



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

December 24, 2014
PR 14-39

Ms. Lynn Arditi

Re: Providence Journal v. City of Providence

Dear Ms. Arditi:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the City of Providence (“City”) is complete. The timeline relating to this complaint is described below.

On September 15, 2014, you requested from the City:

“[d]ata and images extracted from the cell phone of * * * during a search warrant executed on February 26, 2014 * * * at Brown University. In addition, we request electronic records (e-mails, phone calls, images) exchanged between * * * obtained during a search warrant executed on March 27, 2014 on * * * cell phone and room and the subsequent forensic analysis of the cell phone. The Journal requests an electronic copy, such as a CD, of the records which we believe contain important information related to a rape investigation by the Providence Police which will shed light on the judicial process.”¹

Subsequently, on September 26, 2014, the City timely denied your APRA request, citing, among other provisions, R.I. Gen. Laws § 38-2-2(4)(D)(c), which exempts from public disclosure documents maintained by law enforcement agencies for criminal law enforcement purposes where disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

¹ We decline to name the individuals identified in your request. We also observe that the search warrants referenced in your request were sealed by the District Court, and to our knowledge, as of the date of this finding, remain sealed by the District Court.

While the above-described events were occurring, attorneys for one or more of the individuals referenced above (whose electronic data you were seeking) filed a lawsuit in the Superior Court seeking to enjoin the Department of Attorney General and the City from publicly releasing, among other documents, electronic data stored on cellular telephones relating to the investigation that was the subject of your (and others) APRA request. On October 2, 2014, Presiding Justice Alice B. Gibney enjoined the Department of Attorney General and the City from disclosing, among other documents, the electronic cellular telephone data you sought. Notwithstanding Presiding Justice Gibney's October 2, 2014 order, on October 6, 2014, you filed the instant complaint.²

Even though you filed a complaint with this Department dated October 6, 2014, by email dated October 17, 2014, you appealed the City's denial to Public Safety Commissioner Steven M. Pare.³ By email dated November 3, 2014, Commissioner Pare denied your appeal and cited, among other reasons, that:

“the City of Providence is currently prohibited from releasing any records pertaining to this investigation by order of the Superior Court. Accordingly, such records are required to be kept confidential by rule of court.”

The City filed a response to your APRA complaint, and you did not file a rebuttal.

At the outset, we note 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 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 City violated the APRA. See R.I. Gen. Laws § 38-2-7. In other words, we do not write on a blank slate.

² In your complaint, you related that the Providence Journal “has not yet received any response” to its September 15, 2014 APRA request, but your complaint contained a copy of the City's September 26, 2014 denial. Through a series of correspondences with this Department, you clarified that your complaint was not that the City did not provide a response, but instead, you were appealing the denial of your request. See Arditi email, dated October 27, 2014.

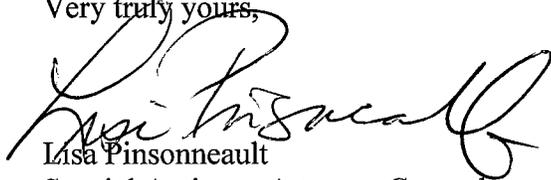
³ Your appeal letter indicates that your September 15, 2014 APRA request sought “all investigatory records relating to the investigation of the November 21, 2013 alleged sexual assault of a Providence College student” and that this request “included, but was not limited to, a request for all police reports, witness statements, data and images extracted from search warrants executed by the Providence Police Department on the dormitory rooms and cell phones of the current and former Brown students in connection with the investigation and correspondence between the state prosecutor(s) and lawyers about this case.” This summation does not accurately reflect the September 15, 2014 APRA request and your actual September 15, 2014 APRA request is reproduced in the text.

In this case, while we acknowledge that at the time of your September 15, 2014 APRA request and the City's September 26, 2014 APRA denial, Presiding Justice Gibney had yet to prohibit the City from disclosing the electronic cellular telephone records at issue in this matter, we conclude that our review must consider the October 2, 2014 order. Indeed, you appealed the City's September 26, 2014 denial to Commissioner Pare, who upheld the City's determination, for among other reasons, because "the City of Providence is currently prohibited from releasing any records pertaining to this investigation by order of the Superior Court."⁴ Considering the Superior Court's October 2, 2014 order, Commissioner Pare's reliance on this order in denying your appeal, and that the Superior Court's order remained in effect at the time your appeal was considered and denied, this Department cannot find that the City violated the APRA when it denied your request. See R.I. Gen. Laws § 38-2-2(4)(S). In brief, disclosure was prohibited by court order.

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). 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,



Lisa Pinsonneault
Special Assistant Attorney General
Extension 2296

LP/pl

Cc: Jeffrey Padwa, Esquire