



House of Representatives

General Assembly

File No. 499

February Session, 2022

House Bill No. 5458

House of Representatives, April 14, 2022

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING REVISIONS TO THE FREEDOM OF INFORMATION ACT RECOMMENDED BY THE FREEDOM OF INFORMATION COMMISSION.

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

1 Section 1. Section 1-200 of the 2022 supplement to the general statutes
2 is repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2022*):

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

7 (1) "Public agency" or "agency" means:

8 (A) Any executive, administrative or legislative office of the state or
9 any political subdivision of the state and any state or town agency, any
10 department, institution, bureau, board, commission, authority or official
11 of the state or of any city, town, borough, municipal corporation, school

12 district, regional district or other district or other political subdivision of
13 the state, including any committee of, or created by, any such office,
14 subdivision, agency, department, institution, bureau, board,
15 commission, authority or official, and also includes any judicial office,
16 official, or body or committee thereof but only with respect to its or their
17 administrative functions, and for purposes of this subparagraph,
18 "judicial office" includes, but is not limited to, the Division of Public
19 Defender Services;

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

22 (C) Any "implementing agency", as defined in section 32-222.

23 (2) "Meeting" means any hearing or other proceeding of a public
24 agency, any convening or assembly of a quorum of a multimember
25 public agency, and any communication by or to a quorum of a
26 multimember public agency, whether in person or by means of
27 electronic equipment, to discuss or act upon a matter over which the
28 public agency has supervision, control, jurisdiction or advisory power.
29 "Meeting" does not include: Any meeting of a personnel search
30 committee for executive level employment candidates; any chance
31 meeting, or a social meeting neither planned nor intended for the
32 purpose of discussing matters relating to official business; strategy or
33 negotiations with respect to collective bargaining; a caucus of members
34 of a single political party notwithstanding that such members also
35 constitute a quorum of a public agency; an administrative or staff
36 meeting of a single-member public agency; and communication limited
37 to notice of meetings of any public agency or the agendas thereof. A
38 quorum of the members of a public agency who are present at any event
39 which has been noticed and conducted as a meeting of another public
40 agency under the provisions of the Freedom of Information Act shall not
41 be deemed to be holding a meeting of the public agency of which they
42 are members as a result of their presence at such event.

43 (3) "Caucus" means (A) a convening or assembly of the enrolled
44 members of a single political party who are members of a public agency

45 within the state or a political subdivision, or (B) the members of a
46 multimember public agency, which members constitute a majority of
47 the membership of the agency, or the other members of the agency who
48 constitute a minority of the membership of the agency, who register
49 their intention to be considered a majority caucus or minority caucus, as
50 the case may be, for the purposes of the Freedom of Information Act,
51 provided (i) the registration is made with the office of the Secretary of
52 the State for any such public agency of the state, in the office of the clerk
53 of a political subdivision of the state for any public agency of a political
54 subdivision of the state, or in the office of the clerk of each municipal
55 member of any multitywn district or agency, (ii) no member is
56 registered in more than one caucus at any one time, (iii) no such
57 member's registration is rescinded during the member's remaining term
58 of office, and (iv) a member may remain a registered member of the
59 majority caucus or minority caucus regardless of whether the member
60 changes his or her party affiliation under chapter 143.

61 (4) "Person" means a natural person, partnership, corporation, limited
62 liability company, association or society.

63 (5) "Public records or files" means any recorded data or information
64 relating to the conduct of the public's business prepared, owned, used,
65 received or retained by a public agency, or to which a public agency is
66 entitled to receive a copy by law or contract under section 1-218, as
67 amended by this act, whether such data or information be handwritten,
68 typed, tape-recorded, videotaped, printed, photostated, photographed
69 or recorded by any other method.

