

September 23, 2021

The Hon. Daniel McKee
Governor
82 Smith Street, Room 115
Providence, RI 02903

VIA EMAIL

Dear Governor McKee:

This letter is written on behalf of ACCESS/RI, a coalition of non-profit organizations dedicated to improving citizen access to the records and processes of government in Rhode Island. In that regard, we write with some urgency to ask you to address the current diminishment of government transparency that has been generated by the troubling increase in infections, hospitalizations and deaths caused by the Covid-19 Delta variant.

As you know, for more than a year, you and your predecessor issued recurring executive orders that, with the goal of promoting public health and safety, waived certain provisions of the Open Meetings Act, allowing public bodies to meet remotely and giving members of the public the opportunity to attend and participate remotely in those meetings as well. Two months ago, you let those executive orders lapse, a step that, at the time, seemed quite reasonable based on the progress that had been made in taming the Covid-19 pandemic. As a coalition that firmly believes that some measure of accountability is lost when public bodies do not meet in person and the public cannot engage with them directly, we agree that the “physical presence” standard of the OMA is extremely important. It was for this reason that we opposed a bill that was proposed in the General Assembly this session that would have allowed public bodies to continue to meet remotely for *more than two years*.

However, in these last two months, the Delta variant has upended the expectations that many of us had in seeing in-person indoor gatherings return to normal, and it is what has prompted you to issue an executive order allowing the government to continue to operate under emergency conditions. Because of this new pandemic wave, it is our understanding that some public bodies have had difficulty garnering quorums to meet in person due to the health concerns of some members. Just as importantly, we know that some members of the public have been reluctant to attend public meetings for those same reasons. While some public bodies are continuing to livestream their meetings and allow remote public participation, many others are not, leaving constituents with the choice of participating in their government only if they are prepared to risk their health and that of those close to them.

In light of the current status of the pandemic, we therefore urge you to reinstate the executive order allowing for remote meetings and requiring livestreaming and remote public participation. Since these emergency executive orders last only thirty days, the decision whether to reissue them will occur on a regular basis and can take into account, as decisions regarding the previous orders did, their continued necessity based on the progress in countering the latest wave of the pandemic. Nothing in the General Assembly’s amendments to your emergency powers,

enacted in the FY2022 budget, affect your ability to take this action. In addition, with the legislature likely not returning until January, action by your office is the only effective way, for the near future, to address this problem.

Finally, in asking you to take this step, we would be remiss in not also asking you to consider strengthening the executive order from previous iterations. When these orders were first issued, the ACLU and Common Cause asked then-Governor Raimondo to include some additional safeguards to better promote transparency and accountability. We have attached a copy of the letter containing those suggestions that was submitted at that time. One addition that we would particularly urge, based on our experience in attending remote meetings these past 18 months, is a requirement that when remote meetings are being held by video conference, the cameras of all participating members of the public body should be kept on at all times.

We thank you in advance for your consideration of this request, and look forward to a favorable response, as we know you share our goal of encouraging government transparency during this difficult period.

Sincerely,

Steven Brown, Executive Director, ACLU of Rhode Island
Jane Koster, President, League of Women Voters of Rhode Island
Linda Levin, President, ACCESS/RI
John Marion, Executive Director, Common Cause Rhode Island
John Pantalone, Associate Professor of Journalism, University of Rhode Island
Justin Silverman, Executive Director, New England First Amendment Coalition

cc: Claire Richards
Elizabeth Tanner



March 19, 2020

The Honorable Gina M. Raimondo
Office of the Governor
82 Smith Street
Providence, RI 02903

VIA EMAIL

Dear Governor Raimondo:

We understand this is an extraordinary time for state and local governments as they cope with the COVID-19 outbreak. In light of that, our organizations recognize the need to relax some of the safeguards in the Rhode Island Open Meetings Act and the Access to Public Records Act as you did in Executive Order 20-05. However, we write to express some concerns, and offer some suggestions, about the Executive Order and how it is being implemented by public bodies.

