



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

February 17, 2015
ADV PR 15-01

Danica Iacoi, Esquire

Re: In re Computer Aided Dispatch System

Dear Attorney Iacoi:

By email dated January 29, 2015, you requested an Access to Public Records Act (“APRA”) advisory opinion for the Department of Public Safety (“DPS”). You relate that this advisory request is the result of a media inquiry for “the release on a daily basis of our Computer Aided Dispatch System (“CAD”) records.”

According to your advisory request:

“[t]he CAD system is designed to capture data pertaining to all calls for service, log notes, attendance and assignment information. Each barracks and headquarters maintains a separate CAD log. The CAD system also serves as a day sheet/daily log for each barracks and headquarters where time, date, personnel and all important information pertaining to the day-to-day operations of the Rhode Island State Police is recorded.

The specific media request seeking the release of the CAD records on a daily basis could divulge confidential victim information and potentially compromise pending criminal investigations. Although each barracks and headquarters maintains separate CAD entries, a master report can be generated. Due to the volume of contacts, the amount of data recorded and the size of the workforce, these reports will be extremely voluminous and time consuming to redact.” (Emphases added).

While the instant matter raises several APRA issues, your request seeks advice concerning whether “the CAD entries are considered public records under [APRA and i]f

so, to what extent would the records be subject to redaction, as well as the costs associated with responding to such requests. It is notable that this Department has not been provided a copy of a CAD.

At the outset, we note that in examining the APRA, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether a particular matter is or not deemed a public record, 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. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

With respect to your first inquiry concerning whether "the CAD entries are considered public records," respectfully, based upon the general nature of your advisory request, this Department can provide only the most general advice. As far as we are aware, neither the APRA nor the Rhode Island General Laws contain any provision exempting (or prohibiting) CAD reports from public disclosure in all circumstances. Certainly, the DPS has not brought to our attention any such prohibition. Accordingly, we are aware of no such provision that would prohibit the DPS from disclosing its CAD report (in its entirety) in all circumstances. This is not to say that certain portions of the CAD report may not be exempt (or prohibited) from public disclosure. For example, the APRA would allow (but not require) the DPS to exempt from public disclosure "[p]ersonel and other personal individually-identifiable records * * * the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq." See R.I. Gen. Laws § 38-2-2(A)(I)(b). The APRA would also allow (but not require) the DPS to exempt from public 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, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigation or criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution, which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual." R.I. Gen. Laws § 38-2-2(4)(D).

Of course, other APRA exemptions are possible, including the balancing test set forth in Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998).

In other instances, the DPS may be prohibited from releasing information contained in a CAD report. For example, R.I. Gen. Laws § 14-1-64(a) provides in pertinent part that “[a]ll police records relating to the arrest, detention, apprehension, and disposition of any juveniles shall be kept in files separate and apart from the arrest records of adults and shall be withheld from public inspection[.]” The identity of a child molestation sexual assault victim is also confidential. See R.I. Gen. Laws § 11-37-8.5(b) (“Every agency of state or local government shall protect the confidentiality of documents containing the identity of victims of child molestation sexual assault.”). Moreover, except in situations where a minor is involved in a violation of a motor vehicle law or involved in a motor vehicle accident, “[n]o member of any municipal or state agency shall release the identity of any minor who is believed to be a victim of a violation of any law except with the consent of his or her parent or guardian.” R.I. Gen. Laws § 9-1-44(a).

The foregoing should make clear that while there is no absolute prohibition to the disclosure of a CAD report in its entirety, certain entries within the CAD report may be either exempt from public disclosure or prohibited from public disclosure. As noted, supra, we have not been provided a copy of the CAD report – and we presume that each CAD report will differ based on the daily activity of the DPS – but we are confident in responding that whether any specific exemption or prohibition applies to any particular CAD entry can only be determined after review of the CAD report and its contents by the DPS. A careful reading of your advisory request supports this conclusion. See January 29, 2015 e-mail (“The specific media request seeking the release of the CAD records on a daily basis could divulge confidential victim information and potentially compromise pending criminal investigations.”)(emphases added). See generally Davidson v. East Greenwich Police Department, PR 95-11 (police logs).

Having concluded that the CAD reports may contain some information that constitutes a public record that must be publicly disclosed upon request, you question “to what extent would the records be subject to redaction, as well as the costs associated with responding to such requests.” Our response to the first part of this inquiry is sufficiently described above and makes clear that such a determination requires a case-by-case analysis based upon the content of each CAD entry.

With respect to the costs portion of your inquiry, the APRA provides that:

“[t]he cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records[.]” R.I. Gen. Laws § 38-2-4(a).

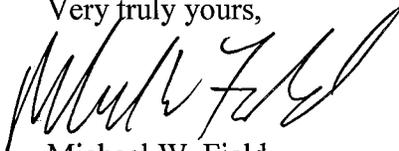
The APRA also provides that “[a] reasonable charge may be made for the search or retrieval of documents,” but this charge “shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.” R.I. Gen. Laws § 38-2-4(b). As the Rhode Island Supreme Court has made clear, “search or retrieval” includes the time it takes a public body to review and redact a particular document. See Direct Action for Rights and Equality v. Gannon, 819 A.2d 651, 661 (R.I. 2003) (“costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested documents”). “For the purposes of [R.I. Gen. Laws § 38-2-4(b)], multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.” R.I. Gen. Laws § 38-2-4(b).

Similar to our response concerning whether the CAD report is a public record, the determination of the costs assessed by the DPS, if any, can be made only after a case-by-case review of each requested CAD. While your advisory request suggests that “these reports will be extremely voluminous and time consuming to redact,” we are unaware of any provision within the APRA that allows a public body to forego its APRA responsibilities based upon the volume or time-consuming nature of a request.¹ Instead, any costs assessed by the DPS must comply with this finding and the APRA.

This Advisory Opinion does not abrogate any rights that the Department of Attorney General is vested with pursuant to R.I. Gen. Laws § 38-2-8 and is strictly limited to the Department of Attorney General’s interpretation of the APRA. This Advisory Opinion does not consider any other provision of the APRA, nor does this Opinion address the DPS’s responsibility under any other State law, rule, regulation, or ordinance. This Opinion also does not shield the DPS from a complaint filed in the Superior Court by a citizen or entity pursuant to R.I. Gen. Laws § 38-2-8 or any other authority.

We hope that this Advisory Opinion is of assistance as this Department is committed to ensuring that public bodies comply with the APRA. We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Michael W. Field
Assistant Attorney General

¹ The APRA does allow a public body to extend the time to respond to an APRA request for “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).