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SB0038

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**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**GOVERNMENT  
ADMINISTRATION  
AND ELECTIONS  
PART 4  
946 – 1273**

**2011**

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March 7, 2011  
11:00 a.m.

I believe that we should put a mechanism in, which would require the state agencies to respond in a reasonable time so the repeatedness of the request doesn't have to be continued.

It will just make a better system work a lot better.

REP. LESSER: Thank you very much.

SENATOR CRISCO: You're very welcome. Thank you, both.

REP. MORIN: Thank you, Senator. I appreciate your coming in. We will move on to Senate Bill 38. Let's see, Colleen and Claude have spoken. Are you coming back? All right. Colleen first.

COLLEEN MURPHY: Good afternoon, again. This time I will be exceptionally brief.

REP. MORIN: Good afternoon.

COLLEEN MURPHY: I'm Colleen Murphy, the Executive Director and General Counsel of the FOI Commission. I'm here to comment on Senate Bill 38 AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT AND DIVISION OF PUBLIC DEFENDER SERVICES.

The Commission is opposed to this bill because we believe it sweeps too broadly and would hide from public view most records of the Division of Public Defender Services.

The proposed exemption applies to any documents pertaining to the legal representation of an indigent client. In reality, nearly everything the Division of Public Defender Services does pertains to the representation of an indigent client.

Criminal case files of clients are already protected from disclosure. These records are not subject to the FOI Act and are not open to the public because they're adjudicative records and part of the Judicial Branch.

Also, there's an exemption in the law for attorney/client privileged communications if that's an area of concern under this bill.

The second provision of the bill would exempt personnel files of the Division of Public Defender Services' employees and the Commission sees no reason for such a proposal. The FOI Act already exempts from disclosure any personnel work related information and medical information where disclosure would constitute an invasion of personal privacy.

The employees of the Division of Public Defender Services as well as the employees of the Division of Criminal Justice have been protected by this exemption for years.

In addition, public defenders' residential addresses, social security numbers and other personal information is already protected by the FOI Act and other statute.

Therefore, the Commission does not see the need for this bill. We're happy to continue discussions with the Division of Public Defender Services if there's a specific area that they can narrow it, as I said, we'd be happy to discuss it with them and with you. Thank you.

REP. MORIN: Representative Lesser.

REP. LESSER: Thank you, Mr. Chairman. Thank you for your testimony.

What, in the testimony that they submitted, the Office of Chief Public Defender pointed to a recent decision that your Commission made to allow, I guess, an incarcerated inmate to obtain information on a public defender. Is that correct?

COLLEEN MURPHY: The case to which I believe you refer is a case that is currently on appeal in Superior Court. There was a request. My recollection of the facts of the case is that there was a request by an inmate for records that would be complaints against the public defender, the very public defender that had represented him.

The inmate represented to us that he had complained he was unhappy with the services that he received and then asked if he could see the, if there were any other complaints filed against this public defender.

And the Commission adjudicated the case. It did not have the benefit of access to the actual records. The Division of Public Defender Services did not feel that it could provide those records to us in camera, which is a highly unusual situation, so the Commission could not review the records to see if there was any legal basis to withhold them.

Absent that, the Commission took evidence concerning the general nature of complaints and ruled that they would not be exempt under the FOI law as they would not be exempt as they pertain to any other public employee.

REP. LESSER: Well, I guess my question is, what do you feel, what kind of records could or should be kept confidential, or should be made available to incarcerated persons?

COLLEEN MURPHY: Well, I think the records that generally you would be concerned about, which, you know, the area of privileged communications, that as I said, that those would be exempt already.

In terms of the criminal case file itself, this agency is only subject to the FOI law with respect to their administrative functions, so, you know, outside of that case, records related to the administrative processes of the agency, the budgeting, accounting, personnel type functions would be the functions of the Commission would have jurisdiction over.

REP. LESSER: But included in that personnel category, you don't think that there's any sort of special consideration that we should give the employees of the Public Defender's Office with regard to their safety in this particular precedence?

COLLEEN MURPHY: Beyond what the law already has, which as I said there are exemptions for address information, medical information. Any information that would be invasive of personal privacy would already be exempt.

I haven't heard a case, a specific case made why this particular group has a greater expectation in their records than another group.

REP. LESSER: Well, thank you very much.

REP. MORIN: And if I could, thank you, Colleen. As I remember from the discussions, was the complaint, the inmate was interested in if complaints had been made by other folks against this particular defender or any particular defender?

COLLEEN MURPHY: Just one.

REP. MORIN: Just one? How does that go into the confidentiality of, I'm not an attorney, but the client/attorney privileges, or doesn't it?

COLLEEN MURPHY: Well, that would have been a case to make, I suppose in that case, if there was anything in the complaint that was subject to the privilege. The Commission would have, you know, heard that argument and would have ordered it to be exempt pursuant to the statute.

In this case there was no such evidence of that. As I said, we did not have the records to make a real legal judgment there, so that's where we were.

REP. MORIN: That's fair. And you know, I've kind of, I've heard from both sides of this and it will be interesting, but I do appreciate your input and your thought process. I do support as much transparency as we can and sometimes there's always a line, to me anyway, of, you know, what's appropriate and what's not, so I appreciate your expertise.

COLLEEN MURPHY: Very good. Thank you.

REP. MORIN: You're welcome. Claude, come on back, followed by Deborah Sullivan.

