



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

July 3, 2013
PR 13-12

Mr. Phillip J. DiDomenico

RE: DiDomenico v. Cumberland Police Department

Dear Mr. DiDomenico:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Cumberland Police Department (“Police Department”) is complete. By correspondence dated March 22, 2013, you allege the Police Department violated the APRA when it refused to provide you copies of two (2) incident reports, which you allege are responsive to your March 13, 2013 APRA request. In your March 13, 2013 APRA correspondence, you requested the Police Department provide you with all incident and arrest reports concerning yourself and either of two other participants within the last eighteen (18) months of your APRA request. We are further advised that the Police Department provided you access to three (3) of the five (5) requested reports, but exempted the remaining two (2) documents (both incident reports), on the ground that disclosure would constitute an unwarranted invasion of the participants’ personal privacy. Additionally, you allege that the denial for these two (2) documents was not writing. See R.I. Gen. Laws § 38-2-7(a).

In response to your complaint, we received a substantive response from Thomas E. Hefner, Esquire, Town Solicitor for the Town of Cumberland. Solicitor Hefner states, in pertinent part:

“Deputy Chief Kinch did, in fact, provide certain documents previously to Mr. DiDomenico and withheld documents for the purposes stated in the March 22, 2013 letter to the Department of Attorney General from Mr. DiDomenico.

Deputy Chief Kinch was justified in redacting certain information provided previously to Mr. DiDomenico and choosing not to provide two (2) other reports in that information contained therein is an exception to the duty to provide records pursuant to G.L. 38-2-2(4)(D)(c) in that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The undersigned, also at this time, provides a copy of all records pertaining to Mr. DiDomenico's request that are on file with the Cumberland Police Department. They relate to incidents to 2-2-2011; 1-4-2012; 3-28-2012; 10-14-12 and 3-13-2013."

At the outset, we note 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 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 Police Department violated the APRA. See R.I. Gen. Laws § 38-2-7. 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). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. "Any denial of the right to inspect or copy records, in whole or in part...shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicates the procedures for appealing the denial." See R.I. Gen. Laws § 38-2-7(a).

Here, we begin by observing that the two (2) reports you claim to have been denied access (although subsequently provided) constitute incident reports and not arrest reports. This Department has consistently held that when an arrest has not taken place, and where an APRA request is made for an incident report, there is a presumption that incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D).¹ For example, in In re: Cumberland Police Department, ADV PR 03-02, this Department concluded that "when the police determine probable cause does not exist, disclosure of related records can reasonably be expected, in most cases, to constitute an unwarranted

¹ The APRA underwent significant changes effective September 1, 2012. In this particular instance, however, the language of the specific section at issue, R.I. Gen. Laws § 38-2-2(4)(D), did not change from its original form, formally at R.I. Gen. Laws § 38-2-2(5)(D).

invasion of personal privacy. To conclude otherwise would fail to give sufficient effect to the General Assembly's specific determination that arrest reports are public [records].” See R.I. Gen. Laws § 38-2-2(4)(D).

In this case, although our precedent suggests that the two (2) withheld documents may be properly exempt from public disclosure, since the Police Department subsequently provided these two (2) documents to you, it is unnecessary for this Department to determine whether these two (2) incident reports are public records.² Accordingly, the sole remaining issue before this Department concerns your complaint that the initial denial was not issued to you in writing. As noted earlier, “[a]ny denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial.” See R.I. Gen. Laws § 38-2-7(a)(emphasis added). No evidence has been submitted or discovered that the Police Department sent you a denial in writing. As such, their failure to do so was a violation of the APRA. See Beagan v. Albion Fire District, PR 09-19.

Upon a finding that a complaint brought pursuant to the APRA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 38-2-9(d). There are two remedies available in suits filed under the APRA: (1) the court may issue injunctive relief and declaratory relief and/or (2) the court may impose a civil fine of up to two thousand dollars (\$2,000) against a public body or any of its members found to have committed a willful or knowing violation of the APRA, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated the APRA. R.I. Gen. Laws § 38-2-8(b); § 38-2-9(d)

In this case, we find that neither remedy is appropriate. In terms of injunctive relief, we do not believe such a remedy is appropriate under the circumstances since as you are now in receipt of all records requested. Additionally, there is no evidence to conclude that the Police Department willfully or knowingly, or recklessly, violated the APRA. See Catanzaro v. East Greenwich Police Department, PR 13-08 (discussing recklessness). In this respect it is notable you were timely advised of the denial, albeit not in writing as requested by the APRA.

² The fact that you may be requesting records concerning yourself is of no consequence to our analysis. This Department has concluded that under the APRA you have no greater right to access the requested records than any member of the general public, regardless of whether you are the subject of the incident report. See Bernard v. Vose 730 A.2d 30 (R.I. 1999); DeWitt v. Department of Corrections, PR 02-16; D’Amario v. Rhode Island Probation Office, PR 08-22. While you may have additional rights that would allow you to obtain documents that pertain to you under other (non APRA) laws or legal principles, this question is not before us and instead the sole question is whether a requested document(s) is a “public record” under the APRA. An affirmative answer to this question would allow anyone, not just you, to obtain access to the requested documents.

DiDomenico v. Cumberland Police Department

PR 13-12

Page 4

Notwithstanding the above, this finding serves as notice to the Police Department that its omission violated the APRA in failing to issue a denial in writing and may serve as notice of a violation for any future similar case. Although the Attorney General will not file suit in this matter, nothing in the APRA prohibits an individual from obtaining legal counsel for the purposes of instituting injunctive or declaratory relief within the Superior Court. Please be advised that we are closing your file as of the date of this correspondence.

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

Very truly yours

A handwritten signature in cursive script, appearing to read "Michael W. Field".

Michael W. Field
Assistant Attorney General
Extension 2380

Cc: Thomas E. Hefner, Esquire