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**VIA EMAIL ONLY**

April 15, 2021  
PR 21-12

James D. Cullen, Esquire  
Roberts, Carroll, Feldstein & Peirce, Inc.

Andrew Berg, Esquire  
Assistant Town Solicitor  
Town of Narragansett

**RE: Lyssikatos v. Narragansett Police Department**

Dear Attorney Cullen and Attorney Berg:

The investigation into the Access to Public Records Act (“APRA”) complaint filed by Attorney Cullen on behalf of his client Dmitri Lyssikatos (“Complainant”) against the Narragansett Police Department (“Department”) is complete. For the reasons set forth herein, we find that the Department violated the APRA by withholding certain internal affairs reports in their entirety. As described more fully below, the Department initially withheld 24 IA reports in their entirety. In response to this Office’s finding in *Lyssikatos v. Narragansett Police Department*, PR 20-58, the Department voluntarily disclosed seven of those reports, which were redacted consistent with Complainant’s representation that he accepted that identifying information could be redacted. This Office then analyzed the remaining withheld reports by applying the balancing test articulated in *Farinelli v. City of Pawtucket*, PR 20-48. We now find that of the remaining 17 reports, 14 are required to be disclosed with redactions, one report was permissibly withheld, and two reports do not need to be produced as the parties agree that they are nonresponsive to the request.

**Background**

This Complaint stemmed from Complainant’s APRA request to the Department seeking “all final reports of investigations into police misconduct, whether initiated internally or by members of the public completed between 1/1/15 and 12/31/18.” The Department denied the APRA request in its entirety, asserting that all responsive records were exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). This Complaint followed.

After initiating an investigation, this Office issued *Lyssikatos v. Narragansett Police Department*, PR 20-58, wherein this Office described the balancing test required to be applied to determine whether internal affairs reports (“IA reports”) are public in whole or in part, i.e., redacted. The test, which is more fully described in *Farinelli v. City of Pawtucket*, PR 20-48, requires the public interest in the IA report (which is defined as shedding light on government conduct) to be weighed against the privacy interests implicated by disclosure of the report, taking into account how redactions may ameliorate any privacy concerns. See R.I. Gen. Laws § 38-2-3(b) (requiring disclosure of any reasonably segregable non-exempt portion of record). In *Farinelli*, we noted the following *non-exhaustive* list of factors that may be relevant to considering the privacy and public interests implicated by a particular report and determining whether the report should be disclosed in whole or in part:

- Whether the report(s) requested are likely to shed light on overall government functions rather than only reveal information about a particular isolated incident;
- Whether the allegations of misconduct were determined to be founded;
- The nature and severity of the alleged misconduct that is the subject of the report, including the rank and position of the official(s) investigated;
- Whether there is any evidence of governmental impropriety in investigating the allegations;
- Any particular public interest in disclosure that is apparent or identified by the requester;
- The extent to which the report reveals personal or private information about officers and/or private citizens or would unfairly harm the reputation of the officers or private citizens, see *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1205 (D.C. Cir. 1991); and
- Whether redaction of names or other identifying information can effectively ameliorate any privacy concerns.

This Office’s finding in PR 20-58 also noted how caselaw, including a recent decision from the Rhode Island Superior Court, rejected Complainant’s assertion that the Department was required to produce IA reports in redacted form without conducting a case-by-case review of the records and applying the balancing test. See *Lyssikatos v. City of Pawtucket*, PC 2017-3678 (Long, J.) (March 18, 2019) (ruling that records needed to be individually reviewed in order to determine whether it was permissible for the records to be withheld); see also *Dep’t of Air Force v. Rose*, 425 U.S. 352, 381 (1976) (analyzing a request for cadet discipline proceeding summaries and holding that the District Court should conduct an *in camera* review and, if in its opinion deletion of personal references and other identifying information “is not sufficient to safeguard privacy, then the summaries should not be disclosed”). Although in many cases, redaction may remedy or at least mitigate privacy concerns, as the United States Supreme Court noted in *Rose*, circumstances may exist where redaction “is not sufficient to safeguard privacy” and withholding the record may be permissible in those limited circumstances. 425 U.S. at 381.

Consistent with the foregoing caselaw, this Office’s finding in PR 20-58 concluded that although the IA reports were not automatically required to be disclosed in redacted form, we questioned the Department’s determination that none of the 24 reports from the relevant timeframe could be produced in redacted form. This Office permitted the Department an opportunity to carefully re-review the withheld reports in light of the guidance provided in our finding and in *Farinelli*, PR 20-48, which had not yet been issued when the Department initially responded to the request.

