

Introduction

How well does the Open Records Law work in the cities and towns of Rhode Island? What happens when citizens walk into town halls, school departments, and police stations to request information, especially documents to which they are clearly entitled under the law? Are the minutes of public bodies routinely available in the form and manner required by the Open Meetings Law?

Nobody really knows. There are many anecdotes, but little or no overall data. The Open Records Law is not enforced through an inspectorate, and no state agency conducts audits or surveys of compliance. Instead, both the Open Records Law and the Open Meetings Law rely on complaints filed with the Attorney General or direct actions in Superior Court for enforcement. The Attorney General has the authority to bring enforcement actions for violations of either law.

Many of the complaints carried forward stem from labor unions and employment grievances. An example is the Attorney General's complaint against the Tiogue Fire District for charging 50 cents per page for photocopies (Audrey Cohen, "Tiogue Fire District Opens Annual Meeting" Providence Journal-Bulletin, September 9, 1997, p. C1). Similarly, a union grievance on behalf of a teacher resulted in a Superior Court decision concerning the requirements for recording votes on school committee minutes (*Miner v. Warwick School Committee*; C.A. No.: KC 94-1054).

But these cases say little, if anything, about the experience of everyday citizens seeking information of various sorts. This is not to suggest that union-related disputes are unimportant, just that what happens in those cases might be quite different from what happens to citizens with a general interest in monitoring local government. Few citizens have the time, money or inclination to file complaints or pursue litigation over restricted access to public information. Therefore, the absence of complaints with the Attorney General or in Superior Court does not necessarily demonstrate anything about the experience of common Rhode Islander's seeking information from municipal government.

This study was designed to provide the first systematic data on implementation of the Open Records Law in Rhode Island's cities and towns. The study provides useful comparisons across departments and jurisdictions. All of the documents included in this study are regulated by the Open Records Law and several are also covered by the Open Meetings Law. Accordingly, this study examines compliance under both laws.

The limitations of this study are discussed after an explanation of how the study was designed and conducted. The results are presented in four separate sections: statewide, by department (city/town clerk, school department, police), analysis of minutes (a detailed examination of city/town council and school committee minutes), and city and town results (an overall summary of all 39 municipalities). The report ends with recommendations and conclusions.

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A. Legal Background on Freedom of Information in Rhode Island

1. The Open Records Law

What is commonly known as the Open Records Law in Rhode Island was originally enacted as the Access to Public Records Act of 1979. Rhode Island was the 49th state to enact such a law. The stated purpose of the law is to:

‘facilitate public access to governmental records which pertain to the policy making functions of public bodies and/or are relevant to the public health, safety, and welfare’ (R.I.G.L. § 38-2-1).

The restriction to matters “which pertain to policy making functions” renders this law narrower in scope than similar laws in other states. Moreover, the next sentence in the statute tempers this goal with the secondary purpose of “protect[ing] from disclosure information about particular individuals maintained in files of public bodies when disclosure would constitute an unwarranted invasion of privacy.” Notwithstanding these possibly contradictory purposes, the Open Records Law provides unequivocal access to a wide range of information.

All state and local agencies and public bodies are covered by the Open Records Law. The law expressly includes any state or local government body “which exercises governmental functions” as well as any person or entity “acting on behalf of the public agency.” R.I.G.L. § 38-2-2(1). The law defines “public records as those maintained by any public body, whether required by law or not,” and those “made or received pursuant to law or ordinance or in connection with the transaction of official business by an agency.” R.I.G.L. § 38-2-2(4)(i).

