

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: RHODE ISLAND DEPARTMENT OF TRANSPORTATION

RULE IDENTIFIER: 290-RICR-30-00-6

REGULATION TITLE: Access to the Public Records of the Rhode Island Department of Transportation

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: AMENDMENT

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date: June 18, 2018

End of comment period: July 19, 2018

SUMMARY OF PROPOSED RULE: To clarify the procedures applicable to the access to public records maintained by the Department of Transportation.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **July 19, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

SIOBHAN L. STEPHENS-CATALA, ESQ.

SENIOR LEGAL COUNSEL

RIDOT

2 CAPITOL HILL

PROVIDENCE, RI 02903

Email Address:

Siobhan.catala@dot.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address:

Rhode Island Department of Transportation
2 Capitol Hill
Providence, RI 02903

ALTERNATIVE PUBLIC HEARING TEXT:

In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

FOR FUTHER INFORMATION CONTACT:

Siobhan L. Stephens-Catala, Esq., Senior Legal Counsel
RIDOT, 2 Capitol Hill
Providence, RI 02903
401-222-6510 ext. 4463
Siobhan.catala@dot.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation: Benefits by providing clarity for those that would like access to Rhode Island Department of Transportation's records. Any changes in societal costs are *de minimus*. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: R.I. Gen. Laws § 38-2-3(d)

Regulatory Findings:

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.

The Proposed Amendment:

Rhode Island Department of Transportation proposes to amend **290-RICR-30-00-6** as follows:

290-RICR-30-00-6

TITLE 290 - DEPARTMENT OF TRANSPORTATION

CHAPTER 30 - BUSINESS, PROPERTY OWNERS, AND THE PUBLIC

SUBCHAPTER 00 - N/A

PART 6 - Access to the Public Records of the Rhode Island Department of Transportation

6.1 Authority

This regulation is promulgated pursuant to the authority granted in R.I. Gen. Laws § 38-2-3(d).

6.2 Purpose

A. The purpose of this regulation is to set forth procedures applicable to the Access to Public Records, R.I. Gen. Laws Chapter 38-2,s maintained by the Department of Transportation.

B. To facilitate open and transparent government at the Department, while balancing privacy rights of the public, employees and vendors of the State.

C. To recognize the public's right to access public records while balancing an individual's right to dignity and privacy.

6.3 Definitions

A. For the purposes of these Rules and Regulations, the following terms shall have the following meaning:

1. "APRA" means the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et. seq.*
2. "Department" means the Rhode Island Department of Transportation
3. "Chief administrative officer" means the Director of the Department of Transportation
4. "Public record" or "public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by the Department of Transportation, subject to the exemptions listed in § 6.5 of this Part.
5. "Request" means a submission asking for specific Records to be provided in accordance with the provisions and process stated herein.

6. "Requestor" means a person or entity making a Request for Records to the Department.

6.4 Procedure for Requesting Public Records

- A. A request for inspection or copying of public records must reasonably describe the records sought in a way that will permit their identification and location by Department personnel. A request shall be submitted through one (1) of the following means:
1. Electronically through the Access to Public Records Page of the State of Rhode Island's Transparency Portal
 2. Mailed to: Office of Legal Counsel, Department of Transportation, 2 Capitol Hill – Room 218, Providence, Rhode Island 02903
 3. Emailed to: dot.apra@dot.ri.gov
 4. Faxed to: (401) 222-4226
 5. Phone: (401) 222-6510
- B. If the description of records sought in the request is not sufficient to allow the Department to identify and locate the requested records, the Department will notify the requester that additional information is needed.
- C. A requestor can choose the format in which to receive records provided that the Department can provide them.
- D. A requestor is not required to offer personally identifiable information nor an explanation for a request.
- E. The Department will make every reasonable effort to honor the request within ten (10) business days of receipt by providing the Records.
- F. Nothing herein shall be construed as requiring the Department to reorganize, consolidate, or compile data not otherwise maintained by the Department in the form requested.
- G. If the record is not made available for inspection, the requestor will be notified of the reason(s) for denial within ten (10) business days of such request.
- H. If the Department needs additional time to retrieve documents, the Department must explain in writing why more time is needed. In such cases, the Department may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that:
1. The request is voluminous in nature or,
 2. The number of requests for records pending or,

3. The difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

I. Individuals or entities making a request for Records, are encouraged to visit the RIDOT website to check whether the requested Records are available online.

J. It is highly recommended, but not required to use RIDOT's standard request form posted on our website.

6.5 Inspection of Records

A. If a Requestor wishes to inspect Department Records and does not wish to be provided with copies, the Department will send instructions to set up an appointment for a time to inspect the Department records that are not otherwise exempt from public disclosure or are currently in use. The Department does not have a copy machine available for use by the public to make copies.

