



Rhode Island non-profit corporation. The RIACLU has a membership of approximately two thousand five hundred (2,500) people. As an association of not less than twenty-five (25) members, the RIACLU is authorized by R.I. Gen. Laws § 42-35-3(a)(2) to request oral hearings and substantive rule making proceedings.

4. In pursuit of the RIACLU's goals, Plaintiffs have advocated in numerous venues for strengthening compliance by public agencies with the rule-making provisions of the Administrative Procedures Act ("APA"), R.I. Gen. Laws § 42-35-1 *et seq.* Plaintiffs have regularly submitted written testimony and participated in public hearings conducted by numerous state agencies in accordance with their obligations under the APA.
5. Defendant, the Rhode Island Department of Public Safety ("DPS"), is a governmental agency of the State of Rhode Island and, as such, is also an agency pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1(1), and subject to the public rule-making provisions of that Chapter.
6. Defendant Col. Steven G. O'Donnell is the Commissioner of the Department of Public Safety, and is sued in that official capacity.

#### **Jurisdiction**

7. This Court has original jurisdiction over this controversy pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Uniform Declaratory Judgments Act, R.I. Gen. Laws § 9-30-1 *et seq.*

#### **Facts**

8. On or about November 16, 2010, the DPS issued a Public Notice of Proposed Rule-Making with regard to proposed regulations governing access to public records. The proposed regulations were made available for public inspection pursuant to R.I. Gen. Laws § 42-35-3. (Exhibit A)
9. Members of the public were invited to submit written or oral comments regarding the proposed regulations by December 16, 2010. Further, a public hearing to consider the proposed adoption was scheduled to be held on Thursday, December 16, 2010 at the Rhode Island State Police Headquarters.
10. In response to the public notice, Plaintiffs prepared and submitted written testimony to the DPS addressing the regulations that had been disseminated by the Defendants as the subject of the public hearing. Plaintiff RIACLU also attended the hearing on December 16, 2010.
11. Upon arriving at the hearing on December 16, 2010, those in attendance were provided a revised set of proposed regulations, made public only the day of the hearing itself, as the formal subject of the public hearing. (Exhibit B)
12. The revised proposed regulations were a significant revision of the regulations that had been the purported basis of the public hearing, and that had been the subject of Plaintiffs' submitted testimony.
13. If the regulations proposed by DPS the day of the public hearing had been the regulations included with its rule-making notice in November, 2010, Plaintiffs' written testimony would have been significantly different from what they submitted.

14. Various persons in attendance objected to the lack of notice and opportunity to review the revised regulations before the public hearing. Nevertheless, the DPS held its hearing, and on or about January 16, 2011, adopted the rules in substantially the same form as they had been provided to attendees at the public hearing for the first time on December 16, 2010.
15. In light of the last minute changes in the proposed regulations, Plaintiffs were not afforded a reasonable opportunity, either at the hearing or during any of the public comment period required pursuant to the rule-making provisions of the APA, to submit data, views or arguments about those regulations.
16. In light of the last minute changes in the regulations, DPS did not, at the time of its public notice of rule-making proceedings, make available an accurate concise summary of all non-technical amendments being proposed, nor did DPS clearly mark the proposed additions, deletions or other amendments to the rules and regulations being proposed, as required by R.I. Gen. Laws § 42-35-3.
17. Any member of the public who relied upon DPS' rule-making notice in November, 2010 and did not attend the December 16, 2010 hearing would have had no opportunity, reasonable or otherwise, to comment on the rule actually being considered by the DPS for promulgation.
18. On or about July 15, 2011, the Department of Public Safety issued a Public Notice of Proposed Rule-Making with regard to amendments to its "Access to Public Records Regulation." These proposed amended regulations were made available for public inspection pursuant to R.I. Gen. Laws § 42-35-3. (Exhibit C)

19. Members of the public were invited to submit written or oral comments regarding the proposed amendments by August 16, 2011. Further, a public hearing to consider the proposed amendments was scheduled to be held on Tuesday, August 16, 2011 at the Rhode Island State Police Headquarters.
20. On or about August 2, 2011, Plaintiffs prepared and submitted written testimony to the DPS addressing the proposed regulations that had been disseminated by the Defendants as the subject of the public hearing. Plaintiff RIACLU also attended the hearing on August 16, 2011.
21. Upon arriving at the hearing on August 16, 2011, those in attendance were provided a revised set of amended regulations, made public only the day of the hearing itself, as the formal subject of the public hearing. (Exhibit D)
22. The revised proposed regulations were a significant revision of the proposed amendments that had been the purported basis of the public hearing, and that had been the subject of Plaintiffs' submitted testimony.
23. If the regulations proposed by DPS the day of the public hearing had been the regulations included with its rule-making notice in July, 2011, Plaintiffs' written testimony would have been significantly different from what they submitted.
24. Various persons in attendance objected to the lack of notice and opportunity to review the second revised regulations before the public hearing. Nevertheless, the DPS held its hearing, and, on or about August 31, 2011, the DPS adopted the rules in substantially the same form as they had been provided to attendees at the public hearing for the first time on August 16, 2011.