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While the law has broad application, it also has twenty-one exemptions. The first exemption pertains to “records identifiable to an individual” R.I.G.L. § 38-2-2(4)(A)(I). In *Providence Journal Co. v. Kane*, 577 A.2d 661 (R.I. 1990), the Rhode Island Supreme Court held that all personnel records identifiable to an individual employee are exempt from disclosure. (The law was amended in 1991 to address this loophole in part.) Some of the other exemptions in the statute pertain to trade secrets, juveniles, charitable contributions, negotiation strategy, memoranda and working papers, test questions, medical records, tax returns, and library records. (See generally R.I.G.L. § 38-2-2)

There are exemptions for police records, but they do not include the items requested in this study. The statute requires that “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.”¹ Only some police records are exempt from disclosure and then only under certain specified conditions (i.e., law

enforcement records relating to the investigation of a crime that could reasonably be expected to interfere with the investigation if disclosed). However, the statute makes it clear that 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 should be made public. R.I.G.L. §38-2-2 (4) (i) (D)

The law places no limitation on who may request public records. Public documents must be available for inspection or copying regardless of form or characteristics pursuant to R.I.G.L. § 38-2-3(a). The law contains some specific provisions about fees, however. If a search is required to locate the documents, a maximum charge of \$15.00 per hour may be assessed, but each person requesting documents is entitled to the first thirty minutes of research at no cost. For photocopies made on common business or legal size paper, the maximum fee is set at 15 cents per page. R.I.G.L. § 38-2-4. There are no specific provisions pertaining to the charges for information in electronic form or in other media such as microfiche.

The Open Records Law has no general provisions outlining the process for requesting public records. Each public body is left to establish its own access procedures. R.I.G.L. § 38-2-3. Records must be made available 'at such reasonable time as may be determined by the custodian thereof.' R.I.G.L. § 38-2-3(a). The custodian is required to inform the requester whether the records are in active use or in storage and to set up an appointment with the requester 'to examine such records as expeditiously as may be made available.' R.I.G.L. § 38-2-3(d). The agency must deny requests in writing, citing the specific reasons for denial and indicating the procedures for appeal, within ten business days of the request. This limit may be extended to thirty business days if good cause is shown. Failure to respond in writing is deemed a denial. R.I.G.L. § 38-2-7.

2. The Open Meetings Law

The minutes of public bodies are one of the most important documents available for monitoring various aspects of local government. This study includes an examination of the minutes from school committees and city and town councils. Requests to examine such documents are governed in part by the Open Records Law. The generic provisions, such as the statutory limit on photocopying charges, apply to these records. The Open Meetings Law, however, contains specific provisions concerning the content and availability of the minutes of public bodies. Accordingly, some aspects of this study involve compliance with the records-related provisions of the Open Meetings Law.

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Originally enacted in 1976, the Open Meetings Law begins with a more unequivocal statement of purpose than the Open Records Law (enacted three years later). The opening section of the Open Meetings Law states that:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. R.I.G.L. § 42-46-1.

The basic provisions of the law require that meetings be posted in advance and, with certain exceptions, be open to the public. The exceptions involve specific provisions for closed meetings, commonly known as executive sessions. Those provisions require that the reason for holding a closed meeting and the votes of each member on that decision “shall be recorded and entered into the minutes of the meeting.” R.I.G.L. § 42-46-. There is also a separate section on “Minutes” in the Open Meetings Law (subsection 7). The first subsection of that paragraph requires:

All public bodies shall keep written minutes of their meetings. These minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the public body recorded as either present or absent;
- (3) A record of individual members of any vote taken; and
- (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.

The next subsection provides specifically for public inspection of the record of votes “listing how each member voted on each issue.” R.I.G.L. §42-46-7. This section provides that ‘unofficial minutes’ must be made available to the public by the date of the next regularly scheduled meeting or within 35 days, whichever comes first. The minutes of both the city/town councils and the school committees are analyzed for legal compliance and overall quality in the Analysis section, pp. 24-30.

B. Study Design

We could not find any models for this study, as there appears never to have been a systematic statewide analysis of the implementation of open records laws at the local level. We contacted Freedom of Information centers at universities across the country and none had conducted any similar studies. The only similar study we found was conducted in Arizona in 1995. The five-month investigation, assisted by twelve newspapers around the state, produced a lively and interesting four-page newspaper report. (See, “Focus on Public Records: Project tests officials’ compliance with law,” Arizona Associated Press Managing Editors, 1995.) The study found that “reaction to requests varied from suspicion and stalling to friendliness and coop-

eration.” (Id.) This is an example of the kind of anecdote reported in the study:

