



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

February 6, 2014
PR 14-03

Mr. Roderick Chappell

RE: Chappell v. Rhode Island Department of Public Safety

Dear Mr. Chappell:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Department of Public Safety (“DPS”) is complete. By correspondence dated May 22, 2013, you allege the DPS violated the APRA when it refused to provide you with the city or town of residence of state police officers and civilian employees of the DPS.¹

In response to your complaint, we received a substantive response from the DPS’s legal counsel, Lisa S. Holley, Esquire. Attorney Holley states, in pertinent part:

“I currently hold the position of Chief Legal Counsel for the [DPS].

I am assigned as the Public Records Officer for the Rhode Island State Police, and I am responsible for overseeing records requests under the Access to Public Records Act, R.I. General Laws Section 38-2-1 et seq.

¹ A subsequent correspondence from you relates that you were not provided the date of hire, but since your initial complaint did not contain this allegation – and in fact stated that you had been provided the date of hire – the DPS did not address this allegation. See May 22, 2013 complaint (“I only got names, date of hire, badge # and rank.”). Consistent with our acknowledgment letter and precedent, we do not consider allegations not raised in the initial complaint. See Mudge v. North Kingstown School Committee, OM 12-35 (declining to address issues raised in reply for first time).

On or about April 13, 2013, [Mr.] Roderick Chappell * * * submitted an APRA request [to] the RI State Police stating the Requested Records as 'Names, Rank, 'ID#, Position held, date of hiring, city and/or Town of residence is requested, under 'Public Records Chpt. 38-2-2(4)(A), of all R.I. State Police Personell [sic] including civilians employed by R.I.S.P.'

On April 23, 2013, Ms. Leilani R. Audette, Paralegal for the Department of Public Safety, provided written notification to Mr. Chappell that the Rhode Island State Police does not keep in the ordinary course of business, any document which contains all the requested items.

Ms. Audette stated that APRA does not require a public body 'to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect public records was made.' RIGL 38-2-[3](h)].

Ms. Audette did however provide Mr. Chappell with a redacted copy of the 'Rhode Island State Police All Inclusive Personnel Directory,' which listed the ID number, rank, and name of each employee, both sworn and civilian.

The document was redacted to remove the address, home and cell phone numbers of the employees.

Ms. Audette acknowledged that APRA identifies 'city or town of residence' of public employees as public information [h]owever, was mindful that APRA requires a balancing of the 'public's right to access public records and the individual's right to dignity and privacy.'

A determination was made that the privacy and **safety concerns** relative to law enforcement agency employees' private residence information outweigh the public interest in disclosure of their city or town of residence. (Emphasis in original).

In the denial letter, Ms. Audette cited a RI Attorney General's opinion, Chappell v. Rhode Island State Police, PR 04-18, which also related to Mr. Chappell, citing specifically the following pertinent language in the opinion:

In at least two specific circumstances, the General Assembly has recognized the heightened privacy interests associated with personal information related to individuals involved with law enforcement. For example, under the APRA, law enforcement records that 'could reasonably be expected to endanger the life or physical safety of any individual' are exempt from public disclosure. R.I. Gen. Laws §38-2-2(D)(f). The General Assembly has also authorized any law enforcement officer employed by the

State Police to obtain a drivers license which lists the State Police's business address in lieu of the officer's residence address as required for other applicants. See R.I. Gen. Laws §31-10-26(c). We see both of these statutes as recognition that disclosure of personal information about law enforcement officials presents a greater privacy interest (and personal safety risk) than disclosure of information about other public employees * * * .”

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.

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). Under the APRA, a record is public unless it falls within one of several enumerated exceptions or the balancing test. See R.I. Gen. Laws § 38-2-2(4)(A)-(AA); see also Direct Action for Rights and Equality vs. Gannon, 713 A.2d 218 (R.I. 1998). Further, R.I. Gen. Laws § 38-2-2(4)(A)(b) provides, in part, that the city or town of residence for a public employee shall be public.