Supplemental Submissions

In response to this Office's finding in PR 20-58, the Department produced to the Complainant seven of the previously withheld reports in redacted form (15-2, 15-4, 16-1, 17-6, 18-2, 18-3, and 18-7).<sup>1</sup> As more fully discussed in PR 20-58, the Complainant previously indicated that he did not take issue with names and personally identifying information being redacted in the reports. *See Direct Action for Rights and Equality ("DARE") v. Gannon*, 713 A.2d 218 (R.I. 1998) (determining that the requested records over a seven (7) year period were public records, albeit in a redacted manner to obscure the identity of the citizen complainant and officer); *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982); *Direct Action for Rights & Equality v. Gannon*, 819 A.2d 651, 663 (R.I. 2003). The Complainant's supplemental submission did not take issue with the Department's production of these seven redacted reports.<sup>2</sup>

The Department asserted particular arguments regarding why each of the remaining 17 withheld reports are either not public under the balancing test or not responsive to Complainant's APRA request. The Complainant's submission contested many of the Department's arguments.

This Office expended significant time reviewing the parties' particular arguments regarding each report and conducting an *in camera* review of each of the IA reports at issue. Due to the nature of the balancing test, an individualized analysis of each report was required. This Office's findings regarding the withheld reports are set forth below. In filing this Complaint, the Complainant indicated that personally identifiable information may be redacted from the IA reports he is seeking. As such, consistent with Complainant's indication that he does not take issue with the redaction of personally identifiable information in these reports, our analysis focuses on whether the reports should have been disclosed in redacted form.

In conducting our review of the withheld reports, we have taken into account the non-exhaustive list of factors referenced in *Farinelli*, PR 20-48, as well as any other relevant considerations related to specific reports. Due to the volume of reports reviewed, our analysis is focused on explaining the chief reasons for this Office's determinations and may not specifically reference each particular factor or consideration that was part of our analysis. Additionally, the *in camera* nature of our review will sometimes limit our ability to more fully discuss the contents of an IA report and for that reason we will sometimes refer to participants using generalized language, such as "officer" or "junior officer" or "supervisor," rather than providing specific ranks or other identifying information.

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<sup>1</sup> This finding will refer to the IA reports based on the report numbers assigned by the Department.

<sup>2</sup> As the Complainant did not take issue with the redacted versions of the seven reports that have now been disclosed, our analysis will focus on the remaining withheld reports and we need not determine whether the initial withholding of those seven reports violated the APRA. This Office has previously determined it unnecessary for us to consider whether a public body violated the APRA when a complainant receives the subject documents after filing an APRA complaint and when there is no evidence of a willful and knowing or reckless violation. *See Lamendola v. East Greenwich School Committee*, PR 20-11; *Farinelli v. City of Pawtucket*, PR 17-22.

We do note at the outset that the particular request at issue in this case sought four years' worth of IA reports. As such, the first *Farinelli* factor, whether the report(s) requested are likely to shed light on overall government functions rather than only reveal information about a particular isolated incident, weighs in favor of disclosure because the requested reports shed light not just on government conduct with regard to particular isolated incidents, but also with regard to how the Department generally handled IA reports and investigations over a multi-year timespan. We observe that in *DARE*, the Rhode Island Supreme Court held that disclosure of several years' worth of records evincing a police department's investigation of complaints about officers implicated the public interest and the APRA's provision that "records relating to management and direction of a law enforcement agency . . . shall be public," although the Court permitted appropriate redactions to be applied. 713 A.2d at 224 (quoting R.I. Gen. Laws § 38-2-2(4)(D)). The large volume of reports requested in this case also makes it more likely under the last *Farinelli* factor that redactions can be used to mitigate privacy concerns, unlike a situation where a request seeks a report related to a specific incident or person.

As detailed further below, we find that most of the withheld reports should have been produced with redactions. More specifically, with respect to the remaining 17 reports, the parties are in agreement that two are not responsive to the original request, we determine that 14 are required to be disclosed with redactions, and we find that only one may be withheld in its entirety.

Central to our conclusion is R.I. Gen. Laws § 38-2-3(b), which requires disclosure of any reasonably segregable non-exempt portion of a record. In some of these cases, we think that the balance tips in favor of disclosure *but only if content implicating the privacy interests within the report is redacted*. Although redaction of names and other identifying information or details may mitigate privacy concerns, it does not eliminate the possibility of someone being able to identify the officer and civilian subjects of a report.<sup>3</sup> Some of these reports contain highly personal information about civilians that would implicate significant privacy concerns if anyone was able to determine the identities of the redacted names (whether due to news articles or any other means by which someone might be able to discern the identity of the redacted parties). The Department's initial decision to withhold some of these reports is understandable given the significant privacy interests, particularly of civilians, implicated by some of these reports. However, we find that careful redaction can permit at least some reasonably segregable portions of each of these 14 reports to be produced consistent with R.I. Gen. Laws § 38-2-3(b).