70 (6) "Executive sessions" means a meeting of a public agency at which
71 the public is excluded for one or more of the following purposes: (A)
72 Discussion concerning the appointment, employment, performance,
73 evaluation, health or dismissal of a public officer or employee, provided
74 that such individual may require that discussion be held at an open
75 meeting; (B) strategy and negotiations with respect to pending claims or
76 pending litigation to which the public agency or a member thereof,
77 because of the member's conduct as a member of such agency, is a party

78 until such litigation or claim has been finally adjudicated or otherwise
79 settled; (C) matters concerning security strategy or the deployment of
80 security personnel, or devices affecting public security; (D) discussion
81 of the selection of a site or the lease, sale or purchase of real estate by the
82 state or a political subdivision of the state when publicity regarding such
83 site, lease, sale, purchase or construction would adversely impact the
84 price of such site, lease, sale, purchase or construction until such time as
85 all of the property has been acquired or all proceedings or transactions
86 concerning same have been terminated or abandoned; and (E)
87 discussion of any matter which would result in the disclosure of public
88 records or the information contained therein described in subsection (b)
89 of section 1-210, as amended by this act.

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

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

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

107 (10) "Freedom of Information Act" means this chapter.

108 [(11) "Governmental function" means the administration or
109 management of a program of a public agency, which program has been

110 authorized by law to be administered or managed by a person, where
111 (A) the person receives funding from the public agency for
112 administering or managing the program, (B) the public agency is
113 involved in or regulates to a significant extent such person's
114 administration or management of the program, whether or not such
115 involvement or regulation is direct, pervasive, continuous or day-to-
116 day, and (C) the person participates in the formulation of governmental
117 policies or decisions in connection with the administration or
118 management of the program and such policies or decisions bind the
119 public agency. "Governmental function" shall not include the mere
120 provision of goods or services to a public agency without the delegated
121 responsibility to administer or manage a program of a public agency.]

122 [(12)] (11) "Electronic equipment" means any technology that
123 facilitates real-time public access to meetings, including, but not limited
124 to, telephonic, video or other conferencing platforms.

125 [(13)] (12) "Electronic transmission" means any form or process of
126 communication not directly involving the physical transfer of paper or
127 another tangible medium, which (A) is capable of being retained,
128 retrieved and reproduced by the recipient, and (B) is retrievable in paper
129 form by the recipient.

130 Sec. 2. Section 1-218 of the general statutes is repealed and the
131 following is substituted in lieu thereof (*Effective October 1, 2022*):

132 (a) For purposes of this section, "governmental function" means the
133 administration or management of a program of a public agency, which
134 program has been authorized by law to be administered or managed by
135 a person, where (1) the person receives funding from the public agency
136 for administering or managing the program, (2) the public agency is
137 involved in or regulates to a significant extent such person's
138 administration or management of the program, whether or not such
139 involvement or regulation is direct, pervasive, continuous or day-to-
140 day, and (3) the person participates in the formulation of governmental
141 policies or decisions in connection with the administration or
142 management of the program and such policies or decisions bind the

143 public agency. "Governmental function" does not include the mere
144 provision of goods or services to a public agency without the delegated
145 responsibility to administer or manage a program of a public agency.

146 (b) Each contract in excess of two million five hundred thousand
147 dollars between a public agency and a person for the performance of a
148 governmental function shall (1) provide that the public agency is
149 entitled to receive a copy of records and files related to the performance
150 of the governmental function, and (2) indicate that such records and files
151 are subject to the Freedom of Information Act and may be disclosed by
152 the public agency pursuant to the Freedom of Information Act. No
153 request to inspect or copy such records or files shall be valid unless the
154 request is made to the public agency in accordance with the Freedom of
155 Information Act. Any complaint by a person who is denied the right to
156 inspect or copy such records or files shall be brought to the Freedom of
157 Information Commission in accordance with the provisions of sections
158 1-205, as amended by this act, and 1-206.

159 Sec. 3. Subsection (b) of section 1-211 of the general statutes is
160 repealed and the following is substituted in lieu thereof (*Effective October*
161 *1, 2022*):

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

169 Sec. 4. Subsection (e) of section 1-205 of the general statutes is
170 repealed and the following is substituted in lieu thereof (*Effective October*
171 *1, 2022*):

172 (e) The Freedom of Information Commission shall conduct training
173 sessions, at least annually, for members of public agencies for the
174 purpose of educating such members as to the requirements of this

175 section and sections [1-7 to 1-14, inclusive, 1-16 to 1-18, inclusive,] 1-200
176 to 1-202, inclusive, [1-205,] as amended by this act, 1-206, 1-210 to [1-217]
177 1-219, inclusive, as amended by this act, 1-225 to 1-232, inclusive, as
178 amended by this act, 1-240 [, 1-241] and [19a-342] 1-242.

