

# ACCESS/RI



## Access Limited:

An Audit of Compliance with the Rhode Island Public  
Records Laws

September 15, 2014

## Executive Summary

On June 26, 2012, amidst much fanfare, Governor Lincoln Chafee signed into law the first major changes to Rhode Island's Access to Public Records Act (APRA) in fourteen years. Open government leaders and politicians alike praised the reforms as a vehicle to bring more openness to a state in need of a positive image for government accountability. Kenneth Bunting, Executive Director of the National Freedom of Information Coalition, wrote that the revisions “will bring about greater accountability and more transparency for the citizens of Rhode Island...the important reforms in this bill will help to ensure that the principle of open transparent government is more than a platitude in the state...” Attorney General Peter Kilmartin wrote that “democracy is built on the principle of transparent, open and accessible government, which is the key to maintaining the public's trust of its elected officials... Government must be accountable to the people.” Legislation co-sponsors Sen. James Sheehan and Rep. Michael Marcello wrote in an op-ed about the legislation in the North Kingstown Patch, “Good governments provide their citizens with as much accurate and easily obtainable information as possible. We believe our changes will make it easier for the public to seek and receive information and make more information that is pertinent to the public readily available.” Even press groups were complimentary of the legislation; Lucy Dalglish, then Executive Director of the Reporters Committee for Freedom of the Press, wrote that the changes in the law “provid[e] critical, much-needed amendments to the Act to ensure access to records that have been widely recognized as valuable to the public.”

Two years later, this audit finds that the reality on the ground in Rhode Island is far different from what was hoped for when the legislation passed. The reason for the disconnect could be an apathy or unwillingness by public agencies to take the requirements of the law seriously. Or it could be the result of a lack of understanding on the part of state and municipal agency records officers, who are on the frontlines in responding to public records requests — this despite the fact that one of the reforms to APRA was mandated training of those records officers by the Office of the Attorney General. Additionally, weak enforcement appears to be a contributing factor, as monitoring and vigilance are the keys to ensuring that the Access to Public Records Act achieves its high aim of keeping Rhode Island government agencies transparent and accountable to the people they serve. This audit has identified major areas of compliance deficiencies by state and municipal agencies as discussed below, and also offers a number of recommendations for consideration.

## **Certifications**

The revised APRA requires that the chief administrator of each agency certify to the Attorney General that each individual charged with responding to public records requests has been appropriately trained on the law. This certification is due by the first of the year, and has now been in effect for two cycles, but with disappointing results.

- More than a third of government agencies surveyed (56 out of 137) failed to meet this basic requirement of the law. Specifically, 10 of 24 state and quasi-public agencies, 13 of 39 municipal records custodians, 16 of 38 municipal police departments and 17 of 36 school districts failed to certify a single employee for 2014.
- In six communities — Charlestown, East Greenwich, Johnston, Newport, Richmond and Warren — there is no Attorney General's record of a municipal employee being certified to respond to open records requests for any of the city or town's departments.
- Ironically, the Office of the Auditor General, which is charged with improving "performance and accountability of government" failed to comply with the requirement for either 2013 or 2014.

Such failures have important ramifications in terms of the level of preparedness of the records officers who interact with members of the public seeking information.

## **Online APRA Procedures**

The revised law requires each agency to adopt written APRA procedures and post them on their websites. Such procedures must include: identification of designated public records office or unit, how to make a public records request, and where a public records request should be made.

- Nearly a quarter of agencies surveyed (32 out of 137) failed to post these procedures online as required by law. Police departments appear to be the worst offenders in this regard: 14 out of 38 did not have their APRA procedures online.
- Seven agencies (2 municipal records custodians, 2 municipal police departments and 3 school districts) had yet to develop any APRA procedures at all.
- For those agencies that had posted their procedures online, the ease with which the procedures could be found on their website varied significantly.

Due to the lack of compliance with posting provisions of the APRA, members of the public cannot easily find the information they need on where to access governmental records to which they are entitled.