25. In light of the last minute changes in the proposed regulations, Plaintiffs were not afforded a reasonable opportunity, either at the hearing or during any of the public comment period required pursuant to the rule-making provisions of the APA, to submit data, views or arguments about those regulations.
26. In light of the last minute changes in the regulations, DPS did not, at the time of its public notice of rule-making proceedings, make available an accurate concise summary of all non-technical amendments being proposed, nor did DPS clearly mark the proposed additions, deletions or other amendments to the rules and regulations being proposed, as required by R.I. Gen. Laws § 42-35-3.
27. Any member of the public who relied upon DPS' rule-making notice in July, 2011 and did not attend the August 16, 2011 hearing would have had no opportunity, reasonable or otherwise, to comment on the rule actually being considered by DPS for promulgation.
28. The Department of Public Safety has failed to provide reasonable notice of the planned adoption and revision of its "Access to Public Records Regulation," in violation of the mandates set forth under the Administrative Procedures Act.

**COUNT I**  
**Injunctive Relief**

29. Plaintiffs hereby incorporate by reference Paragraphs 1 through 30 of the Complaint as if fully set forth herein.
30. Plaintiffs have reasonable likelihood of success on the merits.
31. Plaintiffs have no adequate remedy at law.
32. The balancing of equities requires that the requested relief be granted.
33. Plaintiffs are otherwise entitled to mandatory injunctive relief.

**COUNT II**  
**Administrative Procedures Act**

34. Plaintiffs hereby incorporate by reference Paragraphs 1 through 35 of the Complaint as if fully set forth herein.
35. R.I. Gen. Laws § 42-7.3-9 authorizes the Director of the Department of Public Safety to make and promulgate necessary rules and regulations incident to the exercise of his powers and the performance of his duties as enumerated therein.
36. The Department of Public Safety is required by the Administrative Procedures Act to follow the procedures contained in R.I. Gen. Laws § 42-35-3, which mandates the giving of at least thirty (30) days' notice of intended action prior to promulgation of rules and regulations, and requires agencies to "afford all interested persons reasonable opportunity to submit data, views, or argument, orally or in writing," and to "consider fully all written and oral submissions respecting the proposed rule."
37. The DPS is required at the time of its public notice of rule-making proceedings, pursuant to R.I. Gen. Laws § 42-35-3(1), to make copies of its proposed regulation available and to "prepare a concise summary of all non-technical amendments being proposed."
38. The DPS is required at the time of its public notice of rule-making proceedings, pursuant to R.I. Gen. Laws § 42-35-3(5), to "ensure that any proposed additions, deletions or other amendments" to rules and regulations "be clearly marked."
39. By revising its proposed rules immediately prior to the public hearing on such rules and preventing any reasonable opportunity for public submissions concerning those rules during the public comment period prescribed by the

Administrative Procedures Act, Defendants have failed to promulgate its new regulations with proper notice and in the proper format, and failed to afford interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, as required by the Administrative Procedures Act.

40. The Department of Public Safety's promulgation of rules and regulations without prior public notice and reasonable opportunity to comment is in violation of R.I. Gen. Laws § 42-35-3.
41. There are no administrative remedies available to the Plaintiffs.

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

1. That this Court declare the "Access to Public Records Regulation" adopted in January 2011, and as revised in August 2011, null and void as a result of the Department of Public Safety's failure to comply with the Administrative Procedures Act;
2. That this Court order the Department of Public Safety to hold a new hearing on its "Access to Public Records Regulation," with proper notice, as required by the Administrative Procedures Act;
3. That this Court enjoin the Department of Public Safety from implementing any version of its "Access to Public Record Regulation," until it has issued proper public notice, and afforded interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, in accordance with the Administrative Procedures Act;

4. That this Court award Plaintiffs' attorney's fees and other litigation costs under the Equal Access to Justice Act; and
5. That this Court grant such other relief as it deems just and proper.

Plaintiffs, RIACLU  
and Steven Brown  
By their attorney,

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