



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

June 5, 2018

PR 18-12

Mr. Richard Paiva

Re: **Paiva v. Rhode Island Department of Corrections**

Dear Mr. Paiva:

The investigation into your Access to Public Records Act (“APRA”) complaint dated December 6, 2017, filed against the Rhode Island Department of Corrections (“RIDOC”), is complete.

Your complaint alleges, in pertinent part:

“I recently filed an APRA request with the RIDOC in which what I believe is public information of a state employee was redacted from my request.

I did write back to the RIDOC and appealed to them to provide me with an unredacted version of my request, but that was also denied.”

The information that you contend the RIDOC improperly redacted concerns the name of the elementary or secondary school last attended, the type of high school course completed, and the lowest and highest weekly salary (and the dates) for prior employment. You requested this information from the job applications for two specific correctional officers employed at the RIDOC.

The RIDOC submitted a substantive response through attorney Kathleen M. Kelly, Esquire. Attorney Kelly’s response states, in relevant part:

“After receiving this request I contacted the Human Resources Unit for copies of this information. Upon receipt, I reviewed the documents in question to determine if the information requested was public in nature. After review, I redacted the officers’ home addresses, telephone numbers¹, the names of the high schools each

¹ You do not contest the redaction of the officers’ home addresses or telephone numbers.

officer attended, and in the case of Captain Duffy I redacted the salary he earned prior to his employment with the DOC.

* * *

I declined to provide the above referenced information pursuant to RIGL §38-2-2(A)(I)(b) – []personnel and other personal individually identifiable records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy is not subject to public disclosure. In applying the applicable balancing test between the public interest in disclosure of the information weighed against the privacy interests of Officers Duffy and Largy, I determined that the officers' privacy rights outweighed Mr. Paiva's rights to this information."

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

You are an inmate at the RIDOC and it is our understanding that you have been sentenced to life in prison. See http://www.doc.ri.gov/inmate_search/search_details.php?inmateid=86429. Your life sentence implicates R.I. Gen. Laws § 13-6-1, which states:

"Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. However, the bond of matrimony shall not be dissolved, nor shall the rights to property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of a lawfully obtained decree for divorce."

Recently, the Rhode Island Supreme Court examined this statute in Gallop v. Adult Correctional Institutions, slip. op. (R.I., May 8, 2018). In Gallop, the Superior Court dismissed a lawsuit that alleged state law claims on the basis that Inmate Gallop had been sentenced to life in prison, and therefore, by operation of law was deemed civilly dead. The Supreme Court affirmed, concluding that "a person such as the plaintiff, who is serving a life sentence, is deemed civilly dead and thus does not possess most commonly recognized civil rights." Id. at 6.

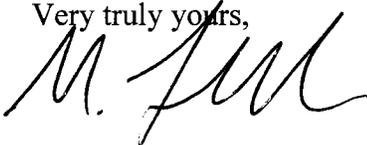
Here, because you have been sentenced to life in prison, the so-called civil death statute applies and you do "not possess most commonly recognized civil rights." Id. Since Gallop establishes that an inmate sentenced to life in prison may not bring a lawsuit in state court concerning state law claims, we have no trouble determining that in accordance with Gallop your right to file an

APRA complaint alleging the deprivation of the APRA has been extinguished. Indeed, if this Office were to find your complaint meritorious, the remedy would be to file a lawsuit in Superior Court on your behalf – a remedy that Gallop makes clear is terminated. See R.I. Gen. Laws § 38-2-9.

Despite the foregoing, even if we were to reach the merits of your complaint, we would still find no violation. Specifically, R.I. Gen. Laws § 38-2-2(A)(I)(b) exempts “[p]ersonnel 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[.]” Here, you contend that certain correctional officers’ educational and past employment history is necessary and serves the public interest because you – and presumably the public – have a right to know the qualifications of state employees in general and correctional officers in particular. Even if we accept this broad assertion, the evidence reveals that the applications provided to you contained the level of educational history and the name (and nature) of past employment. The only information redacted upon which your complaint is based concerns the redaction of the name of the “elementary or secondary school last attended,” the type of high school course, the lowest and highest weekly salary of a prior employment, and the start and finish date of a prior employment. We fail to discern how the disclosure of this information will advance the public interest you assert and further conclude that in the context of this case, the disclosure of this information would “constitute a clearly unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Based upon R.I. Gen. Laws § 13-6-1, and because the information you have requested is exempt from public disclosure, we find no violation.

Please be advised we are closing this file as of the date of this letter.

Very truly yours,



Michael W. Field
Assistant Attorney General

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Cc: Kathleen M. Kelly, Esq.