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ACLU OF RI POSITION: SUPPORT/AMEND

**TESTIMONY ON 21-H 5944 AND 21-H 5998,
RELATING TO STATE ARCHIVES AND PUBLIC RECORDS ADMINISTRATION
March 24, 2021**

These bills would make various revisions to the laws governing the Public Records Administration Act and the duties and responsibilities of the state archivist. The ACLU of Rhode Island supports these bills, and one provision in particular in each of them, but we also urge consideration of additional amendments that would promote better records retention by government agencies and access to those records by the public.

The provision we want to highlight [H-5998, Page 9, lines 19-22; H-5944, Page 9, lines 28-30] would give the public records administrator and the state archivist¹ the power to seek injunctive relief to address violations of the records retention laws by public bodies. Presently, the only power the administrator has is to impose fines against violators, a less than helpful response to ongoing compliance problems if records are being destroyed.

Our interest in these matters was generated by an experience we recently had – but that transpired over the course of a year – in trying to obtain basic public information from a state agency – copies of their news releases over the previous four years. We were shocked to find that the agency (the R.I. State Police) did not have hard copies of all of those releases, nor were they

¹ H-5944 gives this power to the “administrator,” which is not defined in Chapter 42-8.1. The bill should clarify if this is referring to the archivist or another person, such as the public records act administrator.

able to retrieve copies of ones that had been posted online on their website but were then removed after a period of time.

Our quest to find these records took us down a rabbit hole, leading to tangled conversations with administrators at RISP, representatives from the Secretary of State, and officials in the Department of Administration's Division of Information and Technology (DoIT). I have attached to this testimony a copy of correspondence we had with DoIT which provides some (but far from all) background information, but to us, also raised as many questions as it answered.

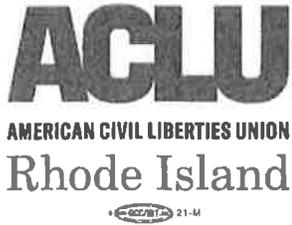
To this day, it remains unclear to us who bears responsibility for the missing news releases, but it is clear to us that there is a lack of clear policy guidance or chains of authority in terms of maintaining public information, and especially information that is posted on state and municipal web sites. The intersection of responsibility among the agency producing the data, DoIT and the state's website maintenance officials, and the Secretary of State's office is extremely opaque.

In supporting this legislation, we urge this committee and the Secretary of State to consider whether, in light of the record retention flaws highlighted by our experience, there are ways to further strengthen these bills and give the SOS the power to better monitor records retention, and to clarify and establish uniform protocols and lines of authority for the maintenance and public accessibility of web-posted records in some format. Something as historically newsworthy as a state agency's news releases should not be disappearing in the ether, nowhere to be found, much less so soon after their creation.

Thank you for considering our views.

Enclosure

Submitted by: Steven Brown, Executive Director



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July 15, 2020

Bijay Kumar, CIO/CDO
Division of Information Technology
One Capitol Hill
Providence, RI 02908

VIA MAIL AND EMAIL

Dear Mr. Kumar:

About a year ago, I first got in contact with your office seeking clarification regarding access to, and maintenance of, press releases uploaded to the RI.gov website by state agencies. My inquiry was prompted by our inability to obtain from the RI State Police (RISP), or find on its site or any other state website, a number of news releases that it had issued and posted online in the past few years. In the months following my conversations with Jestina Dorley in your Division about this, I followed up with a RISP representative at her suggestion. I also spoke with people at the RI Secretary of State's (SOS) office about retention schedules and other procedures for uploading and maintenance of file archives, but they pointed me back to your Department.

Due to the closing of our office in March, my investigation of this matter got sidetracked, but I am now following up on it. Unfortunately, despite my numerous contacts with representatives from RISP, the Secretary of State's office and DoIT, there are still several questions to which I have been unable to obtain answers. Neither RISP nor the SOS were able to explain what happened to RISP press releases uploaded to RI.gov once they "fell off" of the RSS feed after about a year or so. Since we remain interested in solving this mystery and better understanding both the technological and archival processes involved in maintaining the state's electronic records more generally, I'm writing with some follow up questions that I hope you'll be able to answer for us.