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<sup>3</sup> In *The Rake v. Gorodetsky*, the police department argued that redaction was insufficient to protect privacy interests because of the possibility that someone could piece together years' worth of news articles with the redacted reports to identify the people whose names were redacted. 452 A.2d at 1149. The Court responded that "[w]hile recognizing that the scenario defendant presents us with could occur, we feel that on balance the public's right to know outweighs such a possibility." *Id.* As such, the Court recognized that there is some risk that redaction of identifying information will be insufficient to protect the privacy interests of those named in reports, but in the circumstances of that case, where the argument that redaction was insufficient was raised at oral argument and in a highly generalized fashion, determined that the public interest outweighed that risk.

As indicated more particularly below in our discussion of each report, in some cases it is appropriate for the Department to redact not just names and identifying information (such as badge numbers, addresses, dates of birth), but also personal content about individuals, including civilians, that does not meaningfully advance the public interest of shedding light on governmental functions. In reviewing these reports, we applied the balancing test and the *Farinelli* factors not only to determine whether the report should be withheld or disclosed, but also to determine the level of redaction that is appropriate for that particular report.

**Given the sensitive nature of the information contained in some of these reports, we recommend that the Department carefully review and redact personal information where appropriate. If the Department wishes, it may contact this Office with specific questions regarding the redaction of the documents at issue. Especially where the reports contain highly personal information, the Department is encouraged to contact this Office if it has any questions regarding appropriate redactions.**

*Supplemental Findings*

- 15-1

The Department contended that the report was nonresponsive because it concerned “an officer’s job performance, and remedial recommendations” rather than an investigation into “police misconduct.” The Department also asserted that the officer in question was no longer with the Department and, particularly because of that, disclosure would risk an unwarranted invasion of privacy. The Complainant responded that the “investigation and discipline, if appropriate, of a police officer for any misconduct is, therefore, always a matter of significant public interest” and that issues related to job performance are encompassed in police misconduct. (Emphasis in original).<sup>4</sup>

Based on our review, this report consists of a comprehensive review and assessment of issues with a particular junior officer’s job performance, which included assessments provided by other officers. Although the report describes various specific on-the-job incidents, these incidents are discussed in the overall context of illustrating issues with this officer’s job performance. Much of the discussion focuses on the officer having difficulty following internal policies and procedures and receiving counseling on how to improve, more so than about any particular incidents that impacted any members of the public. Although the document was formally designated as an IA report, it is better described as a personnel evaluation.

Particularly as this document discusses numerous incidents and interactions involving this single officer, there is a reasonable likelihood that anyone familiar with the incidents or the Department

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<sup>4</sup> As Complainant notes, we recognize that Complainant’s ability to respond to the Department’s arguments is, by necessity, limited by the fact that the Complainant has not seen the records being withheld. Through our *in camera* review of the documents, this Office is able to evaluate the Department’s arguments and assertions.

would be able to identify the officer in question even if names were redacted. Disclosure of this document would shed some light on the conduct of government, including how the Department handled job performance issues. However, on balance, the document reveals more about a particular individual, whom the Department represents is no longer employed by the Department, than about the actions of government. *See Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1026-27 (9th Cir. 2008) (recognizing government employees' privacy interest in avoiding harassment and "embarrassment and stigma" that could be associated with being named in a report). In these particular circumstances, and particularly considering the officer is no longer employed with the Department which is one consideration among others that is not determinative but at least to some extent lowers the public interest in a report about the officer, we do not find that the Department violated the APRA by withholding this document.

- **15-3**

The Department states that this report pertains to an allegation of harassment by one officer against another and that the accused officer was exonerated. The Department argues this report pertained to a personnel issue, not police misconduct, and that disclosure would risk an unwarranted invasion of privacy. The Complainant responds that "[h]arassment is a serious issue and when it is perpetrated by a public servant, worthy of disclosure to the public and public scrutiny."

Although this report, like the previous one, arguably falls more on the "personnel matter" end of the spectrum, we reject the Department's assertion that a report regarding alleged harassment by one police officer against another does not come within the ambit of "police misconduct." On balance we find that disclosure is warranted. That is because (1) even if this report is characterized as a personnel matter, redaction of personal information can adequately mitigate against any unwarranted invasion of privacy, R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), and (2) this report pertains to the management and direction of a law enforcement agency under R.I. Gen. Laws § 38-2-2(4)(D).