B. In accordance with R.I. Gen. Laws § 38-2-3(f), as amended, if a public Record is in active use or in storage and, therefore not available at the time the individual or entity requests access, the Department will inform the requestor and make an appointment to examine such Records as expeditiously as the Records may be made available. After the person is advised that the Records are available, he/she can make an appointment to inspect the Records at the Department during the business hours of 8:30 a.m. and 3:30 p.m., Monday through Friday, by calling the Office of Legal Counsel at (401) 222-6510.

C. All the provisions stated herein shall apply equally for a Request for inspection of the original Records.

D. The Department's Office of Legal Counsel shall supervise the Requestor's inspection of Records. No original Records shall be removed from the location of inspection by the Requestor. This procedure is necessary to prevent the misplacement or unauthorized removal of Records or any other action which may impair the integrity of Records.

6.5—Expectations/Limitations

~~**A. All files and records of the Department are available for public inspection and copying unless they are specifically exempted by these regulations or their disclosure is**~~

~~prohibited by state or federal law, or by order of a court of competent jurisdiction.~~

- ~~B. The following categories of files and records, or information in such files and records of the Department are specifically exempt from disclosure~~
- ~~1. All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, and pupil records and all records relating to a client/attorney relationship and to a doctor/patient relationship and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.~~
 - ~~2. Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of said retirement systems after (June 17, 1991) shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 37, title 42 and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of~~

~~any person and all information identifying the member's designated beneficiary or beneficiaries.~~**6.6 Costs**

- A. Consistent with APRA, the Department may charge a fee for copying and/or search and retrieval of requested Records. The Department may charge no more than \$0.15 per copied or scanned page. Multiple Requests by the same Requestor within a 30 day time period shall be added together for calculating of cost purposes. The Department may also charge no more than \$15.00 per hour for the search and retrieval time required to respond to a Request, whether the Request seeks copies of Records or seeks to inspect original Records.
- B. There is no charge for the first hour of search and retrieval time. Search and retrieval time shall include the time to: research, compile, review and redact potential Records which contains information, in whole or in part, that may be exempt from disclosure.
- C. The Department may charge for the actual cost for providing certain medium, (e.g. a CD-ROM or flash drives for electronic records) and the cost of mailing in the event the Requestor chooses this method of delivery.
- D. The Department will provide the Requester with an estimate of the copying, search and retrieval costs prior to responding to the Request.
- E. If the request is estimated to require more than ten (10) hours of research and retrieval time, the Department may require prepayment and/or a deposit prior to proceeding with the Request. The Department shall, however, charge the actual costs for copies, search and retrieval time, which shall be paid in advance to the "RI General Treasurer" and submitted in accordance with the instructions provided by the Department for the records to be provided to the Requestor.
- G. A court may reduce or waive the fees for costs charged for search or retrieval in accordance with R.I. Gen. Laws § 38-2-4(e).

6.7 Appeals

- A. Any person or entity denied the right to inspect a Record of a public body may petition the Department's chief administrative officer for a review of the determinations made by his or her subordinate. All appeals to the Chief Administrative Officer at the Department shall be directed to:

Director of Rhode Island Department of Transportation

Department of Transportation

c/o Office of Legal Counsel,

2 Capitol Hill, Rm. 220,

Providence, RI 02903

B. The chief administrative officer shall make a final determination within ten (10) business days after the submission of the appeal. In accordance with APRA, the Requestor may then file a complaint with the Rhode Island Office of the Attorney General or by statute retain private counsel and seek relief in the Superior Court of the county where the record is maintained.

- ~~3. Trade secrets and commercial or financial information obtained from a person, firm, or corporation, which is of a privileged or confidential nature.~~
- ~~4. Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.~~
- ~~5. All records maintained by law enforcement agencies for criminal law enforcement; and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency but only to the extent that the disclosure of such becomes record or information which
 - ~~a. could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings;~~
 - ~~b. would deprive a person or a right to a fair trial or an impartial adjudication;~~
 - ~~c. could reasonably be expected to constitute an unwarranted invasion of personal privacy;~~
 - ~~d. could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, or the information furnished by such a confidential source;~~
 - ~~e. would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or~~
 - ~~f. could reasonably be expected to endanger the life or physical safety of any individual; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.~~~~
- ~~6. Any records which would not be available by law or rule of court to an opposing party in litigation.~~
- ~~7. Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.~~

- ~~8. Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor.~~
- ~~9. Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.~~
- ~~11. Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.~~
- ~~12. Preliminary drafts, notes, impressions, memoranda, working papers and work products.~~
- ~~13. Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.~~
- ~~14. Correspondence of or to elected officials with or relating to those they represent, and correspondence of or to elected officials in their official capacities.~~
- ~~15. The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.~~
- ~~16. All tax returns.~~
- ~~17. All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation other than records of final actions taken, provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.~~
- ~~18. Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.~~
- ~~19. Requests for advisory opinions until such time as the public body issues its opinion.~~
- ~~20. Records, reports, opinions, information and statements required to be kept confidential by federal or state law, rule, rule of court or regulation or by state statute.~~

