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STATE OF RHODE ISLAND
PROVIDENCE, Sc.

SUPERIOR COURT

MICHAEL BILOW, et al.
v.
BROWN UNIVERSITY DEPARTMENT OF PUBLIC SAFETY, by and through BROWN UNIVERSITY

HEARING: March 24, 2026
C.A. No. 2025-02879

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Arrest records generated by police department in Rhode Island are subject to disclosure under the Rhode Island Access to Public Records Act (APRA), R.I. Gen. Laws sec. 38-2-1 *et seq*. The APRA unambiguously states "... records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult **shall be public**." *Id*. At 38-2-2(4)(D) (emphasis added). Through their Motion to Dismiss, defendant Brown Department of Public Safety, clothed with police powers and functioning in all respects as a local police department, attempts to carve itself out of this state mandate. This case presents a straightforward question: whether a private university that employs sworn police officers with full state-delegated arrest authority must disclose arrest records under APRA. The answer is yes.

PARTIES

Plaintiffs Michael Bilow and Noble Brigham are journalists. As journalists, they gathered information regarding events at Brown University, verified this information, and communicated this information to the public. Brown University Department of Public Safety (BDPS) is a fully functioning police department with approximately sixty-five (65) police

officers. Police Officers in BDPS exercise "...the same powers and authority of a police officer as are conferred by the laws of this state upon members of the division of state police, including the power to arrest persons for violation of state criminal statutes or for violation of city or town ordinances of the city or town in which the institution is located." R.I. Gen. Laws sec. 12-2.1-2.

On December 11, 2023, BDPS arrested forty-one (41) students for trespassing and refusing to leave a university building. (Complaint, para. 6.) BDPS refused voluntarily to provide plaintiff Bilow with the arrest reports for this mass arrest. Five months after the forty-one arrests, on April 23, 2023, Bilow filed an APRA request with BDPS for copies of the arrest records. (Complaint, para 9.) BPDS denied this request.

In December 2022, plaintiff Noble Brigham, a reported for the Brown Daily Herald, requested, through APRA, that BDPS provide him with the arrest records for Thony Greene. BDPS had arrested Mr. Greene numerous times. BDPS refused to produce the records. (Complaint, para. 18.)

BDPS has never produced the requested records and continues to assert that it is not a "public body" within the meaning of APRA.

ARGUMENT

Defendant Brown University Department of Public Safety ("BDPS") asks this Court to dismiss Plaintiffs' complaint based on (1) an unsupported mootness theory, and (2) the argument that BDPS is not a "public body" under the Access to Public Records Act ("APRA"). Both arguments fail under Rhode Island law.

First, Plaintiffs' APRA claim is **not moot**. The violations occurred at the moment BDPS unlawfully denied Plaintiffs' APRA requests and continue to this day.[1] The ability to obtain some (but not all) records from the Providence Police Department ("PPD") does not cure the statutory violation, and BDPS continues to deny any obligation to comply with APRA now or in the future—creating a live controversy appropriate for judicial resolution and calling for a declaratory judgment. See **Key Corp. v. Greenville Pub. Libr.**, 288 A.3d 974 (R.I. 2023), discussed below.

Second, BDPS **is** a "public body" within the meaning of R.I. Gen. Laws § 38-2-2(1). The statute expressly includes private entities "acting on behalf of and/or in place of" a public agency. BDPS meets that definition. It exercises state-delegated police powers—arrest, detention, investigation, and use of force—on public streets and property. These are core governmental functions traditionally and exclusively performed by state and municipal police.

The Motion to Dismiss should be denied.

I. THE CLAIM IS NOT MOOT

A. Plaintiffs' claims for injunctive relief are not moot.

[1] BDPS ignores the specific time limit set forth in Section 38-2-3.2. The section mandates that arrest records "…shall be made available within forty-eight (48) hours after receipt of a request (or 72 hours on weekends and holidays) …" Disregarding this time limit is a violation of APRA because these deadlines are part of APRA's that arrest records be rapidly and contemporaneously made public. BPDS' disregard of these time limits shows this case cannot be moot and that APRA violation cannot be cured by belated and untimely disclosure.

Plaintiffs have not received all records that form the basis of their claims. BDPS claims that one Plaintiff obtained the complete records from another source[2] and suggests that the other Plaintiff "can obtain" the requested records from Providence Police. That is incorrect, both legally and factually. Plaintiffs sought arrest reports **created by BDPS**. Were they all forwarded to and processed by Providence Police? We have no information and BDPS has provided none. Any records not forwarded would be unavailable anywhere else.

