CSPRA

COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: March 31, 2026
To: Representative Evan P. Shanley, Chairman
House State Government and Elections Committee
House of Representatives
82 Smith Street
Providence, Rhode Island 02903

CC: Members of the Committee

Re: **Letter of Support for H 8350 and Comments on Court Policies on Bulk Access to Court Records**

Who We Are
The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, governmental, commercial, and societal benefit. Members of CSPRA are just a few of the many entities that comprise a vital link in the flow of information for these purposes and provide services that are widely used by constituents in your State. Collectively, CSPRA members alone employ over 75,000 persons across the U.S. The economic and societal activity that relies on entities such as CSPRA members is valued in the trillions of dollars and employs millions of people.

Public records, including court records, play a key role in services benefiting consumers, businesses, and State and Federal governments. Public records are used to combat government benefit fraud by helping to verify eligibility for public assistance programs. They are also used to detect fraud and set fair rates in applications for insurance and credit cards, keeping costs lower for consumers and helping to decrease or prevent fraud related crimes. Daycares, long-term care facilities, and banks use information from public records to verify the credentials, including background checks, of individuals who will be entrusted to work with vulnerable people or to access sensitive or financial information. The use of public records also directly contributes to public safety, helping to ensure commercial drivers are safe drivers. Our economy and society depend on value-added information and services that include public records data for many important aspects of our daily lives and work. CSPRA works to protect those sensible uses of public records.

Overview
There are several practical and legal issues of concern with current court policy and decision to terminate bulk access to court records. We have encouraged the court change its policy to solve

any perceived problems while restoring bulk access. The court has refused to change their policy or provide any other mechanism or processes that would restore access to the needed data in bulk form. In this letter and Appendix A, we will address several practical and legal issues and provide supporting information that shows why H 8350 is needed.

Practical Issues

Court records accessed through bulk data transfers enable a myriad of lawful, necessary, economically beneficial, and often legally mandated processes and transactions and are efficient for both the user and the court. Users can get the data they need in a standard format on a routine basis and incorporate this data into their processes and systems without burdening government with customized data and service requests. Bulk data transfers also ensure up-to-date data continues to be used in vital societal processes and avoids delays in such processes. The effects of denying bulk access are serious, disruptive, and deviate from how most of the nation's state and local courts deal with this issue. We have prepared an analysis of how other courts address access and the effects of granting or denying reasonable bulk records access. The analysis also addresses the issue of how to address expungement and provides two examples of how other state address this issue. The analysis is attached as Appendix A to this letter.

Agreements for bulk access that were in place before the court cancelled them controlled who could access data in bulk, what data was included, how that could be used, how the data must be managed and protected, and how much it cost to get it. These bulk data transfers were a low-cost method of serving data needs with very low overhead and low direct costs. This method was a win-win approach that has served Rhode Island residents, businesses, and governments well and we urge its restoration. Without bulk access, the legal requirement to provide access to court records becomes very difficult to manage and very inefficient.

Providing records at the cost of reproduction is the gold standard for public records access. The truth of modern data systems is that data storage and electronic transfer interfaces are cheap and get cheaper every year. A Washington State study and subsequent bill adopted into law placed these costs at 10 cents per gigabyte and was based on the actual experience, contracts, and storage costs of the state, cities, and counties. In fact, bulk data transfers today can cost so little as to need a simple flat fee because the actual cost may be pennies or even fractions of pennies. The court's previous routine bulk data agreements were helping, not harming, the court records systems and provided funds that fully covered the cost of reproduction and more. Previous agreements garnered about $600,000 in fees from eight agreements (see Appendix A for more details). Private systems that disseminate, index, and add value to public records also take the burden off public systems to serve those needs, thereby further reducing cost to government.

Restoring Beneficial Uses of Public Records

We look to find balanced solutions to privacy, access, and information management issues. To do that, it is critical to balance the costs and benefits, make sure rights are protected, fairly balance competing rights, and ensure the system works at an affordable cost. H 8350 enables exactly this kind of solution. Furthermore, it will restore many beneficial and important transactions and processes across public safety, employment, protection of vulnerable populations, risk management and insurance, real estate transactions, security management,

consumer protection, investment, and many other areas. Without access to these records in bulk, Rhode Islanders will continue to suffer delays, higher costs, less efficiency, reduced fairness in rate and cost setting, and harms to public safety. The effects spill over to harm Rhode Island economic activity because local businesses and persons who depend on the services will incur higher costs, lower their profitability, or conduct less business as a result.

