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## New England First Amendment Coalition

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*SENT VIA EMAIL TO HOUSESTATEGOVERNMENTANDELECTIONS@RILEGISLATURE.GOV*

### RE: House Bill No. 5454

April 5, 2023

Dear House Committee on State Government and Elections,

I'm writing on behalf of the New England First Amendment Coalition<sup>1</sup>, a non-partisan non-profit advocate for open government in Rhode Island. Our Board of Directors includes many of the region's most prominent journalists and media attorneys. We are also a member of Access/RI, a coalition of groups working in Rhode Island to improve transparency through improved public record and open meeting laws.<sup>2</sup>

We respectfully ask you to pass House Bill No. 5454, An Act Relating to Public Records. This legislation is a much-needed common sense update to our public records law, a statute that has not been significantly reformed in more than a decade. As our fellow Access/RI members will also explain in their own testimony, H.5454 will help strengthen the state's Access to Public Records Act in many ways. These changes — most notably those pertaining to police records, official correspondence and 911 calls — will result in more transparency and accountability. The changes will also bring Rhode Island further in line with other states that already offer much of what H.5454 provides.

While we fully support the testimony to be given by other Access/RI members and urge you to take into account their perspectives, our testimony focuses on the two provisions of H.5454 that address the confidentiality of 911 calls and the release of police-worn body camera footage.

#### Access to 911 Calls

The current law is a cumbersome and problematic attempt to maintain the privacy of those making emergency calls. It has presented insurmountable barriers and unequal access for members of the public. The current law is so restrictive that even individuals seeking the audio of their own calls or the calls made on behalf of their family members are routinely denied access.

Consider the experience of Troy Phillips.<sup>3</sup> Phillips was unable to obtain the 911 recording of a call made on behalf of his brother who died after going into cardiac arrest while at a sandwich shop in Cranston. As a volunteer firefighter and licensed emergency medical services technician, Phillips knew that receiving CPR in the first minutes after a heart attack is critical to the chance of survival. Phillips requested the audio of the 911 call so he could find out if anyone had administered CPR to his brother before EMTs arrived. The current law, however, prevented him from receiving a copy of the call because disclosure requires the written permission of the caller, in this case, a bystander at the sandwich shop. Unfortunately, Phillips was unable to identify that bystander and never received the recording.

Also consider the case of a 911 caller who reported an overdose last summer and was denied under the current law the audio of her own call.<sup>4</sup> The reason? A second person's voice, that of another bystander, could be heard in the background. According to the emergency call center, state law prohibited it from releasing the recording without the written permission of that bystander. Because that person could not be identified, the 911 caller could not access the audio of her own call. Under the current law, this type of scenario can occur any time a 911 call is made in a public space where bystanders not placing the call are nevertheless heard in the background.

With 911 calls, there is a need to balance certain privacy interests with the public's right to know about the operations of emergency response centers. The current law fails on both accounts. Across the country, recordings of 911 calls about accidents, medical emergencies, mass shootings and natural disasters, have provided insight into how our public safety system works or, in some cases, does not.

The changes proposed by H.5454 strike an appropriate balance between providing access to the audio of 911 calls and protecting the privacy of those needing such calls to be made. The bill provides access to the individuals involved in the call and allows an opportunity for other parties to argue that the audio's release is in the public's interest. This framework is an effective, yet considerate, way to protect individual privacy while also allowing sufficient transparency within our state's call centers.

### **Release of Body Camera Footage**

Since concern over police brutality and use-of-force policies recaptured the nation's attention in 2020, communities across the country have demanded more transparency within their law enforcement agencies. The use of body cameras can be an effective way to both protect citizens from unreasonable uses of force and to discourage false allegations of misconduct against officers.

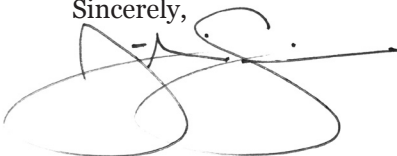
The body camera policies recently issued by the Office of the Attorney General, however, still allow for footage of use-of-force incidents to be unreasonably delayed or to be released only with exorbitant fees incurred by the public. WPRI, for example, requested the video recordings of use-of-force incidents involving the Providence Police Department in 2020, matters of unquestionable public interest.<sup>5</sup> Instead of the recordings, WPRI received a bill for thousands of dollars. Current policies do little to prevent such prohibitive fees. Under H.5454, however, the recordings would be made public within 30 days at no cost.

In another example, the Providence Police Department refused to release the body camera footage of a sergeant accused and ultimately convicted of assaulting a suspect.<sup>6</sup> Despite this refusal, a city official released the footage anyway citing the public's interest in viewing the sergeant's actions. The official was then fired in what is now claimed to be an act of retaliation. H.5454 would treat all videos showing use of force as matters of high public interest and require them to be disclosed within 30 days, removing the discretion of city officials.

As we wrote last October in response to the new policies governing police-worn body camera footage: "As important as the deployment of body-worn cameras to law enforcement officers in Rhode Island is to ensuring oversight and transparency in policing practices, that transparency and oversight is only as meaningful as the public's ability to access the critical footage and information that is collected by this technology. . . . [R]obust standards for release to the public of high-interest or highly publicized incidents must be put in place."<sup>7</sup> H.5454 will do just that.

For these reasons — along with those to be articulated by our partners the ACLU of Rhode Island, Common Cause Rhode Island, League of Women Voters of Rhode Island and the Rhode Island Press Association — we urge you to support the passage of H.5454 and strengthen our often failing public records law.

Sincerely,



Justin Silverman  
*Executive Director*

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<sup>1</sup> Visit [nefac.org](http://nefac.org) to learn more about the New England First Amendment Coalition.

<sup>2</sup> Visit [accessri.org](http://accessri.org) for more information about Access/RI.

<sup>3</sup> Lynn Arditi, "Going Quiet: More States are Hiding 911 Recordings From Families, Lawyers and the General Public," The Public's Radio, <https://the-publicradio.org/article/-going-quiet-more-states-are-hiding-911-recordings-from-families-lawyers-and-the-general-public> (July 16, 2019).

<sup>4</sup> This example was provided to NEFAC by a local journalist covering health and medical services in Rhode Island.

<sup>5</sup> Eli Sherman and Tim White, "Target 12 Probe Reveals Police Use of Force Almost Always Deemed 'Justified' in R.I.," WPRI, <https://www.wpri.com/target-12/target-12-probe-reveals-police-use-of-force-almost-always-deemed-justified-in-ri> (April 31, 2020).

<sup>6</sup> Steph Machado, "Former Head of PERA, Fired for Releasing Hanley Video, Sues City," WPRI, <https://www.wpri.com/news/local-news/providence/former-head-of-pera-fired-for-releasing-hanley-video-sues-city> (March 23, 2021).

<sup>7</sup> Rhode Island Advocates: Police Body Camera Policy Needs More Transparency, NEFAC, <https://www.nefac.org/news/nefac-rhode-island-advocates-police-body-camera-policy-needs-more-transparency> (Oct. 13, 2022).