



State of Rhode Island and Providence Plantations

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**VIA EMAIL ONLY**

April 22, 2020  
PR 20-35

Dr. Melissa Jenkins

Ms. Anita Langer

Mark Davis, Esquire  
Town Solicitor, Town of Narragansett

**Re: Jenkins v. Narragansett Police Department  
Langer v. Narragansett Police Department**

Dear Dr. Jenkins, Ms. Langer, and Attorney Davis:

We have completed the investigation into the Access to Public Records Act (“APRA”) complaints filed by Dr. Melissa Jenkins and Ms. Anita Langer (“Complainants”) against the Narragansett Police Department (“Department”).<sup>1</sup> For the reasons set forth herein, we find that the Department did not violate the APRA.

*Background and Arguments*

Dr. Jenkins alleges the Department violated the APRA when it denied her five-part request<sup>2</sup> for police reports involving certain specifically identified individuals,<sup>3</sup> including at least one of whom

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<sup>1</sup> Although Dr. Jenkins and Ms. Langer submitted separate complaints against the Narragansett Police Department, the complaints raised substantively similar allegations and we have accordingly consolidated these complaints and will issue one (1) finding.

<sup>2</sup> Shortly after Dr. Jenkins filed her complaint with this Office, the Department provided her with one of the police reports she requested that was responsive to part (3) of her request. Additionally, in responding to this complaint, the Department indicated that although it denied part (4) of Dr. Jenkins’ request pursuant to Exemption (D)(c), there were no documents responsive to that request besides those already encompassed in the other parts of the five-part request. Therefore, we focus our analysis on the police reports implicated by parts (1), (2), and (5) of Dr. Jenkins’ request.

<sup>3</sup> We decline to name these individuals because their identities are irrelevant to our finding.

is a public official. The Complainant asserts that the Department failed to conduct the “balancing test” when determining whether these reports were public records. The Complainant further contends that “there is a compelling public interest in knowing if, how, and to what extent, the police department investigated these incidents as they were reported” and there is a “public interest in knowing if publicly elected officials commit a crime.” The Complainant also argues that a number of the parties named in the police reports have spoken publicly about the subject-incidents and therefore have no expectation of privacy in the police reports.

Ms. Langer, who is herself a public official, filed a similar APRA request seeking two police incident reports that were created in response to complaints she made against certain individuals, including the same public official named in Dr. Jenkins’ request. Based on our review, these two incident reports requested by Ms. Langer correspond with the same two incident reports that were withheld in response to parts (1) and (2) of Dr. Jenkins’ request. Ms. Langer contends that disclosure of these incident reports furthers the public interest in that they reveal how the Department has responded to complaints against elected officials.

Town Solicitor Mark Davis, Esquire, provided a substantive response to both complaints on behalf of the Department. The response included copies of the withheld documents for this Office’s *in camera* review. The Department maintains that its denial of Complainants’ requests was proper because the records are exempt under R.I. Gen. Laws § 38-2-2(4)(D)(c) because no arrest resulted, and the privacy interests implicated in these reports outweigh any public interest.

Although the *in camera* nature of our review limits our ability to fully comment on the nature of the reports, they generally concern allegations about verbally abusive behavior and/or conduct that could be considered threatening or harassing. The alleged conduct generally occurred at public meetings and/or in connection with public business. For example, some of the reports pertained to allegations about individuals screaming, making inflammatory comments, standing too close, and/or attacking the character of someone else during a public meeting. It was also alleged that one of the individuals against whom those complaints were made was acting in an official capacity. In these instances, the reports were taken after the alleged incident occurred and indicated the reports were for documentation purposes only. Other withheld reports pertained to a public official reporting alleged harassment or threats made against the official in connection with that official’s public role.

We acknowledge the Complainants’ rebuttals.

### 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). Among the categories of documents exempt from public disclosure pursuant to the APRA are “[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 “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(D)(c). The plain language of this provision contemplates a “balancing test” whereby the public interest in disclosure is weighed against any privacy interest.

