

H-6602

The Honorable Robert E. Craven, Esq.  
House Judiciary Committee  
State House, Room 35  
Providence, RI 02903

March 18, 2021

Re: H5859 - Act Relating to Public Records - Access to Public Records

Dear Chairperson Craven:

On March 17, 2021, the House Judiciary Committee considered House Bill #5859 ("H5859"). This bill is intended to correct a misinterpretation of Rhode Island's Access to Public Records Act ("the APRA") and make the reports of investigations conducted by internal affairs departments of law enforcement agencies public. This bill serves a laudable and important purpose of opening our police departments to public scrutiny. I write in support of this bill.

The importance of H5859 cannot be overstated. Making law enforcement internal affairs reports public goes to the very core of our democracy. Law enforcement is uniquely governmental, a police officer is given a badge and gun and vested with enormous responsibility for the safety and welfare of the citizens of this state. In addition, their power is not limited to the public sphere (streets and sidewalks) but can reach into our homes, our places of work, and our places of recreation. H5859 is intended to ensure that appropriate public scrutiny is directed to those activities. There can be no question that recent events across the country have highlighted the need for such scrutiny.

H5859 is also necessary to correct two opinions of the Rhode Island Attorney General which severely, and inappropriately, curtail the scope of the APRA: *Piskunov v. Town of Narragansett*, PR 17-05; and *Farinelli v. City of Pawtucket*, PR 20-48. In those decisions, the Attorney General approved a "balancing test" in all circumstances where a citizen requests internal affairs reports. These decisions impose significant, and likely insurmountable, transaction costs for citizens seeking to discover what their government—in this case law enforcement—is doing. Indeed, the Attorney General's opinions in *Piskunov* and *Farinelli* invite government agencies to withhold documents thus requiring interested citizens to undertake a long, difficult, and burdensome appeals process.

Further, the Attorney General, in *Piskunov*, made a spurious distinction between internal affairs reports based on whether they resulted from a citizen complaint or arose internally and determined that citizen generated internal affairs reports were more presumptively public than reports generated after an internally generated investigation. This distinction has no logical basis because it is the substance of the report, rather than its origin, that matters. What is more, it is, again, an invitation for governmental agencies to hide what they are doing.

By mandating the disclosure of all internal affairs reports, regardless of their origin, H5859 would correct these decisions from the Attorney General.

While correcting the significant infirmities in the current iteration of the APRA, H5859 also recognizes the privacy interests of law enforcement officers, and others, by allowing (but not mandating) redaction of personally identifiable information. This represents an excellent balance between the public interest in disclosure and the individual's interest in privacy.

At a time when police conduct is under the proverbial microscope, it can only serve our state and our nation well to promote openness and transparency. H5859 does just that.

Sincerely yours,

/s/ **James D. Cullen**

James D. Cullen

**Roberta DiMezza**

---

**From:** James Cullen <jcullen@rcfp.com>  
**Sent:** Monday, March 22, 2021 8:59 PM  
**To:** House Judiciary Committee  
**Cc:** Rep. Ajello, Edith H.  
**Subject:** Written Testimony H5859 (March 17, 2021)  
**Attachments:** PDF copy Written Testimony H5859 (March 17, 2021).PDF

Good Evening

Please find attached written testimony in support of H5859. This relates to a hearing held on March 17, 2021.

Thank you

James D. Cullen  
Roberts, Carroll, Feldstein & Peirce, Inc.  
10 Weybosset Street, Suite 800  
Providence, RI 02903  
401-521-7000  
401-521-1328 Fax