CLAUDE ALBERT: Thank you. I'll introduce myself again. I'm Claude Albert. I'm Legislative Chair of the Connecticut Council on Freedom of Information, an organization committed to furthering government transparency and accountability.

We want to oppose the sweeping exemptions that this bill would provide for public defenders in the Division of Public Defender Services for a

number of reasons. I'll be brief because Colleen touched on many of them.

One, this is going to, this would frustrate public oversight of the performance of individual public defenders and the public defender's office. We see no reason why this agency or this group of public employees should get special protection from scrutiny.

The public has a compelling right to see financial and other administrative records of the agencies that work in their name, including this one.

Complaints of misconduct or poor performance by public employees are also rightly open to inspection. Those regarding public defenders should be, too. If such complaints lead to discipline or other action, the public should know that. If complaints are unfounded or frivolous, the agency must rely on competent responses to such complaints to assure the public it's performing its duties to a proper standard.

Public defenders play a critical role in the criminal justice system. It's only proper that their office be open to inspection by those they work for, both the public at large and the indigent defendants in criminal cases who are their clients.

Legitimate, number two, legitimate claims the public defenders have to secrecy for their records are already provided for in the law. Colleen elaborated on this, but basically material that's covered by the attorney/client privilege is currently protected from disclosure as is personnel, medical and other information that would constitute invasion of personal privacy.



The broad wording of this bill could allow the public defenders to deny virtually any request for documents related to their core function. The bill would exempt, quote, any documents retained by a public defender or special public defender pertaining to the legal representation of an indigent client. That seems to cover a lot of ground.

In fact, we are concerned that it could be interpreted to mean almost anything a public defender does.

This proposal, like a lot of FOI proposals, attempts to leverage a specific need for confidentiality such as the attorney/client privilege into a sweeping and generalized exemption for the agency.

It also falls into a long pattern of agencies and interest groups that come to the Legislature seeking exemptions from the FOI Act for records, which could contain troubling information about the conduct of the public's business, and we ask you decline to endorse this bill.

REP. MORIN: Thank you, Claude. Any questions? We appreciate your testimony.

CLAUDE ALBERT: Okay, thank you.

REP. MORIN: Deborah.

DEBORAH DEL PRETE SULLIVAN: Good afternoon.

REP. MORIN: Good afternoon.

DEBORAH DEL PRETE SULLIVAN: Thank you very much for raising this bill. I think it's a very important piece of legislation and it only came about

because of an instance where an inmate who's up in Maine, a Connecticut state inmate, had requested what he called complaints from our agency.

I did deny the request because we receive letters sometimes marked legal mail, sometimes not, but we receive letters on a daily basis from inmates and from others who are not incarcerated, around the state and elsewhere, addressed to our office, and these are people who have been represented by our office in individual cases.

When Mr. May sent his request in for complaints, looking at what we have, we have individuals who have written letters, some marked legal mail, that pertain to this particular special public defender who is a subcontractor with our office. He is not an employee. He is someone that entered into a subcontract with us. The Division of Public Defender Services is appointed at first, when someone is indigent, has made their application, the court would appoint our office.

We, then determine whether or not there's a conflict of interest, and if there is not, we stay in the case. If there is, it goes out to a list of over 300 private attorneys who have contracted with us, have gone through the rigorous review by the Special Public Defender Committee, and also had to pass through our Public Defender Commission, which is a seven-member Commission, the chair of which is appointed by the Governor.

This individual had made that list that he is a special public defender, and he had individuals writing about his particular performance, whether or not he might have communicated with them. We get numerous requests from individuals daily that would say, my attorney has not contacted me, has

not come to visit me or I'd like to get copies of my transcript. Could you see if the attorney could order them and get them to me.

Many times, and these are simplistic types of requests. Most of them have so much information about their case, whether it's pending or on appeal or on habeas, intertwined in their letter. It is a privileged communication that comes through our office that we review, and if that information were not considered privileged, it would be open to the public.

It would be open to prosecutors, gang leaders, co-defendants, police, other individuals just interested in the case, and it would deem no confidentiality or privilege at all as to those cases.

So we did deny it. We did go to a hearing. I must say it was quite a hearing that we went to. Our attorneys were not, were not regarded as well. One expert was not allowed to testify. We were not ordered to turn over this information or request our (inaudible) to do it in camera. We were requested.

Now as an attorney in the State of Connecticut, and I teach ethics for the Connecticut Bar Association as well as the Division of Public Defender Services. Confidentiality is a big piece of what I am the instructor on.

As an attorney, I cannot release a privileged piece of communication for any inmate that our office has been in receipt of unless I have an express authorization in writing from a client, and we did not have that.

So voluntarily, to you know, suggest that we should just voluntarily turn that over, it's

impossible ethically to do so without the client's authorization, which we did not have. And there were other clients who had spoken about this particular attorney.

So in any event, we had indicated that we could not do that voluntarily, talked about the general nature of this type of correspondence that we receive all the time, and at that point the hearing was over and the decision was made, since we did not prove that these communications were privileged, they were deemed not to be.

There's case law, in fact, that suggests that when an attorney represents that it is a privileged communication, that it is. We're not trying to skirt the issue of providing the public with any information pertaining to how much is spent on a case. We get requests. We had at least five in the State v. Hayes case, where we were able to provide the amount that was spent on the defense of that case.

We have other issues that come up, other thing that people have asked for. But last year there were over 70 requests that were from inmates, and they were asking for information pertaining to their case.

