

# PERSONNEL MATTERS, THE CONNECTICUT FOIA AND COMMON MISTAKES

---

## Education Law Notes

10.31.2018

By Mark Sommaruga

Connecticut's Freedom of Information Act ("FOIA") generally provides access to both meetings and records of public agencies. The FOIA does provide an exception to the open meetings requirements for certain "personnel matters," namely, discussions "concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that the discussion be held at an open meeting." In addition, with respect to public agency records, the FOIA provides that an agency need not disclose "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy." Over the years, these two exceptions have acquired an almost mythical status, sometimes divorced from their limited scope. Here are some common mistakes:

1. **Insufficiently specific agenda items.** The FOIA requires that an agenda item reasonably apprise the public of what action is contemplated or might take place at a meeting. Simply stating that a "personnel matter" will be discussed clearly is not sufficient. The need for specificity in the agenda item does **not** include a requirement that the public agency (for example, a school board) identify *by name* any individual to be discussed in a private "executive session." However, a public agency will likely need to identify the type of employee being discussed (for example, a teacher, police officer). The Freedom of Information Commission ("FOIC") has ruled that simply stating "public employee," without identifying what type of employee is going to be discussed, violates the FOIA. *Smith v. Board of Education, Windsor Public Schools*, #FIC 2013- 291 (March 26, 2014).
2. **"Discussion," "action" and votes.** A public agency that anticipates that it may appoint the successful candidate for a position after any interviews and/or deliberations needs to indicate on its agenda that there will be discussion and (**possible**) **action** regarding the position. The failure to include these words led to an FOIA finding that a school board violated the FOIC when it then proceeded to appoint a human resources director. *King v. Board of Education, Waterford Public Schools*, #FIC2004-344 (June 8, 2005).
3. **Improper executive sessions for board level hearings on personnel matters.** The **evidentiary portion** of a board level employee hearing is generally not an appropriate subject for executive session based upon the "personnel matters" exception, absent some other applicable FOIA exception (such as the need to protect records exempt from disclosure). While the board's "deliberation" is viewed to be a "discussion" covered by the exception, the presentation of evidence is not. **Note as well:** the employee may request that the discussion (i.e., the deliberations) take place in public, and the board will then be unable to

---

[pullcom.com](http://pullcom.com)  @pullmancomley

**BRIDGEPORT** | **HARTFORD** | **SPRINGFIELD** | **WAKEFIELD** | **WATERBURY** | **WESTPORT** | **WHITE PLAINS**  
203.330.2000 | 860.424.4300 | 413.314.6160 | 401-360-1533 | 203.573.9700 | 203.254.5000 | 914.705.5355

## PERSONNEL MATTERS, THE CONNECTICUT FOIA AND COMMON MISTAKES

---

deliberate in executive session absent some other applicable exception (such as the “collective bargaining” exception).

4. **Using executive session for general district personnel issues.** The “personnel matters” executive session exception only applies to a discussion regarding a **specific** employee, not general categories of employees. For example, a discussion of whether to eliminate (or reduce the overall level of staffing in) an agency’s programs – without any tie to a specific individual – would not be covered by the executive session provision.
5. **Giving the employee too much latitude in objecting to the disclosure of his/her personnel records.** Whenever a public agency receives a request to inspect or copy records contained in an employee’s personnel or medical files and similar files **and** it reasonably believes that the disclosure of such records would legally constitute an “invasion of privacy”, the agency is required to immediately notify in writing (a) the employee concerned, and (b) the employee’s union representative (if any). See Connecticut General Statutes §1-214. The agency must then disclose the records requested **unless** it receives a written objection from the employee concerned *or* the employee’s union representative, within specified time frames. The agency is **not** required (or even permitted) to withhold from disclosure (**or even allow the employee or union a chance to object to disclosure of**) requested personnel files when the agency does **not** reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

Most routine employee records have been held by the courts and the FOIC to be subject to disclosure. Thus, the agency (especially after calling its attorney) will not possess a “reasonable belief” that the release of such records could constitute an invasion of privacy, and therefore must disclose such records, regardless of the employee’s or union’s discomfort. Since the FOIC has the power to issue fines, a public agency should never simply give employees the blanket right to object to disclosure of all records. **Note:** The General Assembly recently passed (and Governor Malloy signed) Public Act 18-93, which applies to a situation where the public agency does **not** have a “reasonable belief” that disclosure of requested “personnel, medical or similar files” would constitute an “invasion of privacy”. This Act amends the FOIA to require a public agency disclosing such records to make a “reasonable attempt” (within a “reasonable time” after disclosure of the records) to send a written or electronic copy of the request to inspect or copy such records, or a brief description of such request, to each employee concerned and the union representative, if any. Public Act 18-93 does **not** affect the underlying obligation to disclose these types of records to a person making a FOIA request; rather, it just creates a **post**-disclosure obligation to notify the employee of the request for and release of such records.

These and other issues are discussed in more detail in ***Understanding Connecticut’s Freedom of Information Act***, by **Mark J. Sommaruga, Esq.** For a copy of this book, please click [here](#).

**Please note: this post is adapted from an article written by the author for the *CABE Journal*.**

## PERSONNEL MATTERS, THE CONNECTICUT FOIA AND COMMON MISTAKES

---

**Posted in** The Freedom of Information Act (FOIA)