Because this is presented on a motion to dismiss, Defendant is limited in its argument to the four corners of the complaint. In deciding a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted, the "trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor." **McKenna v. Williams**, 874 A.2d 217, 225 (R.I. 2005) (quoting **Rhode Island Affiliate, ACLU, Inc. v. Bernasconi,** 557 A. 2d 1232, 1232 (R.I. 1999). While the Complaint, para. 13, acknowledges that Bilow obtained copies of arrest reports from the City of Providence, no such allegation appears as to the records requested by Brigham. Nor does either plaintiff have any way of knowing whether records from Providence include all of the records sought from BDPS.

Further, as discussed in footnote 1, above, it is incontrovertible that BDPS violated the forty-eight (48) hour (seventy-two (72) hours for weekends and holidays) time limit stated in Section 38-2-3.2. The statute imposes a mandatory disclosure deadline; it is not

[2] Respectfully, Plaintiffs have no way to verify this assertion—since BDPS has steadfastly refused to produce its arrest reports—and we are before the Court on Defendant's motion to dismiss.

discretionary or aspirational. Its purpose is for rapid, contemporaneous public access to arrest records. BPSS' conduct defeats the statute's purpose.

BDPS denied Plaintiffs' APRA requests. That violation remains unremedied.

B. Plaintiffs' claims for declaratory relief are not moot.

Even if Plaintiffs no longer needed injunctive relief (they do), their claim for declaratory relief remains, as BDPS continues to deny that it is subject to APRA. Here, BDPS **continues** to assert:

- it is not a "public body".
- it has no obligation to respond to APRA requests; and
- it may lawfully continue refusing disclosure.

This creates an ongoing, active controversy requiring declaratory and injunctive relief.

C. The Supreme Court's decision in Key Corp. v. Greenville Public Library is instructive both on mootness and the merits.

In **Key Corp. v. Greenville Public Library, supra,** 288 A.3d 974, the Supreme Court considered the public library's arguments on appeal that the APRA claim brought against it was moot and that, in any event, it was not a public body subject to APRA. The Court disagreed.

In the Superior Court, Greenville sought summary judgment both on the grounds that the live controversy ended when it produced the requested documents 11 days after the complaint was filed in Superior Court and on the ground that it was not a public body under APRA. Key Corp. opposed Greenville's motion both on mootness and the merits, "asserting that the case was not moot, notwithstanding defendant's production of the requested documents, because it was entitled to a declaration regarding defendant's status as a public body and because the APRA provides for civil penalties and attorneys' fees." **Id.** at 977. The Superior Court agreed and the Supreme Court affirmed as to both issues. The matter remained justiciable notwithstanding Greenville's belated provision of the requested records. As to whether Greenville satisfied the statutory of "public body," the Court focused on that portion of §38-2-2(1) which defines an "agency" or "public body" to include:

> any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

Based on facts specific to Greenville, the Court affirmed the finding that Greenville met the statutory definition notwithstanding its status as a private entity.

D. Cases cited by BDPS are inapposite.

Defendant cites FOIA cases where the requested records had been obtained from the same or another federal agency, as mooting the action. From this, Defendant declares that the claim is moot because Plaintiff Brigham *can* ask Providence Police Department, not that he has obtained them. But none of the cited cases stand for the proposition that the *potential* availability from another source moots the action. To the contrary, in **McGehee v. CIA**, 697 F.2d 1095, 1108-09 (D.C. Cir. 1983), rehearing on other grounds, 711 F.2d 1076 (D.C.Cir.1983), the D.C. Circuit held that the fact that FOIA records originated with another agency--who presumably could produce them if asked--did not relieve the requested agency of the obligation to produce them.

Thus, the APRA claim is not moot either as to injunctive or declaratory relief.

II. BDPS IS A PUBLIC BODY UNDER APRA

A. APRA expressly covers private entities acting "on behalf of" or "in place of" public agencies.

APRA defines "public body" to include:

> any other public or **private** agency… acting **on behalf of** and/or **in place of** any public agency.

R.I. Gen. Laws § 38-2-2(1).

BDPS is exactly such an entity.