I denied those cases on the basis of, this is not public information. However, since it's to do with your case, you can have access to it, and then that person is afforded an opportunity to receive all that in the mail.

So we're not denying the public from what they're doing. We are part of the Judicial Branch of government, and these have to do with adjudicative cases. This is our adjudicative function, to representing people, not information about how much we spent on the defense of

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someone, how much we spent on something to do with the facilities. All of that information is public.

In fact, it's on our Office of Chief Public Defender website as we sit here today, and anyone can go in and get the numbers about our staff, and how much was spent in each of our areas.

We have 43 offices and when someone writes a letter to our office about someone that we subcontracted with, we treat that person as someone that deserves the privilege.

And the reason that's so important is, again, under the Rules of Ethics, confidentiality comes into play, 1.6. And also, we look at this role of overseeing those contracts much like a manager in a private law firm would.

If a manager of a law firm or partner received a complaint about an associate, they would look at that letter. They would speak to the associate and they would communicate back and forth, indeed, this is what we call a triangle of the privilege there. We would communicate back with the associate and the individual and say, this will be taken care of and go from there.

But if we as public defenders are going to now have to provide less of a privilege to people who are poor, just because state funds are being paid for us, it also brings up an equal protection issue as well for indigent clients.

So we ask, this is Section 1 I've been basically talking about. We ask that the Committee please adopt the provisions. I know it's a proposed bill. We do have substitute language. We're happy to send that to you.

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REP. MORIN: I wish you would.

DEBORAH DEL PRETE SULLIVAN: And I did mention that to Miss Murphy as well, because it's just a little vague with just a proposed bill. And I'll take questions if you have any.

REP. MORIN: Representative Lesser.

REP. LESSER: Thank you, Mr. Chair. Thank you for your testimony. I think this whole dispute is sort of murky because it's a little unclear as to what specific information is contained in this report that you're, that I guess you're concerned about. What kind of information do you --

DEBORAH DEL PRETE SULLIVAN: It was a letter written by an inmate. Well, there's more than one inmate, and we testified to that. Letters from more than one inmate about their cases, their criminal cases that were pending, whether they were on habeas or appeals.

REP. LESSER: We heard from the FOI Commission that specific attorney/client information would be protected already under this law.

DEBORAH DEL PRETE SULLIVAN: Unfortunately, that's, we still had to go through a hearing. If it's protected, then it should have just ended there, but it did not.

We were told to come into a hearing and present why it was privileged, which they wanted to see the letters. And under the Rules of Ethics, which we need to comply with in this state, we couldn't just turn those over.

REP. LESSER: Okay. Well, I don't know how that would be different if we passed this because it would

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still require you to come in and say this is privileged.

DEBORAH DEL PRETE SULLIVAN: And we would have to testify that it would be part of the attorney/client file. These are letters. These are privileged correspondence.

And I think, you know, we spent a lot of time and a lot of money on these types of cases where we need to defend these, when it comes down to, this is about the case. This is not an administrative function.

Our administrative function is not to defend clients. That's our adjudicated function. It's a constitutional right that they have, and we're not just there doing administrative types of jobs there. This is, we are right into the case and everything to do with that case, except for the cost, is something that we protect under not just the privilege, which is the communications between the client and our offices and our attorneys but also confidentiality, and under the rules it's from whatever source.

If we speak to people and do investigation and we have their name and we have their addresses, I mean, it doesn't protect those witnesses or those victims if we're going to have to turn over correspondence between ourselves and our clients.

It also doesn't help the trust that a client should have in our office who represents them, as if they were not indigent and given court-appointed counsel.

REP. LESSER: Well, we heard from the Commission that this would, this proposed law would be overly broad and that it would prevent your clients from getting information as to complaints that were

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lodged against either the contractor would or direct employees of your office. How would you respond to that?

DEBORAH DEL PRETE SULLIVAN: Well, we look at the word complaint as being a very broad term, all right? These are things that don't ever end up in the personnel file. These are things where people have written to us and said, my attorney hasn't done this. So we look into it and resolve it from there. That's the end of it.

If a complaint like that went to the grievance committee under the Rules, that complaint would go to the grievance committee. The person would be allowed to speak on their behalf, and none of that would ever be public unless probable cause was found.

These are even more preliminary than something like that being brought to the grievance committee. And we also have an ethical duty to report misconduct, so if there was such misconduct, our office has an ethical duty to take care of that.

REP. LESSER: Are there other safeguards? What kind of recourse do your clients have if they feel they're getting inadequate representation, or you're concerned that there may be a pattern of complaints?

DEBORAH DEL PRETE SULLIVAN: Individuals are always able to file a grievance with the Statewide Grievance Committee. Individuals are always able to file other types of proceedings, including a civil lawsuit against our office or against the individual attorneys whether they're an employee or not.



REP. LESSER: And would they be able to discover a pattern of other complaints against that individual?

DEBORAH DEL PRETE SULLIVAN: If they were going to file a grievance, probably not, because again, you'd need the permission of other individuals.

But if they were filing a lawsuit through the rules of discovery within a court proceeding, they could move for that type of discover, and then of course that would be up to what happens in the court, and at that point, our agency and our employee could be represented by the AG's office.

REP. LESSER: Thank you very much.

DEBORAH DEL PRETE SULLIVAN: You're welcome.

REP. MORIN: Thank you. And I guess, Deborah, the one thing, if I heard correctly, was one of the comments made that you folks didn't bring the attorney/client privilege? Did you hear that part?

