



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

July 22, 2016

PR 16-29

Mr. Albert G. Brien

Re: Brien v. Woonsocket Housing Authority

Dear Mr. Brien:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Woonsocket Housing Authority (“WHA”) is complete. By correspondence dated November 8, 2015, you contend that the WHA violated the APRA when it indicated in response to an APRA request by you that “[a]ny documentation regarding the engagement of Mr. Morganelli is not subject to open records request” and when it denied your request for the addresses the WHA Board of Commissioners’ members.

In response to your complaint, we received a substantive response in affidavit form from the WHA’s legal counsel, Joseph J. Rodio, Jr., Esquire. Attorney Rodio, Jr. states, in pertinent part:

“In a letter dated May 24, 2015, Mr. Brien specifically requested ‘Copies of any and all reports prepared by Mr. Vadnais submitted to the WHA that resulted in the engagement of Mr. Morganelli.’ * * * Therefore, in evaluating whether Mr. Brien was denied public records in violation of APRA the next question is whether the requested reports prepared by Mr. Vadnais are exempt under APRA.

[Mr.] Stephen Vadnais served as the WHA Executive Director search consultant to the WHA Board of Commissioners. In that role, Mr. Vadnais was responsible for * * * evaluating every application and resume that was received by WHA in response to the advertisement seeking applicants for the position of Executive Director. In the process of performing that task Mr. Vadnais prepared two reports that are the subject of Mr. Brien’s request. The first document contains a list of the individuals that met the minimum requirements of the WHA Executive Director search, followed by a list of the individuals that didn’t meet the minimum requirements * * * The second set of reports contains grid scoring sheets evaluating the candidate that applied for the position. * * *

[The] WHA determined that the requested documents were exempt from disclosure under R.I.G.L. § 38-2-2(4)(A)(I)(b) which exempts 'Personnel 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 pursuant to 5 U.S.C. § 552 et. seq.' * * *

In Core v. US Postal Service, [730 F.2d 946 (4th Cir. 1984)], the Court evaluated a FOIA request for information about applicants for government employment under Exemption 6. After balancing the potential embarrassment to the individual against the right of the public to information, the Court determined that 'disclosure of information about unsuccessful applicants for a Service job would be a clearly unwarranted invasion of their personal privacy.' * * * Likewise, in Warren v. Social Sec. Admin., [2000 WL 1209383 (W.D.N.Y. 2000)], the Court weighed the privacy interests of job applicants in having their information disclosed against the right of the public to information. The Court determined that the applicants' names, scoring sheets evaluating their applications, and other documents were exempt from disclosure as public documents due to the privacy protections of FOIA Exemption 6. * * *

Therefore, it is clear under R.I.G.L. 38-2-2(4)(A)(I)(b) and the cases evaluating similar circumstances, and in some instances identical, that the reports requested by Mr. Brien are not public documents due to the application of Exemption 6. However, were the Office of the Attorney General to disagree, the inquiry is not complete. Once it is concluded that the documents do not fall under the enumerated exception of APRA, a public entity must apply a balancing test and weigh the privacy interest against the public interest in disclosure in order to determine whether the documents are in fact public. * * * Here, the reports disclose the names and assessments of individuals that may not have disclosed to their current employer that they were seeking other employment and were ultimately judged to be either entirely unqualified, or ultimately not the most qualified applicant. There is great privacy interest for the individuals in being an applicant for the position. Likewise, the public has little or no interest in learning the identities and qualifications of the applicants. The successful candidate can easily be ascertained by the public at the conclusion of the process.

* * *

Mr. Brien left a voicemail for Acting Director Christine O'Connor requesting the addresses of the members of the WHA Board. Ms. O'Connor misconstrued the request as one for home addresses. In spite of the verbal nature of the request causing confusion, Acting Director O'Connor responded to the inquiry by electronic mail stating that only the business address of the members of the Board are available by request, which she provided in that same correspondence. In that correspondence she withheld the WHA record containing the home addresses of all Commissioners. Mr. Brien responded that same day that he did

not need the information after all. However, a day after closing out his request, Mr. Brien responded again that he did not request the home addresses of the WHA Commissioners * * * However, he wished to know why he could not have the mailing addresses of the members of the WHA Board. In spite of having provided the mailing address for all Commissioners, Acting Director O'Connor provided the APRA exemptions that protect home addresses from public records requests.

