



STATE OF RHODE ISLAND
OFFICE OF GOVERNOR DANIEL J. McKEE

April 22, 2025

Honorable Evan P. Shanley
Chair, House Committee on State Government & Elections
Room 135, Rhode Island State House
Providence, Rhode Island 02903

Re: 2025 – H 5877, *An Act Relating to Public Records – Access to Public Records*

Dear Chairman Shanley:

The Administration writes in opposition to H 5877, An Act Relating to Public Records – Access to Public Records (Act). The Act would amend the Access to Public Records Act (APRA) to require that all “electronically stored public records in a computer storage system” be provided at no charge.

Currently, the APRA permits a minimal fee – \$15/hour – for the processing of APRA requests that exceed one hour of effort. *See* R.I. Gen. Laws § 38-2-4(b). The application of this fee is essential to ensuring the appropriate balance between public interest and the efficient use of government resources. It ensures that requestors narrowly tailor requests and that public bodies timely and efficiently produce the requested records. Requestors can also petition the court for a waiver of fees when “the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See* § 38-2-4(e). In contrast to the careful balance struck by the APRA, the Act’s proposed elimination of this reasonable fee will result in burdensome and overbroad requests that will impose unmanageable administrative and financial burdens on public bodies that will ultimately impact Rhode Island taxpayers.

First, today, nearly all records are electronic. Rendering all such records free will assuredly result in excessively large public records requests, unmoored from any conceivable public interest. Currently, the APRA, like its federal counterpart the Freedom of Information Act (FOIA), requires that requestors “frame requests with sufficient

RHODE ISLAND STATE HOUSE, PROVIDENCE, RHODE ISLAND 02903

particularity to ensure that searches are not unreasonably burdensome.” See *Three Boys v. S. Kingstown Sch. Dep’t*, PR 22-1 (quoting *Assassination Archives & Rsch. Ctr., Inc. v. C.I.A.*, 720 F. Supp. 217, 219 (D.D.C. 1989)). “The rationale for this rule is that [public records laws were] not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Assassination Archives*, 720 F. Supp. At 219. The Act betrays that principle and will lead to burdensome fishing requests for entire electronic mailboxes, folders of files, and massive database exports.

Second, the Act wrongfully assumes that electronic records are easy to retrieve and therefore should necessitate no cost. This assumption betrays a fundamental misunderstanding of the public records process. See *DARE v. Gannon*, 819 A.2d 651, 662 (R.I. 2003) (“The APRA does not provide the press and the public with ‘carte blanche’ authority to demand all records held by public agencies.”). Processing an APRA request generally requires not only a search but, more importantly, the review and possible redaction of each individual document. See *id.* at 661 (stating the “costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested documents”). Therefore, the overwhelming majority of time spent processing an APRA request is expended in the review and redaction of records; whether, for example, a record is privileged, required to be kept confidential by law, deliberative, or otherwise exempt from disclosure. See § 38-2-2(4). To be sure, the Attorney General’s Open Government Unit has fielded numerous challenges to agency cost estimates, all uniformly demonstrating that review and redaction is a critical and labor-intensive endeavor. See, e.g., *Re: Crandall and Machado v. Office of the Governor*, PR 24-12 (upholding five minute per record estimate and noting that the actual time spent reviewing was 7.2 minutes per record); *Re: Ahlquist v. R.I. Dep’t of Housing*, PR 24-01 (finding review estimate of one minute per page reasonable); *Three Boys*, PR 22-1 (finding estimate of three minutes per page was not unreasonable). Contrary to this well-documented history, the Act, if passed, would impose enormous financial and administrative burdens on public bodies with no mitigating protection against abusive, burdensome, and overbroad requests.

Third and finally, the APRA imposes response deadlines on public bodies, requiring that each public records request be completed within ten business days, with the option of an additional twenty-day extension in certain limited circumstances. See § 38-2-3(e). Despite the inevitable increase in the volume and scope of APRA requests that this Act would provoke – requests that would be impossible to complete in a matter of days – the Act makes no corresponding adjustments to response deadlines.

Honorable Evan P. Shanley
April 22, 2025
Page 3

Sincerely,

/s/ Katherine E. Miller

Katherine E. Miller
Deputy Executive Counsel

cc: Honorable Members of the House Committee on State Government & Elections
Honorable Stephen M. Casey
Nicole McCarty, Esq.