

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY

PUBLIC NOTICE OF PROPOSED RULE-MAKING

Pursuant to the provisions of R.I. General Laws § 42-7.3-9 and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Public Safety hereby gives notice of its intent to repeal the Access to Public Records Regulation governing the Department of Public Safety.

The purpose of this repeal is that the regulation is not inclusive of all of the Department's divisions and agencies. The Department of Public Safety is responsible for the management and administration of several state public safety agencies. This regulation primarily focuses on the procedures for the Rhode Island State Police.

The proposed repealed regulation and concise summary of non-technical amendments is available for public inspection at www.sos.ri.gov and www.dps.ri.gov, in person at the Department of Public Safety, 311 Danielson Pike, North Scituate, RI 02857, or by e-mail to mgazerro@risp.dps.ri.gov or by calling Maura Gazerro at (401) 444-1298.

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed repealed regulation by Monday, May 7, 2012 to Maura Gazerro, Department of Public Safety, 311 Danielson Pike, North Scituate, RI 02857, or mgazerro@risp.dps.ri.gov. A public hearing to consider the proposed repeal shall be on Monday, May 7, 2012 at 5:00 p.m. at the Colonel Walter Stone Conference Center, 311 Danielson Pike, North Scituate, RI 02857, at which time and place all persons interested persons therein will be heard.

Any individual requiring a reasonable accommodation in order to participate in this hearing should contact Maura Gazerro at (401) 444-1298 at least three (3) business days prior to the hearing.

CONCISE SUMMARY OF NON-TECHNICAL AMENDMENTS

1. This regulation primarily outlines the procedures for records requested from the Rhode Island State Police. The Department of Public Safety is responsible for the management and administration of several agencies, which include: the Rhode Island State Police, the Rhode Island Capitol Police, the Division of the Rhode Island State Fire Marshal, the Rhode Island Municipal Police Training Academy, the Uniform Emergency Telephone System, the Rhode Island Division of Sheriffs, and the Public Safety Grants Administration Office (under the DPS Central Management Office). A regulation is needed that includes guidelines that govern the way in which Access to Public Records is handled by the Department for all of these agencies and divisions.

~~RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY~~



~~Access to Public Records Regulation~~

~~RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY “Department”
311 DANIELSON PIKE
NORTH SCITUATE, RI 02857~~

~~ACCESS TO PUBLIC RECORDS REGULATION~~

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~~Section I: Authority~~

- ~~1. This Regulations is promulgated pursuant to R.I. Gen. Laws § 38-2-1, *et seq.* (“Access to Public Records”), § 42-35-2(a), and § 42-7.3-9.~~

~~Section II: Purpose~~

- ~~1. To establish a regulations to implement R.I. General Laws § 38-2-1, *et seq.*, § 42-35-2(a), and § 42-7.3-9 relating to access to public records maintained by the Department of Public Safety.~~
- ~~2. To identify and delineate categories of records exempt from disclosure.~~
- ~~3. To provide the public and Department of Public Safety Personnel with a regulation that sets forth the rules and procedures applicable to access public records maintained by the department.~~

~~Section III: Policy~~

- ~~1. The Department of Public Safety recognizes both the public's right to access public records and the individual's right to dignity and privacy. It is the Department of Public Safety's policy to facilitate public access to all public records that may be disclosed in accordance with R.I. Gen. Laws § 38-2-1, et seq. It is also the policy of the Department of Public Safety to make all public records in department's possession be available for public inspection and copying consistent with applicable state or federal law, unless otherwise prohibited by a court of competent jurisdiction.~~

~~Section IV: Procedure for Requesting Public Records~~

- ~~1. A member of the public can request public records at the front desk of the Rhode Island State Police Headquarters and Public Safety Complex, at any Rhode Island State Police Barracks, Bureaus, or Units, or at any of the Department of Public Safety agencies. Requests can be made Monday through Friday from 8:00 AM to 4:00 PM; however request forms are available on the website, www.dps.ri.gov, and at all times the Barracks/Bureau/Unit is open.~~
- ~~2. The requester will be provided with a form to complete (APPENDIX A), which lets the Department know the precise public documents sought and assists the Department in processing the request in an expeditious manner.~~
- ~~3. If the public records requested are readily available, the Department will provide the records immediately. However, there are times/circumstances when the records will not be available at the time requested. If the records are not readily available, they can be mailed, faxed, sent electronically to, or picked up by the person requesting them.~~
- ~~4. Rhode Island State Police Uniform Crash Reports for Motor Vehicle Accidents can be purchased on-line for a fee, pursuant to R.I.G.L. 42-28-37, from the website www.GetCrashReports.com or by mail through the Rhode Island State Police Accident Bureau, 311 Danielson Pike, North Scituate, RI 02857.~~