DEBORAH DEL PRETE SULLIVAN: Yes. We raised that. Absolutely. We raised the jurisdictional issue over us since we are part of the Judicial Branch. There's a GA7 case that talks about adjudicative versus the administrative function of the people who are in the Judicial Branch.

We raised the Rules, 1.6, and we raised, you know, the fact that these were privileged. We had them, as far as not to start over, but there were letters again, that when we receive responses from anyone, I mean, we share them with the special public defender. The special public defender keeps us in the loop as well.

It's just like when we have a case, if the special public defender needs to have experts in a case, that comes to our office because we need to oversee that. But that doesn't mean that it necessarily becomes a public document that such and such an expert is going to be provided in a case, because it's a case pending at the time.

REP. MORIN: Thank you so much. I appreciate your answers, and I think we're going to have to, we'll be discussing this further.

DEBORAH DEL PRETE SULLIVAN: If I could be of any, you know, further assistance, please let me know. This case is on appeal right now in New Britain in Administrative Appeal pending. Thank you.

REP. MORIN: Sure thing. Thank you. We're going to move on to bill, House Bill 5994, Claude Brouillard. Are you around, Claude? How about Kachina?

KACHINA WALSH-WEAVER: Thank you. We're a little bit concerned about ensuring the integrity and reputable requests that come in electronically as original documents, and we want to also be certain that the bill does not impose any sort of a mandate on a public agency to establish a means for electronic mail if they do not already have this in place.

HB5994 SB654  
SB655 HB5985

I also will take this opportunity as the Committee considers a proposal such as this, which would begin to take advantage of the efficiencies afforded us by technology to urge you to also advance legislation that would better utilize modern technology and allow costly legal ads and notices to be placed on local public websites rather than in newspapers.



# STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE  
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Michelle S. Cruz, Esq.  
State Victim Advocate

**Testimony of Michelle Cruz, Esq., State Victim Advocate**  
**Submitted to the Government, Administration and Elections Committee**  
**Monday, March 7, 2011**

Good morning Senator Slossberg, Representative Morin and distinguished members of the Government, Administration and Elections Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

**Proposed Senate Bill No. 38, *An Act Concerning the Freedom of Information Act and Division of Public Defender Services***

The Office of the Victim Advocate (OVA) has long supported the effort to establish certain limits on the release of sensitive information through the Freedom of Information (FOI) Act. During the last few legislative sessions, the OVA has put forth proposals to limit FOI's reach when the end result would be the release of private citizen's information. One such proposal was the OVA's privacy exemption for crime victims. This proposal related to the release of crime victim's private and personal information, which had been obtained through a criminal investigation conducted by our state's law enforcement agencies, and was sought later through FOI. This proposal would have provided a process to allow for the law enforcement agency to object to the release of this private information through a privacy exception and would be based on a reasonable person standard.

Last week the Judiciary Committee heard compelling testimony regarding the impact on surviving family members when sensitive information, such as autopsy records and photographs of a murdered child, is released to the public through the Freedom of Information Act. The Freedom of Information Act was created to hold our governmental agencies in check and to prevent corruption from continuing behind closed doors. The need for a process to ensure that public agencies and officials are held accountable and transparent in their actions remains today. However, FOI requests have grown over the years and have inadvertently strayed from the intended use. This problem is compounded by the state's Freedom of Information Commission (FOIC) and its binding authority. Our state's FOIC is the most powerful Freedom of Information Commission in the nation. This misuse of the Freedom of Information Act must be addressed. The intention of the FOI process was never to delve into the private individual, but rather to ensure our state and those acting on behalf of the state, are accountable and transparent.

The proposed legislation once again highlights a loophole in FOI practices in the state. The records and files of an attorney and their client, especially in cases where an



State of Connecticut

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**Testimony of Deborah Del Prete Sullivan,  
Legal Counsel/Executive Assistant Public Defender  
Office of Chief Public Defender**

**Raised Bill No. 38**

***An Act Concerning the Freedom of Information Act and  
Division of Public Defender Services***

**Government, Administration and Elections Committee  
Public Hearing - March 7, 2011**

The Office of Chief Public Defender supports passage of Raised Bill No. 38, An Act Concerning the Freedom of Information Act and Division of Public Defender Services. The proposal is made in light of a recent decision of the Freedom of Information Commission which would require that privileged correspondence between Division clients and the Office of Chief Public Defender in regard to a Special Public Defender be made public and provided to another Division client, currently incarcerated in Maine. The Division maintains as it did throughout the freedom of information proceedings that letters written by Division clients to the Office of Chief Public Defender are privileged and as such are not disclosable to the public. The Freedom of Information Commission determined that such letters were not privileged as the Division would not voluntarily disclose them to the FOI hearing officer. As a result, the Division took an administrative appeal to the New Britain Judicial District which is currently pending.

The bill clarifies existing statutes which clearly establish the Division of Public Defender Services as within the judicial branch of government. The bill would not exempt disclosure of information pertaining to the administrative function of the Division. It would clearly exempt disclosure of any information, including the contents of the attorney-client file, in regard to the legal representation of persons the Division is appointed to.

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Currently, the Division of Criminal Justice enjoys a statutory exemption which provides for public disclosure only as to its administrative function. Pursuant to C.G.S. §1-201, the Division of Criminal Justice, which employs prosecutors, is deemed not to be a state agency except as to its administrative functions. A prosecutor's file in a case in which he/she either represents the state of Connecticut in a criminal proceeding or the Commissioner of Correction in a Habeas proceeding are not subject to public disclosure.

