

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: Department of Revenue

DIVISION: N/A

RULE IDENTIFIER: 280-RICR-10-00-1 ERLID 10100

RULE TITLE: Access to Public Records

REASON FOR RULEMAKING These Rules and Regulations provide the general public with policies and procedures to follow when requesting public records from the Director's Office. The proposed adoption is noncontroversial in nature and is being introduced in an effort to comply with the new format as required by the Rhode Island Code of Regulations (RICR).

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

TESTIMONY AND COMMENTS: **American Civil Liberties Union of Rhode Island**
128 Dorrance Street, Suite 400
Providence RI 02903

COMMENTS ON PROPOSED RI DEPARTMENT OF REVENUE

REGULATIONS GOVERNING ACCESS TO PUBLIC RECORDS

June 20, 2018

The ACLU of Rhode Island wishes to offer brief comments on these proposed regulations addressing public access to the agency's records. Our comments relate to one section in particular, that dealing with "fees."

Section 1.8(c) provides that the Department "charges a fee" for copying and retrieval costs in accordance with APRA, unless 20 or fewer pages are released. In order to

better promote transparency and recognize the public interest in many APRA requests, we urge the addition of a sentence that tracks the language in APRA relating to court determinations of fee waivers or reductions, by specifying that the agency may reduce or waive copy, search and retrieval costs if the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. See R.I.G.L. §38-2-4(d).

Section 1.8(D) requires that all costs be paid “in advance of or at the time of delivery” of the record. We believe the Department should be able to exercise discretion in this regard; otherwise, such a requirement can unnecessarily delay a person’s timely access to records when the fee is small or there is no reason to believe it will not be paid.

If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-2.6, you provide us with a statement of the reasons for not accepting these arguments. Thank you for considering our views.

Submitted by: Steven Brown, Executive Director

July 2, 2018

Dear Mr. Brown:

I thank you for your communication dated June 20, 2018 submitting comments on the Proposed RI Department of Revenue Regulations Governing Access to Public Records (“Proposed Regulation”).

The communication makes two comments/requests concerning the above-referenced Proposed Regulation.

Comment 1. The first comment urges “the addition of a sentence that tracks the language in APRA relating to *court* determinations of fee waivers or reductions by specifying that the agency may reduce or waive copy, search and retrieval costs if requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. See R. I. G. L. 38-2-4(d).”

Response to Comment 1. The proposed addition does not track the language in the APRA. The cited section (R.I.G.L 38-2-4(d)) provides that “Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.” That section does not relate to the suggested change; however, R.I.G.L 38-2-4(e)

provides that “[A] **court** may reduce or waive the fees for costs charged for ...” (emphasis added). APRA does not provide that the agency may reduce or waive the copy, search and/or retrieval costs. Therefore, the agency is not amenable to amending the proposed regulation to provide that the agency may reduce those costs under the circumstances cited.

Comment 2. The second comment indicates that the Department should be able to exercise discretion as to whether costs should be paid “in advance of or at the time of delivery.”

Response to Comment 2. Subsection (C) of Section 3.8 of the Proposed Regulation entitled (“Fees”) provides in relevant part that “[T]he Division **reserves the right to require** a deposit if the estimated costs are \$50.00 or more” (emphasis added). Since the Division “reserves the right to require a deposit if the estimated costs are \$50.00 or more,” the Proposed Regulation does not **require** those costs to be paid in advance (emphasis added). For that reason, the agency believes that it has the necessary discretion with respect to whether to require those costs to be paid in advance. Therefore, it is not necessary to add additional language indicating that the agency has such discretion.

Pursuant to R.I. Gen. Laws § 42-35-2.6 at the time of the filing of the final rule with the secretary of state, the agency will issue a concise, explanatory statement, in a form prescribed by the secretary of state, which satisfies the requires of subsects (1) and (2) of that law.

We thank you for taking the time to comment on the Proposed Regulation.

Sincerely,

Michael Canole

Assistant Tax Administrative

CHANGE TO TEXT OF THE RULE There were no changes to this rule.

REGULATORY ANALYSIS: In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.