In DARE, a community-action group made an APRA request to the Providence Police Department seeking records pertaining to civilian complaints of police misconduct, which included the name of the person filing the complaint and the name of the officer who was the subject of the complaint. See id. at 218. The records sought were:

- a.) “Every ‘Providence Police Civilian Complaint report’...filed within the Providence Police Dept. from 1986 to present.
- b.) A listing of all findings from investigations that was [*sic*] conducted by the Bureau of Internal Affairs, in reference to all ‘Providence Police Civilian Complaint reports’ on record from 1986 to present.
- c.) All reports made by the ‘Providence Police Department Hearing officers [] on their [*sic*] decesions [*sic*] from the findings of investigations conducted in Re: Providence Police Civilian Complaints’...from 1986 to present.
- d.) Reports on all disciplinary action that's [*sic*] been taken as a result of recommendations made by the Hearing Officers ['] Division since 1986 to present.”

See id. at 220.

On appeal, the Supreme Court focused part of its Opinion on the provision that exempts from disclosure:

“[a]ll records maintained by law enforcement agencies for criminal law enforcement; and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency * * * provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.” (Emphases in original). Id. at 224. See also R.I. Gen. Laws §38-2-2(4)(D).

After setting forth the above clause, the Supreme Court determined that the records responsive to category (d) fell squarely within this clause. Nonetheless, despite this determination and the language that documents within this clause “shall be public,” the Supreme Court held that documents responsive to category (d) “must also be disclosed upon request in redacted form.” Id. at 225 (emphasis added). Indeed, the Court continued that “[a]ny balancing of interests arises only after a record has first been determined to be a public record” and “the trial justice’s determination that because of a police officer’s public duty he or she has no reasonable expectation of privacy, although well intentioned, was error.” See id. at 225. DARE stands as authority that even though documents are deemed to be public, these documents may still be redacted pursuant to the balancing test.

Here, the main purpose of the APRA is to “shed light on how Government operates.” See United States Department of Justice, et al. v. Reporters Committee for Freedom of the Press, et al., 489 U.S. 749, 780 (1989). Indeed, the United States Supreme Court has explained that the Freedom of Information Act (FOIA), or in this case 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).²

Respectfully, you have demonstrated no “public interest” in disclosure, as recognized by the FOIA or the APRA, nor is a “public interest” identifiable to us. While we certainly do not adopt

² 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).

a per se rule, based upon the evidence presented in this case, disclosure of the city or town of residence will not shed any light on the operations of government. Balanced against this non-existent “public interest,” we perceive at least some privacy and personal safety interest. Accordingly, similar to DARE, and pursuant to the balancing test, we conclude that the city or town of residence may be redacted in these circumstances.³

Before concluding, it bears noting that your June 18, 2013 reply takes exception to the DPS’s position by explaining that you have “many ways * * * to obtain what I ask for just to keep my listing to date.” You continue that you “do not give nor sell to anyone that I have acquired [sic], you could say it’s my hobby.” You also query, “[h]ow many R.I.S.P. personell [sic] have been killed in their homes” and your correspondence contains the city/town of residence of various State Police personnel.

While you seem to suggest that you will safeguard this information to ensure the safety of the Rhode Island State Police personnel, we are cognizant that if the requested records are a public record in this situation, the requested records must be a public record in any situation regardless of the identity or the interest of the requester. In Bernard v. Vose, 730 A.2d 30 (R.I. 1999), the Rhode Island Supreme Court held that under the APRA, a requesting party did not have a right to review his own board files because once the files were made public to him under the APRA, the files were then available for inspection by the general public. Id. at 31. See also Higginbotham v. Department of Public Safety, PR 09-15 (the Department of Public Safety did not violate the APRA when it denied access to an incident report filed against the complainant). Indeed, if we determined that such records were available to you, under the APRA, as a matter of law, we would necessarily conclude that the same records are available to anyone upon request. For these reasons, we find no violation.

Although the Attorney General has found no violation and 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.

³ See also Rhode Island General Laws § 31-10-26 entitled Issuance of license states, in pertinent part:

“(c) Any person who is a law enforcement officer * * * upon request of the applicant, shall be issued a license which contains the applicant’s official business address in lieu of a residence address as required under the general provisions of this section.”

This provision supports our conclusion.

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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 cursive script that reads "Lisa Pinsonneault". The signature is written in black ink and is positioned above the printed name.

Lisa Pinsonneault

Special Assistant Attorney General

Extension 2297

LP/pl

Cc: Ms. Lisa Holley, Esquire