*For the purposes of subdivision (1) of section 1-200, the Division of Criminal Justice shall not be deemed to be a public agency except in respect to its administrative functions.*

**Sec. 1-201. Division of Criminal Justice deemed not to be public agency, when.**

To assure the integrity of the process and compliance with existing privileges and caselaw, this same protection against public disclosure should exist for any private person who receives court appointed legal counsel. The mission of the Division is to provide legal representation to indigent persons accused of committing a criminal offense. This proposal would exempt from disclosure the contents of a client's attorney-client files from public disclosure. The attorney client privilege protects those communications, oral or written, between the attorney and his/her client. Any exemption for privilege should be consistent with the privilege as it exists for persons who are able to financially afford private counsel. The attorney-client privilege exists for all persons regardless of his/her financial circumstances. Only the client can waive the privilege.

The proposal would also exempt the contents of an attorney client file which would be confidential. Although the exemptions listed list "communications privileged by the attorney-client relationship", the statutes are silent on confidential records and documents such as might be contained within an attorney client file. See C.G.S. §1-210b(10). Attorneys admitted to the practice of law must adhere to the Connecticut Professional Rules of Conduct. Rule 1.6, Confidentiality, specifically requires that confidentiality must be maintained within an attorney-client relationship unless specific circumstances exist which would warrant an exception. No such exception exists pursuant to the Rules to permit or require public disclosure of the client letters in this case. Confidentiality protects against the disclosure of the contents of an attorney's investigation including the names and addresses of witnesses interviewed, medical or psychiatric professionals retained or interviewed and any other information obtained in order to prepare a defense for the case. Disclosure of such without the express authorization of the client would violate this Rule of Confidentiality and subject the

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attorney to disciplinary action by way of a grievance or a civil action. In fact the Commentary to Rule 1.6 specifically provides:

*"The confidentiality Rule, for example, applies not only to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source."*

**Commentary - Rule 1.6, Confidentiality of Information, Rules of Professional Conduct.**

The language is proposed in light of a freedom of information request made to the Division of Public Defender Services by Thomas May, a Connecticut inmate currently incarcerated in Maine. The current statutes provide an exemption from disclosure to the public for information considered to be privileged. However, in this case, Mr. May sought complaints against his court appointed counsel. The form of these complaints however, were in the form of correspondence written by other Division of Public Defender clients who were represented by a particular Special Public Defender. The correspondence from other clients were addressed to the Office of Chief Public Defender and usually answered by Deputy Chief Public Defender Brian Carlow. The correspondence is directly related to the cases which the Special Public Defender was appointed in. When responding, Attorney Carlow regarded and treated the Division clients' letters as privileged correspondence. He would respond to the Division client after discussion with the Special Public Defender and would share the letter received and the response with the Special Public Defender. Mr. May's request was denied because it sought attorney client correspondence from other clients which is privileged. Mr. May filed a complaint to the Freedom of Information Commission and a hearing was held. (FIC #2009-394)

At no time was the Division ordered to turn over these other client letters to the hearing officer. The decision however, determined that the Division did not establish that the letters were privileged and therefore determined that the letters were not privileged. The clients whose privileged letters are at issue are not parties and were never notified about the proceeding.

As a result of the decision, the Division has filed an administrative appeal to protect the contents of the attorney client files of the indigent clients it represents. (See *Dennis McDonough v. FOIC, et al, CV-10-6006196-S* and *Division of Public Defender, et al v. FOIC, et al, CV-10-6006148-S* pending at the New Britain Judicial District.)

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The proposal would also add exempt disclosure of the personnel and medical files of employees of the Division of Public Defender Services as was adopted during the 2010 legislative session exempting such files of employees of the Department of Correction and the Department of Mental Health and Addiction Services.

Lastly, the proposal would exempt payment of any fee required pursuant to C.G.S. §1-212 for employees of the Division of Public Defender Services which are obtained in performance of their duties

The Office of Chief Public Defender respectfully requests that this legislation be supported and thanks the Committee for raising this bill for a public hearing.

**FREEDOM OF INFORMATION COMMISSION STATEMENT IN  
OPPOSITION TO PROPOSED SENATE BILL 38,  
AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT AND  
DIVISION OF PUBLIC DEFENDER SERVICES**

**PRESENTED BY: COLLEEN M. MURPHY, EXECUTIVE DIRECTOR & GENERAL  
COUNSEL (860-566-5682)**

The Freedom of Information Commission (FOIC) submits this statement in opposition to Proposed Bill 38 concerning the records of the Division of Public Defender Services, for the reasons set forth below.

**1. Proposed Senate Bill 38 sweeps too broadly would hide from public view most records of the Division of Public Defender Services.** The proposed exemption applies to "any documents ... pertaining to the legal representation of an indigent client." In reality, the representation of indigent clients is the whole of the Public Defenders' business. Nearly everything the Division of Public Defender Services does "pertains to the representation of an indigent client."

Criminal case files of clients are already protected from disclosure. These records are not subject to the FOI Act and are not open to the public, because they are adjudicative records and part of the Judicial Branch. SB 38 would bar disclosure not merely of client case files, but also many administrative records of the agency that are now accessible to the public.

No other state or municipal agency – including the Division of Criminal Justice - is shielded from public view as thoroughly as the Division of Public Defender Services would be if the General Assembly enacts this proposed bill.

