

## **FREEDOM OF INFORMATION COMMISSION STATEMENT REGARDING THE CONVERSION OF LEGISLATIVE DOCUMENTS FROM PAPER TO ELECTRONIC FORM**

November 18, 2010

The Freedom of Information (FOI) Commission believes that, in theory, the concept of converting legislative documents (including, but not limited to, bills, amendments, calendars, journals) from paper to electronic form is laudable. The reduction of paper copies is economical and environmentally-friendly, and the conversion into electronic form enhances access via the Internet. Nevertheless, in practice, the availability of legislative documents solely in electronic form raises significant concerns regarding the general public's and other interested parties' (such as lobbyists and agency liaisons) right to access such documents on a daily basis, as well as concerns regarding the preservation of legislative history.

Electronic conversion of legislative documents should not hinder access to such records in more traditional ways. Pursuant to the FOI Act, public agencies that maintain records electronically must provide to any person copies of such records on paper, disk, tape or any other electronic storage device or medium as requested by the person, if the agency can reasonably make copies or have copies made. Accordingly, it will be necessary to establish means by which an individual requesting copies of an electronic legislative document can receive such copies in the form requested, including paper form.

In addition, the FOI law requires prompt access to public records in the form requested. Prompt access to legislative documents is crucial in maintaining transparency especially during the legislative session when legislators are making decisions that may have significant social, economic and public policy impacts. If legislative documents are generally only available electronically, questions concerning promptness arise and raise concerns.

Again, in theory, one would think that electronic access is nearly instantaneous. But, access to electronic public records requires two critical factors that must be taken into consideration: first, the information/record must actually be posted online in a timely fashion; and second, one must have access to a computer to retrieve/obtain the information. Thus, electronic access raises the question of when will records be posted online? For instance, will they be available at the same time that they are available to legislators, at the time of a committee meeting when new language is about to be considered or at an unspecified time that may vary from committee to committee or person to person? And, electronic access to public records may set up a system where those who do not have ready access to a computer will get less access than those who do. Provisions must be made for those who do not have access to a computer to ensure that they too will gain access in a prompt manner. In short, the FOI Commission believes that no decisions concerning conversion of legislative documents to electronic form should be made without serious consideration of these questions and concerns.

In more specific terms, the Commission is troubled by the proposed elimination of legislative public hearing transcripts. Elimination of such transcripts would have an adverse impact on the judicial interpretation of statutes and on the General Assembly's ability to

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

Comments on Proposals Regarding the Conversion of Legislative Documents to Electronic Form

Thursday, November 18, 2010

The Connecticut Council on Freedom of Information has a number of concerns regarding proposals to convert legislative information to electronic form only, especially, the proposal to cease making written transcripts of legislative public hearings.

An unsearchable, audio-only record would ill serve all those involved in public policy, including legislators who make it, journalists who seek to understand it, members of the public who seek to influence it, executive branch officials who must implement it, and members of the judiciary who are asked to interpret it. Appellate litigants and judges often must cite specific accounts of legislative history in their decisions, and the lack of a written record, or at least a searchable one, would make that difficult.

Legislators in particular, often find hearing transcripts vital in coming up to speed on public opinion expressed at hearings or parts of hearings they could not attend. Similarly transcripts enable journalists to efficiently familiarize themselves with the dynamics of a public debate. In practical terms the present proposal will drain much of the usefulness from these critical records. It is worth noting as well that the legislative hearing record captures the only substantive discussion on bills that fail to reach the House or Senate floor or that are passed on consent calendars.

In addition the electronic-only process for managing legislative business envisioned in these proposals raises serious questions about the public's ability to follow legislation accurately in real time. When hundreds of bills with serious public policy impact are moving through the system simultaneously, tracking the line-by-line fate of a particular piece of legislation can be difficult for even sophisticated members of the public. Any electronic tracking system must offer the public ironclad assurances that changes in legislation or the status of a bill are instantly available, easily found and transparent. In addition, some provision must be made to provide timely access to those who do not have a computer or whose computer skills are not sufficiently sophisticated. That access must include a paper copy if requested.

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