We ask that you immediately issue an amended Executive Order to clarify two matters that have arisen in the short period of time it has been in effect. We further request that you incorporate other recommendations if this Order is renewed, and, in the meantime, issue immediate guidance to public bodies in keeping with those recommendations.¹

The two amendments that we believe need to be immediately made to EO 20-05 are:

- Clarifying that should a public body continue to meet in person, it must still provide (1) remote access to members of the public; (2) in-person access to the media, by pool arrangement if necessary; and (3) in-person access to members of the public to the extent not inconsistent with the attendance limitations established by EO 20-04.

¹ We are also troubled by the Order's authorization to public bodies to forego contemporaneous public access to a meeting by reason of "economic hardship or despite best efforts." There are many free audio and video conference programs available. Additionally, you announced two days ago that Microsoft has offered free licenses for Office 365 for municipalities. That software suite has scalable video conferencing capabilities that public bodies can use for holding remote meetings. Under the circumstances, no public body should be able to rely on this exemption, and so it should be removed in any future Order.

- Specifying that in the event audio or video coverage of a proceeding or meeting is interrupted, the presiding official shall suspend the discussion until the audio or video is restored.

Additional amendments that should be made if EO 20-05 is renewed, and that public bodies should be asked to abide by in the interim, include:

- When operating remote meetings by video conference, all participating members of the public body should be clearly visible and audible to the public at all times.

- At the start of the meeting, the presiding official should be required to announce the names of any members of the public body participating remotely. During a meeting for which only audio is being provided, anyone speaking should repeat their name prior to making their remarks.

- All votes should be conducted by roll call so that those following by video or audio are aware of how each member of the public body voted.

- Any documents presented to the public body at the public meeting should, if possible, be put on the website of the public body prior to the start of the public meeting.

- The public body should record all meetings and make the recording available on a public website on a timely basis.

We also have separate concerns about those provisions in EO 20-05 suspending portions of the Access to Public Records Act. APRA already gives public bodies up to thirty business days to respond to an APRA request. The Order gives public bodies twenty additional business days to respond. It is our experience that too many public bodies routinely -- sometimes automatically -- seek extensions of time to respond to APRA requests. Allowing agencies to invoke an additional 20 business days extension means that important records could be withheld from the public for almost *two-and-a-half months*.

While the extension can, in theory, only be requested if necessary, for reasons related to this health emergency, its invocation will be virtually impossible to refute, and it can only encourage public bodies to take APRA requests lightly. Government transparency and support of the public's right to know are more, not less, critical during emergency situations. Because this suspension of APRA's deadline is unwarranted and extremely damaging to the public interest, we ask that the additional 20 business day extension for responding to APRA requests be removed from EO 20-05 if it is renewed next month.

We understand that the additional time extension in the Order may be in response to some city and town halls being fully closed at the moment, and therefore having literally nobody available to respond to APRA requests. However, the Order is not in any way limited to those extreme situations. Moreover, by the time that this Order expires a month from now, we expect every city and town hall will be functioning at some level that will enable them to comply with this extremely important law.

It is for this reason that we have not asked for an immediate revocation of this provision, but instead for its non-renewal.² At the very least, any future extension of this deadline must be much more narrowly tailored than that contained in this Order.³

We thank you in advance for your attention to these matters. It is important at this time for all Rhode Islanders to trust what government is doing to protect them and ensuring that the government continues to act in a transparent manner is critical to maintaining that trust. Should you have any questions regarding these suggestions, we are happy to answer them.

Sincerely,

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cc: The Hon. Nellie Gorbea
The Honorable Peter F. Neronha
Claire Richards
David Ortiz
Brett Smiley
Kate Sabatini

² Even during this one-month period, we would urge you to ask public bodies to abide by the statutory deadlines if the APRA request specifically seeks documents related to the pandemic. Obviously, timely information from public bodies about this crisis is critical.

³ We also suggest a technical clarification if the Order is renewed. Section 5 is unintentionally ambiguous in one respect. In allowing public bodies to produce records solely in electronic format, one could read this provision as authorizing agencies to withhold any records that cannot be produced electronically.