**2. Attorney-Client Privileged Communications are Already Exempt From Disclosure under the FOI Act.** The FOI Act has long protected records that are confidential because they are privileged communications between an attorney and a client. Under current law, any communication between an attorney and a client that is made in confidence and, generally, contains legal advice, is protected from disclosure. There are sound policy reasons for protecting attorney-client communications, whether the client is a government agency, a public employee, or an indigent client of the Public Defenders Services.

There are also sound policy reasons for requiring disclosure of records pertaining to legal representation that do NOT divulge privileged communications.

Complaints about an attorney's competence are subject to disclosure – except for any information that is privileged – in the same manner and for the same reasons that almost all personnel and disciplinary information about public employees is available for public scrutiny.

The Division of Public Defender Services is a government agency, funded by taxpayer dollars. The Division is charged with a task of utmost public importance – protecting the constitutional rights of indigent people charged with serious crimes. The public has a compelling interest in knowing that its tax dollars are being spent effectively and that the Division of Public Defender Services is meeting its responsibilities. The only way to guarantee accountability is to preserve transparency – EXCEPT where transparency would divulge privileged communications.



Complaints about attorney misconduct to the Division of Public Defender Services are public records and should be accessible to the public EXCEPT for any information in the complaints that is privileged. But the complaints themselves must remain a matter of public record, much as complaints against police officers are of legitimate public interest, and a matter of public record – except for any information that is otherwise confidential, and complaints about teacher misconduct are open to the public, except for any information concerning performance evaluations.<sup>1</sup>

**3. Private Personnel and Medical Information is Already Exempt.** The FOI Act already exempts from disclosure any personnel – i.e., work-related – information and medical information where disclosure would constitute an invasion of personal privacy. The employees of the Division of Public Defender Services, as well as the employees of the Division of Criminal Justice, have been protected by this exemption for years. In addition, residential addresses, social security numbers, and other personal information is already protected by the FOI Act and other statutes.

Hiring decisions, disciplinary matters, commendations, timesheets – all are public records whose accessibility to the public helps ensure accountability of all public employees – including judges, prosecutors, and public defenders.

**4. Exempting the Division of Public Defender Services from all fees is Unnecessary.** The FOIC takes no position on this subsection of the proposed bill. However, singling out one agency for such special treatment may place an unfair burden on all other agencies. In addition, the FOI Act already permits an agency to waive fees for copies of records in any case where the person making the request is indigent or where a waiver would serve the general welfare.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel,  
860-566-5682.

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<sup>1</sup> The issue is now the subject of an administrative appeal pending in the Superior Court: *Division of Public Defender Services, et al. v. FOIC, et al*, No. CV10-6006148S. In that case, the Division of Public Defender Services refused even to confirm or deny the existence of complaints about attorneys, claiming that to confirm that complaints were made would violate attorney privilege and ethics. The Public Defenders also refused to provide the complaints for an in camera review by the hearing officer, which is the method sanctioned by the Connecticut Supreme Court for the FOIC to adjudicate whether a public record is exempt. The FOIC, which was prepared to exempt all privileged information in the complaints but to order disclosure of all other non-exempt information, was forced to conclude that the Division of Public Defenders failed to prove its case because it chose not to present the necessary evidence.

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Statement by Claude Albert, Legislative Chair, Connecticut Council on Freedom of Information

In Opposition to Proposed Senate Bill 38, An Act Concerning the Freedom of Information Act and the Division of Public Defender Services.

Monday, March 7, 2011

Sen. Slossberg, Rep. Morin and members of the Government Administration and Elections Committee:

My name is Claude Albert, and I am the legislative chair of the Connecticut Council on Freedom of Information, an organization committed to furthering government transparency and accountability. We oppose the sweeping exemptions that this bill would provide to public defenders and the Division of Public Defender Services for a number of reasons.

**1. They would frustrate public oversight of the performance of individual public defenders and the public defenders' office.**

We see no reason why this agency or this group of public employees should get special protection from scrutiny. The public has a compelling right to see financial and other administrative records of the agencies that work in their name, including this one. Complaints of misconduct or poor performance by public employees are also rightly open to inspection. Those regarding public defenders should be too. If such complaints lead to discipline or other action, the public should know that. If complaints are unfounded or frivolous, the agency must rely on competent responses to such complaints to assure the public that it is performing its duties to a proper standard.

Public defenders play a critical role in the criminal justice system. It is only proper that their office be open to inspection by those they work for – both the public at large and the indigent defendants in criminal cases who are their clients.

**2. Legitimate claims the public defenders have to secrecy for their records are already provided for in the law.**

Material that is covered by the attorney-client privilege is currently protected from disclosure, as is personnel, medical and other information that would constitute an invasion of personal privacy.

**3. The broad wording of this bill could allow the public defenders to deny virtually any request for documents related to their core function.**

This bill would exempt from disclosure “any documents retained by a public defender or special public defender pertaining to the legal representation of an indigent client.” That

seems to cover a lot of ground. In fact, we are concerned that it could be interpreted to mean almost anything a public defender does.

This proposal represents a well-worn sleight-of-hand: trying to leverage a specific need for confidentiality, such as the attorney-client privilege, into a sweeping and generalized exemption for the agency. It also falls into a long pattern of agencies and interest groups that come to the legislature seeking exemptions from the FOI Act for records which could contain troubling information about the conduct of the public's business.

We ask that the committee decline to endorse this bill.

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**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2011**

**VOL.54  
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THE CLERK:

Senate Bill 396 as amended by Senate "A" and  
"B", in concurrence with the Senate.

