

May 28, 2020

The Honorable Gina M. Raimondo  
Office of the Governor  
82 Smith Street  
Providence, RI 02903

VIA MAIL AND EMAIL

Dear Governor Raimondo:

Two and a half months ago, in response to the Covid-19 pandemic, you issued an executive order, 20-05, suspending certain provisions of the Access to Public Records Act. At the time, the ACLU of Rhode Island and Common Cause RI wrote to urge that this portion of the Order not be renewed when it expired in mid-April. Instead, you have twice extended it (EO 20-25, EO 20-34). In light of the message of indifference that this action is communicating to public bodies about, and the toll it is taking on, the public's right to know, we ask that you immediately rescind the extension of this provision contained in EO 20-34 or, at a minimum, formally commit to letting it expire on June 14<sup>th</sup>.

As you know, APRA statutorily gives public bodies ten business days to respond to a request for records, and an additional twenty business days if, for certain specified reasons, it would constitute an "undue burden" to reply in that initial timeframe. However, your Order has given public bodies twenty *more* business days to respond, which means that important records can be withheld from the public for *almost two-and-a-half months*.

Although a temporary extension may have made sense at the beginning of the crisis, the 20-business-day extension already written into the statute is, in our view, more than sufficient at this stage of the emergency to address any burdens posed by a 10-day deadline. Giving public records custodians an additional 20 business days to respond to APRA requests is an encouragement to treat that timeframe as the default. That is the way that deadlines often work. But the harm to the public's right to know that this delay causes is real.<sup>1</sup>

The stated rationales that your office recently provided the *New York Times* for renewing this EO only heighten our concerns. One reason given was that with "many employees [] working around the clock supporting the crisis at hand, it severely impacts our ability to both attend to the crisis and meet [APRA] deadlines."<sup>2</sup> This implies that the public's right to know is somehow in conflict with dealing with the crisis, when just the opposite is true: government transparency is more, not less, critical during emergency situations, and has a major role to play in these times. Suggesting that prompt compliance with APRA is a distraction from other government

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<sup>1</sup> See, e.g., Katherine Gregg, "Political Scene: Public's Right to Know Thwarted in COVID Era," *Providence Journal*, May 18, 2020, p. 1. Our quick research also indicates that most states have found no need to extend deadlines for providing access to public records as a result of the pandemic.

<sup>2</sup> Id.

responsibilities trivializes the statutorily-embedded notion that the public's right to know is a "principle[] of the utmost importance in a free society." R.I.G.L. §38-2-1.

Your office also suggested that the harm to the public in delaying access to key documents relating to the crisis, such as government contracts, was overblown because the press has "ample opportunity to hold the administration accountable" through your daily press conferences where reporters can "address anything that was unclear."<sup>3</sup> But to equate news conference availability with public record access is a dangerous and disingenuous non sequitur. It's hard to ask meaningful questions about a document that's unseen. In any event, the executive order allows agencies to delay access to *any* public record, not just those relating to the pandemic-related focus of your news conferences.

As the ACLU and Common Cause pointed out to you more than two months ago, "It is important at this time for all Rhode Islanders to trust what government is doing to protect them, and ensuring that the government continues to act in a transparent manner is critical to maintaining that trust." In sum, because the continued additional extension of APRA's deadline is unwarranted and extremely damaging to the public interest, we ask that you immediately rescind those portions of EO-25 and EO-34 suspending certain provisions of APRA.

We look forward to a positive response to this request and are available to answer any questions you have about this. Linda Lotridge Levin can serve as the principal contact for the signatories.

Sincerely,

Linda Lotridge Levin, President

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<sup>3</sup> Id.

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