



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

July 21, 2014
PR 14-18

Mr. William Lassiter

Re: Lassiter v. Pawtucket Police Department

Dear Mr. Lassiter:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Pawtucket Police Department (“Police Department”) is complete. By correspondence dated March 7, 2014, you alleged that the Police Department violated the APRA when it inappropriately redacted information contained in police report numbered 13-5616-OF.

An explanation of the facts leading to this complaint is required before discussing our finding. It appears that the report you are seeking involves an incident that occurred between yourself and two juveniles, where one of the juveniles allegedly caused damage to the front bumper of your vehicle. While the precise circumstances wherein you obtained Report 13-5616-OF are unclear to this Department, it seems that you were provided the report, in a redacted manner, prior to filing the instant APRA request.

After receiving the redacted report, you filed an APRA request with the Police Department on October 7, 2013 seeking (presumably in an unredacted manner) the offense report that had previously been provided to you in a redacted manner. On October 8, 2013, the Police Department, apparently unaware of the fact that you had already been provided with the redacted report, denied your October 7, 2013 APRA request.

On March 7, 2014, via electronic mail, you filed an APRA complaint with this Department in which you state: “[m]y complaint is the redacted words and sentences that

Lassiter v. Pawtucket Police Department

PR 14-18

Page 2

is my complaint the sentences and words should not of [sic] been redacted so whta I [sic] need to do now thta [sic] is my complaint.”¹

In response to your complaint, we received a substantive response from the Police Department’s legal counsel, Frank J. Milos, Jr., Esquire. Attorney Milos states, in a pertinent part:

1. On October 7, 2013, Mr. Lassiter submitted an APRA request with the Pawtucket Police Department and requested a copy of Police Report 13-5616-OF. The APRA request was forwarded to the City Solicitor’s office on the same date.
2. On October 8, 2013, I prepared and mailed a written response denying Mr. Lassiter’s request for a copy of Police Report 13-5616-OF due to the fact that the report concerned an incident that had not resulted in an arrest. ***
3. Subsequent to October 8, 2013, Mr. Lassiter contacted me by telephone. *** Mr. Lassiter stated that prior to October 7, 2013 had had [sic] obtained a redacted copy of Police Report 13-5616-OF from the Pawtucket Police Department. He requested that I forward him an unreacted [sic] copy of the police report.

5. During our telephone conversation, I also informed Mr. Lassiter that even if the incident giving rise to the police report had resulted in an arrest, I still would not have provided him with a copy of the police report since the incident involved an investigation into alleged criminal acts committed by juveniles and, therefore, the report would have been exempt from disclosure pursuant to R.I. Gen. Laws §14-1-64 (All 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) and R.I. Gen. Laws §38-2-2(4)(S) (Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court).

¹ This Department has concerns over whether you have standing to raise the alleged APRA violation since the report at issue was not provided to you pursuant to your APRA request. Nevertheless, since the Police Department does not raise the issue, this Department will address your complaint on the merits.

Lassiter v. Pawtucket Police Department

PR 14-18

Page 3

7. In light of the foregoing, the City contends that it did not violate the APRA on October 8, 2013, when it denied Mr. Lassiter's request for a copy of Police Report 13-5616-OF due to the fact that the report concerned an incident that had not resulted in an arrest.

***"

You provided no rebuttal to the Police Department's substantive response.

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 Police 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 provides that all records maintained by public bodies are subject to public disclosure unless the document falls within one of the twenty-seven (27) enumerated exceptions. See R.I. Gen. Laws § 38-2-2(4)(A)-(AA). Among the categories exempt from public disclosure are "[a]ll records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime," provided the requested records fall within one or more of the criteria set forth in subsections (a)-(f). See R.I. Gen. Laws § 38-2-2(4)(D).

