



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

November 22, 2016

PR 16-46

Mr. William Nye

Re: Nye v. Rhode Island Department of Public Safety

Dear Mr. Nye:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Department of Public Safety (the “DPS”) is complete. By email correspondence dated November 6, 2015, you alleged the DPS violated the APRA when it failed to fully and completely respond to your APRA request dated September 28, 2015.

In response to your complaint, we received a substantive response from the DPS’ legal counsel, Paul L. Andrews, Esquire, who provided an affidavit from Chief Sheriff David M. DeCesare. Attorney Andrews states, in pertinent part:

“On September 28, 2015, the Department of Sheriff’s received by email a ‘Public Records Request’ from [Mr.] William Nye, requesting ‘Arrest records and any related documents . . . related to Kent County civil case KC-2006-0726...’^[1] Chief DeCesare forwarded the request and responsive documents to the Department. * * *

On October 5, 2015, the Department responded to Mr. Nye’s APRA request via email. In a letter to Mr. Nye, it explained that pursuant to the [APRA], the report [Mr. Nye was] seeking would be exempt from disclosure to members of the general public under Rhode Island General Law 38-2-2(4)(D)(c), which excludes the release of personal information relating to an individual in any files and law enforcement records that could be reasonably be expected to be an unwarranted invasion of personal privacy, or could disclose information furnished on a confidential basis. However, the letter went on to say that the Department

¹ This case is captioned William J. Nye v. Paul G. Brousseau and Susan J. Brousseau.

was enclosing 6 pages of unredacted documents because Mr. Nye was the complainant in the matter. It was noted that the enclosed documents are everything maintained by the Division of Sheriff's responsive to his inquiry. * * *

On October 6, 2015, the Department's Office of Legal Counsel received an email from Mr. Nye questioning the response from the Department to his APRA request. A series of emails from the Department to Mr. Nye attempted to provide assistance and clarification to the response. * * *

On October 15, 2015, Mr. Nye emailed Colonel Steven G. O'Donnell requesting a review of the handling of his APRA request. * * *

On October 29, 2015 Colonel Steven G. O'Donnell issued a decision upholding the response sent to Mr. Nye on October 5, 2015. * * *

On November 25, 2015, the Department was notified by the Office of Attorney General that Mr. Nye had filed an appeal with their office.

* * *

On November 30, 2015, in preparation for this appeal, the Department forwarded a copy of the appeal package to Chief David DeCesare to review. * * * Later that same day, the Department received information from Chief DeCesare that he had located three documents that had Mr. Nye's name written on them. The documents are referred to as 'hold sheets.' The documents are hand written and list Mr. Nye along with other detainees and their status. The documents are used to account for prisoners and their location while at the courthouse. * * *

On December 2, 2015, the Department provided these three documents to Mr. Nye via email with a letter of explanation. There was no intentional denial of Mr. Nye's APRA request. All of the reports that were known to be in possession of the Division of Sheriff that were responsive to Mr. Nye's request were thought to be delivered to him in unredacted form. * * *

In this case, there was no 'arrest report,' to provide Mr. Nye, only the documents (inter-office memorandum) that were completed by the deputies, which were used to document the incident. To complicate the matter, Mr. Nye was taken into custody based on a body attachment issued by the court. He was detained while still at the courthouse. This is an unusual occurrence, as most arrestees are transported to the courthouse by the police or the Department of Corrections. In those cases, there is a procedure in place documenting the arrestee's travel throughout the courthouse. However, even in those circumstances, there is no 'arrest

report' completed by deputies. If an incident occurred while the arrestee was in the custody of the Sheriffs, an inter-office memorandum would be completed by the involved deputies documenting what took place. * * * The six (6) pages of reports were delivered to Mr. Nye on October 5, 2015. The inter-office memorandum is the only document produced by the Sheriff's Department to explain the facts and circumstance surrounding Mr. Nye's detention. * * *

The Department concedes that the 'hold sheets' would have been sent to Mr. Nye if their existence had been discovered at the time of the APRA request. * * *

The Department thought it had fully complied with the APRA request made by Mr. Nye on September 28, 2015. * * * The three documents that were located ('hold sheets') during the preparation of this appeal were not known to the Department at the time the APRA request was made. As soon as they were discovered, Mr. Nye was notified and the documents delivered to him."

