



General Assembly

Substitute Bill No. 1221

January Session, 2023



**AN ACT CONCERNING THE ENFORCEMENT OF VIOLATIONS OF
THE FREEDOM OF INFORMATION ACT.**

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

1 Section 1. Subsection (b) of section 1-206 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2023*):

4 (b) (1) Any person denied the right to inspect or copy records under
5 section 1-210 or wrongfully denied the right to attend any meeting of a
6 public agency or denied any other right conferred by the Freedom of
7 Information Act may appeal therefrom to the Freedom of Information
8 Commission, by filing a notice of appeal with said commission. A
9 notice of appeal shall be filed not later than thirty days after such
10 denial, except in the case of an unnoticed or secret meeting, in which
11 case the appeal shall be filed not later than thirty days after the person
12 filing the appeal receives actual or constructive notice that such
13 meeting was held. For purposes of this subsection, such notice of
14 appeal shall be deemed to be filed on the date it is received by said
15 commission or on the date it is postmarked, if received more than
16 thirty days after the date of the denial from which such appeal is taken.
17 Upon receipt of such notice, the commission shall serve upon all
18 parties, by certified or registered mail or by electronic transmission, a
19 copy of such notice together with any other notice or order of such

20 commission. In the case of the denial of a request to inspect or copy
21 records contained in a public employee's personnel or medical file or
22 similar file under subsection (c) of section 1-214, the commission shall
23 include with its notice or order an order requiring the public agency to
24 notify any employee whose records are the subject of an appeal, and
25 the employee's collective bargaining representative, if any, of the
26 commission's proceedings and, if any such employee or collective
27 bargaining representative has filed an objection under said subsection
28 (c), the agency shall provide the required notice to such employee and
29 collective bargaining representative by certified mail, return receipt
30 requested, by electronic transmission or by hand delivery with a
31 signed receipt. A public employee whose personnel or medical file or
32 similar file is the subject of an appeal under this subsection may
33 intervene as a party in the proceedings on the matter before the
34 commission. Said commission shall, after due notice to the parties,
35 hear and decide the appeal [within] not later than one year after the
36 filing of the notice of appeal. The commission shall adopt regulations
37 in accordance with chapter 54, establishing criteria for those appeals
38 which shall be privileged in their assignment for hearing. Any such
39 appeal shall be heard not later than thirty days after receipt of a notice
40 of appeal and decided not later than sixty days after the hearing. If a
41 notice of appeal concerns an announced agency decision to meet in
42 executive session or an ongoing agency practice of meeting in
43 executive sessions, for a stated purpose, the commission or a member
44 or members of the commission designated by its chairperson shall
45 serve notice upon the parties in accordance with this section and hold
46 a preliminary hearing on the appeal not later than seventy-two hours
47 after receipt of the notice, provided such notice shall be given to the
48 parties at least forty-eight hours prior to such hearing. During such
49 preliminary hearing, the commission shall take evidence and receive
50 testimony from the parties. If after the preliminary hearing the
51 commission finds probable cause to believe that the agency decision or
52 practice is in violation of sections 1-200 and 1-225, the agency shall not
53 meet in executive session for such purpose until the commission
54 decides the appeal. If probable cause is found by the commission, it

55 shall conduct a final hearing on the appeal and render its decision not
56 later than five days after the completion of the preliminary hearing.
57 Such decision shall specify the commission's findings of fact and
58 conclusions of law.

59 (2) In any appeal to the Freedom of Information Commission under
60 subdivision (1) of this subsection or subsection (c) of this section, the
61 commission may confirm the action of the agency or order the agency
62 to provide relief that the commission, in its discretion, believes
63 appropriate to rectify the denial of any right conferred by the Freedom
64 of Information Act. The commission may declare null and void any
65 action taken at any meeting which a person was denied the right to
66 attend and may require the production or copying of any public
67 record. In addition, upon the finding that a denial of any right created
68 by the Freedom of Information Act was without reasonable grounds
69 and after the custodian or other official directly responsible for the
70 denial has been given an opportunity to be heard at a hearing
71 conducted in accordance with sections 4-176e to 4-184, inclusive, the
72 commission may, in its discretion, impose against the custodian or
73 other official a civil penalty of not less than twenty dollars nor more
74 than [one] ten thousand dollars. If the commission finds that a person
75 has taken an appeal under this subsection frivolously, without
76 reasonable grounds and solely for the purpose of harassing the agency
77 from which the appeal has been taken, after such person has been
78 given an opportunity to be heard at a hearing conducted in accordance
79 with sections 4-176e to 4-184, inclusive, the commission may, in its
80 discretion, impose against that person a civil penalty of not less than
81 twenty dollars nor more than one thousand dollars. The commission
82 shall notify a person of a penalty levied against [him] such person
83 pursuant to this subsection by written notice sent by certified or
84 registered mail or electronic transmission. If a person fails to pay the
85 penalty [within] not later than thirty days [of] after receiving such
86 notice, the Superior Court shall, on application of the commission,
87 issue an order requiring the person to pay the penalty imposed. If the
88 executive director of the commission has reason to believe an appeal

