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ACLU sues state police, Corrections Department over fees to produce copies of public records

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PROVIDENCE — The Rhode Island Affiliate of the American Civil Liberties Union is suing the state police and the Department of Corrections on behalf of a small community group, contesting fees for public records involving the state's cooperation with federal immigration officials.

The lawsuit filed Monday on behalf of the Olneyville Neighborhood Association [ONA] seeks a court order waiving "the significant fees" — nearly \$2,000 — requested collectively by the two agencies to produce those records.

The Corrections Department is seeking an estimated \$593 for retrieving and copying the records; state police "demanded a pre-payment of \$1,500 before searching for the documents," the lawsuit states.

The complaint is only the second of its kind filed by the local ACLU affiliate in recent history, said executive director Steven Brown. The civil rights group obtained a court-ordered fee waiver for police-brutality complaint records sought by another community activist group in 1998.

State police Col. Steven O'Donnell and a corrections spokesperson said the requests are wide-ranging and the fees fall within the purview of the state Access to Public Records Act.

"It's a very voluminous request for our policies, our procedures and communications with ICE [U.S. Immigration and Customs Enforcement] — the records have to be hand-searched," O'Donnell said.

The ACLU said the statute authorizes courts to waive those fees when the information sought "is in the public interest because it is likely to contribute significantly" to public understanding of government operations or activities.

ONA is seeking records involving enforcement of so-called ICE "holds," which facilitate detainee transfers from law enforcement to ICE custody. The group filed open records requests with those agencies and five police departments last year: the five departments agreed to waive all fees.

Activists — ONA included — have been pressing Governor Chafee to change those "hold" policies, including through letters, calls and a vigil outside the governor's office earlier this month. Chafee spokeswoman Faye Zuckerman said, "The governor continues to evaluate the issue."

ONA aims to compile a report on the data and share it with policymakers as part of its push to end the ICE hold practice, according to the ACLU.

Eduardo Sandoval, of ONA, said, "It is in everyone's interest to understand how and to what extent state agencies collaborate with ICE for the purpose of detaining and deporting our family, friends, and neighbors. This is information Rhode Islanders need to know."

The lawsuit states, "The refusal to waive the fees and their costly demands actually denies public access to the documents and is counter to the goals and objectives of the Access to Public Records Act."

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Corrections Department spokesperson Susan Lamkins said Monday that the department has not denied ONA's records request. "What we did is, we told them their request was so large it would cost approximately \$593 to get the information. That would not cover our department's entire expenses but simply offset a portion of them which is allowed by statute."

Lamkins said the department would have to search "through hundreds of individual files as well as copy approximately 1,600 pages from individual files and the DOC data base and also working to redact non-public information."

She added, "They asked us to waive the fee. We told them we couldn't at this time. Based on our department's fiscal responsibility to the state, we couldn't do it at no charge. This is a considerable amount of work."

O'Donnell said that under the statute, "We can charge an estimated fee of what it would cost us. We choose to use estimated cost because in the past organizations have failed to pay for the cost of personnel making copies and turning those copies over."

"That's the estimate we came up with. ... If we overestimate, we return the money," O'Donnell said.

Brown, the ACLU executive director, said, "The right to access public records means little if agencies can put them beyond the financial reach of most requesters. Fulfilling requests like this should be part of a public body's core mission, not a money-making venture."

ACLU volunteer attorneys Kathleen Connell and Christopher Gerlica filed the suit.

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Why should we have to pay for any public record? We should be able to go online and search and access them for free. Charging for public records is a way to keep them out of public view.

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Ron Poirier - Top Commenter - Providence, Rhode Island

Agreed, Bobby. Have something you don't want getting out? Simply jack up the cost of procuring it! Don't worry, the people who REALLY matter will still be able to afford it if they need to!

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