Based on our review, the report pertains to a departmental investigation of a complaint brought by a junior officer against a senior officer relating to an email that was critical of the junior officer's performance which the junior officer believed to be harassing. The allegation pertained to workplace duties and the manner of supervision. Although the supervisor was not found to have engaged in any misconduct, and the *in camera* review revealed the allegation to be of relatively less serious nature, nonetheless the public has an interest in how a police department conducts an investigation into alleged harassment by a supervisor. The report does not contain any particularly personal information and does not contain details that are likely to reveal the identities of the parties after names and other identifying information is redacted. Accordingly, we find that the Department should have produced this document after redacting identifying information.

- **15-5**

The Department notes that this IA report pertains to an internally generated complaint related to policy violations by two dispatchers who are employed by the Department but are not "officers."

The Complainant argues that misconduct by dispatchers is encompassed within “police misconduct.”

While understandable, the Department’s interpretation of a request pertaining to “police misconduct” as presumptively excluding civilian employees is nonetheless erroneous in this case. We agree with Complainant’s assertion that alleged misconduct by police dispatchers falls within the ambit of police misconduct and Complainant’s APRA request.

There is a public interest in how a police department investigates an internal complaint regarding an alleged policy violation by its employees and the actions taken based on the results of that investigation. Without providing details gleaned from our *in camera* review, we note that the allegations in question relate to the compensation of government employees, which increases the public interest. Although the alleged misconduct was not especially serious, there is a public interest in this report especially as misconduct was found to have occurred. Additionally, the report does not appear to contain any highly personal details. Indeed, it concerns a situation that was apparently public to some degree. The Department has not provided specific information regarding why redaction is not sufficient to protect any implicated privacy interests. Accordingly, we find that the Department should have produced this document after redacting identifying information.

- **15-6**

The Department asserts that this IA report pertains to an internally generated investigation regarding allegations of inappropriate conduct by an officer. The Department contends the report focuses on interactions between the officer and a member of the community who is well known to the Department and to the Town of Narragansett. The Department asserts that disclosure of the report even in heavily redacted form creates a high risk that the civilian would be identified by members of the community and risks the privacy interests of both the officer and the civilian. The Complainant takes issue with these assertions and contends that the Department’s reasoning is subjective.

Based on our review, 15-6 is a lengthy IA report that details an extensive investigation into various allegations of misconduct related to a particular officer and failure to follow departmental policy. The nature of the allegations are serious and include a potential abuse of law enforcement authority and an inappropriate relationship between an experienced officer and a member of the community. At least some of the allegations of misconduct were sustained, which increases the public interest and, at least to some extent, diminishes the officer’s privacy interests. *See Forest Serv.*, 524 F.3d at 1025 (“[A] government employee’s privacy interests may be diminished in cases where information sought under FOIA would likely disclose ‘official misconduct.’”). There is a high public interest in both the officer’s alleged conduct and how the Department investigated and responded to it.

The report does contain personal information regarding an officer, as well as multiple civilians. However, especially given the serious nature of the allegations, we believe that the public interest outweighs the privacy considerations, especially since privacy concerns can be effectively

mitigated with appropriate redaction. Accordingly, this report should have been produced, with the redaction of any identifying information. Information appropriate for redaction in this particular report could also include certain background information and descriptions related to civilians that implicate the civilians' privacy and are not central to the content of the report as it relates to shedding light on the conduct of the police officer and the Department.<sup>5</sup>

- **16-2**

The Department states that this report pertains to a civilian complaint alleging harassment and asserts that disclosure, even in redacted form, creates a high risk of revealing the identity of the civilians mentioned in the report, who are well known in the community. The Complainant notes that the allegations are serious and asserts that the Department's concern that disclosure would chill the willingness of civilians to make complaints is exaggerated.

Based on our review, the allegations that are the subject of this report are very serious and implicate the potential abuse of law enforcement authority by an experienced officer. Moreover, the report found misconduct had occurred and that numerous Department policies had been violated. *See Forest Serv.*, 524 F.3d at 1025. There is a high public interest in this report as it sheds light on police misconduct, as well as the Department's investigation and response to official misconduct.

The report does contain personal information regarding an officer, as well as multiple civilians. However, especially given the serious nature of the allegations, we believe that the significant public interest outweighs the privacy considerations, especially since privacy concerns can be mitigated through redaction. Accordingly, this report should have been produced, with redaction of any identifying information. Information appropriate for redaction in this report could include certain background information and descriptions related to civilians that implicate the civilians' privacy and are not central to the content of the report as it relates to shedding light on the conduct of the police officer and the Department.

- **16-3**

The Department contends that this report pertains to a third-party complaint that an officer inappropriately went to a person's place of business to investigate a motor vehicle incident. The Department asserts that the officer was exonerated and that even in highly redacted form, disclosure of the report would implicate privacy interests, including those of the civilian who is well-known in the community and who indicated he or she did not wish to pursue a complaint.