“Casa Grande, request for city manager’s expense-account information: Finance director demanded a written request; twice told the reporter the effort was wasting taxpayers’ money; offered to provide a list of types of records from which reporter was to choose which he wanted to see.” (Id. at 3)

The Arizona study presented 14 of these anecdotes, along with other reporting; but there was no systematic data, and therefore no ability to estimate the size or nature of any problems. Nor does this study allow for comparisons across jurisdictions or departments of government. We sought to remedy those shortcomings in this study. As far as we know, this is the first comprehensive statewide analysis of the municipal implementation of open records legislation anywhere in the country. The study was designed around the simple idea of measuring (and comparing) how requests for public documents are handled across the state. That idea is much more manageable in a state the size of Rhode Island, although even here the combination of 39 cities and towns, three separate departments, and 30-plus pages of forms resulted in a massive amount of field work and analysis. The study design evolved into something much more elaborate as we sought to capture more dimensions of the concept of accessibility, and compliance with certain requirements for minutes that are specified by the Open Meetings Law.

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1. What are Open Records?

The primary challenge in designing this study was to conceptualize the notion of open records. In other words, what makes one town’s records more open than another? How do you measure openness? We identified two primary criteria for evaluating the openness of public records, and an additional criterion having to do with the usefulness of the documents received. Obviously, the most important concept for open records is availability --are the documents made available when requested?

Availability can also be thought to include the basic elements required to be included in various documents. The minutes of public bodies, for example, are required by the Open Meetings Law to contain several specific items. If the document is made available to the public, but the required information is missing, then the availability of information as anticipated by the law is not being achieved. Similarly, arrest reports must contain certain basic information: the name of the person arrested, the charge, the nature of the complaint, the place of the arrest, the name of the arresting officer. (Attorney General’s Advisory Regarding Access to Initial

Arrest Reports, PR Opinion No. 94-14 [August 17, 1994]). Departments that “provide” these documents in redacted form are not in full compliance with the law. (Redacted complaints were accepted in connection with police brutality complaints, since the Rhode Island Supreme Court has made it clear in *The Rake* case that these documents are subject to disclosure in that form.) (*The Rake vs. Gordodetsky*, 425 A. 2d 1144 (1982))

Even when documents are available, there are significant related issues involving their accessibility. The American Library Association codified this idea in its Library Bill of Rights, adopted by the ALA Council over 50 years ago. The right to use the library “should not be denied or abridged because of origin, age, background, or views” (Article V, ALA Library Bill of Rights). A related operating principle of professional librarians is that libraries “should be readily, equally and equitably accessible to all” (*Economic Barriers to Information Access, An Interpretation of the Library Bill of Rights*; ALA Council). Applying these principles to public records in general, there are two clear implications. First, it is vital that agencies not charge in excess of the statutory fees for research and photocopying. The law allows for a half-hour of free research and fairly reasonable photocopying charges of \$0.15 per page. Departments or jurisdictions charging in excess of those limits are potentially and unacceptably limiting access to information. Second, it matters how readily documents are available not only in terms of cost, but in terms of time. If it takes several trips to obtain a document or if the office charges more than the statutory limit, then even though the document is available, it is not very accessible.

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There are two additional dimensions to accessibility, both involving how one is treated upon requesting documents. Independent of whether one must make multiple visits or pay more than a statutory limit for photocopying is the question of how courteous and helpful the clerks are in responding to requests. A particularly discourteous clerk might produce the document but, in the process, make it less likely that the citizen will ever inquire again. A related issue concerns the respect for the citizen making the inquiry. Again, the professional ethics of librarians are instructive. This profession specifically protects “each library user’s right to privacy and confidentiality with respect to information sought or received” (Article III, ALA Code of Ethics). A similar ethic should prevail when citizens request information from government. Citizens have any number of reasons for wanting public documents; some are political, some are personal, and all should be private. The law does not condition the availability of documents on who is asking for them or why they are asking. It stands to reason that asking for identification or for a reason for the request could hinder access to public information by intimidation.

