



Connecticut Council on Freedom of Information

The Honorable Gary Winfield, Senate Chair
The Honorable Steven Stafstrom, House Chair
The Honorable John Kissel, Senate Ranking Member
The Honorable Rosa Rebimbas, House Ranking Member
Judiciary Committee
Connecticut General Assembly
Legislative Office Building, Room 2500
Hartford, CT 06106

July 17, 2020

Dear Chairman Winfield, Chairman Stafstrom, Ranking Members Kissel and Rebimbas and honorable members of the Judiciary Committee:

My name is Matthew Kauffman and I am vice president of the Connecticut Council on Freedom of Information. CCFOI has advocated for government transparency and accountability since our founding in 1955, and I am writing in support of **LCO 3471 – An Act Concerning Police Accountability**.

CCFOI commends the Committee for drafting this legislation and illustrating its bipartisan resolve to rebuild trust between law enforcement agencies and the communities they serve. The provisions contained in this draft are important steps toward making our state safer for law enforcement officers and the public alike.

I would like to focus my remarks on Sections 8 and 9 of the draft, which make critical improvements to government transparency, respond to the public's unmistakable call for greater police accountability, and embrace the democratic ideal that the people have a right to know how their civil servants are performing their jobs.

Section 8 ensures that collective-bargaining negotiations cannot be used as a forum to put a shroud of secrecy over the conduct – and misconduct – of public employees. And it does so by simply leveling the field, declaring that for all civil servants, the public's right of access to employment records is governed by the Freedom of Information Act, and not an item to be traded away behind closed doors. Section 9 specifically declares that discipline imposed on state troopers for ethics violations cannot be kept hidden as

part of a union contract. These are important statements asserting that accountability in government must never be used as a bargaining chip.

Overtime or holidays or bumping rights – those are all in the realm of the workplace relationship between employer and employee and are appropriate topics for collective bargaining. But the Freedom of Information Act is a covenant between the citizenry and the government – our government. And citizens' right to know how their government and their civil servants are operating should never be diminished in behind-the-scenes negotiations.

Connecticut is the only state in New England – and quite possibly the only state in the country – that allows union contracts to override state open-records laws. And that secrecy has come at a grave cost to the integrity of our institutions. Connecticut has extremely well-established rules guiding agencies on the release of personnel files to members of the public. But under the last state police union contract, if a trooper objected to the release of any portion of his or her personnel file – whether the objection was legally valid or not – the department was required to withhold the file and required to support the trooper's position in a hearing before the Freedom of Information Commission. So in the vast majority of such cases, the department was contractually obligated to go before the commission and argue for a position they knew was pointless and illegal – a bit of Kabuki theater that wasted enormous resources and merely delayed the inevitable order to release the public records.

And now, the current contract deals another blow to accountability, with a provision that exempts from disclosure internal-affairs documents in cases where the department exonerates one of its own. That provision – never publicly debated, never subjected to a fair hearing – blotted out nearly a quarter-century of sunshine. Decades ago, the Supreme Court recognized that the public had an interest in assessing not only the performance of its employees, but also the performance of agencies in overseeing those employees, writing: "The public has a legitimate interest in the integrity of . . . police departments and in disclosure of how such departments investigate and evaluate citizen complaints of police misconduct." Even in cases where an officer was exonerated, the high court wrote, transparency served "the public's legitimate concern for the fairness of the investigation leading to that exoneration."

Minneapolis Police Officer Derek Chauvin had already faced 18 civilian complaints before the day he knelt on the neck of George Floyd and ignored his pleas that he couldn't breathe. If Chauvin were a state trooper in Connecticut, 16 of those complaints would be kept completely hidden from the public under the current union contract. That model is unacceptable in 2020. Connecticut is better than that.

Nothing in this legislation limits the ability of policymakers to restrict access to personnel files. If it is the collective wisdom of the legislature that further restrictions on the public's right to know are warranted, you and your fellow lawmakers would continue to have the absolute authority to pursue those changes – but to pursue them in the light of day, with all interested parties given the chance to have their say. That is how democracy works.

On behalf of the Connecticut Council on Freedom of Information, I ask the committee to stand up for democracy and accountability, and pass LCO 3471 with Sections 8 and 9 intact.

Respectfully submitted,

A handwritten signature in blue ink that reads "Matthew Kauffman". The signature is written in a cursive style with a large initial "M".

Matthew Kauffman
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