



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

VIA EMAIL ONLY

August 21, 2015

PR 15-49

Ms. Tina Melo

Re: Melo v. Department of Public Safety

Dear Ms. Melo:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Department of Public Safety (“DPS”) is now complete.

By email dated December 26, 2014, you sought “all police reports and findings by the State Police Internet Cyber Task Force on Internet Crimes against Children unit, which [you] filed from 2011 to present.” By letter dated January 9, 2015, the DPS denied your APRA request, contending that the information requested was “not considered a public record and is not releasable under Rhode Island Law.” Specifically, the DPS referenced Rhode Island General Laws § 38-2-2(4)(D)(c), which the DPS indicated “excludes personal information relating to an individual in any files and law enforcement records that could reasonably be expected to be an unwarranted invasion of personal privacy, or could disclose information furnished on a confidential basis.”

Undeterred by this denial, on January 16, 2015, you made a “Second Emergency Request (APRA)” to the DPS, seeking

- [Your] affidavit and criminal report concerning the evidence and hard timeframe, between February 1, 2007-December 31, 2014.
- All Documentation, including phone-call logs, emails or hot-line tip-offs, and the identity of the person(s) involved that lead to your department’s findings against [a third person taking of pornographic photographs of [name and identity omitted] timeframe, between February 2011 to December 31, 2014.
- All arrest logs associated with the above named incident.
- All warrants associated with the above named incident.

- All narrative reports associated with the above named incident.
- All documents pertaining to the chain of custody of the copies your department keeps on file and what, if any, criminal charges are brought against the perpetrator/perpetrators.

Your January 16, 2015 APRA request also made clear that you seek the requested records in pursuit of state and federal litigation. At the very least, you were an interested party to the state/federal litigation, if not an actual party in interest.

On January 21, 2015, the State Police responded to your "Second Emergency (APRA) Request," and among other things, extended the time to respond by an additional twenty (20) business days. Although the APRA provides a public body ten (10) business days to respond to an APRA request, see infra, by email dated January 22, 2015, you filed the instant complaint, which provides that you "wish to file a formal complaint as my requests for open records or even copies of my own reports have been denied."

In response to your complaint, we received a substantive response from the DPS legal counsel, Danica A. Iacoi, Esquire, who relates, in pertinent part:

"[t]he records sought dealt with an investigation that did not result in an arrest, and the privacy interests of all of the individuals involved were found to be substantial. Any disclosure of the records would make them open to the scrutiny of the general public. The Department has not been presented with a public interest that would be served by disclosure. The privacy interests of all involved individuals far outweigh any public interest in disclosure."

An affidavit was also provided by Ms. Leilani R. Audette, which in relevant part affirms that the person you were seeking arrest records concerning was not arrested. The DPS also provided documents responsive to your APRA request for this Department's in camera review.

You provided no rebuttal to the DPS's substantive response.

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

Initially, we observe that your complaint that the DPS violated the APRA by failing to respond to your January 16, 2015 APRA request is not ripe. As suggested earlier, the APRA provides that "[a] public body receiving a request shall permit the inspection or copying within ten (10)

business days after receiving a request.” R.I. Gen. Laws § 38-2-3(e). This time period may be extended an additional twenty (20) business days for “good cause.” R.I. Gen. Laws § 38-2-7(b).

Here, your second APRA request was dated January 16, 2015, and six (6) days later, on January 22, 2015, you filed the instant complaint alleging the DPS failed to properly respond to your request. Indeed, one day prior to your complaint, the DPS extended the time to respond to your January 16, 2015 APRA request. Because your January 22, 2015 APRA complaint was filed prior to the expiration of the DPS’s time to respond, the allegation relating to the January 16, 2015 APRA request is not ripe. Accordingly, we find no violation.

With respect to any allegation that the DPS’s response to your December 26, 2014 APRA request was improper, we also find no violation. 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 or the balancing test. 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 record falls 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 relating to specifically identifiable individuals are exempt from public disclosure. 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 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).” See also Snow v. Dept. of Public Safety, PR 10-12 (the Department of Public Safety did not violate the APRA by denying a request for an incident report that did not culminate in an arrest). We have cautioned, however, that considering the totality of the circumstances, there may very well be circumstances where the privacy interest, in whole or in part, does not outweigh the public interest and an incident report must be disclosed, either in whole or redacted. See e.g., Farinelli v. City of Pawtucket, PR 15-17.

Applying the foregoing standard and based upon the evidence presented, this Department concludes that the DPS did not violate the APRA when it exempted documents pursuant to your December 26, 2014 APRA request. In particular, we have reviewed in camera various incident

reports submitted by the DPS and have no doubt that these incident reports pertaining to allegations of child pornography concerning a specifically identifiable individual who has not been arrested “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(D)(c). See also Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 559 (R.I. 1989)(“the report at issue in the present case specifically relates to the job performance of a single readily identifiable individual. Even if all references to proper names were deleted, the principal’s identity would still be abundantly clear from the entire context of the report.”). Moreover, no “public interest” has been asserted or identified. See Department of Justice v. Reporters Committee for Freedom of the Press, 109 S.Ct. 1468, 1482 (1989)(“FOIA’s central purpose is to ensure that the Government’s activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the government be so disclosed”)(emphasis added).

Further, while it is apparent that you seek these documents as part of state and federal litigation you had an interest in, under the APRA you have no greater right to access the requested records than any member of the general public. In this respect, it is important to stress that although you are requesting records that may be relevant to litigation that you have an interest in, you requested these records pursuant to the APRA. Accordingly, if this Department determines that a particular document is a public record, then any person may access or inspect that record regardless of whether or not the requesting individual is an interested party. Once a record is made public to one person under the APRA, that record is public to all. For this reason, the fact that you requested records that you may have an interest in is of no consequence to our analysis. See Bernard v. Vose, 730 A.2d 30 (R.I. 1999); D’Amario v. Rhode Island Probation Office, PR 08-22; DeWitt v. Department of Corrections, PR 02-16. Of course, our APRA finding does not prohibit you from obtaining access to the requested document(s) through other non-APRA means. For these reasons, we find no violation.

Although the Attorney General has found no violation and will not file suit in this matter, 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,



Lisa A. Pinsonneault

Special Assistant Attorney General

Cc: Danica A. Iacoi, Esquire