Legal Concerns

Summary

There is a federal and state common law right of access to court records that cannot be categorically eliminated. Further, we believe the Rhode Island Access to Public Records Act (APRA) statute covers the court records at issue as we believe these records to be part of the 'administrative function' of the court. We also find statutory and case law affirming that public records are the property of the state. We argue that the court may not categorically abridge the right to access state property in the form of public records and to use those records for lawful purposes. Providing access to public records within a practical administrative framework that includes bulk access is beneficial, efficient, and economical for the court, businesses, and Rhode Island taxpayers. H 8350 will address these legal concerns.

Background

The Judiciary, as a public body, is subject to the APRA. Gen. Laws 1956, § 38-2-2:

> *(1) "Agency" or "public body" means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to: any department, division, agency, commission, board, office, bureau, authority; any school, fire, or water district, or other agency of Rhode Island state or local government that exercises governmental functions; any authority as defined in § 42-35-1(b); or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.*

Section § 38-2-2 further clarifies the application of the APRA to court records:

> *(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.*

Title 8, Chapter 16 relates to records of the Commission on Judicial Tenure and Discipline, exempting the records of the commission's proceedings but no other public court records from the APRA.

Additionally, the U.S. Supreme Court articulated the common law presumption of public record access in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.C t. 1306, 1312 (1978), followed by the Rhode Island Supreme Court in *Providence Journal Co. v Rodgers*, 711 A.2d 1131, 1135-6 (1998). The U.S. Supreme Court found:

> "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, . . . American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has

been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies . . .."

The U.S. Supreme Court more thoroughly explained its reasoning, *Nixon v. Warner Communications, Inc.*, 435 U.S. 597-599:

"It is clear that the courts of this country recognize a general right to inspect and copy public records and document, [footnote omitted] including judicial records and documents. [footnote omitted]. In contrast to the English practice, *see, e.g., Browne v. Cumming,* 10 B. & C. 70, 109 Eng. Rep. 377 (K.B. 1829), American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, *see, e.g., State ex rel. Colscott v. King,* 154 Ind. 621, 621-627, 57 N.E. 535, 536-538 (1900); *State ex rel. Ferry v. Williams,* 41 N.J.L. 332, 336-339 (1879), and in a newspaper publisher's intention to publish information concerning the operation of government, *see, e.g., State ex rel. Youmans v. Owens,* 28 Wis.2d 672, 677, 137 N.W.2d 470, 472 (1965), *modified on other grounds,* 28 Wis.2d 685a, 139 N.W.2d 241 (1966). *But see Burton v. Reynolds,* 110 Mich. 354, 68 N.W. 217 (1896)."

"It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes. For example, the common law right of inspection has bowed before the power of a court to ensure that its records are not "used to gratify private spite or promote public scandal" through the publication of "the painful and sometimes disgusting details of a divorce case." *In re Caswell,* 18 R.I. 835, 836, 29 A. 259 (1893). *Accord, e.g., C. v. C.,* 320 A.2d 717, 723, 727 (Del.1974). *See also King v. King,* 25 Wyo. 275, 168 P. 730 (1917). Similarly, courts have refused to permit their files to serve as reservoirs of libelous statements for press consumption, *Park v. Detroit Free Press Co.,* 72 Mich. 560, 568, 40 N.W. 731, 73735 (1888); *see Cowley v. Pulsifer,* 137 Mass. 392, 395 (1884) (per Holmes, J.); *Munzer v. Blaisdell,* 268 App. Div. 9, 11, 48 N.Y.S.2d 355, 356 (1944); *see also Sanford v. Boston Herald-Traveler Corp.,* 318 Mass. 156, 158, 61 N.E.2d 5, 6 (1945), or as sources of business information that might harm a litigant's competitive standing, *see, e.g., Schmedding v. May,* 85 Mich. 1, 6, 48 N.W. 201, 202 (1891); *Flecmir, Inc. v. Herman,* 40 A.2d 799, 800 (N.J.Ch.1945)."

"It is difficult to distill from the relatively few judicial decisions a comprehensive definition of what is referred to as the common law right of access or to identify all the factors to be weighed in determining whether access is appropriate. The few cases that have recognized such a right do agree that the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case. [footnote omitted] In any event, we need not undertake to delineate precisely the contours of the common law right, as we assume, *arguendo,* that it applies to the tapes at issue here. [footnote omitted]."

