



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

June 2, 2016

PR 16-23

Mr. Ronald Marcos

**Re: Marcos v. Cumberland Police Department**

Dear Mr. Marcos:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Cumberland Police Department ("Police Department") is complete. By email correspondence dated January 8, 2016, you allege the Police Department violated the APRA when it denied your December 11, 2015 APRA request. Although we have not been provided a copy of your December 11, 2015 APRA request, in your complaint, you state:

[o]n December 11, 2015 I visited the Cumberland Police Department and made a formal request under the open records act for reports (arrest and incident reports) pertaining to [a specifically named person, who we shall refer to as "John Doe"]. More specifically, reports pertaining to sexual assault where [John Doe] was the suspect.

In response to your APRA complaint, we received a substantive response from Thomas Hefner, Esquire, Town Solicitor for the Town of Cumberland. Mr. Hefner also provided the two sets of documents that the Police Department exempted. In his affidavit dated February 3, 2016, Attorney Hefner states, in pertinent part:

5. All documents have been provided to me by Deputy Chief Douglas Cuillo by email on January 22, 2016.

6. A summons (arrest report) of [John Doe] - #13-436-AR of 9-13-2013 is attached and labeled #1. It has been provided to the Complainant but the minor's name is redacted so as not to violate the minor's right to privacy.

7. An investigation of [John Doe] - #13-789-OF of 3-21-2013 is attached and labeled #2. It has not been provided to the Complainant as it is not a public

**Marcos v. Cumberland Police Department**

PR 16-23

Page 2

document and would have violated the mother's rights as well as those of the victim.

8. An investigation of [John Doe] - #15-3388-OF of December 11, 2015 is attached and labeled #3. It has not been provided as it relates to a current investigation and is not a public document. (Emphases in original).

You provided a rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Police Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Before delving into the merits of your complaint, we first must address the issue of the APRA request itself. In your email correspondence dated January 8, 2016, you state that you filled out a form and provided it to the Police Department. In correspondence dated April 12, 2016 to this Department, Attorney Hefner states that "[t]here is no written APRA request for Mr. Marcos as the request was made in person[.]" Because we have no record of the documents you actually requested on December 11, 2015, we assume for purposes of this finding that the documents you seek are the documents as articulated in your January 8, 2016 complaint, namely incident and arrest reports where John Doe was a suspect in a sexual assault. At the very least, the Police Department does not object to your representation of the documents requested. Therefore, this finding will examine whether the Police Department violated the APRA when it denied you access to "reports (arrest and incident reports) pertaining to [John Doe]. More specifically, reports pertaining to sexual assault where [John Doe] was the suspect."

We further note that this Department has no jurisdiction to determine whether you should be granted access to requested documents except through the APRA. See R.I. Gen. Laws § 38-2-8. While you may argue that you have an enhanced interest in the requested documents, since we review this matter under the APRA, our legal analysis must consider whether the requested records are available to anyone, not just the person making the APRA request. In other words, under the APRA we must consider not whether the requested documents should be made available to you, but rather whether the requested documents should be made available to the general public upon request. See Bernard v. Vose, 730 A.2d 30, 31 (R.I. 1999) ("The Access to Public Records Act (or act) opens public records to inspection by the general public[.]"); see also McQuade v. Rhode Island State Police, PR 13-03 ("Accordingly, if this Department determines that a particular document is a public record, then any person may access or inspect that record

**Marcos v. Cumberland Police Department**

PR 16-23

Page 3

regardless of whether or not that person is an interested party. Once a record is made public to one person under the APRA, that record is public to all.”).

With respect to your APRA request, Mr. Hefner identifies three separate documents that are responsive. First, there is “summons report” #13-436-AR of September 13, 2013. As represented by the Police Department, this document constitutes an arrest report and was provided to you in redacted form. We have been presented with no evidence or argument that this document was provided in an untimely manner, nor do you contend that the redactions were improper. The provided document indicated John Doe’s name and largely redacted information related to a minor victim of an alleged sexual assault,<sup>1</sup> as well as her family. The redactions that we have reviewed appear to be consistent with State law.

For example, under State law, the identity of a sexual assault victim who is a minor “shall be confidential and shall not be made public.” See R.I. Gen. Laws § 11-37-8.5(a). Further, “[e]very agency of state or local government shall protect the confidentiality of documents containing the identity of victims of child molestation sexual assault.” See id; see also Providence Journal Co. v. Rodgers, 711 A.2d 1131, 1136-38 (R.I. 1998)(identifying information of a child molestation victim, including “familial-identifying information,” must not be disclosed to the public). The redactions that we have reviewed comply with the APRA and R.I. Gen. Laws § 11-37-8.5(a). Again, it does not appear that you dispute that you received this document nor does it appear that you contest the redactions. Therefore, our inquiry with respect to this summons/arrest report ends.