~~Section V: Guidelines for Requests for Access to Law Enforcement Records~~

~~APRA exempts from disclosure all records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with~~

~~enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.~~

~~APRA requires public bodies apply a case by case balancing test to non-exempt documents. That balancing requires a public body to consider both “the public’s right to access to public records and the individual’s right to dignity and privacy...” R.I.G.L. § 38-2-1. All requests for records under APRA shall be forwarded to the Office of Legal Counsel where the balancing test will be applied on a case by case basis.~~

~~1. Arrest Report:~~

~~A. Information concerning the initial arrest of an adult is a public record. If an arrest report is requested for an adult who has been arrested, the following information must be redacted:~~

~~1. Social security number~~

~~B. The following information may be redacted if otherwise exempted pursuant to R.I.G.L. §38-2-2(4)(D) or if the privacy interests of the arrestee outweighs the public’s interest in disclosure:~~

~~1. Actual date of birth~~

~~2. Telephone number~~

~~3. Place of employment~~

~~4. Address and telephone number of employer~~

~~5. Exact street addresses of victims and witnesses~~

~~C. The following information will be redacted if disclosure could reasonably be expected to endanger the life or physical safety of any individual provided for in~~

~~R.I.G.L. §38-2-2(4)(D)(f) or if the privacy interests of the individuals outweighs the public's interest in disclosure:~~

- ~~1. Names of victims or witnesses~~
- ~~2. Addresses and telephone numbers of victims or witnesses.~~

~~D. The following information on the arrest report is considered a public record:~~

- ~~1. Name of arrestee~~
- ~~2. Address of arrestee~~
- ~~3. Age of arrestee~~
- ~~4. Date, time, and location of arrest~~
- ~~5. Name of the arresting officer~~
- ~~6. Charge(s) brought against the arrestee~~
- ~~7. Narrative facts pertaining to the arrest that do not fall within any public records exemption or do not fail the balancing test.~~

~~E. Juvenile records and arrest reports are not public. However, a parent, guardian, or attorney may inspect and copy the police report relating to the arrest or detention of a juvenile. After disposition of an offense, a parent, guardian, or attorney of the juvenile involved may inspect and copy records relating to the arrest, detention, apprehension, and disposition as provided for in R.I.G.L. § 14-1-64.~~

~~F. The identity of a juvenile waived to be tried as an adult under R.I.G.L. § 14-1-7.1, or certified and convicted pursuant to R.I.G.L. § 14-1-7.2, is public record.~~

~~2. While R.I.G.L. § 38-2-2(d) exempts certain law enforcement records from disclosure, under Rhode Island law certain factors will be considered when determining if a report is public. Factors such as whether the investigation is open or closed, whether an arrest was made, whether release of the report will endanger the life or safety of any individual, will be considered.~~

~~**A. Complaint/Incident Report**~~

~~If an individual requests to see a complaint/incident report that has been filed, the appropriate response will depend upon whether the information falls within any of the exemptions in R.I.G.L. § 38-2-2(4) (i) (D). If a complaint/incident report is open and currently under investigation, and the release of the report could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings the report will not be released. If the matter is closed, the~~

~~complaint/incident report will have to be reviewed to determine if any exemptions in R.I.G.L. §38-2-2(4) (i) (D) would prevent the disclosure of the report.~~

~~B. Day Sheets~~

~~Individual requests to view the Day Sheet, will be considered on a case-by-case basis. Specific call records may be provided subject to redaction allowed by APRA and after application of the balancing test. Any references to juveniles, or other exemptions provided for in R.I.G.L. § 38-2-2 will be redacted before the document will be released. An opinion from Legal Counsel will be requested as to whether the information can be released as a public record or to the individual upon their request.~~

