



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

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PR 20-32

Mr. James Taylor
Councilman, City of Providence

Nicholas P. Poulos, Esquire
Assistant City Solicitor, City of Providence

RE: Taylor v. City of Providence

Dear Councilman Taylor and Attorney Poulos:

We have completed an investigation into the Access to Public Records Act (“APRA”) complaint filed by Councilman James Taylor (“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 list of names that the head hunter hired by the City of Providence to fill the Fire Chief’s position sent over” as well as “a time frame of when these names were sent over and a list of names that were interviewed for the Fire Chief’s position[.]” The City responded that no complete list of the names sent over by the headhunter or of interviewees existed. It nonetheless provided a partial list, which included the educational background, years of service, and other qualifications of the applicants but redacted references to the applicants’ names under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). With respect to the “time frame” component of the request, the City noted that no single document was responsive, but generated a list of emails to and from the headhunter regarding the fire chief search. This list included the dates of the emails, who the emails were to/from, and the subject lines, but redacted information identifying the applicants whenever it appeared in one of those fields.

The Complainant appealed the City’s decision to the City’s Chief Administrative Officer, Commissioner of Public Safety Steven M. Paré, who affirmed the City’s response. Commissioner Paré also noted that because the appeal indicated that the Complainant was interested in assessing the quality of the headhunter’s work, he was providing an additional sixty-eight pages of emails

between the City and the headhunter detailing the search process.¹ Again, the applicants' names were redacted.

The Complainant filed the instant complaint alleging that the redaction of the unsuccessful applicants' names was improper, asserting that "these are not personnel records and clearly the right of the public to know what names were provided *** outweighs any privacy issue."

The City maintains the propriety of its response. Through an affidavit submitted by Assistant City Solicitor Nicholas P. Poulos, the City contends that nondisclosure of the applicants' names was proper under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) as unsuccessful applicants have significant privacy interests in their name and disclosure would do little to further the public interest.

We acknowledge the Complainant's rebuttal. The Complainant does not contest the City's characterization of his Complaint as only taking issue with the redactions made to protect the identity of the unsuccessful applicants.

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 "[p]ersonnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). The plain language of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) contemplates a "balancing test" whereby the public interest in disclosure of "personal individually identifiable records" is weighed against any privacy interest in these records.

This Office considered a similar situation in *Jackson v. Town of Coventry*, PR 14-35, where this Office conducted the balancing test to determine whether resumes submitted to the Town of Coventry by individuals seeking employment as Town Finance Director and Director of Public Works were public records subject to disclosure. Based on the evidence presented, we concluded that disclosure of the resumes of individuals employed with the Town would not constitute a "clearly unwarranted invasion of personal privacy." *See* R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Specifically, we found that "the public has at least some interest in knowing that the successful applicants for a public position are qualified and capable to hold that position and that viewing the resumes of the successful applicants will further the public interest." *Jackson*, PR 14-35. We also

¹ We note, as maintained by the City, that these emails were not responsive to the Complainant's initial request for a "time frame" and a "list of names[.]"

found that this public interest outweighed any privacy interest and thus directed the Town to disclose the resumes of the successful applicants and to redact information that would constitute a “clearly unwarranted invasion of personal privacy.” *Id.* Conversely, after balancing the privacy interests of the unsuccessful applicants against the public’s interest in the resumes, we found that the scale tipped in favor of nondisclosure. Specifically, we found that viewing the resumes of individuals who were not selected for employment by the Town would provide little to no insight “on how government operates.” *See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

Additionally, federal caselaw has found a substantial privacy interest in unsuccessful applicants’ materials submitted to the government.² *See Core v. U.S. Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984); *see also Holland v. Central Intelligence Agency*, Civ. A. No. 92-1233, 1992 WL 233820, at *14 (D.D.C. Aug. 31, 1992); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1021 (D. Kansas 1996) (“[U]nsuccessful applicants have a substantial privacy interest in the withheld information.”). Consequently, federal courts have found that names of unsuccessful applicants are exempt because the names, along with other identifying information, are “unlikely to open public business to public view.” *Putnam v. U.S. Dept. of Justice*, 873 F. Supp. 705, 712-13 (D.D.C. 1995) (quotation omitted); *see Voinche v. Federal Bureau of Investigation*, 940 F. Supp. 323, 330 (D.D.C. 1996); *see also U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (right to access records “focuses on the citizens’ right to be informed about ‘what their government is up to’”).

Here, it is undisputed that the City withheld the names of unsuccessful applicants for the fire chief position. In accordance with substantial precedent, we find a substantial privacy interest in an unsuccessful applicant’s name. *See, e.g., Core*, 730 F.2d at 948.

We also find that disclosure of an unsuccessful applicant’s name, at least in this context, does little to further the public interest because it does not “open agency action to the light of public scrutiny.” *Reporters Comm.*, 489 U.S. at 772 (“[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.’”); *see also Putnam*, 873 F. Supp. at 712–13. While the Complainant insists that the disclosure of the unsuccessful applicants’ names would illustrate whether the City was “provided qualified external candidates[,]” we conclude that this disclosure would not shed any significant light on the government’s actions. *See Judicial Watch v. Commission on U.S.-Pacific Trade and Investment Policy*, No. Civ. A. 97-0099, 1999 WL 33944412, at *12 (D.D.C. Sep. 30, 1999) (“[T]here is little insight that the public may glean about the nomination process or the work of the Commission from learning the identities of fellow citizens whom the administration never appointed, and who never served on that body.”). At best,

² 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).

this disclosure might shed some light on the effectiveness of the firm hired by the City to provide qualified candidates.

Moreover, in any event, the City has provided numerous emails and documents that shed light on the interests identified by the Complainant. Indeed, the provided documents detail the date and time of interactions between the headhunter and the City, as well as a partial list that details the applicants' level of education, years of experience, and current job title/rank. All of the foregoing information furthers the public interest articulated by the Complainant without infringing on the "substantial privacy interests" implicated by disclosure of an unsuccessful applicant's name. *See Core*, 730 F.2d at 948.

Accordingly, we find "on balance that disclosure of th[ese] identit[ies] under the circumstances of this case would work a clearly unwarranted invasion of personal privacy." *Holland*, 1992 WL 233820, at *15. We thus find that the City did not violate the APRA by redacting the names of the unsuccessful applicants. We find no violation. Of course, our conclusion only pertains to the Complainant's right to access these documents pursuant to the APRA and we have no occasion in this finding to consider the type of access the Complainant is entitled to in his position as a City Councilman.

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. *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