- ~~21. Judicial bodies are included in the definition only in respect to their administrative function provided that, records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.~~
- ~~22. Library records which, by themselves, or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.~~
- ~~23. Printouts from telecommunication devices for the deaf or hearing and speech impaired.~~

~~6.6 Commercial use of Public Records~~

- ~~1. No person or business entity shall use information obtained from public records pursuant to this regulation to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the Department.~~
- ~~2. Anyone who, knowingly and willfully, violates the provision of this section, shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one (1) year. (38-2-7) (11/83)~~

~~6.7 Disclosable and Non Disclosable Information~~

- ~~— If a record contains both disclosable and non disclosable information, the disclosable portion will be released unless that portion cannot reasonably be segregated from the rest of such record, in which case the record will not be disclosed. (11/83)~~

~~6.8 Procedure for Requesting Public Records~~

- ~~1. A request for inspection or copying of public records shall be presented in writing to the Office of Chief Legal Counsel, Department of Transportation, 2 Capitol Hill — Room 251, Providence, Rhode Island 02903 during the ordinary business hours of the Department on forms provided by the Department and must reasonably describe the records sought in a way that will permit their identification and location by Department personnel. At the discretion of Department legal counsel, the requirements of a formal request may be waived.~~
- ~~2. If the description of records sought in the request is not sufficient to allow the Department to identify and locate the requested records, the Department will notify the requester that additional information is needed.~~

- ~~3. The Department will make every reasonable effort to honor the request within ten (10) business days of receipt of the form as specified herein.~~
- ~~4. The Department will make its best efforts to notify the inquirer of the status of the request within ten (10) days, should it appear that the request cannot be honored within the ten (10) days.~~
- ~~5. Nothing herein shall be construed as requiring the Department to reorganize, consolidate, or compile data not otherwise maintained by the Department in the form requested. If records requested directly relate to a departmental employee, prior to turning those documents over to the requester, the Department will provide five(5) days prior written notice of the request to the employee. (11/83)~~

~~6.9 Appeals Process~~

- ~~1. If the record is not made available for inspection, the requester will be notified of the reason(s) for denial within ten (10) business days of such request. Failure to comply with a request to so inspect or copy such a public record within the ten (10) day period shall be deemed a denial. The requester will also be informed that he may appeal the decision to the Director of Transportation.~~
- ~~2. If an appeal is made to the Director and a denial is upheld, the appellant will be informed of the reason(s) within ten (10) business days after the submission of his review petition.~~
- ~~3. If the Director approves the record's disclosure to the requester, the Director's Office will arrange for a time and place for the inspection of the record.~~
- ~~4. If the Director denies an appeal, the appellant may file a complaint with the Attorney General or may retain private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the Superior Court of the County where the record is maintained. (38-2-8) (11/83)~~

~~6.1.0 Fees~~

- ~~1. Official publications which the Department prepares in the discharge of its duty to inform the public on matters of public interest shall be furnished free of charge when available.~~
- ~~2. The Department will supply one copy of any of its rules and regulations to an individual requesting same free of charge. Rules and Regulations of the Department are also on file at the Office of the Secretary of State and certified copies thereof may be obtained from that office.~~

- ~~3. The Department shall charge a fee of fifteen cents (\$.15) per page and an hourly rate of fifteen (\$15.00) for time spent searching and copying of all other public records, as defined herein. If the time spent on such searching and copying is less than 30 minutes, no fee other than a per page copying fee shall be charged. Copies of records on other than paper 8 ½"x 14" paper will be charged at the actual reproduction cost.~~
- ~~4. All payments for copies of records shall be paid in advance of delivery.~~
- ~~5. The Department will inform the person requesting the record of the approximate cost which will be incurred. (11/83)~~

~~6.1.1 Supervision or Inspections~~

- ~~1. Without regard for the location(s) selected for the public's inspection of records, the inspection will be accomplished in a manner which will provide for general supervision by authorized staff. This is necessary to prevent the unauthorized removal of records or other actions which would destroy the integrity of the record.~~
- ~~2. The Section head in charge of the activity related to the public record shall have overall responsibility for the security of the public record. However, the section head may designate a staff member to coordinate the functions and responsibilities for the public's inspection of records.~~
- ~~3. All personnel dealing with the public era to be made aware, by their section heads of the procedures established for public inspection of records and shall direct inquirers to the Office of Chief Legal Counsel which will serve as a resource in matters relating to the public's inspection of records. (11/83)~~

~~6.1.2 Severability~~

- ~~— If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end, the provisions of these rules and regulations are declared to be severable. (11/83)~~
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CERTIFICATION

~~I hereby attest that the amended within Rules and Regulations Relating to Access to the Public Records of the Rhode Island Department of Transportation have been adopted by the Rhode Island Department of Transportation and are true copies.~~

~~Date—William D. Ankner, Ph.D.~~

DIRECTOR

~~Revised: 12/01~~