Rhode Island Department of Revenue
Office of the Director

March 31, 2026

The Honorable Evan P. Shanley
Chair, House Committee on State Government and Elections
State House
Providence, RI 02903

Re: 2026 H-7305-AN ACT RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS

Dear Chair Shanley:

I am writing on behalf of the Department of Revenue and its six divisions (collectively "DOR") to express concerns with how certain provisions of House Bill 7305 may adversely affect how the DOR responds to public records requests governed by the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.* ("APRA").

As you know, House Bill 7305 amends numerous provisions of the APRA, including those governing both the procedures public bodies must follow when responding to APRA requests and the substantive definitions of what constitutes a public record. When responding to APRA requests the DOR adheres to all requirements of the APRA and ensures that all APRA responses fulfill the APRA's dual purposes of facilitating public access to public records and protecting from disclosure information about particular individuals when disclosure would constitute an unwarranted invasion of personal privacy.

The addition of proposed § 38-2-19, which would require disclosure of the names of "Preferred Plates" owners, to the APRA would lead to confusion among the public generally and APRA requesters specifically seeking such information since the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 *et seq.*, ("DPPA") completely prohibits the disclosure of this information. Last year the Rhode Island Supreme Court unanimously affirmed the application of the DPPA's privacy protections to the names of "Preferred Plates" owners. See *LMG R.I. Holdings, Inc. v. Office of McKee*, 335 A.3d 444 (R.I. 2025). Enacting a provision that runs contrary to federal law is imprudent and would likely lead to unnecessary litigation to defend against the disclosure of information that would constitute a serious invasion of privacy.

Additionally, the following proposed provisions could have a detrimental effect on the DOR's future APRA responses:

- Revision of the exemption in § 38-2-2(4)(A)(I)(a) from "[a]ll records relating to a client/attorney relationship" to "[a]ll records protected by the attorney-client privilege or attorney work product privilege" could inadvertently lead to the disclosure of confidential information and have a chilling effect on the relationship between attorneys and the public bodies they represent. The current exemption has been interpreted to encompass documents beyond those that are covered by the attorney-client and attorney work product

privileges. Narrowing the scope of this exemption would lead to the disclosure of documents that, while not strictly within the scope of the privileges, are created based on the foundation of trust and candor inherent in the attorney-client relationship.

- Revision of the exemption in § 38-2-2(4)(M) from "in their official capacities" to "that has no demonstrable connection to the exercise of official acts of duties" lacks clarity as most correspondence to elected officials leads to further inquiries and actions, especially directed to Executive Branch agencies.
- The addition of "except that, upon good cause shown, such records may be released upon the completion of formal notification" to the investigatory records exemption in § 38-2-2(4)(P) is both vague in that "good cause" is not defined and contradictory to the requirements of § 38-2-3(j) that a public body shall not require "that a person or entity provide a reason for the request. . . ."
- The additional public records definition added to the exemption in § 38-2-2(4)(Y) that "a subpoena issued by a governmental entity to a public body or a public official regarding official business shall be a public record" is vague in that "official business" is not defined and does not provide for an exemption for information that may be contained in subpoenas that would constitute an unwarranted invasion of personal privacy if disclosed, particularly when such disclosure would cause the subject of the subpoena unfair and unreasonable reputational harm. Additionally, as Administrative, State, and Federal subpoenas are issued as a means of fact-finding and investigation, permitting the production of these documents as public records could undermine the integrity of a pending investigation. Further, this may also lead to an escalation of such requests and the increased administrative burden would further stress resources.
- The language added to § 38-2-3(b) which mandates the production of a privilege log when documents or any portion thereof are withheld would be burdensome on public body personnel and strain public body resources, particularly in light of the proposed revisions to the ability of public bodies to assess costs in responding to APRA requests discussed below. Additionally, such provisions would be difficult to assess and administer, especially in the Taxation context, where fact of filing is considered personally identifiable information.
- The requirements of proposed new § 38-2-3(c) that documents discussed, reviewed, considered, or submitted at an open meeting of a public body shall be posted online with the meeting agenda and made available upon request to any member of the public present at the meeting "[n]otwithstanding the provisions of § 38-2-2(4)" does not allow for the redaction of information that may be contained in such documents that would constitute an unwarranted invasion of personal privacy if disclosed.
- The revisions to § 38-2-4(b) that increase the amount of free search and retrieval time afforded to APRA requesters from 1 to 2 hours and prohibit the assessment of charges for the first 2 hours used for the redaction of documents could inadvertently lead to the disclosure of confidential information. Public body personnel must thoroughly review all documents responsive to an APRA request to ensure they do not contain information that is prohibited by law from disclosure and/or would not constitute an unwarranted invasion of personal privacy if disclosed. This review and redaction process is an integral part of fulfilling the purposes of the APRA. Prohibiting public bodies from charging for it, even

at a rate that is often far below the hourly rate of the employees conducting it, could lead to personnel conducting a less careful review causing the disclosure of information that should not be disclosed, and which cannot be undisclosed following an inadvertent disclosure.

- The revisions to § 38-2-4(e) that mandate public bodies must reduce or waive search and retrieval fees "if the requester demonstrates that the information requested is in the public interest" creates an exception that swallows the rule. It is hard to envision any APRA requestor not seeking a fee waiver as most requestors would argue their requests are "in the public interest." Waiving all search and retrieval fees, both for the actual search and retrieval and for the review and redaction process, could lead to the inadvertent disclosure issues described above.

The DOR seeks to continue responding to APRA requests in a manner that fulfills the APRA's dual purposes. Addressing the issues raised above will help to achieve that goal. Thank you for your consideration.

Sincerely,

Jane E. Cole
Interim Director

Cc: The Honorable Members of the House Committee on State Government and Elections
The Honorable Jason Knight
Nicole McCarty, Esq., Chief Legal Counsel to the Speaker of the House