

**Testimony of Colleen M. Murphy, Executive Director and General Counsel
Freedom of Information Commission
Before the Joint Committee on Appropriations
February 13, 2020**

Regarding Governor's Bill 5005, An Act Adjusting the State Budget for
the Biennium Ending June 30, 2021

Thank you, Senator Osten, Representative Walker, and honorable members of the Committee, for the opportunity to submit testimony on the Governor's Proposed Adjustments to the State Budget for Fiscal Year 2021, as set forth in Governor's Bill 5005.

The Freedom of Information Commission's ("FOIC") mission is to administer and enforce the provisions of the Connecticut Freedom of Information Act, and to thereby ensure citizen access to the records and meetings of public agencies in the State of Connecticut.

The FOIC has two concerns relative to the Governor's Recommended Adjustments:

I. **HR Position Reallocation.** The Governor's Recommended Adjustments reallocate the funding and position (-\$82,821) for the Commission's Human Resource ("HR") Specialist position (to The Department of Administrative Services, "DAS"), noting that it is part of the Governor's initiative to streamline state government operations. The FOI Commission believes that it should be deemed an "out of scope" agency, similar to the other agencies currently placed in that category (Constitutional offices, Higher Education, Division of Criminal Justice, Office of the Chief Medical Examiner and quasi-public agencies) and that the HR position should remain within the FOIC.

The HR position that resides in the FOIC is a shared position, pursuant to an MOU with the Office of State Ethics ("OSE") and the State Elections Enforcement Commission ("SEEC"), following the failed merger of these three watchdog entities into the Office of Governmental Accountability. Like many of the other out of scope agencies, the watchdogs are located within the Executive Branch but are not part of the Executive Branch. The FOI Commission is quasi-judicial in nature and has jurisdiction and oversight over all of the agencies within the Executive Branch. For these reasons, it is critical that the watchdogs retain their independence. When the three watchdogs were restored to their independent status in 2016, the then DAS Commissioner entered into an agreement with the FOIC, OSE and SEEC to transfer a position, along with funding from DAS, to the watchdogs, to ensure efficiency and the independence of the agencies with respect to their HR functions. As an out of scope agency, the FOIC (and the other watchdogs) will necessarily follow all of the state rules and regulations relative to its HR and labor relations functions, and will continue to partner with DAS. The position itself however, should remain within, and be accountable to, the FOIC, OSE and SEEC. This will protect both the watchdogs, this administration and future administrations from any concerns regarding interference with watchdog independence.

The FOIC therefore requests that the HR position and funding NOT be reallocated to DAS.

II. The Governor's Recommended Budget Adjustments do not include the Budget Option requested by the FOIC (\$78,037 for FY 21 and do not comport with the budgetary independence language contained in Conn. Gen. Stat. Sec. 1-205a

Conn. Gen. Stat. Sec. 1-205a provides:

Recommended appropriations. Allotments. (a) Notwithstanding any provision of the general statutes, the appropriations recommended for the Freedom of Information Commission 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.

For a second year in a row, the FOIC submitted a Budget Option for funding to fill an existing attorney position (**\$78,037 for FY 21**). Last year, the Commission submitted the request as a Budget Option, rather than part of its original budget submission, at the direction of the Office of Policy and Management ("OPM"). OPM did not include the requested Option in the Governor's proposed budget for the 20/21 biennium. The FOIC requested funding for the position again this year for the second year of the biennium (see Option attached to this testimony).

For a second time, the Governor's recommendations (see Page B-11 of the Governor's Recommended Budget Adjustments) do not reflect that the Commission requested this Option. The only reference to the Commission's submission is in Section C of the Governor's Recommended Budget Adjustments (Page C-2), which shows only a line item, displaying the total amount requested by the FOIC (\$1,785,229). The Governor's Budget Bill 5005 itself shows only the dollar amount requested and then a reduction (line T621) (the total reduction is listed for all three watchdogs as \$286,944; however OPM staff has informed the watchdogs that \$160,858 is the proposed reduction for the FOIC), which brings the recommended appropriation for the FOIC down to \$1,624,371.

Long-term, the FOIC is very concerned that the explicit language and intent of Sec.1-205a, has not been followed. That provision, dating back to 2004, purposely requires that the budget submission and the Recommended Adjustments transmitted to the legislature *shall be* the recommended budget and adjustments submitted by the Executive Director of the Commission. The Governor should not propose Reductions in this manner. It is the role of the legislature to determine the appropriate funding for the FOIC. The FOIC intends to address this long range issue with the Governor's Office and OPM. It is an issue that ought to concern all agencies with similar budgetary independence language, including Legislative Management and the Judicial Department. Following the passage of Sec.1-205a, ensuing Governor's Budget Recommendations initially adhered to the provisions therein. Over time however, administrations have stopped following the mandates of Sec.1-205a. This is a matter that must be remedied in full.

The FOIC requests consideration of the Commission's Budget Option submission and funding to fill the position as a Staff Attorney 1 in FY21 (\$78,037).

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Mary Schwind, Managing Director and Associate General Counsel, at (860) 566-5682.

Agency Technical Option Submission
 Freedom of Information Commission

Signed (Agency Head) _____ Title _____ Date _____
Colleen M. Murphy Exec. Dir. & Gen'l Counsel 10/1/19

Fund	Agency Priority	Adjustment Title	FY 2021 Amount
11000 - General Fund			
	0	Funding for Staff Attorney 1 Established Position	78,037
	Total		78,037
Total			78,037

Freedom of Information Commission

11000 - General Fund

Adjustment Type:

-1 - Other - Other

Agency Title:

Funding for Staff Attorney 1 Established Position

Agency Description:

The FOIC was forced to lay off two attorneys in May 2016 due to severe budget cuts, one position was managerial, while the second was a Staff Attorney 2. The salaries savings was transferred to cover necessary OE operating expenses. Both of these unfilled positions have not been considered in the personal services baseline since then, as the PS and OE line items were merged in a prior year's budget.

At this time, the Commission seeks funding to fill just one of those existing position, at an entry level, Staff Attorney 1 rate.

The FOIC has a significant backlog of contested cases (which, pursuant to sec. 1-206(b)(1), must be decided by the FOIC within a one year timespan). The complexity and scope of such contested cases has markedly increased over the past few years, along with the volume of in camera record submissions (in some instances, amounting to thousands of pages), each page of which must be reviewed and analyzed by legal staff prior to then drafting and rendering a detailed decision in a contested case (the Commission will provide examples and documentation relative to this, when appropriate).

In addition, the Commission's jurisdiction expanded during the 2018 legislative session, due to the passage of Public Act 18-95, codified as sec. 1-206(b)(5) which permits public agencies to seek relief from the Commission from vexatious or frivolous requesters. Therefore, the need for funding to fill one attorney position, at a much lower cost than in prior years, is critical.

The FOIC requests that this Technical Adjustment be transmitted to the Legislature pursuant to sec. 1-205a.

Agency Priority:

0

System ID:

14353

	SID	Agency 2021
Financials		78,037
12524 - Freedom of Information Commission		78,037
Total Financials		