Chief Sheriff DeCesare states, in pertinent part:

"On September 9, 2015, I received a complaint via e-mail from a William Nye alleging that his civil rights were violated by having been arrested without cause on August 27, 2015 by members of the Division of Sheriffs. * * *

In investigating Mr. Nye's complaint, we determined that at the time of Mr. Nye's arrest, there was an active civil Body Attachment issued for him out of the Kent County Superior Court and a copy of said was in our possession at the time of Mr. Nye's arrest, therefore validating his arrest.

* * *

On September 28, 2015, I received an APRA request from Mr. Nye requesting reports and document associated with his arrest on the Superior Court Civil Body Attachment.

On October 1, 2015, I forwarded Mr. Nye's request to DPS legal and accompanied all the report we had on file for his arrest. * * *

On October 19, 2015, I received an e-mail from Mr. Andrews informing me that Mr. Nye had filed an administrative APRA appeal and asked that I review his correspondence and check to see if there were any documents that we may have and did not provide.

* * *

The manner in which Mr. Nye was arrested is not customary, especially since it was on a civil body attachment that was not acted upon outside of the courthouse. Ordinarily, persons come into our custody from the Adult Correctional Institute or from outside law enforcement agencies. They are taken in through the cellblock and processed by cellblock deputies. In Mr. Nye's situation, he was already in the courthouse and was taken into custody inside the building and brought down to the cells from the interior elevators, not the cellblock processing room. This prompted me to inquire with the building supervisor if the 'hold sheets' for that day included the name of Mr. Nye. It * * * documented that Mr. Nye was held in cell 46, came in from courtroom 4-C, it listed his gender, D.O.B., disposition, courtroom of appearance and whether he was possessed a personal trap. Also located was a RILETS Query (NCIC) sheet which showed that Mr. Nye had been run through RILETS to check for other warrants before he was released. These documents were contained in a file at the Noel Judicial Complex, the courthouse where Mr. Nye was taken into custody and had not been forwarded to headquarters with the signed memorandum of the deputies involved in Mr. Nye's arrest.

In my initial search for 'all reports' and 'documents; associated with Mr. Nye's arrest, I focused entirely on the reports of the deputies involved in his apprehension and the existence and validity of the body attachment. My attention was centered solely on documents relating to Mr. Nye's arrest, I had not focused my search on whether there were documents pertaining to Mr. Nye's apprehension and detention. I never thought to inquire if he had been handled as a detainee off the street."

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

Here, after your APRA request, the DPS responded by providing you six (6) pages in an unredacted manner and noting that the documents provided constituted all the records it maintained. The DPS also explained that "the report you are seeking would be exempt from disclosure to members of the general public," but because you were the "complainant in this matter," the DPS was providing these documents to you. The six (6) pages consisted of four (4) memoranda and one (1) body attachment issued in the above-captioned civil action.

The following day you replied to the DPS's response, focused upon the word "report" in the DPS's response, and claimed that the DPS's letter "fails to acknowledge my full request." You also

claimed that the documents received looked like a partially completed investigation report, that such a document is “not an arrest record,” and that you were not provided any documents “due to any body attachments,” as your request sought. Later that day, the DPS responded and advised you that it provided you “all of the documents we have in our possession concerning your request” and that “[t]hese documents are all that we have.” The DPS’s correspondence closed by indicating “in an abundance of caution,” the DPS would “double check to make sure there are no other records pertinent to your request.” As best as we can determine the documents you claim that have not been provided are: arrest records, documents that evince the date of arrest, “a different body attachment document,” electronic records related to “due to any body attachments,” documents that evidence payment for the body attachment, and logs relating to the processing of detainees.

Your APRA request sought:

“Arrest records and any related documents, due to any body attachments in Kent County civil case KC-2006-0726, Nye v. Brousseau. The time period of the arrest(s) is on or around August 27, 2015.”

The issue for our consideration is whether the DPS’s search and retrieval relating to your APRA request was reasonably calculated to discover all responsive documents. For the reasons that follow, we find no violation.

Subsequent to its October 6, 2015 correspondence advising you that the DPS would “double check” to ensure that it maintained no additional responsive documents that had not already been provided, on December 2, 2015, the DPS provided you three (3) additional documents. Two of these documents concern a log of detainees and the disposition of their case, while the third record documents a RILETS (NCIC) query.