Several Rhode Islanders complained at ACCESS/RI forums in 1997 that access to public documents depended on who was asking. At the forum in South Kingstown, for example, several citizens complained that

inquiries for public documents resulted in questions such as “why do you want them?” (Jon Graney, “Resident’s Decry Secrecy in State’s Governing Bodies,” *Providence Journal-Bulletin*, January 30, 1997, p. C-1). The response to requests “should not depend on whether you are a town councilor,” someone else said (*Id.*). Accordingly, we recorded for each item requested whether the researcher was asked either for identification or for a reason for the request.

A final consideration, only tangentially related to requirements of the Open Records Law, is whether the documents are usable. Of course, at the extreme, an unreadable document is not accessible in any meaningful way. What difference does it make if cities and towns are freely providing access to information if the information is difficult or impossible to understand? At the ACCESS/RI forum in Cranston, for example, a citizen complained that city council agendas are “vague and difficult to understand” (Richard Salit, “R.I.’s Public-Information Highway has Potholes,” *Providence Journal-Bulletin*, February 5, 1997, p. C-1). Multiple sets of minutes of two different local bodies were analyzed across the state for compliance with the Open Meetings Law and for overall quality (as measured by three factors elaborated in the analysis of Minutes section).

2. Research Protocols

Turning the conceptual arguments above into a research protocol posed several challenges. At first blush, the easiest concept to operationalize is availability. Availability can be measured simply by recording whether the document requested was actually made available. In order for this simple approach to work, however, we had to make sure that the items we requested were covered by the Open Records Law. We consulted several attorneys and journalists for advice at this stage of the research design, and we are confident that every record we requested is subject to disclosure under the law. Another complicating factor concerns the lengths to which we would go before considering a request denied. It would be unfair to the cities and towns to give up too quickly, counting as a denial responses such as “the copy machine is broken” or “the person you have to see isn’t here now.” On the other hand, our goal was not to get the document at all costs. Rather, we wanted to be persistent and polite, within reason. Accordingly, we agreed to follow-up on any initial referrals or requirements for a written request. As a general rule, we decided that three unsuccessful attempts would be considered a denial; in some cases, explained in the body of the report, this judgment was made after one or two requests were not fulfilled.

In selecting the items to request, we felt it was important that the

ACCESS/RI, a non-profit organization, was formed in 1996 “to strive to end government secrecy that may advance special interests, promote personal advantage, conceal official mistakes, [or] avoid embarrassment in high places.” The organization includes librarians, journalists, professors, civil libertarians, and public advocacy groups such as Common Cause, Operation Clean Government, and the League of Women Voters. Public education is a primary role of the organization.

ACCESS/RI held a series of five forums at public libraries across the state in early 1997. The purpose was to hear from citizens about their experiences with trying to obtain government information and to receive suggestions about areas in need of study and/or reform. A citizen at the forum at the Rochambeau Public Library suggested that the cities and towns “be rated for their openness, and that the ratings be posted on the Web.” That suggestion was actually the spark that led to this study.

ACCESS/RI drafted model legislation for improving the Open Meetings Law and the Open Records Laws in Rhode Island. A bill encompassing many of the proposed reform passed the Senate last year. The bill did not get out of the Judiciary Committee in the House.

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research be as relevant as possible to the experience of common citizens. Therefore, we tried to identify records that seemed to be of particular public interest or those that potentially contained a wealth of information. It was not our intention to seek obscure records or those that would prove difficult to produce, such as the expense accounts of the city manager (an item requested in the Arizona study, mentioned above). Rather, it was our intention, consistent with the stated purpose of the law, to request documents that might give the citizens insight into the operation and current affairs of their city or town.

We also wanted to ask for items across a range of departments in the cities and towns. The most obvious department to be included was the city/town clerk. It also seemed fitting to examine those whose charge it is to educate our children and whose duty it is “to protect and to serve.” All three of these departments were mentioned in various ways at the ACCESS/RI forums in 1997.

