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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 21-H 5859, RELATING TO ACCESS TO PUBLIC RECORDS March 17, 2021

The ACLU of Rhode Island strongly supports this legislation, which is designed to clarify the public's right to access to final reports of investigations of police misconduct. The bill will close loopholes that a few police departments, with the support of Attorney General advisory opinions, have used to hinder the public's right to know. This amendment to the Access to Public Records Act (APRA) is essential because the public is being denied access to even redacted findings of misconduct, undermining transparency and accountability in very harmful ways.

In order to understand the genesis of this bill, some history is in order. In two major Access to Public Records Act (APRA) lawsuits filed in past years by the ACLU, the R.I. Supreme Court has ruled that the public is entitled to obtain final reports of investigations of police misconduct. Although both cases involved requests for reports of citizen-generated complaints of misconduct, the court rulings did not propound any distinction between investigations prompted by civilians and those initiated by a police department itself. However, a 2017 APRA advisory opinion by the Attorney General's office, *Piskunov v. Town of Narragansett*, approved such a distinction and held in that case that the Narragansett Police Department could withhold their final reports of misconduct investigations if they were initiated internally. This distinction makes no sense, and until that ruling, police departments had routinely provided those reports.

Unfortunately, that quickly changed. Later that year, the Rhode Island Accountability Project, a non-partisan organization which promotes governmental accountability and maintains a publicly available database of police misconduct reports, was similarly stymied from obtaining internally-generated police misconduct final reports from the Pawtucket Police Department. Relying on the *Piskunov* opinion, the Department refused to turn over 57 separate internal investigatory findings. In further eroding easy access to these key documents, a Superior Court judge held that each record, even with personally identifiable information redacted, needed to be reviewed on an individual basis. The result is a climate that invites public bodies to use unnecessary procedural hurdles to block APRA requests and impose significant transaction costs that most applicants for the release of records cannot afford. Such secrecy is especially intolerable when one considers that, in other states, *unredacted* misconduct reports are available to the public.

H-5859 would overturn the *Piskunov* opinion and restore police department accountability and transparency when it comes to findings of police misconduct. Internally generated reports regarding alleged police misconduct, no less than citizen-generated reports, should be available for public scrutiny. We believe APRA always required these documents to be public, and H-5859 will reinstate that access that has been wrongfully denied. The ACLU urges the committee's support of this legislation.