



**Substitute House Bill No. 5175**

**Public Act No. 18-95**

**AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF INFORMATION ACT AND PETITIONS FOR RELIEF FROM VEXATIOUS REQUESTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (b) of section 1-206 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2018*):

(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 not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice 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

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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 not later than thirty days after receipt of a notice of appeal and decided not later than 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 not later than 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. During such preliminary hearing, the commission shall take evidence and receive testimony from the parties. If after the preliminary hearing the commission finds probable cause to believe

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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 not later than five days after the completion of the preliminary hearing. Such decision shall specify the commission's findings of fact and conclusions of law.

(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

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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, including, among other factors, whether the request or appeal is repetitious or cumulative; (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; (D) any history of

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nonappearance at commission proceedings or disruption of the commission's administrative process, including, but not limited to, delaying commission proceedings; and (E) the refusal to participate in settlement conferences conducted by a commission ombudsman in accordance with the commission's regulations.

(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.

(5) Notwithstanding any provision of this subsection, a public agency may petition the commission for relief from a requester that the public agency alleges is a vexatious requester. Such petition shall be sworn under penalty of false statement, as provided in section 53a-157b, and shall detail the conduct which the agency alleges demonstrates a vexatious history of requests, including, but not limited to: (A) The number of requests filed and the total number of pending requests; (B) the scope of the requests; (C) the nature, content, language or subject matter of the requests; (D) the nature, content, language or subject matter of other oral and written communications to the agency from the requester; and (E) a pattern of conduct that amounts to an abuse of the right to access information under the Freedom of Information Act or an interference with the operation of the agency. Upon receipt of such petition, the executive director of the commission shall review the petition and determine whether it warrants a hearing. If the executive director determines that a hearing

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is not warranted, the executive director shall recommend that the commission deny the petition without a hearing. The commission shall vote at its next regular meeting after such recommendation to accept or reject such recommendation and, after such meeting, shall issue a written explanation of the reasons for such acceptance or rejection. If the executive director determines that a hearing is warranted, the commission shall serve upon all parties, by certified or registered mail, a copy of such petition together with any other notice or order of the commission. The commission shall, after due notice to the parties, hear and either grant or deny the petition within one year after its filing. Upon a grant of such petition, the commission may provide appropriate relief commensurate with the vexatious conduct, including, but not limited to, an order that the agency need not comply with future requests from the vexatious requester for a specified period of time, but not to exceed one year. Any party aggrieved by the commission's granting of such petition may apply to the superior court for the judicial district of New Britain, within fifteen days of the commission meeting at which such petition was granted, for an order reversing the commission's decision.

Approved June 7, 2018