~~C. Police Report of Motor Vehicle Accident~~

- ~~(1) Statewide Uniform Crash Reports whose contents have been reviewed and deemed public are placed on a website, www.GetCrashReports.com, to be purchased by those requesting a report. Other requests for Uniform Crash Reports may be forwarded to the Accident Bureau, 311 Danielson Pike, North Scituate, RI 02857.~~
- ~~(2) Any request for accident reports prepared by law enforcement that have not been placed on this website for the public will be reviewed to determine whether the matter is open and whether criminal charges are pending. Non-public information will be deleted prior to release. A request for the police report of an accident that may be considered to contain public information should be referred to Legal Counsel for a review on a case-by-case basis.~~

~~D. Whether or not the following information is a public record, the report may be disclosed to specific individuals:~~

~~(1) Statewide Uniform Crash Report Filed by an Involved Individual:~~

- ~~a. Statewide Uniform Crash Reports must be provided to individuals involved in the accident or their legal representative, regardless of whether the accident is under investigation, or if there are charges pending from the accident.~~

~~(2) Motor Vehicle Accident Investigative Reports, Photographs and Accident Reconstruction Reports:~~

- ~~a. If copies of photographs are requested, they may be furnished to an individual involved or their legal representative, unless there are criminal charges pending. If criminal charges are pending or contemplated, the Attorney General's Office should be consulted with to determine which photographs may or may not be released. If duplicate photographs are~~

~~needed, the negatives should be reproduced through the outside vendor at the expense of the individual requesting the duplicates.~~

- ~~b. If an accident reconstruction report is requested by an individual or their legal representative, it should be determined if criminal charges are pending or contemplated. If criminal charges are pending or contemplated, the Attorney General's Office should be consulted with to determine whether the accident reconstruction report should be released.~~
- ~~c. If the privacy interests of the individuals involved in the accident outweigh the public's interest in disclosure, or if the documents contain material relevant to an ongoing criminal investigation, the accident photographs or accident reconstruction reports would not be released.~~
- ~~d. If the Attorney General's Office determines that the requested documents should not be released Legal Counsel will prepare a response denying the request. Requests under APRA should be forwarded to Legal Counsel along with copies of the requested materials for review and response.~~

~~**(3) Copy of One's Own Complaint/Incident Report:**~~

- ~~a. An individual may request a copy of a complaint/incident report that they filed which although is not a public record, may be acceptable to provide a copy to the complainant. Some examples include, but are not limited to:
 - ~~i. A copy of a complaint/incident report about a theft from a home or automobile that an individual may need to file a claim with an insurance company.~~
 - ~~ii. A complaint/incident report is made and the complaint/incident report is closed or does not result in any arrest, while the complaint/incident report may not be a public record, a copy could be released to the individual who filed the complaint/incident report.~~~~
- ~~b. Any information in the complaint/incident report beyond that provided by the complainant must be reviewed to determine whether the documents are exempt from disclosure or subject to redaction.~~

~~**(4) Witness Statements:**~~

- ~~a. If there are no law enforcement concerns about releasing information, such as a witness statement taken from the individual who is requesting a copy of their statement, the statement could be released to the individual from whom the statement was taken.~~

3.—Public Records Law Procedures Summary:

- ~~A. The public records law does not require a public body to reorganize, compile, or maintain data not maintained in the form requested, except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.~~
- ~~B. Documents shall be provided within a reasonable time. If the documents are readily accessible and do not need to be reviewed to determine whether the documents are public, the information should be made available to the individual who requests such information at that time, or as soon as possible if another law enforcement responsibility requires immediate attention. In such cases it should be indicated at what point it is expected the records will be provided for review. If the documents need to be located and/or reviewed to determine if all portions of the records are public, they must be made available within ten (10) business days, with the ability to extend to thirty (30) business days total for good cause.~~
- ~~C. If the materials are not public, the request should be forwarded to Legal Counsel to provide a written response indicating the reasons why the record is not public. The law now excludes a public entity from later claiming any reason not included in the denial except for good cause shown. The law also requires courts to impose civil fines not exceeding one thousand dollars (\$1,000) for public bodies or officials found to have knowingly and willfully violated the Public Records Act and to order the records produced at no cost and may provide for an award of attorney fees and costs. If the individual states that they need information that is not public, they should be advised that they may see the information through appropriate civil or criminal discovery procedures.~~