179 Sec. 5. Subdivision (17) of subsection (b) of section 1-210 of the 2022
180 supplement to the general statutes is repealed and the following is
181 substituted in lieu thereof (*Effective October 1, 2022*):

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

185 Sec. 6. Subsection (g) of section 1-212 of the general statutes is
186 repealed and the following is substituted in lieu thereof (*Effective October*
187 *1, 2022*):

188 (g) Any individual may copy a public record through the use of a
189 hand-held scanner. A public agency may establish a fee structure not to
190 exceed twenty dollars for an individual to pay each time the individual
191 copies records at the agency with a hand-held scanner. As used in this
192 section, "hand-held scanner" means a battery operated electronic
193 scanning device the use of which (1) leaves no mark or impression on
194 the public record, and (2) does not unreasonably interfere with the
195 operation of the public agency. "Hand-held scanner" includes, but is not
196 limited to, a mobile telephone or camera.

197 Sec. 7. Subsection (d) of section 1-225 of the general statutes is
198 repealed and the following is substituted in lieu thereof (*Effective October*
199 *1, 2022*):

200 (d) Notice of each special meeting of every public agency, except for
201 the General Assembly, either house thereof or any committee thereof,
202 shall be posted not less than twenty-four hours before the meeting to
203 which such notice refers on the public agency's Internet web site, if
204 available, and given not less than twenty-four hours prior to the time of
205 such meeting by filing a notice of the time and place thereof in the office

206 of the Secretary of the State for any such public agency of the state, in
207 the office of the clerk of such subdivision for any public agency of a
208 political subdivision of the state and in the office of the clerk of each
209 municipal member for any multitown district or agency. The secretary
210 or clerk shall cause any notice received under this section to be posted
211 in [his] the secretary's or clerk's office. Such notice shall be given not less
212 than twenty-four hours prior to the time of the special meeting;
213 provided, in case of emergency, except for the General Assembly, either
214 house thereof or any committee thereof, any such special meeting may
215 be held without complying with the foregoing requirement for the filing
216 of notice but a copy of the minutes of every such emergency special
217 meeting adequately setting forth the nature of the emergency and the
218 proceedings occurring at such meeting shall be filed with the Secretary
219 of the State, the clerk of such political subdivision, or the clerk of each
220 municipal member of such multitown district or agency, as the case may
221 be, not later than seventy-two hours following the holding of such
222 meeting. The notice shall specify the time and place of the special
223 meeting and the business to be transacted. No other business shall be
224 considered at such meetings by such public agency. In addition, such
225 written notice shall be delivered by electronic transmission or by mail
226 to the usual place of abode of each member of the public agency so that
227 the same is received prior to such special meeting. The requirement of
228 delivery of such written notice may be dispensed with as to any member
229 who at or prior to the time the meeting convenes files with the clerk or
230 secretary of the public agency a written waiver of delivery of such
231 notice. Such waiver may be given by [telegram] electronic transmission
232 or by mail. The requirement of delivery of such written notice may also
233 be dispensed with as to any member who is actually present at the
234 meeting at the time it convenes. Nothing in this section shall be
235 construed to prohibit any agency from adopting more stringent notice
236 requirements.

237 Sec. 8. Subdivision (1) of section 4d-30 of the general statutes is
238 repealed and the following is substituted in lieu thereof (*Effective October*
239 *1, 2022*):

240 (1) "Contract" means a contract for state agency information system
241 or telecommunication system facilities, equipment or services, which is
242 awarded pursuant to this chapter, [or subsection (e) of section 1-205,]
243 subsection (c) of section 1-211, [subsection (b) of section 1-212, section 4-
244 5,] subsection (a) of section 10a-151b, or subsection (a) of section 19a-
245 110.

