



## Director's Office

One Capitol Hill | Providence, RI 02908 | (401) 222-2280

Jonathan Womer, Director

March 19, 2024

House Committee on State Government and Elections  
Rhode Island State House  
82 Smith Street  
Providence, RI 02903

### Re: H 7181– AN ACT RELATING TO PUBLIC RECORDS – ACCESS TO PUBLIC RECORDS

Dear Chairman Shanley,

Thank you for the opportunity to comment on House Bill No. 7181. The Rhode Island Department of Administration (Department) and all other Executive Branch departments fully support government transparency and access to public records for Rhode Island citizens.

Although the Department recognizes the intention of this bill is to further government transparency, the Department has concerns regarding unintended consequences and the fiscal burden the proposed amendments to the Access to Public Records Act ("APRA") would have on taxpayers and citizens receiving government services.

The Department's concerns include:

- a. On page 1, lines 9 & 10, adding "as specified by the exemptions contained in this chapter" would have significant consequences. The APRA does not contemplate every possible scenario, including new records that are created by emerging technologies and new legislation. Currently, APRA contains a general balancing test, whereby the interests of transparency in government operations are balanced against privacy and security concerns. Adding this language, would eliminate this general balancing test and place the State at risk. For example, there is no specific exemption for State IP addresses. However, in the wrong hands, making IP addresses for state computer systems would place the State at risk from a cyber attack.
- b. On page 2, starting on line 15, this change in R.I. Gen. Laws § 38-2-2(4)(A)(I)(a)(i) narrows the exemptions related to legal communications to only records covered by the attorney-client privilege. The attorney-client privilege is a narrow construct related to litigation. Using the same standard here under APRA may result in other forms of attorney-client communications being considered public. This may chill important discussions between state employees and their government lawyers fearing that any questions sent to the lawyer may be released as public.



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- c. Additionally, this change also narrows the exception for doctor-patient medical information that may undermine individual privacy.
- d. The change on page 5, line numbers 2-4 (R.I. Gen. Laws § 38-2-2(4)(M)) amending and limiting the exemption from disclosure for correspondence from citizens to elected officials in their official capacities to only communications that have "no demonstrable connection to the exercise of official capacities" may chill communication from the public to elected officials. This change would mean that any communication of or to an elected official in their official capacity may be considered public. Citizens may avoid seeking such assistance for fear that their letters may become public.
- e. Page 6, lines 22-24 (R.I. Gen. Laws § 38-2-3(b)), the language used here appears to have the unintended consequences of requiring that confidential records, which are prohibited from disclosure pursuant to other State laws, are made available for public inspection. This would not appear to be the intent and this section should be rephrased and clarified.
- f. The change on page 6, line numbers 27-32 (R.I. Gen. Laws § 38-2-3(b)), this change appears to require that State to list each document, rather than to categorize documents by type. For broad requests where multiple entire documents are withheld, creating a privilege log listing each and every document would be a huge task and require significant State resources, significantly increasing the hours needed to fulfill the request.
- g. Page 7, starting on line 23, (R.I. Gen. Laws § 38-2-3(m & n)), these changes would essentially allow requestors to ignore publicly posted procedures to submit a request for records to an agency. Currently, agency policies are required to be posted online and often provide multiple means for citizens to request records either through mail email, fax and/ or in person. If the requestor ignores these procedures and sends the request to an employee on leave or on vacation, the agency may have no confirmation the request has been received but could still be held accountable for an APRA violation under the amendment. The Department's APRA regulations are clear, easy to follow, publicly posted and provide multiple means (email, fax, mail, website and in person) for APRA submissions. Requestors should be required to follow the publicly posted procedures to submit an APRA request.
- h. On page 9, starting on line 1, this proposed provision would void as public policy and non-disclosure agreements between the government and third parties. Sometimes receiving confidential, non-public information with private institutions such as Rhode Island Power to analyze energy needs is necessary for the public good. Without a non-disclosure in place, and entity such as this will simply refuse to provide this confidential



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information to the State or a municipality. Public policy should encourage the sharing of confidential information with the government, not the opposite.

- i. Beginning on page 9 on line 33 and continuing to page 10, lines 1-23, (R.I Gen. Laws § 38-2-4 (b)), this change would reduce or waive charges for the search, retrieval, review or redaction or records by state agency. While the State does not oppose simply adding an additional hour free, waiving charge based on a "public interest" standard is not in the interests of taxpayers. The State has a massive number of records in the millions and often APRA requests are extremely broad. Requesting search and retrieval charges on a good faith basis, balances the resources of government agencies with requestor's ability to narrow and focus a request. Additionally, these changes, combined with proposed amendment above requiring a privilege log, would grind government to halt. Instead of providing important services to the citizens, government agencies would be redirected towards fulfilling overbroad requests, possibly at no charge. The current APRA balances transparency with the current resources needed to fulfill APRA requests.
- j. Page 11, lines 9-11, (R.I Gen. Law§ 28-2-9(d), this change would allow compensatory and punitive damages without limitation, which would place further taxpayer dollars at risk for failure to deploy limited resources.

The intent of the proposed legislation is admirable, but some of the actual consequences of the bill would be to reduce government efficiency and service, require additional resources to fulfill overly broad requests and ultimately increase the burden on taxpayers. The Executive Branch departments would, at a minimum, require appreciable new resources to fulfill these proposed requirements. The State's current APRA provides significant transparency and open government, while striking a balance with the interests of the taxpayer.

The Department appreciates the opportunity to share these clarifications with the Committee. If there are any questions, please feel free to contact my office at your convenience. As always, I thank you for your partnership and consideration of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Womer".

Jonathan Womer  
Director, Department of Administration