Once the departments were selected, we identified the specific items to request. From the city/town clerks, our survey was initially designed to include requests for city council agendas and minutes, the city budget, a list of tax delinquent properties, and the list of registered voters in electronic form. We specifically requested copies of the minutes and agendas of the three most recent city council meetings in order to analyze the quality of the minutes and to test for any potential overcharges. It was also our intention to analyze the relationship between posted agendas and subsequent minutes of the same meetings. Three different sets of minutes and agendas were requested so we could evaluate several issues, including compliance with the Open Meetings Law. Since citizens are often concerned about public expenditures, the municipal budget also seemed a relevant and appropriate choice.

Further, the list of tax-delinquent properties was requested to evaluate the availability of potentially sensitive public information. In order to test the accessibility of public records in electronic format, we requested the list of registered voters to be supplied on disk (provided by the researcher). Due to some difficulties with the data collection, the list of tax delinquent properties and voter records were not included as items used to evaluate compliance. (For a discussion of these two items, see pp. 18-20). Only the requests for the city council meeting agenda, meeting minutes, and the municipal budget were used to evaluate compliance.

As many similarities exist between public records held by city governments and school departments, it seemed appropriate, for the sake of parallelism, to request some of the same type of documents from school departments. Therefore, copies of the agendas and minutes were requested for the three most recently available school committee meetings. We also asked to view the budget for the school district. Beyond those items, we asked to view the most recent contract settlement between the district

and the teachers union. While documents leading up to a contract settlement are specifically exempt from disclosure, the contract itself is precisely the kind of document the Open Records Law is designed to make public. Similarly, we asked to view the school committee's policy manual. This document should provide useful information about the administration of local schools. (R.I.G.L. § 16-2-32) For school departments, the requests for meeting agendas, meeting minutes, district budgets, contract settlements, and policy manuals were all used to evaluate compliance.

In choosing items to request from the police, we took special care to insure that our requests were covered by the Open Records Law. Accordingly, we asked for items that are regularly provided to journalists (access to the local log), clearly available under the statute and under a letter from the Attorney General (arrest records of cases not under investigation), and clearly available under Rhode Island case law (redacted police brutality reports). (Although the initial arrest reports are public under the statute, regardless of whether or not they are under investigation, we requested arrest reports not under investigation so there would not fall under one of the exemptions.) The final item seemed particularly relevant since it could give the public insight into any potential abuses of police power. There is a Rhode Island Supreme Court decision that rules specifically that these documents are subject to disclosure (in redacted form) under the Open Records Law. (*The Rake v. Gorodetsky*, 425 A. 2d 1144 (1982)). Ultimately, this item was not included in the overall measure of compliance for reasons outlined at pp. 21-22.

In addition to recording whether the document was made available, we also tried to capture the dimensions of accessibility mentioned above. Accordingly, the research protocol called for researchers to evaluate their interactions with the clerks or officers. This ranking was to be given independently of whether the request was fulfilled and was aimed at rating the overall experience in a more qualitative but, at least, ordinal manner. We also recorded whether clerks or officers asked researchers for identification and/or for a reason for their request. These simple dichotomous variables were used to measure the professional respect shown by the clerks and officers toward the researchers. By not requesting researchers to justify their requests, clerks and officers would exhibit the same type of unconditional servicing of a patron's needs that is expected of good librarians. Along with these variables, the research protocol also asked how many visits were made to various departments in connection with the request. This variable captures the "runaround" problem. This measure, along with the tests for overcharging mentioned above, was specifically aimed at identifying any adverse "transaction costs" associated with obtaining public records.

The method for analyzing the usability of documents was employed only in connection with budgets and minutes from the school department and city or town hall. The results of that analysis, and a general descrip-

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tion of how it was conducted, is contained in the section on departmental results.

C. Data Collection

Students went into the field in pairs, and the fieldwork was conducted between October and December of 1997. The use of pairs was to insure that the impressions of each city or town were based on the interactions of more than one researcher. The study was also designed so that each city or town would be visited more than once. This insured that the results would never turn entirely on the interactions with a single clerk on a single day.

Planning for two visits also made it easier to return for documents not provided on the first trip. A set of forms was developed to insure that the requests were uniform and that the impressionistic results were recorded immediately after the visit and in the same manner. A sample of one form is included in Appendix A.

