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March 19, 2024

The Honorable Evan P. Shanley  
Chair, House Committee on State Government and Elections  
State House  
82 Smith St.  
Providence, RI 02903

**RE: H7181: An Act Relating to Public Records – Access to Public Records**

Dear Chairman Shanley:

I am writing to express opposition to H7181, a bill that seeks to make changes to several provisions within the public records act that would have repercussions for state taxpayers and affect the operations of the Rhode Island Department of Human Services (DHS). In this letter, I have outlined several concerns we may share with other State agencies for the committee's consideration.

First, DHS is concerned about disclosing subpoenas as criminal and civil investigations of the federal programs administered by DHS are often conducted by the Office of the Inspector General in conjunction with other federal law enforcement agencies and U.S. attorneys. These investigations often focus on third parties rather than the government agencies. As a result, there may be individuals and related information listed in the subpoena that are ultimately found to have no connection to the investigation. Oftentimes, the department may not be aware of the final outcomes regarding these individuals. Disclosure of the existence and content of these subpoenas does not further the understanding of the operations of a department such as DHS, nor does it further the public interest. In fact, it may further the false perception that individuals who receive public assistance are all criminals, especially if the name is found in a subpoena. The production of many fact-finding subpoenas would only continue to advance, often negative, false assumptions of public assistance recipients.

Second, DHS takes its obligation to produce public records seriously. DHS carefully weighs its obligations to the public interest to produce such records while safeguarding the confidentiality of information obtained as required under the federal and state programs it administers.

A majority of the public records requests received by DHS, from the public, state that no fees should be charged because the request "is in the public interest." Technically, this would be true of all requests made by the public, thereby requiring waiver of fees. However, fees are a means to keeping requests from being overly broad, voluminous, and unduly burdensome to DHS. The imposition of fees may also assist the requestor in narrowing the request to what is truly needed. When requests are unnecessarily broad and voluminous, DHS employees are taken away from their duties associated with the administration of DHS programs, which also has a cost to taxpayers. Additionally, fees serve to deter abusive requests that are unreasonably broad, unduly burdensome, repetitive and/or intended to disrupt the public body's business. Currently, R.I. Gen. Laws § 38-2-4(e), requires the courts to be the appropriate forum to determine whether fees should be reduced or waived.

Third, DHS has concerns about APRA requests that come outside the APRA request procedure. Permitting any means possible for APRA requests introduces a level of disorganization that hurts DHS, its employees, and people seeking public records.

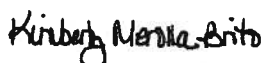
APRA requires public bodies to establish written access procedures and post them on their websites. These procedures must include the identification of a designated public records officer, and how and where to make a public records request. APRA also requires the designation of R.I. Attorney General trained public records officers. These processes and procedures are not complicated and ensures that both the department and the requester are following the same procedures for all requests and those that are trained to handle such requests do just that. Requests that come outside this system introduces a level of disorganization that hurts both the public body, its employees and people seeking public records.

DHS employees that are not public records officers are likely not familiar with the details of the APRA law and APRA time constraints as it relates to these records requests. These employees have different responsibilities, are not on notice of any APRA obligations, and may not have the appropriate backup to assist in these requests, and as a result, may unintentionally misdirect such requests. Requiring DHS employees to deal with public records requests without going through established processes takes its employees outside of the realm of their primary job duties. It is important to note that recipients of public assistance, and other DHS administered programs, often request copies of documents from their files or copies of their complete file, for a variety reasons. Therefore, based on the confidential nature of DHS records, it is imperative that public records officers, who are knowledgeable of APRA law, are the points of contact for these requests to ensure procedures are followed and the confidentiality of the personal information within its files is protected.

All DHS employees that are designated as public records officers regularly monitor inboxes, phones and mail and has backup coverage if they are sick, on vacation, or otherwise out of the office. Their designation as a public records officer and familiarity of the law ensures awareness of statutory deadlines, the requirements for public disclosures, and therefore acts accordingly. The same may not be true of other employees less familiar or not familiar at all with APRA. Requiring public bodies to respond to requests that come outside that system introduces a level of confusion and disorganization that hurts both DHS and the people seeking public records.

Thank you for the opportunity to share DHS's concerns.

Sincerely,



Kimberly Merolla-Brito  
Director  
RI Department of Human Services

CC: The Honorable Members of the House Committee on State Government and Elections  
The Honorable Patricia A. Serpa  
Nicole McCarty, Esq., Chief Legal Counsel for the Speaker of the House of Representatives  
Lynne Urbani, Director of House Policy