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NEWS ALERT

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New CT Freedom of Information Laws to Consider after October 1, 2018

By Kari L. Olson and Sarah Gruber | October 10, 2018

Effective October 1, two changes were made to the Connecticut Freedom of Information Act (FOIA) of which public agencies should take note.

The General Assembly added a new section to General Statutes § 1-206 concerning vexatious requesters. Under the old regime, public agencies which had been the subject of frivolous or vexatious requests for public information could seek relief against a vexatious requester only by bringing a lawsuit in Superior Court pursuant to General Statutes § 1-241, and only after the FOIC had determined that a frivolous appeal had been taken by a requester. Given the several procedural and financial hurdles to bringing such an action, it comes as no surprise that no reported decision exists showing an action brought by a public agency under that statute. And yet municipalities are often presented with vexatious requesters, but vexatious perhaps because of the cumulative nature of requests, or the threatening nature of the requests or language used by the requester.

New section (b)(5) of General Statutes § 1-206 makes it at least procedurally easier for a public agency to get relief from a vexatious requester, allowing the agency to file a sworn petition to the FOIC directly for relief from a vexatious requester, apparently without waiting for the requester to have taken a frivolous appeal. The full commission can then vote on whether the alleged requester is considered "vexatious," and can potentially enter relief allowing and authorizing the public agency to not respond to that vexatious requester for up to one year. (The commission's decision can then be appealed to the Superior Court.) The new legislation also broadens the criteria the FOIC may consider in determining whether a request has been vexatious (or an appeal frivolous), now allowing the FOIC to consider cumulative requests, and non-appearance at or delaying commission meetings.

The second notable FOIA change, effective October 1, concerns sensitive information contained in personnel files. Public agencies often receive requests for the personnel files of their employees, and those requests are often aimed at details that the implicated employee might find objectionable to disclose. Under certain narrow circumstances, the public agency may properly decide not to disclose the employee's personnel or medical files if disclosure would constitute an invasion of privacy. The original rule in General Statutes § 1-214(b) remains that if the agency reasonably believes that disclosure would constitute an invasion of privacy, it must first notify the employee and collective bargaining representative so as to give an opportunity to object to disclosure.

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The new law added a second provision, General Statutes § 1-214(b)(2), that prescribes the course of action in the converse situation: now, if the public agency does not reasonably believe that the disclosure would constitute an invasion of privacy, the agency shall first disclose the documents, and after that notify the employee that it happened. In other words, the agency now cannot wait for its employee to weigh in before deciding whether disclosure of the records would constitute an invasion of privacy; it must make the decision in the first instance and, depending on that decision, possibly immediately disclose the records with notice to the affected employee coming afterwards.

For more information on this bulletin, or questions about how to comply with FOIA, please contact Kari L. Olson at 860.240.6085 or kolson@murthalaw.com or Sarah Gruber at 860.240.6060 or sgruber@murthalaw.com.

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