



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

March 13, 2015  
PR 15-11

Richard Lee Paiva

**Re: Paiva v. Rhode Island Department of Corrections**

Dear Mr. Paiva:

Your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Department of Corrections (“DOC”) is complete. By correspondence dated November 27, 2013, you alleged that the DOC violated the APRA when it denied your APRA request for “copies of Doctor’s Edward A. Blanchette and Fred H. Vohr applications for employment with the RI DOC, \*\*\* and [their] medical insurance carriers name and contact information.”<sup>1</sup>

In response to your complaint, legal counsel for DOC, Michael B. Grant, Esquire, submitted an affidavit. Mr. Grant states, in pertinent part:

“5. RIDOC did in fact deny complainant’s request to receive [Dr. Vohr’s and Dr. Blanchette’s] applications of employment and the names and contact information of the doctors’ insurance carriers, as this information was deemed not a public record.

6. RIDOC denied complainant’s request in writing and determined that said information was not a public record since dissemination of the same would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. §552, et. seq.

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<sup>1</sup> Although not clear, it appears your APRA request was sent to DOC on October 9, 2013.

7. Furthermore, RIDOC determined that based upon the balancing test outlined in *Direct Action for Rights and Equality v. Gannon*, complainant was not entitled to this information. The employment applications contain a litany of personal information about the individuals in question that should not be subject to disclosure. Additionally it was the opinion of RIDOC that the doctors' privacy interests in their applications for employment and their insurance carriers outweighed the complainant's right to be provided the information. Therefore, disclosure of such information was denied."

In addition, DOC provided this Department with the documents at issue for an in camera review and a supplemental affidavit. In pertinent part Mr. Grant states:

"4. Upon a due and diligent inquiry within RIDOC, I have learned that Dr. Blanchette provides medical services to inmates housed at RIDOC in the capacity of a contract employee, and is not a state employee.

6. Contract employees in seeking employment with RIDOC do not file an application for employment, as is a requirement if applying for a position as a state employee.

7. Accordingly, RIDOC never received, nor required, Dr. Blanchette to file an application for employment."

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 DOC 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 stated purpose is both "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." R.I. Gen. Laws § 38-2-1. Similarly, the United States Supreme Court has made clear that the federal Freedom of Information Act ("FOIA"):

focuses on the citizens' right to be informed about 'what their government is up to.' Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose,

however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about the agency's own conduct. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773, 109 S.Ct. 1468, 1481-82 (1989) (emphasis supplied).<sup>2</sup>

The Court further explained that:

the 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. Thus, it should come as no surprise that in none of our cases construing the FOIA have we found it appropriate to order a Government agency to honor a FOIA request for information about a particular private citizen. Id. at 774-75, 109 S.Ct. at 1482 (emphases in original).

The instant case implicates R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), which exempts from public disclosure, in pertinent part:

Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq...[.] (Emphasis added).<sup>3</sup>

The plain language of this provision contemplates a “balancing test” whereby the “public interest” in disclosure is weighed against any “privacy interest.” Consequently, 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).

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. In Jackson, 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).

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<sup>2</sup> The Rhode Island Supreme Court has stated that “[b]ecause [the] APRA generally mirrors the Freedom of Information Act, 5 U.S.C.A. § 552 (West 1977), Teacher's Alliance Local No. 920 v. Brady, 556 A.2d 556, 558 n.3 (R.I. 1989).

<sup>3</sup> This amendment became effective September 1, 2012.

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 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 Reporters Committee, 109 S.Ct. at 1482.

Under the APRA, “[e]xcept as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.” See R.I. Gen. Laws § 38-2-3(a). The APRA further provides, in pertinent part, that “[a]ny reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion.” See R.I. Gen. Laws § 38-2-3(b). With respect to DOC’s denial of Dr. Vohr’s employment application, we find that DOC violated the APRA when it denied your request en toto. Here, DOC denied your request claiming that “pursuant to R.I. Gen. Laws § 38-2-2(4)(a)(I)(b), applications for employment...are not public record, since dissemination of the same would constitute a clearly unwarranted invasion of personal privacy.” DOC also argues that “based upon the balancing test outlined in Direct Action for Rights and Equality v. Gannon you are not entitled to this information.” DOC never identifies or explains how the disclosure of any particular information will constitute a clearly unwarranted invasion of personal privacy and in this respect Jackson controls.

