



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 12, 2015

PR 15-32

Ms. Linda Lotridge Levin

Re: Access/Rhode Island v. Cumberland Police Department

Dear Ms. Levin:

The investigation into your Access to Public Records Act ("APRA") complaint filed on behalf of Access/Rhode Island against the Cumberland Police Department ("CPD") is complete. In relevant part, you relate that:

"Access/RI through our contractor MuckRock sent a staffer to the CPD on May 19, 2014 to request 'The log of arrests made over the past seven (7) days, including: (1) full name of the arrested adult; (2) home address of the arrested adult, unless doing so would identify a crime victim; (3) year of birth of the arrested adult; (4) charge or charges; (5) date of the arrest; (6) time of the arrest; (7) gender of the arrested adult; (8) race of the arrested adult; and (9) name of the arresting officer.'" (Emphasis added).

Your complaint continues that "[t]he following day the CPD called for an email address and then sent arrest logs for the previous five (5) days from the date of the request," *i.e.*, from May 15, 2014 through May 19, 2014. After exchanging emails between MuckRock and the CPD, you relate that "MuckRock received the final two days of the logs but the CPD Deputy Chief continued to insist that state law only required release of five (5) days of arrest logs." Although your complaint acknowledges that the CPD response was "ultimately responsive," you claim that "the experience of the MuckRock staff clearly demonstrates the CPD does not understand their obligations under the APRA." You ask that this Department direct the CPD "to correct the issues raised in this complaint."

In response to your complaint, this Department received an affidavit from the Cumberland Town Solicitor, Thomas E. Hefner, Esquire, along with related documents. In relevant part, Mr. Hefner relates that the CPD's response was consistent with the APRA and that Access/Rhode

Island has no legal standing in this matter since the May 19, 2014 APRA request was made by MuckRock, and not by Access/Rhode Island.¹ You did not file a rebuttal.

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

Effective September 2012, the APRA was amended. Among the amended provisions was R.I. Gen. Laws § 38-2-3.2(a), which provides that:

[n]otwithstanding the provisions of subsection 38-2-3(e), the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the public body[.]'

The APRA then enumerates "the information," delineating nine (9) categories as apparently set forth in MuckRock's May 19, 2014 APRA request.² It is significant that the foregoing provision, R.I. Gen. Laws § 38-2-3.2(a), "appl[ies] to arrests made within five (5) days prior to the request." (Emphasis added). In other words, within the time period specified by R.I. Gen. Laws § 38-2-3.2(a)—forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours after receipt of a request—a law enforcement agency must provide the delineated arrest log information it maintains, see R.I. Gen. Laws § 38-2-3.2(a), for any "arrests made within five (5) days prior to the request." R.I. Gen. Laws § 38-2-3.2(b).

¹ With respect to the argument that Access/Rhode Island lacks standing to file the instant complaint, we addressed this issue in a related complaint and our conclusion applies equally to this case. See Access/Rhode Island v. West Warwick School Department, PR 15-24. As such, we review this complaint solely on the basis of this Department's independent statutory authority. R.I. Gen. Laws § 38-2-8(d).

² MuckRock's May 19, 2014 APRA request is not entirely discernable because of the manner in which the document was photocopied. The APRA request, however, does not entirely reflect the provisions set forth in R.I. Gen. Laws § 38-2-3.2. For example, MuckRock's May 19, 2014 APRA request seeks the "name of arresting officer," while R.I. Gen. Laws § 38-2-3.2 requires the release of the "[n]ame of the arresting officer unless doing so would identify an undercover officer." (Emphasis added). This distinction is not material to our finding.

The existence of this 2012 amendment, however, in no way precludes an APRA request for adult arrest log information that occurred more than five (5) days prior to the request. In this event, i.e., where an APRA request is made for adult arrest log information where the arrest occurred more than five (5) days prior to the request—such as this case—a law enforcement agency must provide the delineated arrest log information that it maintains for “arrests made within five (5) days prior to the request,” id., and this information must be made available “within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours.” R.I. Gen. Laws § 38-2-3.2(a). For arrest log information exceeding the “five (5) days prior to the request,” the time provisions set forth in R.I. Gen. Laws § 38-2-3(e) control. These provisions require that a public body respond to an APRA request within ten (10) business days, but “may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.” R.I. Gen. Laws § 38-2-3(e). See also R.I. Gen. Laws § 38-2-7. Applying the foregoing to this situation, we find no violation.

The undisputed evidence reveals that on May 19, 2014, MuckRock made an APRA request to the CPD for seven (7) days of delineated adult arrest log records. The following day, May 20, 2014, the CPD responded to MuckRock by providing adult arrest log records from May 15, 2014 through May 19, 2014. The evidence also reveals that no arrests were made on May 14, 2014, and accordingly, the CPD’s May 20, 2014 response complied with R.I. Gen. Laws § 38-2-3.2. The undisputed evidence also reveals that on May 29, 2014—less than ten (10) business days from MuckRock’s May 19, 2014 APRA request—the CPD provided additional adult arrest log records, dating back to May 12, 2014, i.e., days six and seven of MuckRock’s APRA request. This response complied with the time provisions set forth in R.I. Gen. Laws §§ 38-2-3(e) and 38-2-7.

While your complaint references several post-May 20, 2014 emails between MuckRock and the CPD and avers that the CPD “continued to insist that state law only required release of five (5) days of arrest logs,” there can be no doubt that for the reasons explained above, the CPD’s actions did not violate the APRA. In this respect, even your complaint acknowledges that the CPD’s response was “ultimately responsive.”³

Although the Attorney General has found no violations, nothing within the APRA prohibits an individual 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). Whether Access/Rhode Island would

³ Other APRA requests made by MuckRock expressly provided that MuckRock looked forwarded to the Police Department’s response within ten (10) business days. See e.g., Access/Rhode Island v. West Greenwich Police Department, PR 15-25. The instant in-person APRA request, however, contained no such waiver. For the reasons discussed, above, this distinction is not material.

have standing to do so is, of course, a decision within the jurisdiction of the Superior Court and not this Department. Please be advised that we are closing your 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 cursive script that reads "M. W. Field".

Michael W. Field
Assistant Attorney General

Cc: Thomas E. Hefner, Esquire