

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: ACCESS TO PUBLIC RECORDS REGULATION : DOCKET NO. 4160

**REPORT**

**I. Authority and Notice**

R.I. Gen. Laws § 38-2-3(c) states that “each public body shall establish procedures regarding access to public records but shall not require written requests for public information available pursuant to R.I.G.L. § 42-35-2 or for other documents prepared for or readily available to the public.” Through this rulemaking, the Commission establishes such procedures. Pursuant to R.I. Gen. Laws § 42-35-3(a)(1), the Commission posted a public Notice of Proposed Rulemaking on the Rhode Island Secretary of State’s website. The Notice of Proposed Rulemaking set forth a description of the proposed rules, a hearing date, and a deadline for filing written comments.

**II. Public Hearing**

On May 3, 2010, the Commission held a public hearing at its Offices at 89 Jefferson Boulevard, Warwick, Rhode Island for the purpose of taking oral comment on its Proposed Rules. No public comment was provided at the hearing.

**III. Comments on the Proposed Rules and Commission Rationale**

Written comments were received from the American Civil Liberties Union (“ACLU”) regarding three provisions of the Proposed Access to Public Records Regulation (“Proposed Regulation”). At its Open Meeting held on June 17, 2010, the Commission discussed each of the comments. The Commission notes at the outset that the majority of requests it receives for public documents are of the type for which no written request is required under the law (i.e. public information available pursuant to

R.I.G.L. § 42-35-2 or for other documents prepared for or readily available to the public). (R.I.G.L. § 38-32-3(c)). The Commission believes that these Regulations and the sample request form (“Appendix A to the Regulation) provide a clear and balanced approach to assist the public in accessing public documents.

First, the ACLU requested that Section 4(1) of the proposed rules which refers to the sample request form that asks for the name and contact information be amended to include a sentence, “A requestor shall not be required to provide identifying information in order to request or obtain public records.” The Commission notes that the sample request form included with its Proposed Regulation states clearly that the name, address and signature of the requestor is optional. The Commission will include “optional” under other contact information. However, the form does request one method of written contact information so that the Commission can actually respond to the requestor in accordance with the law in the event the documents are not able to be produced immediately to a walk-in requestor. This is also clearly delineated as optional. Additionally, the Proposed Regulation also states that the sample request form is optional. Therefore, the Commission declines to include the requested sentence.

Second, the ACLU requests deletion of a statement that “the Commission will use its best efforts to notify” an inquirer of the status of his or her request if it appears it cannot be honored within the statutorily required ten (10) day period. The ACLU notes that the Commission is required by law to notify a requestor within ten days if good cause exists to require more time to respond. R.I.G.L. § 38-2-7(b) states “Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for

a period not to exceed thirty (30) business days.” One concern the Commission has is that if a requestor does not provide any identifying information or contact information (makes the request in person and will pick up the documents), the Commission would be unable to provide a response in 10 business days if there is a need to extend the period. If the Commission misses the 10 business day period, it is deemed a denial. The Commission may very well either have gathered the documents and is waiting for the requestor to return, may have determined that the requested documents are voluminous and is in possession of a cost estimate, or may have determined that the documents are in storage and have to be retrieved, leading to a delay in copying. However, in order to provide some clarity, the Commission will change the provision set forth in Section 4(4) to the following: “If it appears that the request cannot be honored within ten (10) business days of receipt, the Commission will provide notification to the requestor of the status of the request within ten (10) business days. However, in the event a requestor does not provide identifying or contact information, the Commission will use its best efforts to notify the requestor of the status of the request within ten (10) business days.”

Finally, the ACLU raises concerns that the sample request form asks whether the requested documents are “sought for the purpose of pending litigation involving the Department of the State of Rhode Island.” The ACLU notes that public documents may not be withheld based on the purpose for which the records are sought. (R.I.G.L. § 38-2-3(h)). However, the APRA also cannot be used to circumvent nondisclosure of certain records related to pending litigation. Additionally, R.I.G.L. § 38-2-2(4)(A)(II)(E) exempts “Any records which would not be available by law or rule of court to an opposing party in litigation” from the category of public document. The Commission

notes that the Department of Administration has left the provision on the sample form on the basis that the form is optional and a requestor could refuse to provide the information. The Commission discussed adding "optional" to the provision, but determined that the provision should be deleted. There was a concern that a requestor not familiar with governmental functions would not be reading the Regulation, but rather, would simply ask how to request documents, be handed the Request Form and would not understand that items could truly be left blank in order to receive the documents.

With the two changes described above, the Commission adopted the Proposed Regulations at its June 17, 2010 Open Meeting as final.

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EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON JUNE 17, 2010. FINAL RULES TO BE FILED WITH THE SECRETARY OF STATE'S OFFICE ON OR BEFORE JULY 16, 2010. REPORT ISSUED ON JUNE 29, 2010.

PUBLIC UTILITIES COMMISSION



Elia Germani, Chairman

Mary E. Bray, Commissioner

Paul J. Roberti, Commissioner