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<sup>5</sup> Generally speaking, the Department, which is best acquainted with the underlying circumstances of each report, may exercise some discretion in determining appropriate redactions so long as such redactions are reasonable and do not unreasonably obscure the aspects of the report that shed light on government conduct. In particular, redaction of identifying information and details may be appropriate to the extent the information does not substantially shed light on government conduct and the Department has a reasonable basis to be concerned that unredacted disclosure of that information could unduly implicate the privacy interests of the officers or civilians.



The Complainant asserts that if a civilian reports police misconduct that should not be deemed truly private information.

Based on our review, this report pertains to a relatively minor incident regarding which the officer was exonerated, though the officer was counseled regarding what had occurred. The report confirms the Department's representation that the citizen who was the subject of the incident did not wish to pursue a complaint, though the incident did apparently upset the civilian. On balance, we find that this report could have some public interest as it pertains to an interaction between the police and a member of the public. To be sure, the public interest here is lower than some of the other IA reports discussed in this finding because of the nature of the allegations, the fact that the impacted civilian did not wish to pursue a complaint, and because no misconduct was found. Nonetheless, the public has an interest in knowing whether officers conduct themselves appropriately and professionally in their interactions with members of the public and how the Department responds to allegations that they did not.

On the other hand, this report also implicates significant privacy interests since it contains details about the underlying motor vehicle incident that involved multiple private citizens. However, it appears from the report that some of the information contained in the report was already public knowledge at least to some degree. On balance, we find that the report should have been produced but that identifying information and details, especially regarding the underlying motor vehicle incident involving citizens and details related to the officer's interaction with the civilian that may be considered personal and that do not shed light on government conduct, may be redacted to mitigate privacy concerns.

- 16-4

The Department notes that this IA report pertains to a third-party complaint that an officer was insensitive to a victim during a sexual assault investigation. The Department asserts that disclosure even in heavily redacted form would be prejudicial to the officer who was exonerated and to the victim of the sexual assault who did not wish to pursue a complaint in the first place. The Department notes that these concerns are magnified in light of the sensitive nature of the subject matter of a sexual assault investigation. The Complainant responds that if a civilian reports police misconduct that should not be deemed truly private information.

Our review of this report confirms the Department's representation that the citizen who was the victim of the sexual assault was not the one who filed a complaint against the officer, that the officer was exonerated, and that the report contains sensitive information related to a sexual assault. While those factors weigh against disclosure, on the other side of the column is the public interest in how the Department investigated this sort of allegation and in the Department's policies and practices regarding sexual assault investigations, which are discussed in the report. To be sure, disclosure of this report in unredacted form would implicate very significant privacy concerns which would clearly outweigh the public interest in the report. However, we conclude that with appropriate redactions the privacy concerns can be mitigated and "reasonably segregable portions" of the report could have been disclosed.

It would be appropriate for the Department to redact the personal information contained in this report. For instance, we believe it would be appropriate for the Department to redact much of the fourth paragraph of the report, which provides details that could be used to potentially identify the victim of a sexual assault and the revelation of which would present a significant invasion of privacy in the event anyone was able to discern the subject of the report despite the redaction of names. Additionally, this paragraph contains only limited information concerning the Department's investigation of the complaint. *See* R.I. Gen. Laws § 38-2-3(b). Other information that may lead to identifying the sexual assault victim or revealing personal details related to the assault may also be redacted, such as the date of the incident, the location of the incident, and the victim's past/present employer, schools, and residences. Even though these redactions may obscure some aspects of the report in the interests of protecting privacy interests, it would not meaningfully interfere with shedding light on the government's conduct and would leave a reasonably segregable portion of the report that can be produced. The aspects of the report that should be provided include, to the extent they do not reveal personal details, the generalized statements in the report regarding the general nature of the complaint, the fact that it was investigated, the result, and statements regarding the Department's policies related to sexual assault investigations.

- 16-5

The Department notes that this report pertains to a civilian complaint about inappropriate officer conduct that was ultimately sustained. The Department asserts that the complainant<sup>6</sup> is a well-known member of the community and that privacy interests would be implicated by disclosure even in redacted form. The Complainant responds that “[s]ince the complaint related to the public facing behavior of an officer and was sustained, the *Farinelli* analysis would suggest that there is an overwhelming public interest in this report and that it should be disclosed.”

Based on our review, the alleged misconduct addressed in this report is very serious and the charge of misconduct was sustained. *See Forest Serv.*, 524 F.3d at 1025. Without delving into too much detail due to the *in camera* nature of our review, the report pertains to numerous different potential policy violations and misconduct flowing out of a particular incident where the officer interacted with a citizen and, among other conduct, publicly referenced private details regarding that citizen's past that the officer knew about from a prior on-the-job encounter. There is a high public interest in officer misconduct of this nature and in the manner the Department investigated and responded to it. We also recognize that this report implicates significant privacy interests related to a private citizen. On balance, we find that the report should have been produced but that identifying information and some details, especially regarding a personal subject matter regarding a private citizen, should be redacted to mitigate privacy concerns.

