



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

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VIA EMAIL ONLY

October 7, 2019

PR 19-11

Steve Ahlquist
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Patrick J. McBurney, Esq.
Counsel for Central Falls Detention Facility Corporation
pmcburney@pldolaw.com

RE: Ahlquist v. Central Falls Detention Facility Corporation

Dear Mr. Ahlquist and Attorney McBurney:

We have completed our investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Steve Ahlquist (“Complainant” or “Mr. Ahlquist”), against the Central Falls Detention Facility Corporation (“Corporation”). For the reasons set forth herein, we find that the Corporation violated the APRA.

Background

The Corporation operates the Donald W. Wyatt Detention Facility (“Wyatt”) located in Central Falls, Rhode Island.

On or about March 25, 2019, the Complainant submitted an APRA request to the Corporation via email for:

“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 all public documents pertaining to Wyatt meeting with Federal officials about this new deal, etc.”

The Corporation responded on or about March 29, 2019, providing copies of two contracts/agreements pertaining to the Complainant’s request, but denying the request for detainee

records¹ pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) and § 38-2-2(4)(D)(c) on the grounds that “the request seeks information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

The Complainant subsequently filed a complaint with this Office alleging that the Corporation violated the APRA when it denied his request for detainee records. Complainant asserted that “[w]hile it is true that prisoners have privacy rights, the specifics as to a prisoners [sic] name, age, 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.” He also argued that such information is necessary in order to research who is being detained and reach out with community aid.

The Corporation submitted a response arguing that the requested detainee records are exempt from disclosure pursuant to the APRA, that the request implicates the privacy interests of detainees, and that Complainant failed to identify a valid public interest that would support disclosure. Although this Office specifically requested “a substantive response in affidavit form” and “**all documents, if any, which were withheld from disclosure for an *in camera* review**” (emphasis in original), the Corporation did not provide the requested affidavit or documents.

The Complainant did not submit a rebuttal.

Relevant Law and Findings

When we examine an APRA complaint, our authority is to determine whether a violation of the APRA has occurred. *See* R.I. Gen. Laws § 38-2-8. In doing so, we must begin with the plain language of the APRA and relevant caselaw interpreting this statute.

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. *See* R.I. Gen. Laws § 38-2-3(a). The APRA also provides 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.” R.I. Gen. Laws § 38-2-3(b). Additionally, “[i]f an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.” *Id.*

The Corporation denied the Complainant’s request for detainee records, in its entirety, citing R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), which exempts from disclosure “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” and § 38-2-2(4)(D)(c), which exempts from disclosure records relating to the detection and investigation of crime where disclosure “could reasonably be expected to constitute an unwarranted invasion of

¹ The request sought “prisoner records” related to ICE detainees. We will refer to these as “detainee records.”

personal privacy.” The Corporation failed to state that no portion of the requested documents or records contain reasonably segregable information that is releasable.

Considering the Corporation’s determination that the detainee records were exempt from public disclosure in their entirety, the APRA required the Corporation to “state in writing that no portion of the document or record contains reasonable segregable information that is releasable.” R.I. Gen. Laws § 38-2-3(b). Because the Corporation’s March 29, 2019 denial did not contain the advisement required by R.I. Gen. Laws § 38-2-3(b), we find that the Corporation violated the APRA.

The Corporation contends that the requested documents are not public in full, but on the record presented, we are unable to confirm this conclusion and do not believe that issue is ripe for our review. The request itself broadly sought “copies of prisoner records.” It is unclear to us what documents and information are encompassed by such a broad request and we have not been presented with evidence that the Corporation sought any clarification.² Additionally, it is unclear to us what the Corporation understood this request to seek. The Corporation did not identify the nature of any responsive documents it maintains or provide them to this Office for in camera review. Without the benefit of understanding the nature of the original request or the type of documents that may be responsive to it, we cannot determine whether or not those documents are public in whole or in part.

We believe the first step in resolving this matter is understanding the nature of the APRA request and then requiring the Corporation to respond to that specific, clarified request in a manner consistent with the APRA. In seeking to understand the nature of the Complainant’s APRA request, we are guided by Complainant’s statement (made in his Complaint to this Office) acknowledging that “it is true that prisoners have privacy rights,” but arguing that “the specifics as to a prisoners [sic] name, age, 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.” We take this statement to indicate that the Complainant’s APRA request sought records for ICE detainees disclosing their name, age, country of origin, and the specific reason(s) for the detention. The Complaint submitted in this matter did not identify any other information encompassed in the request for “prisoner records.”

Accordingly, in accordance with the APRA, the Corporation is directed to respond to the Complainant within ten (10) business days regarding “the specifics as to [detainees’] name, age,

² We pause to emphasize the importance of maintaining open communications when submitting and responding to an APRA request. Individuals submitting APRA requests are encouraged to describe the documents they seek with as much specificity as possible to avoid confusion, and public bodies are encouraged to seek clarification if they do not understand what records are being sought. Oftentimes, engaging in communications between the requestor and the public body can avoid APRA complaints (or at least narrow the issues) and facilitate the disclosure of public documents.

country of origin, and specifics of why the [detainee] is being detained.”³ The Corporation may extend this time for good cause pursuant to R.I. Gen. Laws § 38-2-3(e). To the extent the Corporation is responding to Complainant’s request as clarified above, the Corporation should not assess any costs. *See* R.I. Gen. Laws § 38-2-7(b). The Corporation should be mindful in its response to clearly articulate the nature of any responsive documents it maintains, and if the Corporation determines that any of the requested categories are exempt in whole or in part, the Corporation must state the basis for asserting the exemption. If the requested records are denied in whole, the Corporation must address whether any reasonably segregable portion of the document(s) may be released. Additionally, if the Complainant seeks additional particular documents or information, he is free to submit a new request to the Corporation for that additional information, specifying any other types of documents or information he seeks.

Within thirty (30) business days from the date of this finding, the parties should provide this Office with an update regarding whether the Corporation has responded to Complainant as directed in this finding and whether the Complainant alleges any unresolved or new APRA violations related to the matter discussed in this finding. In the event that the Complainant alleges any unresolved or new APRA violations, these allegations should be described with supporting evidence.

Conclusion

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).

Although injunctive relief may be appropriate, for the reasons discussed, we believe it appropriate to first allow the Corporation an opportunity to comply with this finding. At this time, we do not find that the Corporation committed a willful and knowing, or reckless, violation, but we may revisit that issue based on future developments.

Please be advised that this case file will remain open pending the parties’ supplemental submission. Although this Office has determined that it will not file suit in this matter at this time, nothing within the APRA prohibits the Complainant from filing an action in Superior Court seeking injunctive or declaratory relief. *See* R.I. Gen. Laws § 38-2-8(b).

³ This Office makes no determination whether these documents or categories are public in whole or in part. We arrive at this conclusion because the requested records have not been provided for our *in camera* review and because the Corporation has never reviewed the request for “the specifics as to a prisoners [sic] name, age, country of origin, and specifics of why the prisoner is being detained.”

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

Sincerely,

Peter F. Neronha
Attorney General

By: /s/ Kayla E. O'Rourke
Kayla E. O'Rourke
Special Assistant Attorney General

KO/dg