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YOUR VIEW: JAMES H. SMITH

## Proposal Would Slam Door On Public Records

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Connecticut's Victim Advocate Michelle Cruz has proposed turning Freedom of Information laws upside down — sweeping changes that would eviscerate the public's right-to-know laws in an ill-advised, ill-conceived attempt to protect crime victims.

She has proposed expanding the number of government records exempted from public disclosure, which now includes personnel and medical files, to include "documents, materials, photographs, videos, recordings or other tangible objects." Making these things public would be considered a punishable invasion of personal privacy.

I'm not sure what she means by a "tangible object," but let's take "recordings" for instance. Let's say there was a bank robbery gone bad where people were shot and injured and one person died. And there was a question that if help had arrived earlier, a life might have been saved. Relatives ask for the impounded bank videos and 911 tapes to try and learn when and how emergency crews got to the scene.

Families could be denied access to the information for months under Ms. Cruz's proposals.

The law now, mostly, presumes openness and access to records. The Cruz amendments presume privacy first, that "any public agency ... shall raise a privacy objection" whenever a citizen requests any of the aforementioned documents and "the public agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission."

It already takes months to get a decision out of the overburdened commission. If this

wholesale bid for secrecy became Connecticut law, the commission would be so overwhelmed that the ideal of open government would be virtually lost.

For good measure, Ms. Cruz adds this wording: "Any public agency shall not be held liable for fines or penalties for raising a "good faith" privacy objection."

So, hide it and don't worry because you can't be held accountable for hiding it. Under the law now, governmental agencies refusing to disclose public records can be fined.

"The burden of establishing the applicability of an exemption rests with the party claiming it. Thus, anyone who cites privacy ... as the basis for keeping a record confidential must prove that the record is one the (law) seeks to protect," is the way the respected Office of Legislative Research addressed the question in 2003.

The landmark case on this issue was decided by the state Supreme Court in 1993. The court first affirmed, "the general rule (is) that public records are subject to public disclosure," then decided that personal privacy trumps public disclosure "only when the information sought ... does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person."

Ms. Cruz takes this language and inserts it into her proposed amendments, but twists the presumption from openness to secrecy. Virtually any clerk, cop or keeper of governmental records can think the information is embarrassing, claim it is "highly offensive" nor a matter of public concern and refuse to release it, and furthermore face no punishment.

We all can sympathize with the victims of crime and their families. In closed societies, dictatorships, rule by warlords, terrible things happen to people and no one ever finds out why or how or even what happened.

A fatal accident or a heinous crime are personal tragedies, but they are also legitimate matters of public concern, and attempts to thwart efforts to inform citizens of such events, while perhaps well-meaning, do not serve a democratic society.

Ms. Cruz was appointed to her post a little more than a year ago and she has worked with relish to fulfill her duties to serve victims in the criminal justice system. But these measures quite simply don't deserve a legislative sponsor.

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