The common law right to access public records may be narrowly limited in the discretion of a trial judge in a particular case where certain access would be injurious to the rights of the participants or the fairness of the trial. However, a blanket ban for lawful and proper uses is contrary to recognized common law.

We also found this second summary of Rhode Island law from the Harvard Law Library useful in framing the discussion on the right to access public records including court records for all proper and lawful uses, including commercial or businesses uses.:

> "Rhode Island enacted the Access to Public Records Law in 1979. R.I. Gen. Laws Ann. § 38-2-1. Prior to the statute, a common law right of access to records was available but required that requestors have a demonstrated "interest" in the records. In re Caswell's Request, 18 R.I. 835, 29 A. 259, 259 (1893)."
>
> "'No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.' R.I. Gen. Laws Ann. § 38-2-3(j). Commercial use was originally restricted by R.I. Gen. Laws Ann. § 38-2-6, but was deemed unconstitutional in Rhode Island Ass'n of Realtors, Inc. v. Whitehouse, 51 F.Supp.2d 107 (1999), affirmed 199 F.3d 26, and was subsequently repealed. Rhode Island still allows a waiver of copying fees for non-commercial use. R.I. Gen. Laws Ann. § 38-2-4(e)."
>
> "Several places in the Rhode Island code refer to records as "property of the state": R.I. Gen. Laws Ann. § 8-10-36 ("All books, papers, recording media, and supplies necessary for the use of the court reporters and court recording clerks… and the notebooks used and notes and recordings taken by them shall be the property of the state"); R.I. Gen. Laws Ann. § 8-5-4 (same); R.I. Gen. Laws Ann. § 20-2-3 ("Every city and town clerk or agent appointed under this chapter shall record all licenses issued under this chapter in books kept for that purpose, one coupon of which shall be retained in his or her record. The books shall be supplied by the department, shall remain the property of the state."). Additionally, the Rhode Island Attorney General has the statutory authority to replevin public records not held in state custody. R.I. Gen. Laws Ann. § 42-8.1-12."[1]

The Rhode Island Judiciary Rules of Practice Governing Public Access To Electronic Case Information promulgated by the court are also instructive on the issues here. To our knowledge, these rules were finalized in 2018 and have not been amended or repealed since then. They state: "The Public Access Rules seek to harmonize the Judiciary's **obligation to make case information available and accessible** while also protecting the privacy of personal and/or otherwise non-public information filed with the courts throughout the Judiciary" (emphasis added). They provide for both kiosk access at the clerk's office at the courthouse and access remotely that is limited by specific privacy provisions in the rules. Recognizing its obligation to provide access to court records, the court has been providing bulk access to court records for over 10 years. Therefore, until the 2023 policy change and later termination of bulk records contracts, the court has been treating kiosk, remote, and bulk access as part of its obligation to make case information available and accessible to the public.

Analysis

[1] See https://copyright.lib.harvard.edu/states/rhode_island/

What we distill from this background is the public has a common law right to inspect and copy Rhode Island public records—and specifically court records—for a variety of lawful purposes. These rights may also be narrowly limited in the discretion of a trial judge in a particular case where certain access would be injurious to the rights of the participants or the fairness of the trial. These rights were augmented, not replaced, by Rhode Island state statues granting the public further rights of access to these records. These statutes further declare such records to be the property of the state and as such are held, not owned, by public officials who manage and hold that property in trust for the people.

The specific definitions section of the APRA noted above states that judicial bodies are included with respect to their administrative functions. One Rhode Island Superior Court case, *In re Biechele*, discussed this issue and found that, "It is apparent the APRA would apply to those carrying out policies and rules in the Clerk's office in the course of managing documents filed with the Court. It is not designed to apply to individual judges reading their office mail." *In re Biechele P.M.*, No. 06-2471, (R.I. Super. May. 26, 2006).[2] While the court in this case found the records at issue, sentencing letters, not be a public record subject to APRA, the court acknowledged the applicability of the APRA to the management of documents filed with the court. Court rules and years of practice have acknowledged the duty of the courts to make these records public within stated limits. We therefore assert that administrative functions include providing access to court records as the people have the right of access and the courts must administratively manage that right of access.

