any meeting of a public agency is interrupted by any person or group of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are wilfully interrupting the meetings, the members of the agency conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit such public agency from establishing a procedure for readmitting an individual or individuals not responsible for wilfully disturbing the meeting.

§ 1-240. Penalties

(a) Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47 or 871, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense.

(b) Any member of any public agency who fails to comply with an order of the Freedom of Information Commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

§ 1-241. Injunctive relief from frivolous, unreasonable or harassing freedom of information appeals

A public agency, as defined in subdivision (1) of section 1-200, may bring an action to the Superior Court against any person who was denied leave by the Freedom of Information Commission to have his appeal heard by the commission under subsection (b) of section 1-206 because the commission determined and found that such appeal or the underlying request would perpetrate an injustice or would constitute an abuse of the commission's administrative process. The action authorized under this section shall be limited to an injunction prohibiting such person from bringing any further appeal to the commission which would perpetrate an injustice or would constitute an abuse of the commission's administrative process. If, after such an injunction is ordered, the person subject to the injunction brings a further appeal to the Freedom of Information Commission and the commission determines that such appeal would perpetrate an injustice or would constitute an abuse of the commission's administrative process, such person shall be conclusively deemed to have violated the injunction and such agency may seek further injunctive and equitable relief, damages, attorney's fees and costs, as the court may order.

§ 1-242. Actions involving provisions of the Freedom of Information Act. Notice of litigation to the Freedom of Information Commission. Intervention by commission

(a) In any action involving the assertion that a provision of the Freedom of Information Act has been violated or constitutes a defense, the court to which such action is brought shall make an order requiring the party asserting such violation or defense, as applicable, to provide the Freedom of Information Commission with notice of the action and a copy of the complaint and all pleadings in the action by first-class mail or personal service to the address of the commission's office.

(b) Upon the filing of a verified pleading by the commission, the court to which an action described in subsection (a) of this section is brought may grant the commission's motion to intervene in the action for purposes of participating in any issue involving a provision of the Freedom of Information Act.

