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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 23-H 5454, RELATING TO ACCESS TO PUBLIC RECORDS April 5, 2023

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.

I wish to briefly focus on provisions in the bill dealing with police records. The legislation makes four key amendments to promote greater transparency and accountability.

- APRA has long required the disclosure of initial arrest reports, which includes the narrative report of the arrest. However, news organizations and requesters have sometimes found police departments failing to provide the actual narrative report, instead offering a one-paragraph document that provides no real information. This bill would more clearly define the initial arrest information that must be provided, and would further make 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 would reject that distinction and give 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.

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.

**SUMMARY OF PROPOSED AMENDMENTS IN 23-S 420/H 5454,
THE ACCESS TO PUBLIC RECORDS ACT REFORM LEGISLATION**

1. Page 1, lines 9-10. This clarifies the meaning of the privacy language in the purpose section of the statute.
2. Page 1, line 19 through Page 2, line 2. Specifies that college police departments employing police officers are subject to the Act.
3. Page 2, lines 9-10. This language was moved to another section and amended. See #12.
4. Page 1, line 12-13. Clarifies that all withheld records are subject to the “reasonably segregable” provision of the statute.
5. Page 2, lines 14-17. Clarifies the scope of the exemption for medical records and revises the scope of the exemption for records relating to attorneys and clients.
6. Page 2, lines 32-34. Clarifies that past as well as present employment information is public.
7. Page 3, lines 29-34. Includes definition of narrative report for police records.
8. Page 3, line 34 through Page 4, line 1. Addresses the availability of non-arrest police incident reports.
9. Page 4, lines 2-10. Clarifies that reports of internal police investigations are public records and the names of so-called *Giglio* officers are also public.
10. Page 4, lines 11-14. Addresses access to police body-worn camera footage.
11. Page 4, lines 30-31. This language is moved to another section for clarity. (See #19.)
12. Page 5, lines 2-3. Addresses and limits the current exemption for elected official correspondence. See #3.
13. Page 5, line 13. Allows for disclosure of “investigatory records” for good cause.
14. Page 5, lines 19-20. Requires public bodies to cite the law or regulation relied upon in withholding records based on a non-APRA-specific exemption.
15. Page 6, lines 4-6. Provides that subpoenas issued to government entities or officials are public documents.

16. Page 6, lines 15-17. Clarifies that records of a public body are subject to disclosure even if maintained at another location.
17. Page 6, lines 21 and 25-27. Clarifies the scope and process for releasing “reasonably segregable” records.
18. Page 6, lines 28-30. Requires public bodies to post agenda documents with their agenda.
- 19 and 20. Page 6, lines 30-32. This language was moved from another section for clarity, and slightly expanded to allow for access to records reviewed or considered at a public meeting. See #11.
21. Page 7, lines 7-9. This language is moved to another section for clarity. (See #28.)
22. Page 7, lines 9-12. Requires public bodies to include a prominent link to their APRA procedures on their website.
23. Page 7, lines 14-15. Allows requests to be filed by mail, fax or email.
24. Page 7, lines 16-17. Clarifies that failure by a requester to follow all the technical procedures in filing a request is not a basis for ignoring the request.
25. Page 7, lines 18-21. Requires public bodies to forward APRA requests to the appropriate person within the agency, and extends the timeframe available for responding to requests under those circumstances.
26. Page 7, lines 27-29. Requires more specificity from public bodies in seeking an extension of time to respond to a request.
27. Page 7, lines 31-32. Makes clear that a waiver of the response time to a request is allowable only with written consent of the requester.
28. Page 7, lines 33-34 and Page 8, line 1. This language was moved from another subsection for clarity. See #21.
29. Page 8, lines 9-10. Allows requesters to receive documents electronically in a searchable format where feasible.
30. Page 8, lines 26-29. Bars public bodies from entering into contractual agreements that purport to keep confidential records otherwise public or from allowing private parties to make determinations as to the confidentiality of records under the statute.
31. Page 9, lines 11-12. Revises provision regarding timeframe for access to police logs.

32. Page 9, lines 12-13. Requires AG to establish uniform arrest log form for police departments to use.
33. Page 9, lines 20-23. Requires AG to post online information about public body compliance with certification requirement of the law.
34. Page 9, line 27. Reduces copying cost from 15 cents to 5 cents a page.
35. Page 9, lines 33-34. This extends from one to two hours the time for which no fee can be charged for responding to a request, and further bars charging for the redaction of documents or for the denial of records.
36. Page 10, lines 8-14. Requires administrative and judicial reduction or waiver of costs for requests that are in the public interest, and allows for appeals of any denials of waivers.
37. Page 11, lines 5-11. Increases the amount of the civil fines that can be imposed for violations of the law, and allows court to award damages and impose daily fines for violations.
38. Page 11, line 21. Clarifies that settlements of legal claims by, as well as against, public agencies are public.
39. Page 11, lines 27-29. Requires AG to post on their website searchable APRA complaints and opinions.
40. Page 11, lines 33-34 through Page 12, line 10. Allows 911 calls, and requests for 911 assistance made in other formats, to be publicly released for good cause and to individuals involved in the call.