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<sup>6</sup> Although we use the capitalized “Complainant” to refer to Mr. Lyssikatos who filed this APRA Complaint, we will use lowercase “complainant” to refer to individuals who filed an IA complaint.

- **16-6**

The Department represents that this report pertains to an allegation by a citizen of inappropriate disclosure of confidential information. The Department asserts that even in redacted form, disclosure would harm the privacy interests of the civilian, especially given that the subject of the report pertained to disclosure of confidential information. The Complainant responds that “while Narragansett asserts that the complaint was initiated due to the alleged disclosure of confidential information, it has not shown that the disclosure of the report would reveal this confidential information or that redaction would be inadequate to protect the confidential information at issue.”

Based on our review, the IA report pertains to an allegation of inappropriate disclosure of confidential information that, based on the information contained in the report, was investigated and determined to be unfounded. The report recounts the investigation that took place and how the officer who was the subject of the investigation apparently had little involvement in the underlying matter and how any public disclosure of confidential information appears to have resulted from the conduct of a third-party who is not a law enforcement officer and is not affiliated with the Department.

On balance, given the facts of this particular case, we recognize that the public interest in this report may be limited. Nevertheless, the public has some interest in learning how the Department investigated this matter. On the other hand, the report is replete with personal information pertaining to multiple private citizens and regarding a sensitive subject matter. Additionally, the information in the report is likely to cast a negative light on the third-party who it appears was actually responsible for the public disclosure of private information. Ultimately, we conclude that “reasonably segregable” portions of this report may be disclosed and that it would be appropriate for the Department to redact the report to the extent it contains information and contextual details that are personal and could be used to identify the subjects of the report.

- **16-7**

The Department contends that this report pertains to alleged inappropriate conduct by animal control officers who are not police officers, and thus this report is not responsive to the APRA request. The Complainant responds “that inappropriate conduct by two reserve animal control officers is a matter of public concern justifying disclosure under the APRA” and asserts that “Narragansett’s interpretation of ‘police misconduct’ is unduly strict.”

The report indicates that the animal control officers in question are employees of the Department and carry out tasks with at least some degree of law enforcement authority and under the supervision of the Department. As such, we find that this report was responsive to the request.

The report pertains to a civilian complaint that the officers mishandled a situation involving a member of the public. The report chronicles that an investigation occurred and wrongdoing was found. Although the nature of the wrongdoing is not especially serious, it is problematic particularly since it involved an interaction with a member of the public and the potential misuse of authority. The report does contain information that would implicate privacy interests, including

information regarding the citizen complainant. On balance, we find that the report should have been produced but that identifying information and some details, especially regarding the private citizen, may be redacted to mitigate privacy concerns.

- **17-3<sup>7</sup>**

The Department describes this report as pertaining to a civilian complaint related to improper disclosure of medical information. The Department contends that the complainant is well known to the community and that disclosure, even in redacted form, would harm the privacy interests of the civilian complainant, especially because the complaint pertains to confidential medical information. The Complainant responds that “[t]he issue of the alleged disclosure of confidential medical information could also be handled through appropriate redaction.”

Based on our review, the Department investigated this matter and determined that the officers in question disclosed certain information to EMS personnel who were responding to a medical emergency. The disclosure was intended to help the medical treatment of a civilian (and indeed was apparently shared in the interests of protecting that civilian from potential harm) and was determined to be appropriate. Given these circumstances, and that there is no indication of police misconduct, we find that there is a low public interest in this report. However, there is at least some public interest in the report since it sheds light on the conduct of the police officers at the scene and how the Department investigated the matter. Additionally, the report contains personal information regarding multiple civilians. We conclude that the report should have been produced but with redaction of identifying information, including the personal and medical information regarding the civilians.

- **17-4**

The Department notes that this report pertains to a civilian complaint alleging “threatening” actions by officers during a felony arrest and an allegation that something was missing from the complainant’s vehicle after the arrest. The Department asserts that the complainant has a history of making false reports, did not name any particular officer in the complaint, and refused to cooperate in the investigation. As such, the Department argues disclosure of the report would not shed light on actions of the Department. The Complainant responds that there is “significant public interest in knowing how the police internal affairs department for Narragansett handles repeat complainants and whether their complaints receive the attention they deserve, justifying the disclosure of this report.”