### **Response Times to Record Requests**

One of the most fundamental aspects of APRA is that, except in special circumstances, public bodies must respond to requests for records within ten business days. APRA recognizes that it is not just enough for agencies to make records available to the public; they must be provided within in a short time period. Otherwise, agencies can stall and prevent requesters from making use of public records in a timely way. Unfortunately, the audit shows that the APRA requirement is all too often honored in the breach.

- Dozens of agencies violated the 10 business day response window when asked for routine documents such as employee contracts, arrest reports, and even their own APRA procedures.
- At the state level, the Department of Business Regulation, Department of Corrections, Department of Health and Department of Labor and Training failed to provide a response to a request for employee contracts within ten business days as required by APRA. Notably, they did not have any contracts to provide, yet it took them longer than the statutory window merely to provide a negative response to the request.
- The Department of Administration, Department of Labor and Training, Department of Public Safety, Division of Motor Vehicles, Lottery Commission and Office of the Auditor General also failed to respond to requests for employee pension/payout data within the statutory window. Notably, the Office of the Auditor General took the longest to respond, 49 business days.
- The majority of the police departments examined (26 out of 39, including the Rhode Island State Police) failed to respond to an APRA request for public information in the statutory window for at least one of the three requests made to each department for dispatch logs, arrest logs and arrest reports including narrative. Four police departments failed to respond to all three requests within the time required by statute: Hopkinton, New Shoreham, Warren and West Greenwich. Fourteen departments — Bristol, Charlestown, Cumberland, East Greenwich, East Providence, Gloucester, Lincoln, Little Compton, Middletown, Narragansett, Newport, North Smithfield, Richmond and Smithfield — responded to all requests submitted within the statutory window. The majority of

the departments were somewhere in the middle, failing to respond to either one or two requests within the time allowed by statute.

- School districts fared only slightly better. Fourteen of 36 school districts failed to respond in a timely manner to one of two requests for school information sought — superintendent contracts and teacher layoff letters. An additional two school districts — Cumberland and West Warwick — failed to respond in a timely manner to both requests.

### **State Employee Contracts and Payout Data**

The APRA reforms of 2012 codified that public employee contracts and “any payments received by an employee as a result of termination, or otherwise leaving employment” are public documents.

- Only five out of twenty four state and quasi-public agencies provided contracts in response to requests for employment contracts for the ten agency employees with the highest salaries. All others indicated that no such contracts existed. It is beyond the scope of this audit to determine if these responses are in fact accurate. It is surprising, however, that so many of the agencies operate without a single employee contract.
- In terms of response times, eight of the twenty-four state and quasi-public agencies surveyed failed to respond to one of the two requests in a timely manner.
- The Department of Labor and Training failed to respond to both requests within ten business days as required by APRA.

### **Police Arrest Records**

The audit tested the compliance of the 39 police departments with a longstanding provision of APRA that makes records of the initial arrest of an adult public. (The Attorney General's office has issued two opinions confirming that the narrative portions of such records are public information, as well.)

- None of the departments rejected the request for all arrest records during a 24 hour period preceding the request. However, one department, the New Shoreham Police Department, completely failed to respond to the request after several attempts at follow up.

- The major issue with compliance in regards to the police arrest records was the lack of a timely response: 13 of the 39 Departments did not respond in the statutory window, as referenced above. The Barrington Police Department took the longest to respond at 39 business days, followed by the Providence Police Department at 22 business days and the Rhode Island State Police at 19 business days.
- It is encouraging that no department attempted to withhold narrative portions of the initial arrest reports in their entirety. It is outside of the scope of this audit to determine whether or not the narrative portions were complete or whether they were properly or improperly redacted, which could indicate another type of violation of the provision.

### **Police Arrest and Dispatch Logs**

As a result of the 2012 reforms, police departments are now required to provide certain basic arrest information, what are known as “arrest logs,” to the public on a quicker timeframe than the usual 10 business days for public records requests. Arrest logs are required to be provided within 48 hours of a request made on a weekday or 72 hours if made on a weekend or holiday. The basic information to be provided under the statute includes, with minor exceptions, such things as the full name and address, gender, race and year of birth of the arrested adult, charge or charges brought against him or her, the date and time of arrest, and the name of the arresting officer. Motivating this change was the belief that the public deserves to have timely information when individuals are removed from the community by the police.

