



State of Rhode Island and Providence Plantations

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Attorney General

VIA EMAIL ONLY

March 09, 2020

PR 20-13

Mr. James Almeida

Steven B. Nelson, Esquire
Associate City Solicitor

RE: Almeida v. City of Providence

Dear Mr. Almeida and Attorney Nelson:

We have completed an investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. James Almeida (“Complainant”) against the City of Providence (“City”). For the reasons set forth herein, we find that the City did not violate the APRA.

Background and Arguments

The Complainant requested a particular police incident report that pertains to certain communications between staff and a student at a local university that resulted in the university contacting the police. The Complainant alleges that the City violated the APRA when it withheld the report pursuant to R.I. Gen. Laws § 38-2-2(4)(D). The Complainant asserts that he has a particular interest in this police report and he generally alleges that it should be disclosed.

The City maintains that the withheld police incident report concerns a matter where no criminal charges were filed and no arrests were made. The City accordingly submits that the police incident report falls under a number of exemptions, including the personal privacy exemption, R.I. Gen. Laws § 38-2-2(4)(D)(c).

We acknowledge the Complainant’s rebuttal.

We also conducted an *in camera* review of the withheld document.

Relevant Law and Finding

When we examine an APRA complaint, our authority is to determine whether a violation of the APRA has occurred. *See* R.I. Gen. Laws § 38-2-8. In doing so, we must begin with the plain language of the APRA and relevant caselaw interpreting this statute.

The APRA permits nondisclosure of records maintained by law enforcement agencies if disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]” R.I. Gen. Laws § 38-2-2(4)(D)(c). When a law enforcement agency investigates a complaint involving private citizens and determines that an arrest is not warranted, records related to the investigation implicate significant privacy interests. *See, e.g., Fund for Constitutional Government v. National Archives and Records Service*, 656 F.2d 856, 864 (D.C. Cir. 1981)¹ (“There can be no clearer example of an unwarranted invasion of personal privacy than to release to the public that another individual was the subject of an FBI investigation.”); *see also American Civil Liberties Union v. Department of Justice*, 655 F.3d 1, 7 n.8 (D.C. Cir. 2011) (“[D]isclosure of records revealing that an individual was involved or mentioned in a law enforcement investigation implicates a significant privacy interest,” particularly where the individual was never charged or convicted).

Here, based on the undisputed representations of the City, and on our *in camera* review of the withheld police incident report, we find that nondisclosure was permitted under the APRA. The police incident report pertains to a matter where an arrest was not made. It contains sensitive personal information about multiple individuals, including addresses, dates of birth, and phone numbers. We further note that the Complainant has made no argument that disclosure of this document would advance the public interest. *See Dept. of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 772 (1989) (“[W]hether disclosure of a private document . . . is warranted must turn on the nature of the requested document and its relationship to ‘the basic purpose . . . to open agency action to the light of public scrutiny.’”). We accordingly find that the privacy interest outweighs the public interest and that the City permissibly withheld the document under R.I. Gen. Laws § 38-2-2(4)(D)(c).

Furthermore, the implicated privacy interests cannot be effectively quelled by redaction since the requested records relate to a specific incident. *See Pawtucket Teachers Alliance v. Brady*, 556 A.2d 556, 559 (R.I. 1989) (“[T]he report at issue in the present case specifically relates to the job performance of a single readily identifiable individual. Even if all references to proper names were deleted, the principal’s identity would still be abundantly clear from the entire context of the report.”).

While we understand that the Complainant may have a particular interest in the withheld document, the APRA analysis concerns whether a record is public, not whether a record should be

¹ We reference FOIA caselaw because the Rhode Island Supreme Court has made clear that “[b]ecause APRA generally mirrors the Freedom of Information Act * * * we find federal case law helpful in interpreting our open record law.” *Pawtucket Teachers Alliance v. Brady*, 556 A.2d 556, 558 n.3 (R.I. 1989).

released to a specific individual. *See Bernard v. Vose*, 730 A.2d 30 (R.I. 1999). For this reason, the fact that the Complainant requested records in which he asserted a personal interest is of no consequence to our analysis. *See Harper v. Portsmouth Police Department*, PR 19-15; *Gardiner v. Rhode Island Department of Public Safety*, PR 19-08. Of course, our conclusion does not prohibit the Complainant from seeking access to the requested document through other, non-APRA means. For these reasons, we find no violation.

Conclusion

Although this Office has found no violations, nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of instituting an action for injunctive or declaratory relief in Superior Court. *See* R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness
Special Assistant Attorney General