Based on our review, as the Complainant notes, there is some public interest in a report demonstrating how the Department responded to this complaint, even if it was apparently largely unsupported by evidence and the complainant declined to cooperate. No particular officer’s privacy interest is implicated since no specific officer was named in the complaint. The complainant’s privacy interests are implicated but we have not been presented with sufficient

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<sup>7</sup> The Department notes that due to a clerical error, the IA reports for 2017 begin with 17-3.

evidence that redaction cannot adequately mitigate that concern. The report should have been disclosed in redacted form.

- **17-5**

The Department states that this report pertains to allegations of harassment by an officer related to repeated traffic stops and arrests of the same person. The Department asserts the complainant is well-known to members of the public such that redaction may not be effective, and that the complaint was ultimately withdrawn and determined to be unfounded. The Complainant responds that the notoriety of the complainant should not impact the analysis.

Although there is some public interest in any IA report showing how the Department conducts an investigation into alleged misconduct, in this case the report indicates that the complainant's attorney formally submitted a letter withdrawing the complaint and indicated that the complaint had no basis. The other information in the report indicates that the Department conducted an investigation and its findings confirmed there was no misconduct. In circumstances such as these, where even the complainant seems to acknowledge that the complaint never should have been filed in the first instance, we find there is low public interest in the report. However, the report does shed at least some light on how the Department responded to the matter. The report contains significant personal information regarding the civilian, the disclosure of which would be likely to cast the civilian in a negative light. Although the public interest in this overall report is low, and the privacy interest is high, we find that the privacy interest can be adequately addressed by redaction of identifying information as well as details regarding the civilian that are personal and could be used to identify the person. Accordingly, on balance we find that the report should have been disclosed with redactions.

- **18-1**

The Department asserts that this report pertains to a civilian complaint of alleged off-duty misconduct by an officer. The Department indicates the complainant declined to make a formal complaint and refused to cooperate but that the matter was nonetheless investigated and the officer was exonerated. The Complainant responds that “[t]he mere assertion that the complainant did not want to make a formal, written complaint and refused to cooperate with the investigation does not change the privacy analysis.”

Based on our review, this report concerns potential misuse of law enforcement authority in connection with an off-duty incident. The report indicates that the incident was investigated and the officer was exonerated. Although there is a public interest in this report, we also note countervailing privacy interests. In addition to the interests of the accused officer, we particularly note that the report indicates that the complainant was very concerned about his or her complaint becoming public. The record indicates the complainant specifically declined to file a formal complaint for that reason and was very concerned about not filing “formal paperwork” and wanted the matter resolved “off the record.” In these particular circumstances where disclosure would implicate the privacy interests of both the officer and the complainant and where the complainant vigorously and repeatedly expressed a desire for the entire complaint to not be formal or on “the

record,” we find that the privacy interests are high. There is also a significant public interest in this report as it pertains to potentially serious off-duty conduct that could potentially implicate the misuse of law enforcement authority. On balance we conclude that this report should have been produced but that it would be appropriate for the Department to redact personal information and details in the report that could be used to identify the officer and the civilian.

- **18-4**

The Department contends this report pertains to an internally generated report pertaining to job performance, including neglect of duty, but does not constitute an investigation into “police misconduct.” The Department represents that the officer in question is no longer with the Department and that disclosure would constitute an unwarranted invasion of privacy. The Complainant responds that “the public has a significant interest in learning about the investigation of alleged neglect of duty by one of its police officers.”

Based on our review, this report contains information about a particular incident, as well as references to other more general evaluations of the officer. There is a high public interest in this report as it pertains to an incident involving an alleged neglect of duty that is relatively serious in nature and the evidence was found sufficient to sustain the allegations. The report contains personal information regarding both the officer and the civilian who was involved in the incident. Although the officer is no longer employed with the department, the nature of the misconduct alleged and the fact that it was sustained weigh heavily in favor of disclosure, particularly where redaction can adequately address any privacy concerns. We also note that unlike Report 15-1 which constituted an overall assessment of an officer and which we find can be withheld, this report is primarily focused on a particular incident involving an officer and a civilian. Thus, this report should have been produced, with redactions.

Information appropriate for redaction could include certain background information and descriptions related to the civilian that implicate the civilian’s privacy and are not central to the content of the report as it relates to shedding light on the conduct of the police officer and the Department. Additionally, to the extent the report contains more generalized comments regarding the officer’s overall job performance, which might more appropriately be described as a personnel evaluation rather than an investigation of misconduct, and the disclosure of which may be more likely to reveal the officer’s identity, it may be appropriate to redact some of that information to the extent the Department can do so without obscuring the portion that sheds light on government conduct with regard to the IA investigation.

- **18-5**

The Department contends this report pertains to a service call to the home of an officer that did not result in any charges. The Department asserts that disclosure, even in redacted form, would create an undue risk of invasion of the officer’s privacy and that the report does not pertain to an “internal affairs” investigation related to police misconduct. The Complainant responds that based on the Department’s description, he accepts that this report is not responsive to his request.