Records related to law enforcement investigations involving specific 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.”); *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); *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1205 (D.C. Cir. 1991) (“There is little question that disclosing the identity of targets of law-enforcement investigations can subject those identified to embarrassment and potentially more serious reputational harm.”). However, the APRA provides that records “reflecting the initial arrest of an adult” are public, and as such, an adult arrested has a diminished privacy interest in records “reflecting the initial arrest.” *See* R.I. Gen. Laws § 38-2-2(4)(D).

Here, it is undisputed – and confirmed by our *in camera* review – that the withheld reports pertain to instances where individuals were the subject of a police report, but no arrests were made. We thus conclude that disclosure would implicate privacy interests of the individuals who were the subject of the report, as well as the privacy interests of the other private individuals who were named in the reports.

With respect to the public interest, courts have consistently recognized in the FOIA<sup>4</sup> context that 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, 772–73 (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.’” *Id.* at 772 (holding that a “rap sheet” of a private citizen within the Government’s possession was not public).

Here, the Complainants seek a limited number of reports related to specific individuals. Although the reports may shed light on how the Department handled these specific incidents, disclosure would tend to reveal more about the circumstances of these particular incidents involving specific

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<sup>4</sup> 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).

citizens rather than on the Department's overall operations. *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”). We also have not been presented with any evidence, nor is any apparent, to indicate that the Department's handling of the incidents in question was improper. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 175 (2004).

We do, however, recognize that at least one of the individuals named in the incident reports is a public official and that the reports pertain to conduct that allegedly occurred in connection with public business. Although federal courts have recognized that a person's status as a “public figure” might “somewhat diminish an individual's interest in privacy, the degree of intrusion occasioned by disclosure is necessarily dependent upon the character of the information in question.” *FCG*, 656 F.2d at 865. Indeed, in *FCG*, the plaintiff made a similar argument as the Complainants here, namely that because certain investigatory records were related to high level government officials and concerned serious allegations of government misconduct – Watergate – the requested documents should have been disclosed. The Court of Appeals concluded otherwise, stating that the “release of this type of information represents a severe intrusion on the privacy interests of the individuals in question and should yield only where exceptional interests militate in favor of disclosure.” *Id.* at 866.

Here, although we find that Complainants have asserted some public interest, we recognize that the individuals named in the reports, including public officials, also have a privacy interest. We also note that the implicated privacy interests cannot be effectively addressed by redaction since the requested records relate to specific and identifiable individuals. *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.”). Indeed, the APRA requests identify the subjects of the reports.

While this case presents some compelling interests on both sides, on balance, we do not find that the public interest outweighs the privacy interest such that the Department violated the APRA by withholding the reports. Our conclusion is based, in part, on our *in camera* review of the withheld reports, which do not indicate that a public official was accused of, let alone arrested for, criminal misconduct. Indeed, the incident reports indicate they are for documentation purposes, and that no crime was involved. Without diminishing the seriousness of the allegations relayed in the incident reports, we have not been presented with any evidence that an arrest or any criminal proceedings resulted from the incidents described in the reports. In these particular circumstances, where the requests specifically sought reports pertaining to specific individuals and where redaction could not reasonably protect the relevant privacy interests, we do not find that it was impermissible to withhold the reports. As such, we find that the Department's actions were permissible under the APRA.

While we understand that Ms. Langer may have a particular interest in documents related to a complaint she initiated with the police, the APRA analysis concerns whether a record is public, 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 has 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. The Department may also wish to consider whether these reports should be provided to Ms. Langer outside the APRA process given her particular interest in them. Additionally, to the extent the Complainants believe that criminal conduct or unethical conduct involving a public official occurred, they may wish to contact the Rhode Island State Police or the Rhode Island Ethics Commission, respectively.

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/ Kayla E. O'Rourke  
Kayla E. O'Rourke  
Special Assistant Attorney General