

Legislative Update

October 2008

FREEDOM OF INFORMATION ACT LEGISLATION SUMMARY SPECIAL SESSION 2008 - CONNECTICUT GENERAL ASSEMBLY

In its 2008 special session, the General Assembly made changes to the Connecticut Freedom of Information Act (Chapter 14 of the Connecticut General Statutes, the "FOIA") by Section 11 of Public Act 08-3 of the June 11 Special Session of the Connecticut General Assembly (the "Act").

In summary, these changes, which became effective on October 1, 2008, amend FOIA at Section 1-225 of the 2008 supplement to the general statutes to require that (a) the minutes of all public agencies be "posted on such public agency's Internet web site, if available" and (b) the notice of a special meeting of every public agency "be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available."

Currently, municipalities in Connecticut are accustomed to filing a paper copy of minutes and notices for special meetings with the town clerk or the clerk of a board or commission. However, the new requirement for posting this information on a town web site, "if available," might prove to be a difficult task for some municipalities, especially those municipalities which do not have a full-time webmaster or information technology (IT) person on staff.

As a result of these changes to FOIA, municipalities across the state are asking for a clarification of the phrase "if available" from the Freedom of Information Commission (the "Commission"). The phrase "if available" is not clarified or defined in the Act, and has led to uncertainty as to its application. The following are specific questions and/or examples of the application of the phrase "if available" which municipalities are hoping can be clarified by the Commission:

1. If a municipality has an Internet web site, but does not have a full-time webmaster, information technology (IT) or another person that is able and authorized to post information on the web site on a constant and consistent basis, then is the web site deemed "unavailable" so that posting of the minutes or notice of the special meeting is not required?



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For example, some of the smaller municipalities in the state have volunteer webmasters who spend a few hours each month updating the town website. These volunteers are not available on a daily basis. If a municipal agency, board or commission called a special meeting and the volunteer webmaster is unavailable, is the municipality's Internet web site then considered "unavailable" so that posting on the web site is not required?

2. What if a municipality's website is down for maintenance or inoperable due to other factors beyond the municipality's control, such as a power outage— is the web site then "unavailable"?
3. If the public agency of the municipality is "autonomous" (e.g., a volunteer fire department or a housing agency) and therefore does not utilize the municipality's web site to provide information on its functions or activities, is the web site considered "unavailable" to it so that posting on the web site is not required?

As a result of the lack of understanding of these changes, some municipalities are contemplating "shutting down" their Internet web sites because they do not believe that they can comply with the changes required by the Act if further guidance and clarification is not provided.

We will keep you informed about any possible clarifications given by the Freedom of Information Commission. In addition, it should be noted that representatives from the Connecticut Council of Small Towns ("COST") have met with the Governor's office to review these changes to FOIA and there is a possibility that the state legislature will re-visit these changes in the upcoming session.

The updates to FOIA are available online through the General Assembly website at <http://www.cga.ct.gov/>. We will be happy to send you copies of FOIA or Public Act 08-3 upon your request.

QUESTIONS OR ASSISTANCE?

If you have any questions about this update, please contact Matthew Ritter at (860) 251-5092, Matthew Venhorst at (860) 251-5334 or Henry Zaccardi at (860) 251-5737.

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