



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

September 1, 2016

PR 16-37

Ms. Johanna Harris

Re: Harris v. City of Providence

Dear Ms. Harris:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the City of Providence (“City”) is complete. By correspondence dated January 30, 2016, you allege the City violated the APRA when it responded to your APRA request indicating that the City maintained no responsive documents. You assert that the City does, in fact, maintain such records. More specifically, your APRA request sought:

“All registration signup sheets for the Providence Summer Midnight Basketball Program, from May 26 through August 8, 2015, including but not limited to signup sheets at the following locations: Davis Park, Buckling Park, Davey Lopes Recreation Center and Gano Street Park.”

You allege the “City of Providence had to maintain registration records as well as cash receipts for all participants who paid a registration fee of \$25 to participate in a series of scheduled games.”

We received a substantive response from the Assistant Solicitor for the City, Ms. Kathryn M. Sabatini, Esquire, who also included a sworn affidavit of Mr. Michael Stephens, the Director of Recreation Services for the City.

Assistant Solicitor Sabatini states, in pertinent part:

“On January 11, 2016, I received an email from [Ms.] Johanna Harris, in which she attached and conveyed six different APRA requests.

* * *

On the same day that I received the above-referenced email from Ms. Harris, I forwarded her request pertaining to Midnight Basketball to [Mr.] Michael Stephens, the City's Director of Recreation Services, and asked him to forward responsive documents to me for review.

Mr. Stephens informed me that the City did not maintain documents responsive to the request.

At the same time, Mr. Stephens also informed me that he had reached out to the Salvation Army to obtain the records and believed that the Salvation Army would provide the records to us within days.

I followed up with Mr. Stephens on multiple occasions to inquire as to the status of the records.

Initially, Mr. Stephens informed me that it was his understanding that the records would be forthcoming.

At a certain point, Mr. Stephens informed me that he had been informed by the Salvation Army that it was of the opinion that it was not required to furnish the records to the City because the records were not the City of Providence records.

When Mr. Stephens informed me that the Salvation Army did not believe that the records were City of Providence records, I sought information regarding the Midnight Basketball program and the relationship between the City and Salvation Army relative to the program.

Pursuant to a Memorandum of Understanding between the City of Providence and the Salvation Army, the Midnight Basketball program is a program of the Salvation Army.

In light of this agreement, the Public Records Unit determined that it could not require the Salvation Army to provide the City with documents responsive to the request and accordingly, that the City does not maintain documents responsive to the request.

The Public Records Unit responded to Ms. Harris, indicating that the City does not maintain responsive documents. The response also advised Ms. Harris of her various rights of appeal.”

The Memorandum of Understanding between the Salvation Army and the City states, in relevant part, the following:

“The Salvation Army will serve as the lead agency partnering with the City of Providence; however, the *Providence Midnight Basketball League* will be considered a program of The Salvation Army.”

Mr. Stephens also provided an affidavit in which he states, in relevant part, the following:

“I am the Director of Recreation Services for the City of Providence.

In that capacity, I manage the Recreation Department and oversee the provision of all recreation programs and activities.

In that capacity, I am directly responsible for the City of Providence’s involvement in the Midnight Basketball Program.

* * *

The City of Providence does not itself maintain documents responsive to the above-referenced request.

Because the City of Providence does not maintain documents responsive to the request, I contacted the person responsible for this information, [Mr.] Kobi Dennis, at the Salvation Army to ask that he provide the records to me for the City’s review.

Mr. Dennis informed me that he would gather the responsive documents and bring them to me.

At a certain point, Mr. Dennis informed me that he would not be providing me with the documents because it was his opinion that they were Salvation Army documents, not City of Providence documents.”

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

Here, there is no evidence – and you do not contest – that the City does not have or maintain the requested records. Moreover, it also does not appear – and you do not argue – that the Salvation Army was acting on behalf of, or in place of, the City such that the Salvation Army would be within the ambit of the APRA. See R.I. Gen. Laws § 38-2-2(1); Collette v. Town of Charlestown, PR 13-20. On this point, we note that the Memorandum of Understanding provides that the Salvation Army “will serve as the lead agency partnering with the City of Providence” and that the program that you seek records concerning “will be considered a program of The Salvation Army.” These determinations aside, even if we concluded that the Salvation Army fell within the scope of the APRA for purposes of this request, we would still find no violation.

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”), and by extension the APRA:

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

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).

Although not referenced by the City (because it concluded it did not maintain responsive documents), the instant case implicates R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), which exempts from public disclosure, in pertinent part:

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.” Teacher’s Alliance Local No. 920 v. Brady, 556 A.2d 556, 558 (R.I. 1989).

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...[.]

This request also implicates the balancing test set forth in Direct Action for Rights and Equality v. Gannon, 713 A.2d 222 (R.I. 1998).

Under either exemption, the analysis 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[.]” R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), or otherwise be exempt under the balancing test.

Respectfully, you have not identified any public interest that would be served in the disclosure of the Providence Summer Midnight Basketball Program registration signup sheets, nor is any public interest apparent to this Department. Far from concerning the activities of any governmental agency, the evidence indicates that the information requested is information concerning private citizens “that happens to be in the warehouse of the Government.” See Reporters Comm., 489 U.S. at 774-75, 109 S.Ct. at 1482; see also Forest Guardians v. U.S. FEMA, 410 F.3d 1214, 1220-21 (10th Cir. 2005) (holding that information concerning participants in a federally subsidized flood insurance program requested pursuant to FOIA was rightfully withheld because individuals have a privacy interest in deciding to purchase insurance and the public interest in disclosure was “nonexistent”).

In addition, our conclusion is consistent with prior findings of this Department. See e.g., Couture v. Coventry Police Department, PR 04-05 (concluding that information contained in accident report regarding “the home street address, date of birth, and insurance policy number of individuals involved in or witness to the accident” may be redacted before disclosure of the accident report). Therefore, because there is no articulated or discernable public interest in disclosing the identities of the individuals named in these signup sheets, we conclude that the privacy interest outweighs the public interest and the redacted records are exempt from disclosure. See Direct Action for Rights and Equality, 713 A.2d at 225. See also Fuka v. Rhode Island Department of Environmental Management, PC 07-1050 (Indeglia, J., April 17, 2007)(applying balancing test to exempt private citizen’s home addresses). Accordingly, for these reasons, we find that the City did not violate the APRA by failing to provide the requested records, namely the registration signup sheets.

You should be advised that nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the Superior Court. R.I. Gen. Laws § 38-2-8. Please be advised that we are closing our file as of the date of this letter.

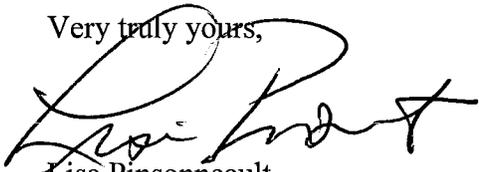
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We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault". The signature is fluid and cursive, with a large initial "L" and "P".

Lisa Pinsonneault

Special Assistant Attorney General

LP/kr

Cc: Ms. Kathryn Sabatini