



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

February 16, 2016  
PR 16-03

Mr. Kenneth Jackson

**Re: Jackson v. Coventry School Department**

Dear Mr. Jackson:

The review of your Access to Public Records Act (“APRA”) complaint filed against the Coventry School Department (“School Department”) is complete. By correspondences dated July 13, 2015 and July 22, 2015, you alleged that the School Department violated the APRA when it denied your request for “a copy of all resumes received by the Coventry Schools Administration’s advertised position for a Financial Director as well as any resumes received from other sources.” Your APRA request also indicated that you “would expect that all identifying information such as name, address, telephone numbers and so forth as well as their past and current employers would be blackened out.”

Attorney Katherine Duncanson, legal counsel for the School Department, submitted a substantive response to your complaint. The School Department contends, in pertinent part:

“I responded on July 10, 2015, at which time I, on behalf of Coventry Public Schools, denied access to the resumes of the unsuccessful candidates for the position of Finance Director and Interim Finance Director. As a basis for the denial, I stated that the production of the resumes, even in the redacted form, would be an unwarranted invasion of the candidates’ privacy. As was stated in the APRA decisions of the RIAG in PR 14-35 Jackson v. Coventry and PR 15-11 Paiva v. Department of Corrections, the resumes of unsuccessful candidates are not subject to disclosure as the balancing test found that the disclosure would be an unwarranted invasion of the candidates’ privacy while providing ‘little to no insight into how government operates.’ Mr. Jackson claims that he is requesting redacted copies of resumes that will not violate the candidate’s privacy...The redaction of such information, however, would result in the production of documents with no valuable information left to read. Further, unsuccessful

candidates have simply submitted their information for consideration for a position. They have not agreed to be employees of the public body or for the release of any information regarding their candidacy. The unauthorized release of this information could have a negative impact on their current employment and professional relationships if it is determined who a candidate is from information on the resume.

...Requiring that documents submitted by unsuccessful candidates be produced under the RI APRA would discourage otherwise qualified candidates from applying to positions out of fear that the information submitted would be public information....

...These records are confidential in nature and the release of them, even in redacted from [sic], would be an unwarranted invasion of the candidate's privacy..."

You provided no 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 School Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA's dual purpose is to "facilitate public access to public records" and to "protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy." See R.I. Gen. Laws § 38-2-1. Accordingly, documents, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.," are deemed exempt from disclosure under the APRA. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). The plain language of this provision contemplates a "balancing test" whereby the "public interest" in disclosure is weighed against any "privacy interest." Since the School Department denied your request pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), we must consider the "public interest" versus the "privacy interest" to determine whether the disclosure of the requested records, in whole or in part, "would constitute a clearly unwarranted invasion of personal privacy[.]" R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

This issue was previously addressed by this Department in response to a complaint you filed against the Town of Coventry. In Jackson v. Town of Coventry, PR 14-35, this Department conducted the balancing test described above to determine whether resumes submitted to the Town of Coventry by individuals seeking employment as Town Finance Director and Director of Public Works were public records subject to disclosure. Based on the evidence presented, we concluded that disclosure of the resumes of individuals employed with the Town would not

constitute a “clearly unwarranted invasion of personal privacy.” See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Specifically, we found that “the public has at least some interest in knowing that the successful applicants for a public position are qualified and capable to hold that position and that viewing the resumes of the successful applicants will further the public interest.” We also found that this public interest was outweighed by any privacy interest, and thus directed the Town to disclose the resumes of the successful applicants and to redact information that would constitute a “clearly unwarranted invasion of personal privacy.” *Id.* On the other hand, after balancing the privacy interests of the unsuccessful applicants against the public’s interest in the resumes, we found that the scale tipped in favor of nondisclosure. Specifically, we found that viewing the resumes of individuals who were not selected for employment by the Town would provide little to no insight “on how government operates.” See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773, 109 S.Ct. 1468, 1482 (1989).

Similar to your APRA request in Town of Coventry, PR 14-35, your APRA request in the instant matter sought access to “a copy of all resumes received by the Coventry Schools Administration’s advertised position for a Financial Director as well as any resumes received from other sources.” Indeed, the facts presently before us are so strikingly similar to the facts in Town of Coventry that this Department inquired how the present matter is distinguishable. By correspondence dated July 22, 2015, you indicated that “this is a different matter since the position has not been filled” and that you “requested the resumes with no means to identify the candidates [sic] identity[.]” While you are correct that at the time you filed your complaint in Town of Coventry, the Town had filled the two available positions, this distinction is detrimental to your argument that the School Department’s denial in this case violated the APRA. Specifically, the fact that the Town of Coventry had selected two applicants for the positions was a significant factor in our prior determination that the resumes of the successful applicants should be disclosed in redacted form since the public had some interest in knowing that the newly hired employees were qualified to hold the position. In addition, since the identities of the successful applicants were already public, the privacy interests implicated by disclosure were minimal and could be protected through redaction.

According to your complaint in this case, “the 28 candidates who submitted resumes for the Finance Director were all eliminated by the School Department.” As such, it appears that the resumes at issue concern only unsuccessful applicants. As you recall, in Town of Coventry we found little to no public interest in the resumes of the unsuccessful applicants and a significant privacy interest that could not be protected through redactions. Thus, we concluded that the resumes of the unsuccessful applicants were exempt under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Here, like in Town of Coventry, we have been presented with no public interest sufficient to outweigh the privacy interests. Indeed, we see no factual or legal distinction that would command a finding contrary to Town of Coventry. Frankly, the fact that your APRA request “expect[s] that all identifying information such as name, address, telephone numbers and so forth as well as their past and current employers would be blackened out,” reduces the public interest in this case below the public interest we described in Town of Coventry. Even if we were to agree with you that there is a public interest in reviewing only the unsuccessful candidate resumes (and not considering other factors such as an interview or salary requirements) to determine whether any qualified applicants were rejected, doing so with arguably the most

important information redacted – current and past employment – greatly reduces what you claim to be the public interest and leaves only general type categories for inspection, such as volunteer experience, skills, and honors. Based on our in camera review of the resumes, information within some of these general categories would also likely be redacted since disclosure would be identifiable to specific unsuccessful applicants. See R.I. Gen. Laws § 38-2-3(b). Therefore, we find that the School Department did not violate the APRA when it denied you access to “all resumes received by the Coventry Schools Administration’s advertised position for a Financial Director as well as any resumes received from other sources.”<sup>1</sup>

Although the Attorney General has found no violation, 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.

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

Very truly yours,



Malena Lopez Mora  
Special Assistant Attorney General  
Ext: 2307

Cc: Katherine Duncanson, Esquire

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<sup>1</sup> In your July 22, 2015 correspondence to this Department, you asked us to “keep in mind that the School Department did not advertise the position in any local media such as the Providence Journal, Boston Globe, or even the Kent County Times who would put the advertising in all of their associated papers.” It seems that this request was made to support your argument that the hiring process was somehow tainted, but you present no evidence to support this claim and you present no evidence that the School Department was required to advertise in the locations mentioned. Even if such a requirement existed, we are unsure how this would affect our APRA analysis.