* * *

In spite of the conclusion of the matter twice, Mr. Brien demanded to know why the only public record withheld, one containing the home addresses of Commissioners, was not provided as a response to a records request (although, confusingly, reiterate that he is only seeking a mailing address which he has already received). Acting Director O'Connor replied informing him of the personal privacy exemptions both under R.I.G.L. § 38-2-2(4)(A)(I)(b) and the balancing of interests that applied to the records of the Commissioners' home addresses."

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 WHA violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA's stated purpose is both "to facilitate public access to public records" and "to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-1. The United States Supreme Court has made clear that the federal Freedom of Information Act ("FOIA"):

focuses on the citizens' right to be informed about 'what their government is up to.' Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about the agency's own conduct. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773, 109 S.Ct. 1468, 1481-82 (1989) (emphasis supplied).¹

¹ The Rhode Island Supreme Court has stated that "[b]ecause [the] APRA generally mirrors the Freedom of Information Act, 5 U.S.C.A. § 552 (West 1977), we find federal case law helpful in interpreting our open record law." Pawtucket Teacher's Alliance Local No. 920 v. Brady, 556 A.2d 556, 558 n.3 (R.I. 1989).

The Court further explained that:

the FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed. Thus, it should come as no surprise that in none of our cases construing the FOIA have we found it appropriate to order a Government agency to honor a FOIA request for information about a particular private citizen. Id. at 774-75, 109 S.Ct. at 1482 (emphases in original).

The instant case implicates R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), which exempts from public disclosure, in pertinent part:

Personnel 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 pursuant to 5 U.S.C. 552 et. seq...[.]

In Jackson v. Town of Coventry, PR 14-35, this Department conducted the balancing test described above 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. In Jackson, 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." We 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. On the other hand, 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 Reporters Committee, 109 S.Ct. at 1482.

Here, there are two responsive documents, one that lists the names of applicants and identifies these individuals into different categories, and second, a scoring grid of various applicants. In substance, the documents you seek are similar to Jackson, i.e., information detailing the names and identities of unsuccessful applicants. Accordingly, similar to Jackson, we conclude that the disclosure of the information contained in Mr. Vadnais' materials, which we have reviewed in camera and that refers to unsuccessful candidates for the position of Executive Director, would constitute a clearly unwarranted invasion of these candidates' personal privacy. Notably, you have provided no "public interest" for this Department to balance against the "privacy interest" and considering your APRA request for the entire reports, no "reasonable segregable portion of a public record" can be provided. See R.I. Gen. Laws § 38-2-3(b). Accordingly, we find no violation.

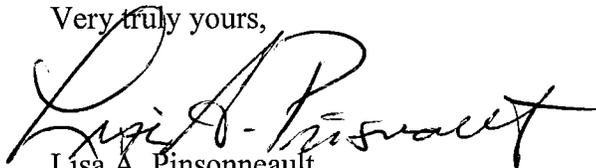
With respect to the allegation concerning the addresses of the Board of Commissioners, we must confess our confusion. It appears you left a voicemail message requesting the addresses of the members of the WHA Board.² On the following day, October 26, 2015, Ms. O'Connor emailed you indicating that the home addresses of the WHA members would not be disclosed, but providing you the business mailing addresses of the Board of Commissioners. Later that same day, you responded to the email indicating that you have "obtained the information via other sources & have no need for any additional information at this time," but the following day, you again e-mailed Ms. O'Connor relating that you "never asked * * * for home addresses" and that Ms. O'Connor should provide you "the specific section of [the APRA] which prohibits publication of mailing addresses of appointed public officials." Your APRA complaint addressed to this Department asks that we review Ms. O'Connor's lack of response "to [your] request for the mailing addresses of the members of the Board of Commissioners of the Woonsocket Housing Authority."

On this issue, we decline to issue what would be tantamount to an advisory opinion. For starters, the nature of your oral request makes determining precisely what was requested impossible. More importantly, it seems that you were not seeking the home addresses of WHA members and the WHA provided you the business address of the WHA members. In no way do you challenge the information you were provided and you make clear that you obtained the requested information and "have no need for any additional information at this time." Under these circumstances, we find no violation. See Farinelli v. City of Pawtucket, PR 16-27.

Nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in the Superior Court.

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

Very truly yours,



Lisa A. Pinsonneault
Special Assistant Attorney General

Cc: Joseph J. Rodio, Jr., Esq.

² We question whether this request was in conformance with the WHA's APRA policy. This was not raised by the WHA, so we need not address it.