Total Number voting	144
Necessary for passage	73
Those voting Yea	85
Those voting Nay	59
Those absent and not voting	7

DEPUTY SPEAKER ALTOBELLO:

Senate Bill 396 passed in concurrence with the  
Senate.

Would the Clerk please call Calendar 507.

THE CLERK:

On page 45, Calendar 507, Senate Bill Number 38,  
AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT AND  
DIVISION OF PUBLIC DEFENDER SERVICES. Favorable  
report of the Committee on Judiciary which recommends  
passage with Senate Amendment Schedules "A" and "B".

DEPUTY SPEAKER ALTOBELLO:

Representative Morin, you have the floor.

REP. MORIN (28th):

Thank you, Mr. Speaker. I move for acceptance of  
the Joint Committee's Favorable Report and passage of

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the bill with concurrence in the Senate.

DEPUTY SPEAKER ALTOBELLO:

Question is acceptance and passing in concurrence with the Senate. Please proceed.

REP. MORIN (28th):

Thank you. Mr. Speaker, the Clerk has an amendment, Senate Schedule "A", LCO 5526. And I ask that it be called.

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please call LCO 5526.

THE CLERK:

LCO Number 5526, Senate "A", offered by Senator Williams, et al.

DEPUTY SPEAKER ALTOBELLO:

Representative Morin.

REP. MORIN (28th):

It just makes some minor changes and I urge acceptance.

DEPUTY SPEAKER ALTOBELLO:

Do you move adoption, sir? Do you move adoption of the amendment?

REP. MORIN (28th):

Move adoption of the amendment. Thank you, sir.

DEPUTY SPEAKER ALTOBELLO:

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The question before the Chamber is adoption of Senate "A". Adoption of Senate "A"? If not, I'll try your minds, all those in favor signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed? The Ayes have it. Senate "A" is adopted. Further on the bill as amended?

Representative Morin.

REP. MORIN (28th):

Thank you, Mr. Speaker. We also have Senate Schedule "B", LCO 6297, and I ask that it be called.

DEPUTY SPEAKER ALTOBELLO:

Would the Clerk please call LCO 6297.

THE CLERK:

LCO Number 6297, Senate "B", offered by Senators Slossberg and Roraback.

DEPUTY SPEAKER ALTOBELLO:

Representative Morin.

REP. MORIN (28th):

Thank you, Mr. Speaker. This is a simple change to require the disclosure of secret ballots used for the election of an officer of volunteer fire

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department. I urge adoption.

DEPUTY SPEAKER ALTOBELLO:

Question before the Chamber is Senate "B".

Question before the Chamber is Senate "B". All those  
in favor, please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed? The Ayes have it. Senate "B" is  
adopted. Further on the bill as amended?

Representative Morin.

REP. MORIN (28th):

Thank you, Mr. Speaker. It's a great bill and I  
urge my -- colleagues to support it.

DEPUTY SPEAKER ALTOBELLO:

Further on the bill? Further on the bill? If  
not, staff and guests please retire to the Well of the  
House, members take your seats, the machine will be  
open.

THE CLERK:

The House of Representatives is voting by roll  
call. Members to the Chamber. The House is voting by  
roll call. Members to the Chamber.

DEPUTY SPEAKER ALTOBELLO:



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Have all members voted? Have all members voted?  
Please check the board to make sure -- now here's a  
veteran strolling across the Well of the House knowing  
full well the Speaker's behind her somewhere.

If all members have voted, please check the board  
to make sure your vote has been properly cast. If all  
members have voted, the machine will be locked.  
Clerk, please take a tally. And would the Clerk  
please announce the tally.

THE CLERK:

Senate Bill Number 38, as amended by House -- I'm  
sorry, Senate "A" and "B", in concurrence with the  
Senate.

Total Number voting	147
Necessary for passage	74
Those voting Yea	129
Those voting Nay	18
Those absent and not voting	4

DEPUTY SPEAKER ALTOBELLO:

Bill as amended is passed in concurrence with the  
Senate.

Would the Clerk please call Calendar 628.

THE CLERK:

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**CONNECTICUT  
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SENATE**

**PROCEEDINGS  
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you call the first bill, please?

THE CLERK:

Madame President, Calendar page 14, Calendar 366,  
Senate Bill 38, AN ACT CONCERNING THE FREEDOM OF  
INFORMATION ACT AND DIVISION OF PUBLIC DEFENDER  
SERVICES, Favorable Report of the Government  
Administration and Elections Committee.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Madame President. I move the joint  
committees Favorable Report and passage of the bill.

THE CHAIR:

Acting on approval of the bill, will you remark  
further?

SENATOR SLOSSBERG:

Thank you, Madame President. Before I summarize  
the Clerk has a technical amendment that is drafted by  
LCO. It's LCO 5526 and I would ask that it be called.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Madame President, the clerk is in possession of  
LCO 5526, which shall be designated Senate "A", copies

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of which have been distributed.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Madame President, I move adoption.

THE CHAIR:

Question on adoption, will you remark?

SENATOR SLOSSBERG:

Yes, this is as I said, just a technical amendment drafted by LCO.

THE CHAIR:

Will you remark? Seeing no remarks, will all favor or adoption of amendment "A" please say aye?

SENATORS:

Aye.

THE CHAIR:

Opposed.

The amendment is adopted.