When considering statutory frameworks such as this, it is often argued that courts are free to ignore or not follow certain state laws because of separation of powers. We would suggest separation of powers of that type does not apply here except as recognized and limited by case law. The exceptions found in case law are limited to specific circumstances and cases—and does not apply to all records of all cases. The need for checks and balances is specifically referenced in this case law. It is given as a reason why court records need to be public. Further, the statutes declare that the records are the property of the state. This property was paid for by the taxpayers and owned by the state, not the courts as some form of government separate from the state. We do not think the issue here is freedom from undue interference by other branches. Rather we see the separation of the people from their property without comporting with the limited reasons for which a court may deny access—which is to protect the ends of justice in a particular case. We suggest that ensuring administrative access to court records is not interference with the decision-making processes or authority of the judiciary but rather acts as a critical check and balance on the judicial branch and that ***is*** critical to the separation of power's purposes and doctrine.

We recognize the importance of protecting the workings of the court. It is equally important to protect the workings of society which includes both the utility we get from court records and the checks and balances that open, transparent, and modern data-centric access to the court records provides. Without bulk access, the systems that provide utility and oversight do not work or work very poorly.

Protect Legal and Beneficial Uses of Public Records

[2] For reference: In re Biechele | Cases | Rhode Island | Westlaw

Information is intricately embedded in so many aspects of life and commerce that it is difficult to predict all the ways a change in information policy will affect various people, products, services, uses, and government functions. CSPRA has tracked such policies over the last three decades and we often see many unintended consequences of limits on access and use of public records. H 8350 will restore a beneficial, efficient, and legally supported method of public records access and we urge its adoption.

Thank you for your consideration of our input.

Richard J. Varn/s/
Richard J. Varn, Executive Director
Coalition for Sensible Public Records Access
San Antonio, TX
Email: cspra@cspra.org
Cell : (515) 229-8984
A non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, commercial, and societal benefit.

Appendix A
Information Related to Rhode Island Court Records Access

Review of State Record Access

States provide statewide bulk access, statewide individual lookup, or a mix of solutions that are not uniform across the state. Of the states with a unified court system and that can provide bulk records, all allow access to such bulk records except Rhode Island. Rhode Island was providing this and can again by simply reactivating an existing service, reinstating the contracts, enforcing the terms of those contracts, and collecting the fees for this service.

States with unified statewide access to bulk records:

1. Alaska
2. Arizona
3. Arkansas
4. Connecticut
5. Hawaii
6. Idaho (discretionary)
7. Indiana (discretionary)
8. Iowa
9. Maine (discretionary)
10. Maryland
11. Minnesota
12. Missouri (use limits)
13. New Jersey
14. North Carolina
15. North Dakota
16. Pennsylvania
17. South Dakota
18. Utah
19. West Virginia
20. Wyoming

States (and DC) with broad-based individual lookup:

1. DC
2. Kansas
3. Massachusetts
4. Mississippi
5. Montana
6. New Hampshire
7. New Mexico (limited uses)
8. New York

9. Oklahoma
10. Oregon
11. Rhode Island
12. Tennessee
13. Vermont
14. Virginia
15. Washington
16. Wisconsin

States with a patchwork of access in bulk and for individual look up depending on the court and jurisdiction:

1. Alabama
2. California
3. Colorado
4. Delaware
5. Florida
6. Georgia
7. Illinois
8. Kentucky
9. Louisiana
10. Michigan
11. Nebraska
12. Nevada
13. Ohio
14. South Carolina (general use limits on statewide records but those do not apply to those same records obtained from individual courts)
15. Texas

In several states, other third-party vendors such as Tyler Technologies and i3 Verticals work directly for or with the courts to distribute their records in bulk to other data users under terms set by those courts.

Most court records across all states are available in bulk or through a technology enhanced individual look up process. The states and courts that can provide records in bulk almost all do so except Rhode Island. With adequate enforcement of the previous contract and additional vendor-paid audits as needed, the expungement issue will be addressed for the vendors who are using the bulk service. However, with individual lookup, there will be fewer controls and many more persons and companies able to access the records making enforcement of expungement more difficult. With the vendors having access restored, the courts will have more control over expungement by those vendors and the customers who use those vendors services. This approach better serves the courts interests, the citizen's interests, and addresses its expungement concerns.