In an email response from Ms. Dorley last year, she indicated that, "The Division of Information Technology at the Department of Administration, does not have any involvement with RISP archives. I believe we assist with certain things for their site but not this part." I'm writing to ask for clarification on exactly what the Division of Information Technology's role is in this situation and, more broadly, in maintaining information on the RI.gov website. How much, and what kind of, oversight does your office have over the various governmental departments' information maintained on RI.gov? Is there another agency that has the responsibility we assumed would be DoIT's role?

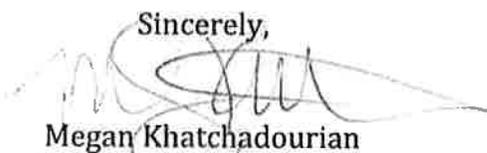
It was also unclear from our conversations with the members of the archival and retention division of the RI Secretary of State's office where web files for older posted information that

had "fallen off" are held, and by whom. Nor could we determine how decisions were made about how long information was maintained on the various state departments' web sites, how those decisions were made, and whether more than one agency oversees the process of maintaining or deleting information or documents on the RI.gov website. In short, it is unclear to us exactly what role DoIT plays in the RI.gov website and the maintenance of electronic records posted on that site.

The bottom line in this particular instance is that we have been unable to find anywhere very basic public information that has virtually disappeared from a state agency's website (and for which the agency has advised us no paper copies exist). It is difficult to envision a more troubling example of government technology appearing to undermine, rather than promote, the public's right to know. We are hopeful you can clear up some of these issues for us.

Thank you in advance for your attention to this matter, and I look forward to hearing back from you in the near future about it. Should you have any questions about this, please feel free to let me know. I can be contacted at myoung@riaclu.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Megan Khatchadourian', written over a light blue horizontal line.

Megan Khatchadourian
Assistant to the Director

cc: Brett Smiley



Division of Information Technology

One Capitol Hill Providence, RI 02908 (401) 574-9220
Bijay Kumar, Chief Digital Officer/Chief Information Officer

July 31, 2020

Megan Khatchadourian, Assistant to the Director
ACLU – Rhode Island
128 Dorrance Street, Suite 400
Providence RI 02903

Dear Ms. Khatchadourian:

Thank you for your letter dated July 15, 2020, regarding the retention of RI State Police (“RISP”) press releases on their website, <https://risp.ri.gov/>.

The Division of Information Technology (“Division”) does provide support to the RISP related to their website. Additionally, as you may be aware, the website is provided through a third-party vendor to the State. The purpose of the website is to provide information to the public for convenience of reference. Because of data limitations and cost, the website is not intended to be an archival tool for the long-term storage of records.

Press releases on the website would be considered “extra copies of publications or duplicate documents for convenience of reference.” In accordance with R.I. Gen. Laws § 42-8.1-2 (12)(iv), such copies for convenience of reference are expressly excluded from the definition of record. This provision states:

The following are excluded from the definition of records: . . .

(iv) Extra copies of publications or duplicated documents preserved for convenience of reference;”

Separate from the website, each State agency, including the RISP is responsible for preserving their own official records in accordance with approved records retention schedules.

In response to correspondence from the Secretary of State’s office regarding the preservation and storage of Press Releases the Rhode Island State Police utilizes the following process which started post January 2020:

Daily submissions to ri.gov/press by each barracks/unit, utilizing third-part web-based application “Webmaker’s Toolbox” are saved as a “text document” to an internal network drive. This process allows for the information to be searchable and provides for routine back-up to ensure permanent retention.

Press Releases and Media Advisories distributed using third-party web-based application “Constant Contact” are downloaded and saved as “PDF documents” to an internal network drive. This process allows for the information to be searchable and provides for routine back-up to ensure permanent retention.

Thank you for your inquiry and time regarding this matter.

Regards,

Bijay Kumar
Chief Digital Officer/Chief Information Officer

