



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

VIA EMAIL ONLY

March 27, 2020

PR 20-21

Ms. Gina Giramma

Mark Davis, Esquire
Narragansett Town Solicitor

RE: Giramma v. Narragansett Police Department

Dear Ms. Giramma and Attorney Davis:

We have completed an investigation into the Access to Public Records Act (“APRA”) complaint filed by Ms. Gina Giramma (“Complainant”) against the Narragansett Police Department (“Department”). For the reasons set forth herein, we find that the Department did not violate the APRA.

Background and Arguments

The Complainant requested a particular police incident report that pertains to a domestic disturbance involving a minor. The Complainant alleges that the Department violated the APRA when it withheld the report pursuant to R.I. Gen. Laws § 38-2-2(4)(D)(c). It appears that the Complainant contends that the report should be disclosed because she has a particular interest in the subject matter of the report.

The Department maintains that the withheld police incident report concerns a matter where no criminal charges were filed and no arrests were made. The Department accordingly submits that disclosure of the police incident report would constitute an unwarranted invasion of the personal privacy of the individuals identified in the incident report.

The Complainant did not file a rebuttal.

We 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 provides that all records maintained by public bodies are subject to public disclosure unless the document falls within one of the twenty-seven (27) enumerated exemptions. *See* R.I. Gen. Laws § 38-2-2(4)(A)-(AA). Among other exemptions, 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 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 evidence presented and our *in camera* review of the withheld police incident report, we find that the Department did not violate the APRA. The police incident report pertains to a matter where no arrest was made. It contains sensitive personal information about multiple individuals, including a minor, and contains addresses, dates of birth, and telephone numbers. We further note that the Complainant has made no argument that disclosure of this document would advance the public interest and we do not discern any apparent public interest in disclosure. *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 any public interest in disclosure and that the Department did not violate the APRA when it withheld the document under R.I. Gen. Laws § 38-2-2(4)(D)(c).

Furthermore, the implicated privacy interests cannot be effectively addressed 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

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).

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, it is significant that the APRA analysis concerns whether a record must be disseminated to the public at-large, not whether a record should be 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 she may have a personal interest does not factor into the APRA 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