



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

October 7, 2016

PR 16-42

Mr. Rahim Caldwell

Re: Caldwell v. Cranston Police Department

Dear Mr. Caldwell:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Cranston Police Department (“Police Department”) is complete. By email correspondence dated June 10, 2016, you alleged that the Police Department violated the APRA when it denied your May 9, 2016 APRA request wherein you sought records pertaining to incident number 16-28147-OF.

Specifically, on May 9, 2016, you made an APRA request with the Police Department seeking:

“All records pertaining to call #16-28147-OF not limited to any and all visual, audio or any other recording means, incident reports, case reports, names of officers involved, squad vehicle number, mobile data terminal records, Cranston Police Department Surveillance [sic] Footage From driveway from 7:30am-7:59am from the one Way in, one way out driveway. Police Squad Vehicle Surveillance [sic], video and audio footage, and body camera footage from officers on scene under incident #16-28147-OF call log #16-28147OF the report for call log #16-28147-OF.”

On June 29, 2016, this Department received a substantive response from the City of Cranston (“City”) on behalf of the Police Department dated June 27, 2016. In its response, the City provided us with a copy of its May 23, 2016 correspondence with you, which constituted a partial granting and partial denial of your APRA request. As related in its May 23, 2016 correspondence:

“[t]his agency is going to provide a redacted version of the report which contains the names of the officers and the cruiser number as well as a redacted copy of the call log for the stop. The audio from the radio transmissions between the officer

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or officers at the car stop and the dispatch unit will not be provided. Audio recordings from the scene of the car stop and video of same do not exist because this agency does not use body cameras or in vehicle video or audio recording equipment, and therefore cannot be provided. The request for footage from the surveillance cameras at the Cranston Police Department will not be provided as they are here for security of the agency and had no bearing on the incident.”

The City’s substantive response, provided by affidavit from its City Solicitor, Christopher M. Rawson, Esquire, is consistent with the May 23, 2016 response.

You provided a rebuttal, which we have reviewed.

At the outset, we observe that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether a violation 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.

To begin, you seek “[a]ll records pertaining” to a particular offense report incident that did not result in an arrest. This Department has consistently held that where an arrest has not taken place, there is a presumption that initial 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 13-03; Zompa v. West Warwick Police Department, PR 13-07; Radtke v. Dept. of Public Safety, PR 13-10.¹ Here, you not only seek the offense or incident report, but “[a]ll records” that pertain to the offense or incident report.

As referenced by the Police Department, your APRA request implicates, among other provisions, R.I. Gen. Laws § 38-2-2(4)(D)(c), which exempts from public disclosure records maintained by law enforcement agencies for criminal law enforcement purposes where disclosure “could

¹ 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.

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reasonably be expected to constitute an unwarranted invasion of personal privacy.” Clearly, there is some privacy interest concerning the individuals named in these documents. 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.”); American Civil Liberties Union v. Department of Justice, 655 F.3d 1, 7 n.8 (D.C. Cir. 2011)(“disclosure of records revealing that an individual was involved or mentioned in a law enforcement investigation implicates a significant privacy interest”). See also Bernard v. Vose, 730 A.2d 30 (R.I. 1999)(privacy interest in inmate parole file despite inmate making request under APRA). As such, R.I. Gen. Laws § 38-2-2(4)(D)(c) requires that this Department weigh the privacy interests in the requested records with the public interest in disclosure.

In your complaint, you do not identify the public interest in the disclosure of these documents that you wish this Department to consider and no public interest is readily discernible from our review. The United States Supreme Court has made clear that the public has an interest in a document that “sheds light” on how government operates and that a citizen requesting access to a document must demonstrate an “interest more specific than having the information for its own sake.” See Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 772-773 (1989). Not only do we question whether the incident report in question sheds light on how government operates, but your complaint provides no evidence that disclosure will advance the “public interest” as that term has been defined by the APRA.

Here, the Police Department provided you redacted copies of its call sheet and the responsive incident report. Having reviewed the unredacted call sheet, we find no violation with the Police Department’s redaction, namely the name, address, social security number and other information specifically identifiable to the subject of the call. The disclosure of this information “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” R.I. Gen. Laws § 38-2-2(4)(D)(c), and in no way advances the public interest.

The Police Department’s redaction of the incident report falls with the same category and is largely consistent with the call sheet redactions, but rather than review these redactions we need only reference our prior observation 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).” In re: Cumberland Police Department, ADV PR 03-02. This prior observation suffices to resolve your complaint regarding the redacted incident reports, as well as your complaint that you were denied other records pertaining to this incident, namely audio recordings pertaining to radio transmissions related to this call and surveillance footage. To be clear, while this Department has never opined that all records relating to an incident report are per se exempt from public disclosure, consistent with In re: Cumberland Police Department, this Department has opined that a “strong presumption” does exist and you have neither asserted nor demonstrated that the “public interest” in this case requires a contrary result. See e.g., Marcos v. Cumberland Police

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Department, PR 16-23. Other documents you have requested, such as audio and video recordings of the traffic incident, do not exist and therefore cannot be provided. See R.I. Gen. Laws § 38-2-3(h).

Although the Attorney General has found no violation, 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). 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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Field", written in a cursive style.

Michael W. Field

Assistant Attorney General

MWF/kr

Cc: Christopher Rawson, Esq.