The import of this development is two-fold. First, it addresses your contention that the DPS had not provided you logs relating to your detention. To the extent that you had pressed this issue, the DPS’s supplemental response makes this issue moot. Second, because you have been provided these documents, we need not address whether injunctive relief would be appropriate. We discussed this issue in Farinelli v. City of Pawtucket, PR 16-27, but in short, because the goal of a civil action seeking injunctive relief would be to provide access to the withheld document – and since you have been provided access to the detention logs – we need not address this possible remedy.

With respect to your remaining claims, we also find no violations. First, we express some concern that your APRA request may be subject to different interpretations and be generally unclear. It has been observed that “it is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested.” See Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217 (D.D.C. 1989). See also McLaughlin v. Rhode Island Family Court, PR 11-34. Again, in relevant part, you sought “[a]rrest records and any related documents, due to any body attachments in Kent County civil case KC-2006-0726, Nye v. Brousseau.”

While your complaint relates that the definition of “arrest record” is included within R.I. Gen. Laws § 38-2-3.2, this provision does not concern an “arrest record,” but rather addresses “arrest logs.” Instead, this Department has recognized that an “arrest record” is comprised of the initial face sheet and the initial narrative of an arrested adult. See WPRI v. Woonsocket Police Department, PR 12-17. In this respect, your APRA request can be interpreted to seek the initial face sheet and narrative report, and “any related documents, due to any body attachments.”

The evidence makes clear and is undisputed that no “arrest record” exists. As explained by Mr. Andrews:

“[t]he Chief explained that the Sheriff’s Department does not use a specific ‘arrest report.’ Instead, they complete inter-office reports, detailing the specifics of an incident. In this case, there was no []arrest report, ‘to provide Mr. Nye, only the documents (inter-office memorandum) that were completed by the deputies, which were used to document the incident.”

Then-Colonel O’Donnell also noted in his October 27, 2015 letter to you that “[t]here are no ‘arrest records’ involving your incident.” Because you have been supplied the inter-office memorandum, and because there is no evidence that so-called traditional “arrest records” exist, we find that the DPS provided you the responsive documents that it maintained.²

You also claim that even though a copy of the body attachment with your name was provided, another – separate document – must exist. This argument is based upon a correspondence that indicates the body attachment in this case was issued consistent with R.I. Gen. Laws § 9-5-7, but this provision references the execution of a body attachment against a defendant, whereas you were a plaintiff. We see no reason to examine this statutory argument and simply find that this argument presents no evidence that an undisclosed body attachment document exists. Lastly, you claim that unspecified “electronic records” and documents concerning the payment of a fee for the body attachment exist. We find no evidence to support these claims and add that, at best, it is unclear that any documents concerning payment for a body attachment would be responsive to your APRA request, which effectively sought the initial face sheet and narrative report, as well as “related documents.” Based upon the evidence presented, and for the reasons explained, we find that the DPS conducted a reasonable search and retrieval to find documents responsive to your APRA request.

Because we conclude that the DPS conducted a reasonable search and retrieval and we find no evidence that responsive documents have not been provided to you, injunctive relief is clearly not appropriate. Moreover, even if the December 2, 2015 disclosure of the detention logs constituted an APRA violation – a determination we need not address for the reasons discussed herein – there is no evidence that any such violation was willful and knowing, or reckless, which would subject

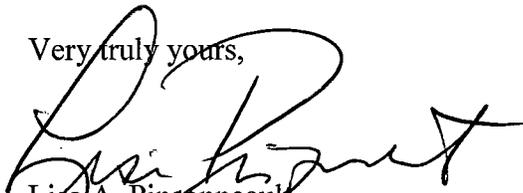
² Among the reasons you contend that other records exist is because you received a correspondence that references the date the body attachment was executed, and this leads you to conclude that the date must be memorialized somewhere. Our review of the inter-office memorandum finds several references to the date the body attachment was executed.

the DPS to a civil lawsuit for monetary fines. See R.I. Gen. Laws § 38-2-8(b); Farinelli, PR 16-27. Indeed, for the reasons explained above, these detention logs do not constitute “arrest records,” as this term has been defined, and whether such detention logs would constitute “related documents” can be answered differently by reasonable minds. See Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217 (D.D.C. 1989).

Although the Attorney General will not file suit in this matter, 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,



Lisa A. Pinsonneault
Special Assistant Attorney General

LP/kr

Cc: Paul L. Andrews, Esq.