- Discouragingly, nearly half of police departments (19 out of 39) failed to provide arrest logs within the statutory window for a response.
- One department — Hopkinton — failed to respond to the request at all.

The audit also requested from every police department a week’s worth of dispatch logs — a record of the service calls and responses conducted by patrol officers.

- Twelve police departments failed to provide the logs in a timely manner. Central Falls Police Department took 52 business days to do so.
- The Woonsocket Police Department refused to turn over any portion of the logs, claiming that they were all exempt from disclosure.

## **In-Person Police Record Requests**

Besides the electronic requests made to all departments, nine were additionally tested by submitting in-person requests. Such visits revealed a lack of understanding of public records officers as to the requirements of the law as well as a general insufficiency of the format of the arrest logs to meet the statutory requirements for information. For example:

- The clerk of the Cranston Police Department initially indicated to the requestor that arrest log information “is confidential,” though it was later released.
- Similarly, the clerk at the East Providence Police Department was uncertain whether the arrest log should be made public.
- Both of the above clerks asked if the requestor worked for a local media establishment, which should have no bearing on the release of the records according to the statute.
- The clerk at the Rhode Island State Police also incorrectly informed the requestor that “no one gets that” as to his request for police log data. Only after the requestor handed him the relevant section of the Attorney General APRA guidelines did the State Police accept the APRA request for processing.
- The Providence Police Department refused to accept an in-person request.
- An insufficient format of police logs produced by the police departments appears to be a common problem contributing to inefficient processing of records requests. Five of the nine police departments — Cranston, Cumberland, Pawtucket, Warwick and Woonsocket — had clerks handwrite information on the police log forms, usually after the requestor notified the clerk of the insufficiency of their forms to address the information required by statute. The Providence Police Department posted online police logs that were legally insufficient according to the statutory format. The same insufficient arrest log format issue was identified at the Coventry and East Providence police departments, which pulled and redacted the arrest records instead of having a police log readily available.

## **School District Compliance**

As discussed above, the 2012 APRA reforms cemented that public employee contracts are public documents. The reforms also established a balancing test to weigh personal privacy in personnel records against the public interest in their disclosure. The audit tested the compliance of school districts on two separate records requests: 1) superintendent contracts, and 2) teacher layoff letters.

- Only one district rejected the request for the superintendent contract. The Warwick Public Schools asserted that “superintendents’ contracts are generally not public documents,” but provided a heavily redacted copy with basic information on wages, benefits and job duties of the superintendent.
- More commonly, school departments faltered on compliance with the contract requests by failing to respond in a timely manner; fourteen districts failed to respond within ten business days.
- More than a third of the school districts (14 out of 36) invoked the public-interest-versus-privacy balancing test in rejecting an APRA request for teacher layoff letters — eleven rejected the request as far as a preliminary list of laid-off teachers, while three districts rejected even the request for a teachers that had received final layoff letters. This indicates a general lack of agreement as to school departments in the application of the new balancing test to a common issue of layoff letters.

## **Successful Areas of Compliance**

All was not bleak. In a few areas, public bodies generally showed widespread compliance with the law.

- APRA gives requesters the option of deciding in what format they would like to receive documents (e.g., electronic or hard copy), and public bodies overwhelmingly complied with this provision.
- APRA allows requesters to remain anonymous. With few exceptions, public bodies did not request identifying information in agreeing to fulfill requests.
- On the whole, public bodies did not charge fees for records in those very few instances when fees could have been lawfully imposed. Only the Rhode Island State Police and the Pawtucket Police Department charged potentially questionable fees in providing access to various police records.



