



Attorney General Peter F. Neronha

ACCESS TO PUBLIC RECORDS ACT CHECKLIST¹ *OPEN GOVERNMENT UNIT*

It is important to note that the APRA establishes the minimum requirements with which public bodies must comply. Public bodies are encouraged to implement policies promoting increased disclosure and transparency that are consistent with the APRA and its goal of facilitating public access to government records.

PROCEDURES (R.I. Gen. Laws § 38-2-3(d))

- ❖ All public bodies must establish written procedures regarding access to public records, which must be posted on the public body's website, if such a website is maintained, and made otherwise readily available to the public.
- ❖ Written procedures must include the following:
 - Identification of a designated public records officer or unit;
 - Where to make a public records request; and
 - How to make a public records request.
- ❖ A public body may require that requests be made in writing. However, requests need not be in writing if the requested records are available pursuant to the Administrative Procedures Act or are otherwise readily available to the public.
- ❖ A public body cannot require that requests be made on a specific form or that requesters provide identifying information or the reason(s) for their request.

TRAINING AND CERTIFICATION (R.I. Gen. Laws § 38-2-3.16)

- ❖ Any officer or employee given authority to grant or deny access to records must be trained, either by attending an Attorney General training or by watching the video of the Attorney General's Open Government Summit.
- ❖ No later than January 1 of every year, every public body and Chief Administrative Officer must certify that all officers and employees who have the authority to grant or deny persons or entities access to records have been provided orientation and training during the prior year.
 - Any person who becomes authorized by their employer after January 1 to grant or deny Access to Public Records Act requests shall receive training as required under the Act as soon as practicable, but not more than one (1) month after being authorized to grant or deny APRA requests. The Chief Administrative Officer must certify to the Office of Attorney General that training has been received when training has been completed.

¹ This checklist is provided by the Office of Attorney General to assist public bodies and provide guidance concerning the Access to Public Records Act's requirements. This checklist does not list all Access to Public Records Act requirements and is neither intended to replace the Access to Public Records Act nor should it be construed as legal advice. Public bodies should defer to their legal counsel when questions regarding compliance arise. Revised July 2020.

- ❖ Certification should be accomplished using forms generated by the Attorney General and available at: <http://www.riag.ri.gov/CivilDivision/OpenGovernmentUnit.php>.
- ❖ Completed certification forms must be forwarded to the Office of Attorney General, Attn: Open Government Unit 150 South Main Street, Providence, Rhode Island 02903 or agsummit@riag.ri.gov.

RESPONDING TO REQUESTS²

- ❖ Within ten (10) business days of receipt of a request, the public body must provide one of the following responses to the requester:
 - Access to the records;
 - Denial of the request;
 - Extension of the time to respond; or
 - Estimate of the time and cost, which tolls the time to respond.

Access:

- ❖ Requested documents are presumed to be public records and must be disclosed, unless the document (in whole or in part) is exempt pursuant to one or more of the exemptions found in R.I. Gen. Laws § 38-2-2(A)-(AA). (*R.I. Gen. Laws § 38-2-2(4)*).
 - Even if a document is exempt from disclosure, the public body may, in its discretion, still disclose the document, unless disclosure is prohibited by some other law, regulation, or rule of court.
- ❖ Documents must be provided in any requested media that can be provided. (*R.I. Gen. Laws § 38-2-3(g)*).
 - Must provide copies electronically, by facsimile, or by mail pursuant to requester's choice, unless doing so would be unduly burdensome due to the volume of records requested or the costs incurred. Person requesting delivery responsible for costs, if any. (*R.I. Gen. Laws § 38-2-3(k)*).
 - For example, if the public body maintains and can provide a document in word or excel and the requester requests that document in one of those particular formats, the public body cannot provide a PDF.

Denial:

- ❖ Any denial of a request for records:
 - must be in writing (even if request was made orally);
 - Provide specific reason(s) (including citation to specific exemptions, where applicable) for denial;
 - Without a showing of good cause, any exemption not specifically stated in the denial is deemed waived. (*R.I. Gen. Laws § 38-2-7(a)*).
 - If withholding entire document, must state that no reasonably segregable portion of the document can be produced. (*R.I. Gen. Laws § 38-2-3(b)*); and
 - Identify procedure for appealing denial. (*R.I. Gen. Laws § 38-2-7(a)*).
- ❖ The following responses constitute denials for purposes of the APRA and the requirements set forth above:
 - A response indicating that the public body does not maintain documents responsive to the request. (*R.I. Gen. Laws § 38-2-7(c)*).
 - A response that includes any redaction of any records, in whole or in part.

² This section should not be used for requests seeking adult arrest logs, which require a law enforcement agency to provide a response within 48 hours after receipt of a request, unless a request is made on a weekend or a holiday, in which case the records shall be made available within 72 hours. (*R.I. Gen. Laws § 38-2-3.2*).

Extend the time to respond *(R.I. Gen. Laws § 38-2-3(e))*

- ❖ A public body may extend the time to respond by an additional twenty (20) business days.
- ❖ The extension must:
 - Be in writing;
 - Demonstrate extension necessary due to voluminous nature of the request, the number of requests pending, or the difficulty in searching for and retrieving or copying requested records; and
 - Be particularized to specific request – no copying above boilerplate language from the statute.

COSTS *(R.I. Gen. Laws § 38-2-4)*

- ❖ Up to \$.15 per document copied on a common or legal-size paper;
- ❖ Up to \$15.00 per hour for search, retrieval, review, and redaction, with no charge for the first hour;
 - Multiple requests from the same person/entity within a 30-day time may be considered one request for purposes of calculating the first hour at no charge.
- ❖ No more than the reasonable actual cost for providing electronic records;
- ❖ No more than the reasonable actual cost for retrieving records from storage, but only where the public body is assessed a retrieval fee; and
- ❖ Any other cost provision specifically authorized by law.
- ❖ For all costs, an estimate must be provided upon request; and a detailed itemization of the search and retrieval costs must be provided upon request.
- ❖ It is a best practice to provide requesters with an estimate up front so that they have an opportunity to make an informed decision about whether to proceed with the request.