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July 29, 2015

The Hon. Allan Fung
Mayor
869 Park Avenue
Cranston, RI 02910

BY EMAIL AND FAX

Dear Mayor Fung:

I have read with great attentiveness the recent letter from Colonel O'Donnell regarding the results of the State Police investigation of your police department in response to the so-called Ticketgate scandal and other matters. The latest controversy now involves the release of the State Police report. I am writing because the ACLU of Rhode Island strongly believes that the report, purportedly prepared at a cost of hundreds of thousands of dollars in taxpayer money, involves a matter of extreme public interest and deserves to be made public expeditiously.

Since the so-called parking ticket scandal broke over a year-and-a-half ago, the ACLU of Rhode Island has expressed concerns about the civil liberties issues raised by the incident and emphasized the need for an independent investigation of the matter. Just as important is a public accounting of what happened.

While some City Council members have been calling for prompt release of the entire State Police report, you have demurred, instead indicating that you plan to ask for an advisory opinion from the Attorney General about "which contents may be appropriate for public disclosure." However, I am writing to ask you to immediately release the report, and to do so in unredacted form – with the possible narrow exception of very discrete personally-identifiable information, such as Social Security Numbers, for which there are very clear limits on public disclosure and which are entirely irrelevant to the report. But general reliance on Access to Public Records Act (APRA) exemptions, such as those involving so-called "personnel" records or "investigatory" matters, in order to withhold various portions of the report is completely inappropriate.

That is because, in many respects, the report is at bottom an examination of personnel and investigative matters, and so reliance on APRA exemptions ultimately serves merely as an excuse to withhold vital information from the public. The City should not seek to use the open records law as a shield to withhold disclosure of critically important information from an investigation of alleged serious abuses of the public trust.

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It is important to keep in mind that the exemptions contained in APRA are discretionary. While a public body has the right to withhold disclosure of certain information under those exemptions, it is not obligated to. As our R.I. Supreme Court has stated in this regard:

“The APRA provides neither a right to prevent the release of private information nor a remedy to compel nondisclosure. . . . Thus, the APRA exemptions, similar to those under the FOIA, allow public agencies to withhold documents, but do not require withholding.” *In re: New England Gas Company*, 842 A.2d 545, 551 (citations omitted).

Seeking an opinion from the Attorney General is thus both unnecessary and unwarranted. Even if he concludes that some portions of the report could be withheld from disclosure, it is completely in your hands whether to do so. In addition, the ACLU and other open government groups have expressed concern in the past about the inherent conflict of interest when the Attorney General – the chief law enforcement officer in the state who routinely relies on the assistance of police agencies – examines APRA issues related to records involving the police. The result of that reliance has all too often been, in our view, a decision to err on the side of withholding rather than disclosing records, precisely the opposite presumption established by APRA.

Further, any such request is likely to delay – for weeks, if not months – public access to this critical report. However, the public deserves answers now.

In short, there can be no question about the strong public interest in examining the contents of the RI State Police report that you requested, and in doing so promptly. In a recent statement, you said that your “intention has always been transparency about this report.” Because the Access to Public Records Act does not in any manner stand in the way of the report’s disclosure, and withholding it runs counter to your stated interest in transparency, we urge prompt release of the report this week.

Sincerely,

Steven Brown
Executive Director

cc: Cranston City Council