

# REPORTERS COMMITTEE

**FOR FREEDOM OF THE PRESS**

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June 15, 2012

**VIA E-MAIL**

Governor Lincoln D. Chafee  
Office of the Governor  
82 Smith Street  
Providence, RI 02903

**Re: An Act Relating to Public Records, H 7555**

Dear Governor Chafee:

The Reporters Committee for Freedom of the Press writes to urge you to sign into law H 7555, which proposes amendments to the Access to Public Records Act that increase public access to records of high public value and provide statutory mechanisms and incentives necessary to enforce the Act.

As a non-profit organization that has advocated for the freedom of information rights of journalists nationwide since 1970, the Reporters Committee supports the passage of this amendment, which will increase public access to Rhode Island's public records. To that end, this letter addresses two concerns with the bill you raised in a June 6 letter:

1. The Balancing Test in § 38-2-2(4)(A)(I)(b)

The bill's balancing test is not a new development to the Access to Public Records Act. Rather, the Act explicitly contemplates the balancing of such considerations. As explained the Act's Statement of Purpose, "[i]t is ... the intent of this chapter 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.*"<sup>1</sup> Therefore, it is clear that providing blanket, insurmountable protection for personnel or personally identifying information in which the public has a legitimate interest would conflict with the underpinnings of the law.

Additionally, the balancing test is narrowly crafted to incorporate the balancing test in Exemption 6 of the federal Freedom of Information Act, which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."<sup>2</sup> Notably, many other states—including Kansas, Arkansas, Delaware, the District of Columbia, Illinois, Georgia, and Hawaii—have adopted the "invasion of personal privacy" balancing test with respect to the release of personnel or personally identifying information. In doing so, these states have recognized that in some cases, even information that is contained

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<sup>1</sup> R.I. GEN. LAWS § 38-2-1.

<sup>2</sup> 5 U.S.C. § 552(b)(6).

in a “personnel” file may lack any privacy value, and the public interest in such information—such as in cases of employee fraud—may be sufficient to outweigh any such interest.

Further, public bodies are further constrained from improperly releasing confidential because the bill bars the release of any “[p]ersonnel and other personal individually-identifiable records” made confidential by other federal or state laws.<sup>3</sup>

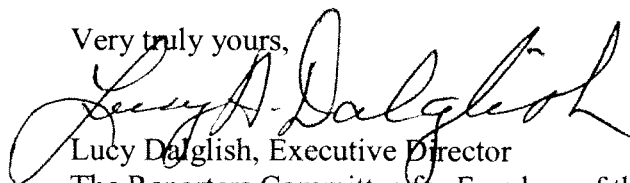
## 2. Fees/Fines for Violations

By increasing the civil fines and attorney’s fees available for violations of the Act, the legislature provides agencies with a necessary incentive to comply with the provisions of the Act. By doubling the civil fine, agencies may be strongly encouraged to strictly comply with the provisions of the law. With respect to the concern that fines or a waiver of fees will be imposed for errors such as “providing records one day late,” the amendment provides agencies with the opportunity to extend the statutory deadline for up to “an additional twenty days” where the agency provides an “explanation . . . particularized to the specific request.”<sup>4</sup> This specifically applies to situations where, for example, “the voluminous nature of the request” requires additional processing time.<sup>5</sup>

Furthermore, states throughout the country have found that providing successful requester litigants with attorney’s fees is a critical device in enforcing compliance with the open records law. Currently, the Act provides that where a court finds that a “plaintiff’s case lacked a grounding in fact or in existing law,” it may award the defendant attorney’s fees and costs. By providing that a plaintiff, who is often a citizen taxpayer, may obtain such fees in the event that the court finds the defendant’s case similarly deficient—regardless of the ultimate outcome of the case—this bill reduces the risk for journalists and citizens in bringing open records challenges.

This bill provides critical, much-needed amendments to the Act to ensure access to records that have been widely recognized as valuable to the public, and to give teeth to the existing law, which permits journalists and citizens to provide oversight to tax-funded officials. We urge you to sign the bill with the existing provisions, and please do not hesitate to contact us if we may address any questions or concerns.

Very truly yours,



Lucy Dalglish, Executive Director  
The Reporters Committee for Freedom of the Press

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<sup>3</sup> An Act Relating to Public Records, H 7555, at § 38.2.2(4)(A)(I)(b).

<sup>4</sup> *Id.* at § 38-2-3(e).

<sup>5</sup> *Id.*