



128 Dorrance Street, Suite 400
Providence, RI 02903
Phone: (401) 831-7171
Fax: (401) 831-7175
www.riaclu.org
info@riaclu.org

ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 24-H 7181, RELATING TO ACCESS TO PUBLIC RECORDS March 19, 2024

It has been more than a decade since the General Assembly passed legislation updating and strengthening the state's Access to Public Records Act. Time has demonstrated the acute need for continued reform of the law, as the public's critical "right to know" is thwarted all too often by provisions in APRA that are ambiguous, weak or fail to address key issues that promote meaningful access to public records. We therefore strongly support this comprehensive effort to bolster the public's ability to monitor government activities.

As important as the revisions to APRA in 2012 were, it became clear very quickly that much more needed to be done. A 2014 report by ACCESS/RI examining how state and municipal agencies were implementing the 2012 amendments revealed deep areas of non-compliance. Unfortunately, that has not changed over the years. In addition, Attorney General advisory opinions interpreting the statute in ways unfriendly to requesters – ruling, for example, that agencies could charge requesters for the time to write a letter denying access to documents, or allowing agencies to ignore APRA requests if they happen to be directed to the wrong personnel – cry out for correction. Other loopholes have also made themselves known, and revisions that were suggested in the original 2012 bill but ultimately jettisoned also deserve reconsideration.

For all these reasons, the ACLU of Rhode Island supports this latest effort to make our open records law stronger and more useful to members of the public. The proposed changes cover a number of important issues, including: tightening up the exemptions for so-called "investigatory" records and police incident reports; requiring an agency's procedures for handling APRA requests to be more easily available; calling for greater explanation when records are withheld; and reducing the costs that public bodies can impose on individuals seeking records in the public interest. Attached to this testimony is a brief summary of each of the bill's provisions.

This written testimony briefly focuses on two key areas addressed by the bill to promote greater transparency and accountability: access to police records and limits on charging fees for providing records. Regarding police records:

- This bill makes clear that police incident reports not followed by arrest should not be deemed presumptively exempt from disclosure.
- In two major rulings, the R.I. Supreme Court held that the public is entitled under APRA to obtain from the police final reports of their investigations of police misconduct. Unfortunately,

a 2017 APRA advisory opinion by the Attorney General's office, *Piskunov v. Town of Narragansett*, made an arbitrary distinction between citizen-generated complaints and those initiated by a police department itself, and held that the latter were not necessarily public. This has cast a veil over the public's ability to monitor police misconduct and has been a major setback in the implementation of APRA in this critical aspect of public oversight. This legislation rejects that distinction and gives the R.I. Supreme Court decisions the scope that we believe was intended.

- The bill would make clear that the names of police officers who have been found to have engaged in misconduct that requires disclosure to defense counsel in criminal cases (the so-called "Giglio rule") are public.

- Finally, the bill would require the release of police body-worn camera (BWC) footage within 30 days if the recorded incident involved the use of force by police, even if the matter is still under investigation. The Attorney General recently adopted regulations governing BWC use that generally imposes a 30-day disclosure rule, but creates an exception if the incident remains under investigation. However, use of force incidents are precisely the encounters where timely release of the camera footage is essential to promote public trust and, hence, the provision in this bill seeks to ensure that transparency in a timely manner.

The revisions to the law regarding the fees that public bodies can charge requesters are just as critical. Providing access to public records should be considered a core responsibility of any public body. We therefore question objections raised by those bodies to limiting what they can charge for performing that function. Rhode Islanders are routinely deterred from pursuing APRA requests because of the costs that public bodies demand be paid for access to what is literally the public's business. This legislation seeks to address that problem with these amendments:

- The cost for photocopying documents is reduced from 15 cents to 5 cents a page.
- No charge can be imposed for denying a request for records.
- The free time for searching and retrieving records is expanded from one to two hours, and public bodies are also barred from charging for the first two hours spent redacting records.
- Most important of all, the bill would adopt the procedures of the federal Freedom of Information Act and require agencies to reduce or waive fees if the requester demonstrates that the information requested "is likely to contribute significantly to public understanding of the operations or activities of the government."

Promoting transparency and the public's right to know is critical to any democratic society. In the spirit of encouraging that transparency, we urge the committee to support this thorough and carefully considered bill. A summary of each amendment contained in the bill is attached. It is worth noting that almost half of those amendments have been revised from last year's bill based on feedback received from state and local agencies. The ACLU strongly urges committee passage of this critical piece of legislation.

**SUMMARY OF PROPOSED AMENDMENTS TO THE
ACCESS TO PUBLIC RECORDS ACT, 24-S 2256 AND 24-H 7181**

1. Page 1, lines 9-10. This clarifies the meaning and scope of the privacy language in the purpose section of the statute.
2. Page 1, line 19 to Page 2, line 2. Specifies that college police departments employing statutorily authorized police officers are subject to the Act.
3. Page 2, lines 8-11. This language relating to exemptions for elected official correspondence was moved to another section and further revised. See #14.
4. Page 2, line 13. This clarifies that all records that are withheld under APRA are subject to the Act's provision requiring that any non-exempt "reasonably segregable" portions of a record be disclosed. See also #19.
5. Page 2, lines 15-19. Clarifies the scope of the exemption for medical records to mirror federal and state confidentiality laws, and narrows the scope of the exemption for records relating to attorneys and clients to those involving attorney-client and work product privilege, which also better mirrors the exemption's scope in other states' laws.
6. Page 2, line 21. Clarifies that exemptions to APRA cannot be adopted via state regulation.
7. Page 2, line 34 to Page 3, lines 2. Clarifies that both past and present government employment information is public.
8. Page 3, line 32. Minor clarification regarding the availability of police record narrative reports that are public.
9. Page 3, lines 33-34. Specifies that non-arrest police incident reports are not presumptively exempt from disclosure.
10. Page 4, lines 1-5. Clarifies that final reports of internal police misconduct investigations are public records, while allowing identifying information to be redacted to protect privacy.
11. Page 4, lines 5-9. Provides that so-called *Giglio* information – names of officers who have engaged in misconduct that requires disclosure in criminal cases – shall be public unless the release would be in conflict with LEOBOR.
12. Page 4, lines 10-15. Addresses access to police body-worn camera footage, and requires recordings involving use of force incidents to be made available within 30 days of a request, with the possibility of a 20-day extension.