89 under subdivision (1) of this subsection or subsection (c) of this section
90 (A) presents a claim beyond the commission's jurisdiction; (B) would
91 perpetrate an injustice; or (C) would constitute an abuse of the
92 commission's administrative process, the executive director shall not
93 schedule the appeal for hearing without first seeking and obtaining
94 leave of the commission. The commission shall provide due notice to
95 the parties and review affidavits and written argument that the parties
96 may submit and grant or deny such leave summarily at its next regular
97 meeting. The commission shall grant such leave unless it finds that the
98 appeal: (i) Does not present a claim within the commission's
99 jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute
100 an abuse of the commission's administrative process. Any party
101 aggrieved by the commission's denial of such leave may apply to the
102 superior court for the judicial district of New Britain, [within] not later
103 than fifteen days of the commission meeting at which such leave was
104 denied, for an order requiring the commission to hear such appeal.

105 (3) In making the findings and determination under subdivision (2)
106 of this subsection the commission shall consider the nature of any
107 injustice or abuse of administrative process, including, but not limited
108 to: (A) The nature, content, language or subject matter of the request or
109 the appeal, including, among other factors, whether the request or
110 appeal is repetitious or cumulative; (B) the nature, content, language or
111 subject matter of prior or contemporaneous requests or appeals by the
112 person making the request or taking the appeal; (C) the nature,
113 content, language or subject matter of other verbal and written
114 communications to any agency or any official of any agency from the
115 person making the request or taking the appeal; (D) any history of
116 nonappearance at commission proceedings or disruption of the
117 commission's administrative process, including, but not limited to,
118 delaying commission proceedings; and (E) the refusal to participate in
119 settlement conferences conducted by a commission ombudsman in
120 accordance with the commission's regulations.

121 (4) Notwithstanding any provision of this subsection, [to the

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

131 (5) Notwithstanding any provision of this subsection, in the case of
132 an appeal to the commission of a denial by a public agency where,
133 after a hearing, the commission finds the public agency is engaging in
134 a practice or pattern of conduct that constitutes an obstruction of the
135 public's right to access information under the Freedom of Information
136 Act or reckless, wilful or wanton misconduct with regard to the delay
137 or denial of responses to requests for public records under said act, the
138 commission may apply to the superior court for the judicial district of
139 New Britain for further injunctive and equitable relief, damages,
140 attorney's fees and costs, as the court may order.

141 [(5)] (6) Notwithstanding any provision of this subsection, a public
142 agency may petition the commission for relief from a requester that the
143 public agency alleges is a vexatious requester. Such petition shall be
144 sworn under penalty of false statement, as provided in section 53a-
145 157b, and shall detail the conduct which the agency alleges
146 demonstrates a vexatious history of requests, including, but not
147 limited to: (A) The number of requests filed and the total number of
148 pending requests; (B) the scope of the requests; (C) the nature, content,
149 language or subject matter of the requests; (D) the nature, content,
150 language or subject matter of other oral and written communications
151 to the agency from the requester; and (E) a pattern of conduct that
152 amounts to an abuse of the right to access information under the
153 Freedom of Information Act or an interference with the operation of
154 the agency. Upon receipt of such petition, the executive director of the

155 commission shall review the petition and determine whether it
156 warrants a hearing. If the executive director determines that a hearing
157 is not warranted, the executive director shall recommend that the
158 commission deny the petition without a hearing. The commission shall
159 vote at its next regular meeting after such recommendation to accept or
160 reject such recommendation and, after such meeting, shall issue a
161 written explanation of the reasons for such acceptance or rejection. If
162 the executive director determines that a hearing is warranted, the
163 commission shall serve upon all parties, by certified or registered mail
164 or electronic transmission, a copy of such petition together with any
165 other notice or order of the commission. The commission shall, after
166 due notice to the parties, hear and either grant or deny the petition
167 [within] not later than one year after its filing. Upon a grant of such
168 petition, the commission may provide appropriate relief
169 commensurate with the vexatious conduct, including, but not limited
170 to, an order that the agency need not comply with future requests from
171 the vexatious requester for a specified period of time, but not to exceed
172 one year. Any party aggrieved by the commission's granting of such
173 petition may apply to the superior court for the judicial district of New
174 Britain, [within] not later than fifteen days [of] after the commission
175 meeting at which such petition was granted, for an order reversing the
176 commission's decision.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2023</i>	1-206(b)
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GAE *Joint Favorable Subst.*