~~Section VI: Hours of Inspection~~

- ~~1. When a request is made to inspect public records (as opposed to obtain copies), the requester will be advised when the records are available and he/she can then make an appointment to inspect those documents at the Department.~~
- ~~2. The time frame for the Department to respond to requests to inspect public records is the same time frame applicable to responding to requests for copies of public records as set forth in Section V above.~~

~~Section VII: Fees~~

1.— Fees for Copying Records

- ~~a.— A public body may not charge more than fifteen cents (15¢) per page for documents that are able to be copied on common business or legal size paper, and not more than the reasonable actual cost for providing electronic records.~~
- ~~b.— Reasonable search charges can be made for search or retrieval of documents that take more than sixty minutes to search and retrieve, but the charge cannot exceed fifteen dollars (\$15.00) per hour.~~
- ~~c.— Any receipts are payable to the State of Rhode Island and should be forwarded to the Central Management Office for deposit in the General Treasury.~~
- ~~d.— An estimate of the costs shall be made before copying and providing copies.~~
- ~~e.— If a court determines it is the public interest, it may reduce or waive fees for search and retrieval costs.~~
- ~~f.— Department personnel will make copies of requested records.— The Department does not have a copy machine available for use by the public to make copies.~~

2.— Publications/Rules and Regulations

- ~~a.— Official publications prepared by the Department in the discharge of their duties to inform the public on matters of public interest will be furnished free of charge when available.~~
- ~~b.— The Department will supply one (1) copy of any of its rules and regulations to an individual requesting them free of charge.— Rules and regulations of the Department are on file at the Office of the Secretary of State, and certified copies thereof may be obtained from that office.— Rules and regulations of the Department are also available on line from the websites of the Secretary of State, www.sos.ri.gov, and the Department of Public Safety, www.dps.ri.gov.~~

VIII:— Supervision of Inspections

- ~~1.— The inspection of public records must be accomplished in a manner which will provide for general supervision by authorized Departmental staff. This is necessary to prevent the misplacement or unauthorized removal of records or any other action that may impair the integrity of the public record.~~
- ~~2.— Personnel in charge of the Department having possession of the public records requested shall have overall responsibility for the security of the public records.— However, the individual in charge of that Department may designate a staff member(s) to coordinate the functions and responsibilities related to the copying and inspection of public records.~~
- ~~3.— All personnel responsible for responding to requests for access to public records shall be made aware by their supervisors of the provisions of this regulation and the procedures~~

~~to be followed when an access to public records request is made. Department personnel having any questions regarding the procedures to be followed should direct inquiries to the Legal Counsel for the Department.~~

~~IX: Severability~~

- ~~1. If any provision of this Regulation or the application thereof to any individual or circumstances is held invalid, such invalidity shall not affect the provisions or application of the remaining portions of the regulation which can be given effect. The provisions of these rules and regulations are declared to be severable.~~

~~APPENDIX~~

~~APPENDIX A: Department of Public Safety Public Records Request Form~~



DEPARTMENT OF PUBLIC SAFETY

PUBLIC RECORDS REQUEST FORM

Date: _____ Request Number: _____

Location: _____

Name (optional): _____

Address (optional): _____

City/Town, State, Zip Code (optional): _____

Telephone Number (optional): (Home): _____ (Work): _____

Requested Records:

If these records are not readily available at the time of your request, please advise whether you would like to:

_____ Pick up the records _____ Records to be sent regular mail

_____ Records to be faxed to Fax Number: (_____) _____

For Office Use Only

Request Taken By: _____ Request Number: _____

Date: _____ Time: _____ Records Available On: _____

Records Provided: _____ Yes _____ No _____ In Part

Date response provided if any exemptions are claimed: _____

Costs for Records: Copies \$ _____ Search and Retrieval \$ _____

Department of Public Safety – Access to Public Records Request Receipt

If you desire to pick up the records, they are expected to be available on _____ at the Department of Public Safety, Rhode Island State Police Headquarters, at the front desk in the main lobby. If, after review of your request, it is determined that the requested records are exempt from disclosure for a reason set forth in R.I.G.L. § 38-2-2(4) (i) (A) through (Y), the department reserves its right to claim such exemptions.

Note: If you choose to pick up the records but did not include identifying information on this form (name, etc.); please inform the officer at the front desk of the date you made the request, records requested and request number. Any parent, guardian, or attorney of an involved juvenile requesting records must show identification in order to obtain the records, pursuant to R.I.G.L. § 14-1-64.