246 Sec. 9. Section 4d-47 of the general statutes is repealed and the
247 following is substituted in lieu thereof (*Effective October 1, 2022*):

248 With respect to any state employee whose position is eliminated or
249 who is laid off as a result of any contract or amendment to a contract
250 which is subject to the provisions of this chapter and [subsection (e) of
251 section 1-205,] subsection (c) of section 1-211, [subsection (b) of section
252 1-212, section 4-5,] section 4a-50, 4a-51, subsection (b) of section 4a-57,
253 subsection (a) of section 10a-151b, or subsection (a) of section 19a-110,
254 or any subcontract for work under such contract or amendment, (1) the
255 contractor shall hire the employee, upon application by the employee,
256 unless the employee is hired by a subcontractor of the contractor, or (2)
257 the employee may transfer to any vacant position in state service for
258 which such employee is qualified, to the extent allowed under the
259 provisions of existing collectively bargained agreements and the general
260 statutes. If the contractor or any such subcontractor hires any such state
261 employee and does not provide the employee with fringe benefits which
262 are equivalent to, or greater than, the fringe benefits that the employee
263 would have received in state service, the state shall, for two years after
264 the employee terminates from state service, provide to the employee
265 either (A) the same benefits that such employee received from the state,
266 or (B) compensation in an amount which represents the difference in the
267 value of the fringe benefits that such employee received when in state
268 service and the fringe benefits that such employee receives from the
269 contractor or subcontractor.

270 Sec. 10. Section 4d-48 of the general statutes is repealed and the
271 following is substituted in lieu thereof (*Effective October 1, 2022*):

272 No contract or subcontract for state agency information system or

273 telecommunication system facilities, equipment or services may be
 274 awarded to any business entity or individual pursuant to this chapter,
 275 [or subsection (e) of section 1-205,] subsection (c) of section 1-211,
 276 [subsection (b) of section 1-212, section 4-5,] subsection (a) of section 10a-
 277 151b, or subsection (a) of section 19a-110 if such business entity or
 278 individual previously had a contract with the state or a state agency to
 279 provide information system or telecommunication system facilities,
 280 equipment or services and such prior contract was finally terminated by
 281 the state or a state agency within the previous five years for the reason
 282 that such business entity or individual failed to perform or otherwise
 283 breached a material obligation of the contract related to information
 284 system or telecommunication system facilities, equipment or services. If
 285 the termination of any such previous contract is contested in an
 286 arbitration or judicial proceeding, the termination shall not be final until
 287 the conclusion of such arbitration or judicial proceeding. If the fact-
 288 finder determines, or a settlement stipulates, that the contractor failed
 289 to perform or otherwise breached a material obligation of the contract
 290 related to information system or telecommunication system facilities,
 291 equipment or services, any award of a contract pursuant to said chapter
 292 or sections during the pendency of such arbitration or proceeding shall
 293 be rescinded and the bar provided in this section shall apply to such
 294 business entity or individual.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	1-200
Sec. 2	October 1, 2022	1-218
Sec. 3	October 1, 2022	1-211(b)
Sec. 4	October 1, 2022	1-205(e)
Sec. 5	October 1, 2022	1-210(b)(17)
Sec. 6	October 1, 2022	1-212(g)
Sec. 7	October 1, 2022	1-225(d)
Sec. 8	October 1, 2022	4d-30(1)
Sec. 9	October 1, 2022	4d-47
Sec. 10	October 1, 2022	4d-48

GAE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

This bill, which makes several changes to the Freedom of Information Act (FOIA), does not result in a fiscal impact to the state or municipalities.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**HB 5458*****AN ACT CONCERNING REVISIONS TO THE FREEDOM OF INFORMATION ACT RECOMMENDED BY THE FREEDOM OF INFORMATION COMMISSION.*****SUMMARY**

This bill makes several unrelated changes to the Freedom of Information Act (FOIA), including the following:

1. limits the applicability of FOIA's definition of "governmental function" so that it applies only to one statute concerning contracts for performing a governmental function, rather than throughout FOIA (§§ 1-3);
2. generally conforms the law on trainings provided by the Freedom of Information Commission (FOIC) to current practice (§ 4);
3. explicitly allows the copying of public records using mobile telephones or cameras (§ 6); and
4. allows notices of a special meeting to be sent to a public agency's members by electronic transmission (§ 7).