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Madame Chair. On the main bill, this bill places the division of Public Defender's Office on the same footing as the Division of Criminal Justice for purposes of the Freedom of Information

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Act. The Clerk also has an amendment, its LCO 6297  
and I would ask that it be called.

THE CHAIR:

Mr. Clerk will you please call the second  
amendment, amendment "B"?

THE CLERK:

Madame President, the Clerk is in possession of  
LCO 6297, copies of which have been distributed and it  
shall be designated amendment "B".

THE CHAIR:

Thank you, Mr. Clerk.

Senator Slossberg.

SENATOR SLOSSBERG:

Yes, Madame President. I move adoption.

THE CHAIR:

The question is on adoption. Will you remark?

SENATOR SLOSSBERG:

Thank you, Madame President. At this time I'd  
like to yield to Senator Roraback.

THE CHAIR:

Senator Roraback, will you accept the yield, sir?

SENATOR RORABACK:

With pleasure, Madame President, thank you and  
thank you to Senator Slossberg. Madame President,

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this amendment simply clarifies what I think all of us would think doesn't need clarification but the Freedom of Information Commission had a hard time giving a straight answer to a question that was put to them by the members of the Kent Volunteer Fire Company who were about to elect their officers and the question that was put to the Freedom of Information Commission was can we do our elections by secret ballot?

And, I understand -- I'm a great proponent of the Freedom of Information Act, but I'm also a great proponent of our freedom to cast ballots in privacy because the fear in any election is if you must disclose publicly who you're voting for, there is possible recrimination, retaliation and bad things that flow from having to disclose who it is you're voting for.

So, in order to make it clear that the Freedom of Information law would not require the election of officers in a volunteer fire department to be done by a show of hands or in a way where it's known who you're voting for, this amendment will simply clarify that you have the right to vote in private in those elections and obviously when the votes are counted, there need to be tellers from any candidates so that

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everyone can be confident in the integrity of the election process, but everyone can also have confidence that their vote is known only to them and to their higher being.

So, I thank Senator Slossberg for her understanding of the appropriateness of this amendment and I thank the Chamber for its indulgence and I urge adoption. Thank you, Madame President.

THE CHAIR:

Thank you, Senator. Will you remark further?  
Will you remark further? Seeing none, all in favor of amendment "B" please say aye.

SENATORS:

Aye.

THE CHAIR:

Opposed.

The amendment passed.

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Madame President. If there's no objection I'd ask that this item be placed on the Consent Calendar.

THE CHAIR:

Seeing no object -- I'm sorry, I do see an

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objection. Senator -- Seeing no real objection, the  
bill will be placed on the Consent Calendar.

Mr. Clerk.

MR. CLERK:

Madame President, turning to page 40, Calendar  
343, substitute for Senate Bill 942, AN ACT  
CONCERNING THE INTEGRITY OF ELECTIONS. The Clerk is  
in possession of amendments.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Yes, thank you, Madame President. I move the  
joint committees Favorable Report and passage of the  
bill.

THE CHAIR:

Acting on approval of the bill, will you remark?

SENATOR SLOSSBERG:

Yes, thank you, Madame President. This bill  
requires the Secretary of State to adopt regulations  
to implement an emergency contingency plan regarding  
problems that may occur during elections. The bill  
requires all towns to come up with emergency plans and  
to certify with the Secretary of State the number of  
ballots they'll be ordering for an election. It also



the Clerk might call the items on the second Consent Calendar so that we might move for a vote on that second Consent Calendar.

THE CHAIR:

Mr. Clerk, please call the bills.

THE CLERK:

Madame President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Starting on page 4, Calendar 102, page 5,  
Calendar 125, page 6, Calendar 191, page 7, Calendar  
104, page 9, Calendar 187, page 11, Calendar 287, page  
12, Calendar 240, page 12, Calendar 328, page 12,  
Calendar 334, page 14, Calendar 366, page 17, Calendar  
318, page 18, Calendar 338, page 24, Calendar 472,  
page 34, Calendar 176, page 37, Calendar 90, page 43,  
Calendar 197, page 46, Calendar 251. These are the  
items that the Clerk has on the second Consent  
Calendar.

HB6176

SB153

SB1078

SB1069

HB6445

HB6484

SB 38

HB6481

SB958

THE CHAIR:

Mr. Clerk will you now call for a roll call vote and the machine will be open on Consent Calendar two.

THE CLERK:

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An immediate roll call vote on Consent Calendar two has been ordered in the Senate. Will all Senators please return to the Chamber? An immediate roll call vote on Consent Calendar two has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

Mr. Clerk will you please call the roll call vote again, please?

THE CLERK:

An immediate roll call vote on the second Consent Calendar has been ordered in the Senate. Will all Senators please return to the Chamber? An immediate roll call vote on the second Consent Calendar has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

Have all members voted? Have all members voted? The machine will be locked and the Clerk will call the tally.

Do you want to call it again and this time we'll all -- we're going to recall that vote.

THE CLERK:

An immediate roll vote call has been ordered in

the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

The machine will be open.

Have all members voted? All the members voted the machine will be locked and will the Clerk please call the tally.

THE CLERK:

Madame President,

Total Number voting 34

Necessary for adoption 18

Those voting Yea 34

Those voting Nay 0

Those absent and not voting 2

THE CHAIR:

The Consent Calendar number two has been adopted.

Senator Looney.

SENATOR LOONEY:

Thank you, Madame President. Madame President that will conclude our business for today but at this point would yield the floor for any members for purposes of announcements of committee meetings or other points of personal privilege.

THE CHAIR: