



STATE OF RHODE ISLAND JUDICIARY

SUPREME COURT
OFFICE OF GENERAL COUNSEL

Licht Judicial Complex
250 Benefit Street
Providence, RI 02903

March 31, 2026

[Via Electronic Mail \(HouseStateGovernmentandElections@rilegislature.gov\)](mailto:HouseStateGovernmentandElections@rilegislature.gov)

Chairman Evan P. Shanley
House Committee on State Government and Elections
Rhode Island State House
House Lounge
Providence, Rhode Island 02903

Re: House Bill No. 8350: An Act Relating to Public Records — Access to Public Records

Dear Chairman Shanley:

I write on behalf of the Rhode Island Judiciary to express the Judiciary's concerns with House Bill No. 8350, scheduled to be heard this evening before the House Committee on State Government and Elections. If enacted, this legislation would subject the Judiciary's "bulk electronic data processing records or any compilation of electronic court records, and more specifically the Rhode Island adult criminal database and the Rhode Island traffic tribunal database extract" to disclosure pursuant to the Rhode Island Access to Public Records Act, R.I. Gen. Laws §§ 38-2-1 *et seq.* (the "APRA").

Court records are public records and have always been public records, however adjudicative court records, such as records relating to charges or disposition, for example, have never been subject to the disclosure requirements of the APRA (i.e., ten-day production timeline, appeal process, etc.). According to the plain text of the statute, the APRA only applies to the Judiciary in the context of its *administrative records* (for example, contracts, purchasing documents and other non-adjudicative records). See R.I. Gen. Laws § 38-2-2(4)(T). See, e.g., *Ialongo v. Narragansett Bay Commission*, 2000 WL 33418525, at *2 (R.I.A.G. May 12, 2000) (citing R.I. Gen. Laws § 38-2-2(4)(T) and observing that "most court documents . . . do not fall within the purview of the APRA."). House Bill No. 8350 is an attempt to compel the Judiciary to produce its criminal and traffic databases, which are compilations of its adjudicative records, under the APRA.

Upon information and belief, the driving force behind House Bill No. 8350 are the data brokers who wish to use these court records as a commodity to sell to their customers, including but not limited to insurance companies and companies who conduct background checks for employers. For context, data brokers and related entities previously purchased bulk data records

from the Judiciary on a monthly basis. These companies were required to hold the data in confidence, refrain from selling the data to third parties or publicly displaying personal identifying information online or in published products, and regularly delete expunged and/or sealed case information by replacing the previous month's data set with the new data set received each month during the contracts' duration. Unfortunately, there were instances where the data brokers did not adhere to this contractual obligation and personal identifying information and expunged and/or sealed case information entered the public domain.

To protect the confidentiality of this data and prevent inappropriate disclosures from reoccurring, in 2023, the Judiciary decided to no longer allow data brokers and other entities to purchase its bulk data.

Following unsuccessful attempts to convince the Judiciary to revert back to providing bulk data, this bill is an effort to compel the Judiciary to do just that.

This bill, if enacted, would legislatively mandate that the Judiciary convey its adjudicative databases to any requestor under the APRA. In addition to posing a potential separation-of-powers issue, it provides no protection or even consideration of how to treat subsequently expunged case information. Requiring the Judiciary to produce its criminal and traffic databases would effectively neuter the state's expunged/sealed case regime because a disclosed record which later becomes expunged/sealed would remain open out in the wild even if it was confidential inside the courthouse. The bill contains no mechanism, nor can the Judiciary imagine one—legal, practical, or otherwise—to claw bulk data back once it is released. This risk would frustrate the General Assembly's laudable and ongoing efforts to improve outcomes for justice-involved individuals. In this legislative session alone, there are multiple expungement bills in the House and Senate under consideration. The introduction of such bills shows an intent by the General Assembly to aid those who have criminal records and expunge certain records, to prevent the defendant at issue from having long-term implications from the attachment of their criminal history. House Bill No. 8350 would completely uproot the prospect of any current or future expungement legislation, as once the bulk data is released, it can become publicly available to all, meaning that even records that later become expunged, would still be in the public forum and could be reported on an individual's background checks and other screening tools.

To be clear, though the Judiciary opposes this bill, the public nature of the records at issue is without question. Requiring the production of these records in bulk format for the pecuniary benefit of the data brokers who are behind this legislation is what the Judiciary opposes. The value of these records lies in the bulk format being sought. When received in bulk format, these records can then be re-commoditized, stored, sold, and used in private industry without regard for the records' legal status. This bill should be viewed as the Trojan Horse that it is, not a sincere effort to enhance the APRA or improve the transparency of government but, rather a manufactured solution in search of a problem, solely intended to regain for the data industry a source of revenue at the expense of one of this state's most at-risk populations.

Thank you for the opportunity to express the Judiciary's serious concerns regarding this legislation.

Sincerely,

Chrisanne Wyrzykowski

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General Counsel

Rhode Island Supreme Court