13. Page 4, lines 31-32. This language is moved to another section for clarity and slightly revised. See #22.

14. Page 5, lines 2-4. Revises the current blanket exemption in the law for any correspondence of or to elected officials in their official capacities; keeps confidential records that are not related to official business. See #3.

15. Page 5, lines 14-15. Allows for disclosure of "investigatory records" upon a showing of good cause once the investigation has been completed.

16. Page 5, lines 21-22. Requires public bodies to cite the specific law or regulation relied upon in withholding records based on a non-APRA-specific exemption.

17. Page 6, lines 6-8. Provides that, unless restricted by court order, subpoenas issued to government entities or officials are public documents.

18. Page 6, lines 17-19. Clarifies that records of a public body are subject to disclosure even if maintained at another location.

19. Page 6, lines 23-24: Clarifies that all withheld records are subject to the Act's "reasonably segregable" provision. See also #4.

20. Page 6, lines 27-32. Establishes procedures for agencies to follow in citing the exemptions relied upon in withholding or redacting records.

21. Page 6, line 33 to Page 7, line 1. Requires public bodies to electronically post agenda documents with their publicly posted agenda.

22. Page 7, lines 1-3. This language was moved from another section for clarity, and slightly revised to allow for access to records reviewed or considered at a public meeting. See #13.

23. Page 7, lines 8-9. Clarifies that a request for documents reviewed or considered at a public meeting need not be submitted in writing.

24. Page 7, lines 13-15. This language is moved to another section for clarity. (See #31.)

25. Page 7, lines 15-18. Requires public bodies to include a prominent link to their APRA procedures on their website.

26. Page 7, lines 20-22. Allows requests to be filed by mail or email, as well as by other means at the public body's discretion.

27. Page 7, lines 23-24. Clarifies that failure by a requester to follow all the technical procedures established by a public body for filing a request is not, by itself, a basis for non-compliance with the request.

28. Page 7, lines 25-30. Requires public bodies to forward misdirected APRA requests to the appropriate person within the agency, extends the timeframe available for responding to requests under those circumstances and bars liability against public bodies for a good faith lack of a timely response.

29. Page 8, lines 2-4. Requires more specificity from public bodies in seeking an extension of time to respond to a request.

30. Page 8, lines 6-7. Specifies that waivers of the time deadlines for responding to a request beyond the maximum authorized by the statute are allowable only with the written consent of the requester.

31. Page 8, lines 8-10. This language was moved from another subsection for clarity. See #24.

32. Page 8, lines 18-19. Allows requesters to receive documents electronically in a searchable format where feasible.

33. Page 9, lines 1-4. Bars public bodies from entering into contractual confidentiality agreements that conflict with APRA or from allowing private parties to make definitive determinations for the body as to the confidentiality of records under the statute.

34. Page 9, lines 20-22. Revises the provision regarding the expedited timeframe for access to police logs, and requires the Attorney General to establish a uniform arrest log form for police departments to use.

35. Page 9, lines 29-32. Requires Attorney General to post online information about public bodies' compliance with APRA's training certification requirements.

36. Page 10, line 2. Reduces copying costs that requesters can be charged from 15 cents to 5 cents a page.

37. Page 10, lines 8-9. This extends from one to two hours the time for which no fee can be charged in retrieving records, and allows up to two hours free time for the redaction of records. It further bars charging for the denial of records.

38. Page 10, lines 17-24. Consistent with the federal Freedom of Information Act, requires agencies to reduce or waive costs for responding to requests that a requester demonstrates are in the public interest, and allows for judicial appeals of any waiver denials.

*39. Page 10, lines 32-33. Technical corrections.

*40. Page 11, lines 15-19. Slightly increases the fines that can be imposed by a court for violations of the law.

*41. Page 11, lines 19-23. Allows a court to award damages and impose daily fines in certain circumstances for knowing and willful violations of the law.

*42. Page 11, lines 32-34. Funnel civil fines issued for violations of APRA to a state restricted receipt account to assist municipalities with APRA compliance.

*43. Page 12, line 2. Clarifies that settlements of legal claims by, as well as against, public agencies are public.

*44. Page 12, lines 8-11. Requires the Attorney General to post on their website in a searchable format the APRA opinions issued by that office.

*45. Page 12, lines 14-20. This new section would make traffic accident data public in accordance with restrictions on its use under federal law.

*46. Page 12, lines 21-27. This new section would make public, to the extent allowed by federal law, the names of individuals who obtain "preferred license plates" through the governor's office.

*47. Page 12, lines 31-34 through Page 13, line 11. Allows 911 calls, and requests for 911 assistance made in other formats, to be publicly released if good cause is shown.

** Beginning with #39, the line numbers are one line higher on the House version of the bill.*