Vendors Cut Off From Bulk Access Who Were Paying Up to $600,000 in Total For Such Access

Here is the list of companies that had contracts with RI for bulk data:

- Drivers History/TransUnion
- Explore Information Services
- Verisk/ISO Claim Partners
- LexisNexis Risk Solutions
- Data Driven Safety
- HireRight
- ShadowSoft, Inc.
- Cleara

Delay in Data Access Via DMV Records

The following chart shows the time lag between charges being filed and final resolution of the case. Some persons use this delay to seek insurance before the resolution is final so they can secure insurance before the resolution would result in either denial of the application or much higher rates. Furthermore, managing drivers in fleets that haul cargo, people, and school children require immediate notification of moving and serious violations. Fleet managers must be notified to enable them to take appropriate and required actions. Filing of charges may require that the driver be suspended until the case is resolved (per contract or policy), be put on a drug testing program or follow other safety protocols until the charges are resolved, or be required to seek counseling if drugs or alcohol were involved.

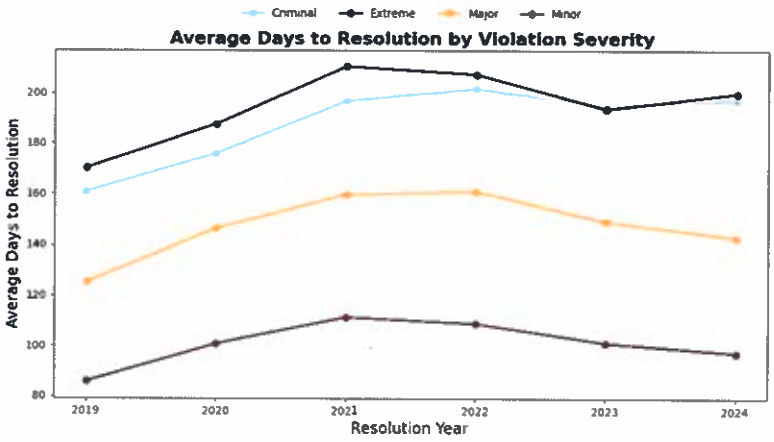
Other criminal charges being filed besides driving offenses can raise serious safety, human resource, and security issues. This applies to fleet operators and all others who are responsible for addressing these issues through a variety of means regulated by contract and employment law. For example, a drug offense that did not involve vehicle operation would still raise safety concerns. A crime involving deception may trigger safety precautions regarding access to sensitive data and systems. Finally, some persons, despite having a duty to report arrests and moving violations citations prior to final resolution, may choose not to do so thereby raising issues of fraud, deception, breach of contract, and actions that may endanger or harm others. Without bulk access, companies with such issues will either be left in the dark or required to make their own requests for individual look up on their own or via a third party which will place a substantial and unnecessary burden on the court system.

Violation Timelines Still Longer than Pre-Pandemic

All violation types

Verisk

Violations, especially serious ones, remain pending for a significant time and can also be a shopping trigger



How Other States Address Expungement

Example One: Connecticut

Disclosure of Criminal Matters, Requirements. Users who obtain records of criminal matters of public record shall, prior to disclosing such records, (a) obtain from the Judicial Branch any available updates concerning matters that have been erased pursuant to Connecticut General Statutes § 54-142a or have otherwise become sealed or confidential by operation of law and/or court order, (b) update its record of criminal matters to permanently delete such records, and (c) not further disclose such erased, sealed, and/or confidential records. Any criminal record mass requestor who discloses an erased record after receiving notice that a record has been erased pursuant to Connecticut General Statutes § 54-142a may be subject to damages under Connecticut General Statutes Chapter 735a (Connecticut Unfair Trade Practices Act). "Mass request" means a request concerning fifty or more criminal matters of public record.

Note: This is like what RI already had in place via contract but chose not to enforce.

Example Two: Quarterly state audits in PA and by third parties such at Tyler Technologies PA then performs a quarterly audit in which they send a list of 20 names. The vendor must search their database and respond with a Y or N as to whether the individual is found within their system.

Additionally, many other jurisdictions send expungement audits quarterly to ensure compliance. Many of those jurisdictions use third-party vendors to conduct the expungement audits at no cost to the jurisdiction by passing along the audit cost to the record requestor. We are aware that the RI Court has retained Tyler Technologies. Tyler Technologies performs such audits for many jurisdictions nationwide.