## **Overall Agency Compliance**

- Eight of 24 state and quasi-public agencies performed well with the audit. The worst agency by far was the Office of the Auditor General.
- At the local level, Narragansett was the only municipality that had no violations at the town clerk, police or school district level. At the other end, West Warwick had a total of nine violations, and East Greenwich, New Shoreham and Warren had seven each.
- Looking discretely at police departments, Bristol, Cumberland, Little Compton, Middletown, Narragansett and North Smithfield performed well. However, New Shoreham and Warren violated APRA in six of seven audited categories for police departments.
- Among school districts, Coventry, Exeter-West Greenwich, Chariho, Lincoln, Narragansett, North Kingstown, and South Kingstown were the best performers. West Warwick stands out with the worst compliance among school districts.

## **Recommendations**

### *Enhanced Oversight by the Office of the Attorney General*

The troubling level of non-compliance with APRA's certification requirements should be an impetus to the Attorney General to enhance enforcement efforts around the certification and training of employees.

- As an initial step, the Office of the Attorney General should post publicly a list of those public bodies that do not comply with the certification requirement in the first month of the year.
- There should be a strong presumption that any public body without APRA-certified employees is deemed to have engaged in a knowing and willful violation of the law. Such a finding by the Superior Court is necessary for a fine of up to \$2,000 to be imposed against the public body or agency.
- Beyond simply keeping records of who is complying with the certification requirement, the Attorney General's office should follow up with those agencies that have not complied by the first of the year and seek ways to address the compliance standard.

- The widespread existence of police log records that have yet to be updated to include the information required to be released by the 2012 reforms should prompt the Attorney General's Office to collaborate with the police departments to develop a legally adequate police log form.
- A report issued last year by the ACLU of Rhode Island documented the rarity of legal action by the Attorney General in seeking penalties against agencies found to have violated the law. As this report confirms, the violations of APRA that most often occur involve basic requirements of the statute, not complicated issues of law. The absence of strong enforcement can only encourage a lackadaisical attitude among public bodies that compliance with APRA simply need not be a priority. It is critical that the office responsible for enforcing APRA become much more aggressive in seeking penalties against violators.

#### *Enhanced oversight by Agency Directors*

- The leaders responsible for the agencies identified in this audit that have failed to adopt written APRA procedures ought to ensure that such procedures are developed immediately. If such procedures have been developed but not posted online, agency heads should work to ensure they are posted with alacrity.
- Agency heads must also ensure that all appropriate personnel have been properly certified as trained to implement APRA.

#### *Strengthened Enforcement Provisions*

ACCESS/RI examined some of the enforcement provisions utilized in other states with regards to the public records statutes. We recommend that the General Assembly consider further reforms to the APRA to strengthen compliance. These could include creating penalties for non-compliance that would accrue on a daily basis and otherwise increasing the fines against violators, and authorizing courts to award compensatory and punitive damages to successful plaintiffs in public records cases.

#### *Independent Commission*

The results of the audit also raise the question of the effectiveness of Rhode Island's current enforcement regime, which relies on the Office of the Attorney General to enforce the APRA against fellow state agencies. A highly successful alternative regime in our neighboring state of

Connecticut instead charges an independent commission, the Connecticut Freedom of Information Commission, with overseeing public records disputes. This commission has independence from the Governor and other state agencies and thus has a more neutral standpoint from which to consider the disputes it resolves. The General Assembly should study creating such a commission in Rhode Island as a way of helping our state live up to its potential for a truly open and transparent government. In the alternative, consideration should be given as to whether enforcement powers would be more appropriately housed with the Secretary of State. That office does not have the same conflicts of interest as the Attorney General, who on a daily basis legally defends, advises and, in many instances, collaborates with the same state and municipal bodies that are the subjects of the open record complaints he or she investigates.

#### *A Change in Culture*

There can be little question that a culture of indifference — if not outright hostility — to the public's right to know is a key reason for the less-than-stellar results detailed in this audit. Too many agencies appear to consider complying with open records requests a burden rather than what it actually is and should be — a core mission of their agency. Ultimately, it is incumbent on state agency directors, mayors, town clerks, police chiefs, school district superintendents and the heads of all other public bodies to make clear to personnel that compliance with APRA is a priority, to emphasize the critical importance of transparency, and to reverse a deep-rooted attitude of secrecy that seems embedded in too many agencies.