Additionally, the bill specifies that FOIA's disclosure exemption for records covered by the federal Family Educational Rights and Privacy Act (FERPA) applies to education records, rather than educational records as current law provides (§ 5). This conforms with terminology used in FERPA (20 U.S.C. § 1232g(4)).

Lastly, the bill makes technical and conforming changes. Among other things, it amends provisions concerning the awarding of state government information technology contracts to remove erroneous

references to (1) FOIC training and fees for copying public records and (2) the statutory list of department heads (§§ 8-10).

EFFECTIVE DATE: October 1, 2022

§§ 1-3 — GOVERNMENTAL FUNCTION

Under FOIA, “governmental function” generally includes a public agency program’s administration or management by a person that, among other things, participates in formulating governmental policies or decisions connected to the program’s administration or management. It does not include the mere provision of goods or services to a public agency without delegated program management or administration responsibilities.

The bill limits this definition’s applicability so that it applies only to one statute concerning contracts for performing a governmental function, rather than throughout FOIA as under current law (see BACKGROUND). In doing so, the bill clarifies that the statutory definition does not apply at common law, where “governmental function” has a similar (though not identical) meaning (see BACKGROUND).

Under current law, “governmental function” also appears in a FOIA provision which generally prohibits public agencies from entering into contracts that impair the public’s right to inspect or copy records stored in a computer system the agency owns, leases, or uses in the course of its governmental functions. The bill makes a conforming change by eliminating the reference to governmental functions.

§ 4 — FOIC TRAINING

The law requires FOIC to conduct annual training sessions for members of public agencies on FOIA’s provisions (e.g., meeting-related requirements). The bill eliminates requirements for FOIC to provide training on (1) physical requirements for public records (e.g., standard ink); (2) using electronic nicotine or vapor products; and (3) injunctive relief from frivolous, unreasonable, or harassing FOIC appeals. It adds requirements for the commission to provide training on (1) contracts for

the performance of a governmental function, (2) veterans' military records, and (3) court actions involving FOIA.

§ 6 — USING MOBILE PHONES AND CAMERA TO MAKE COPIES

The bill explicitly allows individuals to use mobile telephones and cameras to copy public records. It does so by deeming them to be "hand-held scanners" as defined in FOIA.

FOIA allows (1) individuals to use a hand-held scanner to copy records and (2) public agencies to charge up to \$20 each time an individual uses a scanner to copy records at the agency. Under FOIA, a "hand-held scanner" is a battery-operated electronic scanning device that leaves no mark or impression on the records and does not unreasonably interfere with the agency's operations.

§ 7 — NOTICES OF A SPECIAL MEETING

Under FOIA, public agencies must provide at least 24 hours' notice of a special meeting unless there is an emergency. A special meeting is one that is held to consider business that (1) was unforeseen when scheduling regular meetings and (2) should be addressed before the next regular meeting.

The bill allows notices of a special meeting to be sent to a public agency's members by electronic transmission or by mail to their homes. Current law requires that the notice be delivered to the member's home. Current law also allows members to waive delivery of the notice by filing a written waiver with the agency's clerk or secretary. The bill allows members to submit these waivers electronically or by mail.

BACKGROUND

Contract for Performance of a Governmental Function

By law, each contract exceeding \$2.5 million between a public agency and a person for the performance of a "governmental function" must state that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function. The contract must also indicate that these records or files are subject to FOIA

and may be disclosed by the public agency under FOIA.

Governmental Function: Common Law

By law, FOIA applies to non-public entities to the extent they are deemed to be the functional equivalent of a public agency (CGS § 1-200(1)(B)). To determine whether a person is the “functional equivalent” of a public agency, courts and FOIC apply a four-part test established by the Connecticut Supreme Court in *Board of Trustees of Woodstock Academy v. FOI Commission*, 181 Conn. 544 (1980). One component of this test is whether the entity performs a governmental function.

In applying the functional equivalent test in a 1998 case, the Appellate Court held that “Performing a government service pursuant to contract does not make an entity a public agency subject to [FOIA].... The key to determining whether an entity is a government agency or merely a contractor with the government is whether the government is really involved in the core of the program” (*Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 47 Conn. App. 466 (1998)).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 19 Nay 0 (03/29/2022)