



State of Rhode Island and Providence Plantations

**OFFICE OF THE ATTORNEY GENERAL**

150 South Main Street • Providence, RI 02903

(401) 274-4400

*Peter F. Neronha*  
*Attorney General*

**VIA EMAIL ONLY**

April 20, 2020  
PR 20-31

Mr. Thomas Mercurio

Christopher M. Rawson, Esquire  
City Solicitor, City of Cranston

**Re: Mercurio v. Cranston Police Department**

Dear Mr. Mercurio and Attorney Rawson:

We have completed our investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Thomas Mercurio (“Complainant”) against the Cranston Police Department (“Department”). For the reasons set forth herein, we find that the Department did not violate the APRA.

*Background and Arguments*

The Complainant alleges the Department violated the APRA when it denied his November 4, 2019 request for an incident report related to a specific alleged hit-and-run incident that purportedly occurred on November 1, 2019. The Department denied the request pursuant to R.I. Gen. Laws § 38-2-2(4)(D)(a), claiming disclosure of the records “could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings,” and asserting disclosure of the requested records would constitute an unwarranted invasion of personal privacy pursuant to R.I. Gen. Laws § 38-2-2(4)(D)(c). The Complainant subsequently filed a Complaint with this Office.

Town Solicitor, Christopher M. Rawson, Esquire, provided a substantive response on behalf of the Department. Attorney Rawson notes that the requested records do not pertain to an arrest and there is a strong presumption that disclosure of the records would constitute an unwarranted invasion of

personal privacy. The Department provided the relevant police report to this Office for our *in camera* review.<sup>1</sup>

The Complainant did not submit a rebuttal.

Relevant Law and Findings

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 states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. *See* R.I. Gen. Laws § 38-2-3(a). The APRA exempts from public disclosure “[a]ll records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime,” where disclosure, among other reasons, “could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings” or “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws §§ 38-2-2(4)(D)(a), (c). The plain language of R.I. Gen. Laws §§ 38-2-2(4)(D)(c) contemplates a “balancing test” whereby the “public interest” in disclosure is weighed against any “privacy interest.” Consequently, we must consider the “public interest” versus the “privacy interest” to determine whether the disclosure of the requested records, in whole or in part, “would constitute a clearly unwarranted invasion of personal privacy.”

In this case, the Complainant sought a police report related to an incident (which had occurred days earlier) where a third-party private citizen was investigated related to an alleged hit-and-run. Law enforcement records involving the investigation of identifiable private citizens implicate personal privacy interests, particularly when no arrest takes place. *See, e.g., Fund for Constitutional Government (“FCG”) v. National Archives and Records Service*, 656 F.2d 856, 864 (D.C. Cir. 1981) (“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.”); *American Civil Liberties Union v. Department of Justice*, 655 F.3d 1, 7 n.8 (D.C. Cir. 2011) (“disclosure of records revealing that an individual was involved or mentioned in a law enforcement investigation implicates a significant privacy interest,” particularly where the

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<sup>1</sup> The Department also argued that the Complainant “did not properly follow the statutory appeal process” because he filed his complaint with this Office instead of first appealing the Department’s denial to the Department’s chief administrative officer. Although parties are encouraged to attempt to resolve disputes prior to filing a complaint, the APRA does not require a Complainant to file an appeal with the chief administrative officer prior to filing a complaint with this Office. *See* R.I. Gen. Laws § 38-2-8(a) (“[a]ny person or entity denied the right to inspect a record of a public body *may* petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate”) (emphasis added); *Downey v. Carcieri*, 996 A.2d 1144, 1151 (R.I. 2010) (“It is an axiomatic principle of statutory construction that the use of the term “may” denotes a permissive, rather than an imperative condition.”).

individual was never charged or convicted); *see also Bernard v. Vose*, 730 A.2d 30 (R.I. 1999) (privacy interest in inmate parole file). Although the APRA provides that records “reflecting the initial arrest of an adult” are public, *see* R.I. Gen. Laws § 38-2-2(4)(D), it is uncontested that the requested records do not pertain to an arrest. That assertion is confirmed by our *in camera* review. Based on our *in camera* review, we conclude that disclosure would implicate privacy interests of the individual who was investigated, as well as the privacy interests of the purported alleged victim and other citizens who were named in the report.

We next consider whether there is any public interest in the document. The public has an interest in a document that “sheds light” on how government operates. *See Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 772-773 (1989). The Complainant requested a report related to single specific incident. The Complainant has not identified any public interest in the requested records and has not asserted that disclosure would shed light on the government’s operations. Instead, the Complainant contends that he has a compelling personal interest in obtaining the record separate and apart from any public interest. Under the APRA, however, our sole function is to determine whether the requested document should be made available to the public at-large, not specific persons who assert a heightened personal interest in a document. *See* R.I. Gen. Laws § 38-2-3(a); *Bernard v. Vose*, 730 A.2d 30 (R.I. 1999) (holding that petitioner did not have a right, under the APRA, to review his own parole board files, which contained personal and sensitive information about him, because once the files were made public to him under the APRA, the files would then be available for inspection by the general public). For this reason, Complainant’s asserted personal interest in obtaining the records cannot factor into our analysis. *See, e.g., Harper v. Portsmouth Police Department*, PR 19-15; *Gardiner v. Rhode Island Department of Public Safety*, PR 19-08. Additionally, we do not discern any apparent public interest in disclosure of this record, as recognized or defined by the APRA except perhaps revealing some limited information about how law enforcement officers responded to one particular, isolated incident. *See Hunt v. Federal Bureau of Investigation*, 972 F.2d 286, 288–89 (9th Cir. 1992) (contrasting a FOIA request for a single investigatory file with requests for numerous disciplinary files and concluding that “[t]he single file \* \* \* will not shed any light on whether all such FBI investigations are comprehensive”).

Accordingly, we conclude that the privacy interests implicated by disclosing this report outweigh any public interest, and therefore the Department did not violate the APRA by denying the request. Because we determine that the document is exempt under R.I. Gen. Laws § 38-2-2(4)(D)(c), we need not determine whether the other cited exemption also applies. Additionally, this finding pertains only to the APRA and we make no determination whether the Complainant, who claims a heightened personal interest above and beyond the general public, may be able to obtain the requested report through other non-APRA means.

### Conclusion

Although this Office has found no violations, nothing within the APRA prohibits an individual from instituting an action for injunctive or declaratory relief in Superior Court as provided in the APRA. *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.

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

Sincerely,

PETER F. NERONHA  
ATTORNEY GENERAL

By: /s/ Kayla E. O'Rourke  
Kayla E. O'Rourke  
Special Assistant Attorney General