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COMMENTS ON PROPOSED DEPARTMENT OF PUBLIC SAFETY REGULATIONS GOVERNING ACCESS TO PUBLIC RECORDS
Public Hearing: August 16, 2011

The ACLU wishes to express its strong objections to the proposed change being made to the Department's regulations governing access to public records. Only eight months ago, the Department revised its open records regulations in ways that we argued marked a significant step backward for the public's right to know, most particularly in the context of arrest report information. This latest proposal amounts to yet another attack on transparency in this context. It not only seeks to improperly expand the Access to Public Record Act's (APRA) law enforcement exemption, it also once again undermines the statute's requirement that initial arrest reports be public.

The one-sentence amendment at issue states: "Witness statements taken for incident or arrest reports, though not considered a public record, may be released to the individual from whom the statement was taken, only if no exemptions apply."

There are two fundamental problems with this proposed amendment. First, it is simply incorrect that "witness statements" are "not considered a public record." No category of police record -- whether witness statements or any other type of document -- is per se exempt from disclosure under APRA's law enforcement records exemption. Rather, law enforcement records are exempt only to the extent they meet one of the six criteria laid out in that exemption, R.IG.L. §38-2-2(4)(i)(D).

Even more egregious is this proposal's specific attempt to make secret any witness statements that appear in initial arrest reports. As we have pointed out previously, APRA

explicitly provides that “records or reports reflecting the initial arrest of an adult … shall be public.” Redacting from initial arrest reports any information that has been gleaned from a witness is simply incompatible with this statutory imperative. Witness statements that are part of an initial arrest report are clearly public under the law. In short, this regulation would allow the core of some arrest reports to be significantly censored, despite the statute’s explicit reference to arrest reports being public.

As we noted last December, “the importance of public access to arrest records cannot be overstated. Scrutiny of arrest reports is one of the most fundamental ways to oversee the activities of law enforcement, and to make sure that proper procedures are being followed and arrests are taking place in a lawful manner. If a person is locked up in jail, the public should be able to find out how this came about. Indeed, civilian oversight of police arrests is one of the basic principles that distinguish democratic from totalitarian societies.”

Because we believe that the addition of Section V(2)(D)(4)(b) on Page 7 of the proposal is inconsistent with APRA, we urge deletion of that sentence.

We appreciate your attention to our views, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of these rules, incorporating therein your reasons for overruling the suggestions urged by us. Thank you.

Submitted by: Steven Brown, Executive Director