State of Rhode Island
DIVISION OF STATE POLICE
State Police Headquarters, 311 Danielson Pike, North Scituate, Rhode Island 02857
OFFICE OF THE SUPERINTENDENT AND DIRECTOR OF PUBLIC SAFETY

Colonel Darnell S. Weaver
Superintendent

March 31, 2026

The Honorable Evan P. Shanley, Chair
House Committee on State Government and Elections
Rhode Island House of Representatives
82 Smith Street
Providence, RI 02903

RE: 2026-H 7305– An Act Relating to Public Records – Access to Public Records

Dear Chairman Shanley:

On behalf of the Rhode Island Department of Public Safety ("DPS"), please accept this letter expressing strong concerns regarding legislation currently before the House Committee on State Government and Elections entitled, "An Act Relating to Public Records – Access to Public Records," which substantially changes the current framework of the Access to Public Records Act ("APRA") as it applies to law enforcement agencies. Although the proposed legislation would apply broadly to all public bodies, the proposed legislation has provisions targeted at the actions of law enforcement agencies and its records. This letter is intended to provide a law enforcement perspective.

First, the proposed legislation would require that internal affairs reports "shall be public records[.]" As a matter of practice, internal affairs reports are treated as personnel records. Rhode Island General Laws § 38-2-2(4)(A)(I)(b) exempts from public disclosure:

> Personnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et seq.[.]

Similarly, § 38-2-2(4)(D)(c) exempts law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The APRA's stated purpose is both "to facilitate public access to public records" and "to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-1.

Consequently, the APRA contemplates a "balancing test" whereby the "public interest" in disclosure is weighed against any "privacy interest." The United States Supreme Court conducted such a balancing test in National Archives and Records Administration v. Favish, 541 U.S. 157, 171-75 (2004). In considering the application of the relevant FOIA provision requiring the balancing of public and privacy interests, the U.S. Supreme Court explained:

> [T]he usual rule that the citizen need not offer a reason for requesting the information must be inapplicable.... First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted. Id. at 172.

In Providence Journal Co. v. R.I. Dept. of Pub. Safety ex rel. Kilmartin, 136 A.3d 1168, 1175 (R.I. 2016), the Rhode Island Supreme Court expressly adopted Favish's scheme and "place[d] the same gloss upon the APRA." Agreeing with the United States Supreme Court, our Supreme Court held that "to effect the balance of privacy interest against the public interest in disclosure and to give practical meaning to the exemption, the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable." Id.

The proposed legislation twists and reverses federal and state jurisprudence. It also treats the personnel records of police officers differently than personnel records from other public agencies. In addition, the proposal makes no distinction between a "founded" and "unfounded" report or severity of the alleged infraction. Under the recently reformed Law Enforcement Officers' Due Process, Accountability and Transparency Act ("LEODPATA"),[1] R.I. Gen. Laws § 42-28.6-1 et seq., the outcome of significant disciplinary matters that proceed to a hearing would become public after the hearing committee decides whether to sustain, modify or reverse the recommendation of the police chief. Disclosing allegations from an unfounded claim will do nothing but defame the law enforcement officer and chill recruitment and retention of police officers. Transparency already exists in the current system. For any DPS agency, a complainant is made aware of the outcome of any investigation.

Second, the proposal would require all body-worn camera footage involving the use of force to be publicly available within 30 days. The General Assembly tasked the Department of Public Safety and the Office of Attorney General to promulgate rules and regulations concerning the use of body-worn cameras. See R.I. Gen. Laws § 42-161-4(b). These rules address the release of body-worn footage in use of force situations. The policy currently states that it is expected the release of such footage will occur upon "substantial completion" of the use-of-force investigation which is expected to occur within 30 days. 270-RICR-60-00-2.5.13(D)(3(b), (D)(4). Releasing video footage prior to an investigation being substantially completed will hinder the investigation and potential criminal prosecution, leaving open questions whether the investigation was fact-based or populist driven. The safeguards within the statewide policy should assure the citizens of this state that relevant

[1] The proposal adds a reference to the "law enforcement officers' bill or rights" in subsection D(I). LEOBOR has been replaced with LEODPATA.

footage will be released at the earliest opportunity while maintaining investigatory and prosecutorial integrity. Indeed, the Attorney General makes this determination, not the law enforcement agency. Id.

Third, the proposal would require all public bodies to "identify the amount of information withheld and the exemption under which it was withheld" and create a "privilege log" if the reason for the redaction is not delineated on the released portion of the record. The Department of Public Safety receives approximately 2,000 records requests each year. Adding this unnecessary and unfunded burden on my staff may result in the Department being unable to respond within the time set forth in the APRA without an increase to our staffing levels. By way of example, some requests seek literally thousands of pages of records. Each page must be reviewed, and redactions made if appropriate. To require a public agency to specify on each page the basis for each redaction and/or create a privilege log is unnecessary and counterproductive. When information is redacted or records withheld, the requestor is already informed of the specific APRA exemption(s) being applied. Although a requestor may disagree with the redaction or withholding of a record, very rarely, if ever, has a requestor contacted my Department because they were confused as to why a redaction was made or record withheld in its entirety.

Fourth, currently, 911 calls are deemed exempt from public disclosure unless there is a court order allowing for the disclosure or the caller whose voice is recorded consents to the release. The proposal seeks to dramatically change this structure by allowing the release of 911 transmissions, including text messages, photos and videos if a third party can provide "good cause." Respectfully, although DPS does not object to changing the structure to allow for a more robust release of 911 recordings, "good cause" is not defined and applying the balancing test to 911 communications that involve medical issues will implicate significant privacy concerns. DPS requests that "upon good cause shown" is more clearly defined.

Lastly, the proposal states that incident reports will be presumptively public. This amendment is inconsistent with other recent amendments regarding the sealing of arrest records. Indeed, a person arrested has their records automatically sealed upon dismissal of the case. See R.I. Gen. Laws § 12-1-12.1. To the contrary, under this proposed legislation, the reports of a person not arrested may have their reports released into the public domain in perpetuity. With that said, DPS does not have a blanket policy that incident reports are *per se* exempt from public disclosure. Instead, it reviews each incident report on a case-by-case basis. The proposed legislation, however, may tip the balancing test toward the release of records that would normally have not been released into the public domain, which again seems inconsistent with the treatment of persons that were arrested but had their records sealed.

I thank you for the opportunity to express the position of the Department of Public Safety on legislation currently before the House Committee on State Government and Elections, H –7305 entitled, "An Act Relating to Public Records."

Respectfully,

Colonel Darnell S. Weaver
Superintendent, Rhode Island State Police
Director of Public Safety

cc: Honorable Members of the House Committee on State Government and Elections
Nicole McCarty, Chief Legal Counsel to the Speaker of the House
Major Ronald Longolucco
Adam Sholes, Esq. – DPS Chief Legal Counsel
Governor's Office