After the first trips into the field, it became apparent that we needed to develop a simple and uniform protocol in response to persistent requests for identification and/or a reason for the documents requested. We decided that the simple answer to “who are you?” would always be “a concerned citizen.” If pressed, the researcher was then to say they were “doing research” but not to reveal anything about the nature of the research. A few clerks asked point blank whether the request was part of a study of the Open Records Law. This is probably because the researchers were generally of such obvious student age. The protocol called for a vague answer such as “I can’t discuss the nature of the research” (with an offer to supply the results of the report later).

The fieldwork produced over 30 pages of forms for each of the 39 cities and towns. Additionally, sets of agendas, budgets, and minutes were assembled and analyzed both for the cities and towns and for the school departments. The analysis eventually focussed on the minutes for city/town councils and schools committees. First person accounts were also written for every city and town. The researchers were asked to write first-person accounts of one or more noteworthy features of their experiences in each municipality. These accounts, referred to as “narratives” throughout this report, are presented under quotations marks on the City & Town pages (31-69).

An electronic file was constructed to capture all of the data on availability, accessibility, and other aspects of compliance, as well as to fully document the fieldwork itself (by recording, for example, the time, date, name of the researcher, and information about the clerk). This project ultimately encompassed over 11,000 pieces of electronic information. Those data are presented statewide, by department, and by city and town in the sections that follow.

D. Limitations of the Study

How accurate and generalizable are the results from this study? Both questions are relevant in placing this study in context. We have a very high degree of confidence in the accuracy of the reported results. Special care was taken to insure that a single unsuccessful request was not considered a denial, unless the clerk clearly stated it as such. In the instances where lack of success was not explicitly stated as a denial, there was always at least one follow-up visit. Most of those resulted in obtaining the document. The overall results are internally consistent; that is, there are no strange outliers or unexplained results. Rather, the data present clear patterns by department and by item.

How generalizable are the results of this study? Our experiences in the field may not reflect the experiences of an ordinary citizen. Our study was limited by time and resources to two visits to each division of local government. If more visits were made, it is possible that additional observations would change the results, especially the demeanor rating. There are three reasons why the use of students as researchers may have also affected the results. First, students are “outsiders” to the community and known residents may have an easier time obtaining access in their respective towns. Municipal clerks should not be discriminating when deciding who should or should not gain access to documents. The law gives equal access to all people. Second, age, sex, or race may have affected the results due to possible effects of varying forms of discrimination. Some comments from the field notes suggested a certain amount of condescension by some clerks towards “students.” Finally, several researchers were told that they could obtain the document if they were a member of the press. This suggests a canny strategy by some offices to assist the group that has both the strongest reason and the most resources to fight restrictive policies, while denying similar access to the public at large.

There are many other public documents which may be more difficult to obtain than the ones included in this study. The items requested in this study are generally thought to be some of the least controversial public documents. There are many other public records of interest to the public that contain more sensitive information and are therefore likely to be more restricted by cities and towns. Generally, the more controversial the request, the higher incentive to keep the document restricted. For example, the Arizona Press study requested documents such as the expense records of public officials.

There are strong reasons to believe the compliance rates reflected in the study are higher than those experienced by the general public. After examination of the laws, we are certain that our requests were covered under the Open Records Law. We knew exactly what to ask for and where to request the information. The researchers were willing to make multiple

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visits and follow-up on referrals, even though this required up to four visits in some cases. Despite some towns that charged over the statutory limit for photocopies, we were still willing to pay for the requests. Towns may also have responded more favorably to the researchers because they suspected the students were doing research on compliance with open records.

¹The statute further exempts police records if disclosure “(b) would undermine a fair trial, (c) could constitute an unwarranted invasion of privacy, (d) may identify 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 endanger the life or physical safety of an individual.” (R.I.G.L. § 38-2-2(d)(4). The statute also exempts from disclosure “all records maintained by law enforcement agencies for criminal law enforcement; and all records relating to the detection and investigation of crimes.” These exemptions do not, however, prevent disclosure of the daily log, arrest reports, or of police brutality reports as specified in *The Rake* case.