Respectfully, if DOC’s argument against disclosure – that the employment application is not a public record because it “contains a litany of personal information” – were correct, the 2012 APRA amendment to the exemption at issue would be superfluous. Under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), individually-identifiable records are exempt from disclosure if disclosure “would constitute a clearly unwarranted invasion of personal privacy,” and while we do not question that the requested document contain some information that is exempt from disclosure, based on the evidence presented, we find that the exempt information could be redacted pursuant to R.I. Gen. Laws § 38-2-3(b) (“Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion.”) Furthermore, as explained in Jackson, “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.” While the instant facts differ slightly from Jackson, in that

your request sought Dr. Vohr's employment application and not his resume, our rationale for disclosure remains the same.<sup>4</sup> Here, like in Jackson, we conclude that the public interest outweighs the privacy interest asserted by DOC, and that disclosure of the employment application, after redacting the information contained in the employment application that would constitute a "clearly unwarranted invasion of personal privacy," such as a home telephone number, home address, e-mail address, social security number and marital information (including information pertaining to his spouse), will advance that interest. Therefore, we find that DOC violated the APRA when it denied your request for Dr. Vohr's employment application en toto. Because the evidence establishes that the DOC does not maintain Dr. Blanchette's employment application, we find that DOC did not violate the APRA when it did not provide a document that it does not maintain. See R.I. Gen. Laws § 38-2-3(h).

In regards to your request for the name and contact information of Dr. Vohr's and Dr. Blanchette's medical insurance carriers, after conducting the balancing test, we find that the scale tips in favor of non-disclosure. Here, we conclude that the insurance information you seek would "reveal[] little or nothing about [DOC's] own conduct." See Reporters Comm., 489 U.S. at 749, 109 S.Ct. at 1481-82. Respectfully, you have neither asserted nor demonstrated a "public interest" in disclosure, as recognized by the FOIA or the APRA, nor is a "public interest" identifiable to us. Id.; see also Fazzio v. City of Providence, PR 10-20 (name and policy number of insurer exempt from disclosure); see also Forest Guardians v. U.S. FEMA, 410 F.3d 1214, 1220-21 (10th Cir. 2005) (holding that information concerning participants in a federally subsidized flood insurance program requested pursuant to FOIA was rightfully withheld because individuals have a privacy interest in deciding to purchase insurance and the public interest in disclosure was "nonexistent"). Even the most minimal privacy interest outweighs this non-existent "public interest." Therefore, pursuant to the balancing test, we find that the DOC did not violate the APRA when it denied you access to the name and contact information of the doctors' insurance carriers.

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting "injunctive or declaratory relief." See R.I. Gen. Laws § 38-2-8(b). A court "shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter\*\*\*." See R.I. Gen. Laws § 38-2-9(d).

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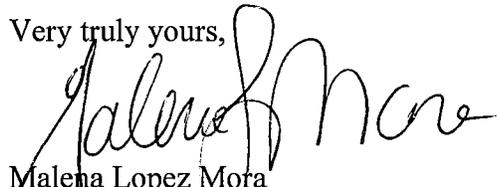
<sup>4</sup> Certain sections of Dr. Vohr's employment application instructs "SEE RESUME," in lieu of providing the requested employment information on the application. Since Dr. Vohr's employment application references his resume, we find that the resume is incorporated in, and made part of, Dr. Vohr's employment application.

While we find that a civil fine is not appropriate, we conclude that the DOC must respond to your APRA request in a manner consistent with the APRA and this finding by providing you with Dr. Vohr's employment application including the incorporated resume. In doing so, DOC may redact information contained within the documents that would constitute a "clearly unwarranted invasion of personal privacy," such as the information described in this finding.

Although the Attorney General will not file suit in this matter, at this time, 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). If you do not receive a response from DOC consistent with this finding within ten (10) business days, kindly advise this Department so that we may further review this situation. Please be advised that we are closing this file as of the date of this letter, but reserve the right to reopen our file if necessary.

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

Very truly yours,



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Cc: Kathleen M. Kelly, Esquire