This Department has consistently held that where an arrest has not taken place, there is a presumption that incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D).² For example, in In re: Cumberland Police Department, ADV PR 03-02, the Cumberland Police Department sought an opinion from this Department as to whether "all" police reports regarding an incident, and not just the initial arrest report, were public records under the APRA. In that instance, we noted that based on our review of the APRA law enforcement exemption in its entirety, the General Assembly made a substantive distinction between initial arrest records, which the APRA deems public, and other offense reports created by law enforcement agencies, which may describe an incident lacking sufficient cause to prompt an arrest. Therefore, we concluded that "when a law enforcement agency investigates a complaint and determines that an arrest is not warranted, there exists a strong presumption that records arising out of that investigation fail to meet the threshold requirement established by R.I. Gen. Laws § 38-2-2(4)(i)(D)(c)."³ Id. See also Snow v. Dept. of Public Safety, PR 10-12 (the Department

² The APRA was amended 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).

³ This law is now codified at R.I. Gen. Laws § 38-2-2(4)(D)(c).

Lassiter v. Pawtucket Police Department

PR 14-18

Page 4

of Public Safety did not violate the APRA by denying a request for an incident report that did not culminate in an arrest).

While precedent may have exempted this document in its entirety, the only issue raised is whether the redactions were appropriate. Here, the portions of the report that have been redacted pertain to individually identifiable information of the two juveniles involved. Although in the proper case we would not rule out the possibility that an unredacted incident report could be disclosed that did not invade the personal privacy of the named individuals who were not arrested, in this case disclosure would constitute an unwarranted invasion of personal privacy and are clearly exempt under R.I. Gen. Laws § 38-2-2(4)(D)(c). In addition, R.I. Gen. Laws § 14-1-64 states 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 arrest records of adults and shall be withheld from public inspection.” Although no arrests were made in the instant case, as a matter of statutory construction, it is difficult to conceive that a juvenile who has been arrested has a greater privacy interest than a juvenile who was not arrested. As such, we conclude that the Police Department did not violate the APRA when they redacted the portions of the report that were individually identifiable to the juvenile parties involved.

Lastly, we deem it necessary to address the fact that the document you requested seems to involve you and damage caused to your property. While we certainly understand your desire (and maybe need) to obtain the identities of the juveniles involved, it must be remembered that you seek this information under the APRA and that under the APRA, you do not have any greater interest in gaining access to a record than any member of the general public. 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, which contained personal and sensitive information about himself, 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. Because the privacy interest of the individual outweighed the public’s interest in disclosure, the Rhode Island Supreme Court exempted the files from disclosure even though the requester was the subject of the records that sought disclosure. 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).

Of course, our APRA finding does not prohibit you from obtaining access to the requested documents through other non-APRA means. By example, R.I. Gen. Laws § 14-1-66 might be an appropriate avenue if you are seeking the unredacted report for the purpose of initiating a civil lawsuit.⁴ Additionally, nothing within the APRA prohibits an

⁴ See R.I. Gen. Laws § 14-1-66 (“Upon written motion by the victim of a crime or his or her attorney, the family court may, in its discretion, and upon good cause shown, divulge the name and address of the juvenile accused of committing the crime solely for the purpose of allowing the victim to commence a civil action against the juvenile and/or his or her parents to recover for damages sustained as a result of the crime; provided, that

Lassiter v. Pawtucket Police Department

PR 14-18

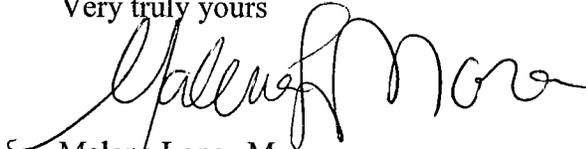
Page 5

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 "Malena Lopez Mora".

Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: Frank Milos, Esquire

written notice of the motion shall be given to the juvenile accused of committing the crime or his or her attorney, and further provided that the court shall order that the name and address of the juvenile accused of committing the crime not be divulged by the victim of a crime or his or her attorney to any other person unless and until the civil action is commenced, without further order of the court”).