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April 10, 2019

Andrea M. Shea, Esq.
Special Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903

Re: Ahlquist v. Central Falls Detention Facility Corporation

Dear Attorney Shea:

We are in receipt of Steve Ahlquist's ("Complainant") Access to Public Records Act ("APRA") complaint ("Complaint") against the Central Falls Detention Facility Corporation ("CFDFC"). Please consider this correspondence the response of the CFDFC to the Complaint.

I. Factual Background

On March 25, 2019, the CFDFC received an email from Complainant. CFDFC treated this email as a request for records pursuant to APRA. The request sought "any information Wyatt Detention may have regarding the recent agreements with the US Marshall Service to house ICE detainees. Copies of contracts, copies of prisoner records, copies of public documents pertaining to Wyatt meeting with Federal officials about this new deal, etc." On March 29, 2019, CFDFC, through counsel, responded to the Complainant's request and provided him with the contracts and agreements. CFDFC denied Complainant's request for "prisoner records" as those documents are not public records and/or not subject to disclosure pursuant to APRA. On April 1, 2019, Complainant appealed this determination to the Office of the Rhode Island Attorney General (the "Office").

In his appeal, Complainant was clear that his request was "for a list of people being held" and that "the specifics as to a prisoners name, age, gender, country of origin, and specifics of why the prisoner is being detained are of significant interest to a public that wants to be informed about the actions of its government." Complainant did not identify a specific public interest he has sought to advance or how the requested information would advance that public interest, but rather, generally asserted an unidentified public interest.

II. Prisoner Records Are Not Subject to Disclosure

The records sought by Complainant are not subject to disclosure pursuant to APRA. Specifically, Section 38-2-2(4)(D) of the General Laws exempts "All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided . . . [the records c]ould reasonably be expected to constitute an unwarranted invasion of personal privacy." Similarly, FOIA, the federal counterpart to APRA, contains the following exemption: "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b). The Rhode Island Supreme Court has stated that "[b]ecause APRA generally mirrors the Freedom of Information Act, 5 U.S.C.A. § 552 (West 1977), we find federal case law helpful in interpreting our open record law." *Pawtucket Teachers' All. Local No. 920 v. Brady*, 556 A.2d 556, 558 n.3 (R.I. 1989). Accordingly, it is appropriate to look to federal decisions on this very issue.

In *Tuffly v. United States Department of Homeland Security*, 870 F.3d 1086 (9th Cir. 2017), the Ninth Circuit Court of Appeals was presented with a near analogous situation. The requesting party sought records to identify ICE detainees at five different Arizona detention facilities, including names, dates of the detainees' detention, and criminal history. The Ninth Circuit determined that the privacy interests of the detainees outweighed any public interest in the release of the information.[1]

Importantly, if the names of the detainees at CFDFC were subject to disclosure, not only would Complainant receive the personally identifiable information, but so too would any other individual or group, as disclosure pursuant to APRA is disclosure to the general public. As *Tuffly* recognized, "[t]here is no question, as the government points out, that undocumented immigrants face a serious risk of 'harassment, embarrassment, and even physical violence and reprisal by citizens and law enforcement.' . . . To disclose the identities of the [] detainees would be to publicize their immigration status and the fact of their prior detention—a disclosure that could well have a serious impact on the privacy and other rights of the affected individuals." *Id.* at 1096.[2]

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[1] In *Tuffly*, the agency did produce records, which were redacted. The redactions included names, file numbers, and case identification numbers. As Complainant has asserted that the purpose of his request was to identify the detainees by name in order "to research who is being detained, or to reach out with community aid and assistance" and has not identified how redacted records will "open agency action to the light of public scrutiny," *see Schiffer v. F.B.I.*, 78 F.3d 1405, 1410 (9th Cir. 1996), the CFDFC has not yet undertaken a review and redaction of the requested prisoner records. Should the Office direct the CFDFC to do so, the CFDFC requests that it be permitted to provide Complainant with a cost estimate pursuant to § 38-2-4 before being required to undertake such a review.

[2] It makes little difference that the detainees in *Tuffly* had been released. The same privacy concerns apply both instances.

Accordingly, the court determined that a release of detainees names and personal information would subject them to a "significant invasion[] of personal privacy" and exempted the records from disclosure pursuant to FOIA. *Id.* at 1098. The detainees at CFDFC would be subject to the very same invasion of privacy is disclosure were required.

The records requested by Complainant contain personal information, that if disclosed could and would subject the detainees to a significant invasion of personal privacy. Moreover, Complainant has not identified any valid public interest concern that he seeks to advance. *See id.* at 1094 (the relevant inquiry of the public interest is whether the information would shed light on the agency's performance of its duties or let public know what the government is up to). Thus, to the extent a balancing test is employed, the privacy interests clearly outweigh any interest the public may have in disclosure.

III. Conclusion

For the above stated reasons, the requested records are exempt from disclosure pursuant to APRA. Should the Office determine that redacted records are to be produced, the CFDFC requests that the Office permit CFDFC to issue a cost letter pursuant to § 38-2-4 and that the time period for production of such redacted records be tolled until payment is made of the estimated costs.

Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,

PANNONE LOPES DEVEREAUX & O'GARA LLC

Patrick J. McBurney

PJM

CERTIFICATION

I certify that on April 10, 2019, I emailed a true and accurate copy of this correspondence to Steve Ahlquist (atomicsteve@gmail.com)