

FREEDOM OF INFORMATION COMMISSION STATEMENT ON

SR 7, RESOLUTION PROPOSING APPROVAL OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE STATE OF CONNECTICUT AND THE CONNECTICUT STATE POLICE UNION (NP-1 BARGAINING UNIT)

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HR 9, RESOLUTION PROPOSING APPROVAL OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE STATE OF CONNECTICUT AND THE CONNECTICUT STATE POLICE UNION (NP-1 BARGAINING UNIT).

January 18, 2023

Senate Resolution 7 and House Resolution 9 propose the approval of a collective bargaining between the State of Connecticut and the Connecticut State Police Union (NP-1) bargaining unit.

Among other provisions, the collective bargaining agreement (“Agreement”) contains provisions relating to personnel files (Article 9) and grievance procedures (Article 14). The Freedom of Information (“FOI”) Commission supports the proposed changes to Article 9, but is concerned with certain provisions in Article 14 of the current collective bargaining agreement that remain and supersede the meetings requirements within the FOI Act.

Article 9

Article 9 of the Agreement proposes to eliminate an exemption from disclosure for state troopers’ personnel files and internal affairs investigations with only a disposition of exonerated, unfounded or not sustained.

"[W]hen a person accepts public employment, he or she becomes a servant of and accountable to the public." Perkins v. Freedom of Information Commission, 228 Conn. 158, 177 (1993). Accordingly, records relating to a public employee’s ability to perform his or her duties, or an investigation of alleged misconduct are legitimate matters of public concern. Even where an investigation results in exoneration, there may be a legitimate public interest in an alleged abuse of power while engaged in the performance of a public employee’s duties. Department of Public Safety v. Freedom of Information Commission, 242 Conn. 79, 82 (1997). There is also a legitimate public interest in knowing the manner in which investigations about public employees are conducted.

In addition, the FOI Act already contains a permissive exemption for “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). Under such exemption, unless the information sought does not pertain to legitimate matters of public concern, and is highly offensive to a reasonable person, the requested information must be disclosed.

Further, the legislature recently recognized that “[f]or any agreement or arbitration award...on matters appropriate to collective bargaining...where any provision in such agreement or award pertaining to the disclosure of disciplinary matters or alleged misconduct would prevent the

disclosure of documents required to be disclosed under the provisions of the [FOI] Act...the provisions of the [FOI] Act shall prevail”. Public Act 20-1 (July Sp. Sess.) (amended Conn. Gen. Stat. §5-278(e)).

For the foregoing reasons, the Commission supports the elimination of the language previously contained in Article 9 of the Agreement.

Article 14

Article 14 (section 13) of the current collective bargaining agreement provides that “[t]he parties agree the grievance and arbitration procedure to be a private matter and therefore not open to the public or the media.” Such provision supersedes Conn. Gen. Stat. §1-225, in its entirety.

Conn. Gen. Stat. §1-225 provides that “[t]he meetings of all public agencies, except executive sessions...shall be open to the public.” A “meeting” does not include “strategy or negotiations with respect to collective bargaining”. Conn. Gen. Stat. §1-200(2).

“Grievance hearings are meetings that must be open to the public during the presentation of evidence regarding the underlying facts allegedly giving rise to the grievance, but they may be closed to the public, in the absence of a waiver, during negotiations regarding appropriate remedies or settlements.” Waterbury Teachers Association v. Freedom of Information Commission, et. al., 240 Conn. 835, 843-844 (1997) (evidentiary portions of grievance hearings conducted by town board of education were not excluded from the meetings requirements); Glastonbury Education Association v. Freedom of Information Commission, et. al., 234 Conn. 704 (1995) (at least part of compulsory arbitration proceedings under Teacher Negotiation Act did not have to be open to the public under the “strategy or negotiations” provision of Conn. Gen. Stat. §1-200(2)).

“Similarly, the legislature has exempted from public disclosure not all documents relating to collective bargaining, but only ‘records, reports and statements of strategy or negotiations with respect to collective bargaining.’” Glastonbury Education Association at 714, citing Conn. Gen. Stat. §1-210(b)(9); Bloomfield Education Association v. Freedom of Information Commission, et. al., 35 Conn. App. 384, cert. denied, 231 Conn. 926 (1994) (grievances filed under teachers’ collective bargaining agreement did not constitute “records, reports and statements of strategy or negotiations” and therefore were not exempt from disclosure.”).

The public's right to access public hearings (as recognized in the FOI Act and court decisions), where evidence and argument are offered in support of, or against, a filed grievance should not be contracted away by the language of a collective bargaining agreement. Rather, such decisions should only be made after robust debate, deliberation, and enactment of statute.

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