This Office's review confirms that the Department provided a fair description of the report and based on Complainant's acceptance that this report is nonresponsive to his request, we need not further analyze this report and we find that nondisclosure was permissible.

- **18-6**

The Department asserts that this report pertains to several "bizarre" complaints filed by a civilian who was involved in a divorce proceeding with his wife and appeared to be suffering from some degree of mental illness. The Department asserts that there was no internal affairs investigation and that even in redacted form, disclosure would implicate the privacy of the officers and the citizen complainant. The Complaint responds that based on the Department's description, he accepts that this report is not responsive to his request.

Although the report contains very limited information, its content appears to be consistent with the Department's description. Based on Complainant's acceptance that this report is nonresponsive to his request, we need not further analyze this report and find that nondisclosure was permissible.

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As detailed above, we have concluded that the Department violated the APRA by withholding the above-discussed IA Reports in their entirety, with the exception of IA Reports 15-1, 18-5, and 18-6.

In a number of the IA reports we analyzed above, the public interest in disclosure was clear: the allegations concerned official misconduct, the misconduct was sustained, and the report shed light on the Department's response. In other cases, the public interest in the conduct at issue in the particular report was more limited, whether because the alleged misconduct was relatively minor, it did not implicate sworn officers, the complaint was withdrawn, or the officer was exonerated after an investigation. But particularly in the circumstances of this request which implicated four years' worth of IA reports, we also noted a global public interest in shedding light on how the Department generally responded to allegations of misconduct during that timeframe. Especially in light of that interest and of the ability of redaction to mitigate the privacy interests, which implicate the first and last *Farinelli* factors, this Office concluded in almost every case that disclosure of at least a portion of the report was appropriate provided that the privacy interests of the officers and civilians mentioned in the report could be addressed through redactions. That is because in almost every case, the report shed some light on the conduct of law enforcement. In those cases where the privacy interest is substantial, such as reports that reference medical information, mental health or substance abuse, sexual assault, or other highly personal details, we recognize that extensive redactions will likely be necessary to adequately address the privacy interests.

Nonetheless, the APRA requires disclosure of any reasonably segregable portions of the reports and for each of the reports that we have found should have been disclosed, at least some reasonably segregable information can be made available. *See* R.I. Gen. Laws § 38-2-3(b).

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).

Here, we have found that the Department violated the APRA by withholding certain reports as outlined above. Although injunctive relief may be appropriate in this case, we will allow the Department ten (10) business days from the issuance of this finding to produce these reports. The reports may be redacted consistent with this finding and caselaw. The Department must produce these records without cost. *See* R.I. Gen. Laws § 38-2-7(b).

**If the Department wishes, it may contact this Office with specific questions regarding the redaction of the documents at issue. Especially where the reports contain highly personal information, the Department is encouraged to contact this Office if it has any questions regarding appropriate redactions.**

If the Complainant believes that the Department has failed to comply with this finding, Complainant should advise this Office within ten (10) business days of the deadline for the Department to produce the redacted reports.

Regarding whether the violation was willful and knowing, or reckless, we are concerned that the Department initially withheld all 24 reports in their entirety. IA Reports are an important tool for shedding light on official misconduct and on how a police department investigates and responds to allegations of police misconduct. There is an important public interest in police departments carefully and thoughtfully reviewing IA reports in response to requests for disclosure and producing reports in an appropriate form unless there is a compelling reason for nondisclosure permitted by the APRA.

We also recognize that applying the balancing test is not always straightforward and inevitably involves some judgment calls. We note that the Department issued its initial response prior to this Office’s issuance of *Farinelli*, PR 20-48 and without the benefit of the additional guidance contained in that finding for considering APRA requests related to IA reports. We also note that after our initial finding in this matter, the Department expended substantial time and effort re-reviewing the reports in question, did produce some of the reports, and that it will take additional time for the Department to now redact and produce the additional reports that we have determined should have been produced, at no charge. In these circumstances, assuming the Department complies with this Office’s directives in this finding, this Office does not intend to pursue civil fines for a willful and knowing or reckless violation. Nonetheless, the Department is on notice that the conduct described herein violated the APRA and this finding may serve as evidence of a willful and knowing or reckless violation in the future.



Although the Attorney General will not file suit in this matter at this time, nothing within the APRA prohibits an individual from instituting an action for injunctive or declaratory relief in Superior Court. *See* R.I. Gen. Laws § 38-2-8(b). The Department should copy this Office on its response to the Complainant. This file remains open pending the Department's response and any response from the Complainant.

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

Sincerely,

PETER F. NERONHA  
ATTORNEY GENERAL

*By: Katherine Connolly Sadeck*  
Special Assistant Attorney General