With respect to the two remaining documents – both “incident reports” – we conducted an *in camera* review of these two “incident reports” that Attorney Hefner stated were in the possession of the Police Department and that appear to be responsive to your request. The first incident report we reviewed is incident report #13-789-OF of March 21, 2013, and this incident report indicates “Incident closed by arrest.” Indeed, the summons/arrest report #13-436-AR relating to this incident report (#13-789-OF) has already been provided to you in redacted form.

Notwithstanding the foregoing, with respect to the actual incident report itself, there is a presumption that incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). In In re: Cumberland Police Department, ADV PR 03-02, this Department concluded that “when a law enforcement agency investigates a complaint and determines that an arrest is not warranted, there exists a strong presumption that records arising out of that investigation fail to meet the threshold requirement established by R.I. Gen. Laws § 38-2-2(4)(i)(D)(c).” Id. See also Snow v. Dept. of Public Safety, PR 10-12; McQuade v. Rhode Island State Police, PR 13-

---

<sup>1</sup> We have not been provided any information concerning the prosecution of John Doe and for this reason we use the word “alleged.”

**Marcos v. Cumberland Police Department**

PR 16-23

Page 4

03; Zompa v. West Warwick Police Department, PR 13-07; Radtke v. Dept. of Public Safety, PR 13-10.<sup>2</sup>

Unlike the incident report in In re: Cumberland Police Department, as well as numerous other incident reports that we have reviewed, the instant incident report did lead to an arrest. For this reason, the “strong presumption” that disclosure of an incident report would invade the subject’s privacy discussed in In re: Cumberland Police Department is not applicable. This case demonstrates this principle since an arrest report was disclosed in a redacted manner, but the Police Department exempted the preceding incident report on the basis that disclosure “would have violated the mother’s rights as well as those of the victim.” To be sure, the incident report – similar to the arrest report – contains information that should or must be redacted, and in doing so, the incident report does not appear to contain any additional information than the already disclosed arrest report. Nonetheless, for the reasons discussed, we conclude that incident report # 13-789-OF should have been disclosed in a redacted manner. We leave it to the Police Department to redact the incident report in a manner consistent with State law and the APRA.<sup>3</sup> Again, it bears emphasizing that the non-disclosed incident report does not appear to contain information different than the already-disclosed arrest report.

The second incident report we reviewed is incident report #15-3388-OF of December 11, 2015. According to his affidavit, Attorney Hefner indicates that this incident report was withheld because “it relates to a current investigation and is not a public document.” In this situation, where no evidence has been presented that an arrest was effectuated at the time of your APRA request, In re: Cumberland Police Department would control. Moreover, under R.I. Gen. Laws § 38-2-2(4)(D)(a), disclosing records or information that “could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings” is not a public record. You did not offer any evidence to dispute that there is a current law enforcement investigation. Therefore, absent any evidence to the contrary, and for the reasons discussed, we find that the Police Department did not violate the APRA. See e.g. Solar Sources, Inc. v. United States, 142 F.3d 1033, 1039 (7<sup>th</sup> Cir. 1998)(request for investigation documents during the pendency of a Department of Justice investigation properly denied as “[p]ublic disclosure of information could result in destruction of evidence, chilling and intimidation of witnesses, and

---

<sup>2</sup> In all four (4) of these findings, this Department concluded that the respective Police Departments did not violate the APRA by denying a request for an incident report that did not culminate in an arrest.

<sup>3</sup> Without limiting the scope of the redactions, this Department expects the Police Department’s redactions will comply with State law and the APRA. This Department further expects the redactions would be substantially similar to those redactions made to “summons report” #13-436-AR of September 13, 2013, since this document contained the same information as incident report #13-789-OF.

**Marcos v. Cumberland Police Department**

PR 16-23

Page 5

revelation of the scope and nature of the Government's investigation.""). Unlike the previous incident report, it bears emphasizing that at the time of your APRA request, no arrest had been made related to this incident.

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting "injunctive or declaratory relief." See R.I. Gen. Laws § 38-2-8(b). Also, a court "shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter\*\*\*." See R.I. Gen. Laws § 38-2-9(d).

Here, we find no evidence of a willful, knowing, or reckless violation. Although we determine that disclosure of incident report # 13-789 OF is appropriate, we recognize that disclosure is unlikely to lead to the disclosure of much additional information, if any. We do conclude, however, that under the APRA disclosure of this one incident report is appropriate and the Police Department shall have ten (10) business days to provide you access to this document, in a redacted manner. If you do not receive this document within this timeframe, please feel free to contact this Department so that we may review the Police Department's response. For this reason, although injunctive relief may be appropriate, we believe it prudent to allow the Police Department the opportunity to remedy this matter on its own.

Although the Attorney General will not file suit in this matter at this time, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). This finding does serve as notice to the Police Department that its omission violated the APRA and may serve as evidence in a future similar situation of a willful and knowing, or reckless violation. We are closing this file as of the date of this correspondence, although we again reserve the right to reopen this matter should the circumstances require.

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

Very truly yours,



Maria R. Corvese  
Special Assistant Attorney General  
Extension 2225

MRC/kr

Cc: Thomas Hefner, Esquire