B. BDPS exercises core state-delegated police powers

BDPS officers:

- are sworn and state-certified, R.I. Gen. Laws § 12- 2.1- 1

• are appointed pursuant to R.I. Gen. Laws § 12-2.1-1

• may arrest, detain, investigate, and use force under state law

•patrol public streets adjacent to Brown University;

• are required to generate arrest reports filed with PPD, R.I. Gen. Laws § 12-2.1-5

Rhode Island law gives BDPS officers **the same authority as state police officers** in their jurisdiction. R.I. Gen. Laws § 12-2.1-2. These are not private security functions—they are governmental powers that cannot exist except by statutory delegation.

The authority to arrest is quintessential public power, rooted in the State's exclusive police power and historically exercised only by governmental actors. When the State delegates this coercive authority to a private university police department, the university's police does not act as a private actor; it exercises a sovereign function on the State's behalf. Because arrest authority exists solely by virtue of statutory delegation and enables the deprivation of individual liberty, records generated through its exercise are, by definition, public in character. Accordingly, when a private university police force conducts arrests and creates arrest records, it performs a governmental function that brings those records squarely within APRA's definition of public records, including Section 38-2-2(4)(D)'s mandate that adult arrest records be publicly accessible.

The Ohio Supreme Court, construing language similar to APRA in **State ex rel. Schiffbauer v. Banaszak**, 142 Ohio St. 3d 535 (2015), held that a private university's campus police department met the statutory definition of a public office subject to Ohio's open records act. The pertinent language there defined "public office" to include an "entity

established by the laws of this state for the exercise of any function of government." (The APRA language here is even more expansive.) The Ohio Supreme Court observed:

> [The campus police department] exercises a function of government, namely the basic police power of enforcing laws and maintaining the peace within its jurisdiction. Its officers therefore have the power to search and confiscate property, to detain, search, and arrest persons, and to carry deadly weapons.

State ex rel. Schiffbauer v. Banaszak, supra, 142 Ohio St. 3d at 537.

In **State ex rel. WTOL Television, L.L.C. v. Cedar Fair, L.P.**, 2023-Ohio-4593, 174 Ohio St. 3d 376 (2023), the Court extended its ruling to include the private police department operating with police powers at a local amusement park.

Plaintiffs acknowledge contrary authority of the Indiana Supreme Court in **ESPN, Inc. v. Univ. of Notre Dame Police Dep't**, 62 N.E.3d 1192 (Ind. 2016). In distinguishing Ohio's decision in **State ex rel. Schiffbauer v. Banaszak, supra**, the Indiana Supreme Court noted that, in contrast to the Ohio public records statute (which included entities exercising a function of government), Indiana's public records statute was restricted to actual government entities. [3]

C. BDPS acts "in place of" Providence Police

When BDPS makes an arrest on a public street, it is performing a governmental function that the Providence Police Department would otherwise perform. That is the textbook definition of acting "in place of" a public agency under § 38-2-2(1). BDPS's

[3] The same year, Indiana amended its public records statute to include private university police departments. Ind. Code Ann. § 5-14-3-2 (q)(11).

argument that it does not "replace" local police ignores that the statutory language is disjunctive—**acting on behalf of OR in place of** a public agency is sufficient.

When a private university police department exercises statutory arrest authority, it does so in place of the State, wielding a coercive police power that exists only through sovereign delegation. Arresting individuals and generating arrest records are not private acts; they are the performance of a core governmental function traditionally and exclusively reserved to the State. Because BDPS steps into shoes of the State of Rhode Island or its cities and towns when it arrests, the records created through that authority are inherently public in character. Under APRA's definition of "public record," including Section38-2-2(4)(D)'s mandate that adult arrest records be accessible, such records cannot be insulated from disclosure merely because a private entity performs a public power.

D. Government ownership is not required.

BDPS's private institutional identity does not exempt it from APRA. **Key Corp., supra.** The statute expressly encompasses private entities acting with state authority. If ownership were dispositive, the statutory phrase "private agency… acting on behalf of" would be meaningless.

E. BDPS holds itself out as a police department

BDPS uses uniforms, marked patrol cars, firearms, badges, and the title "police officer." It performs all standard policing functions. Courts evaluating public-body status consider how an entity presents itself to the public. **Key Corp., supra** at 979–80. This weighs heavily in favor of finding BDPS to be a public body.

F. Open-meetings practices do not control APRA coverage.

BDPS argues it is not a public body because it does not conduct open meetings. But the Open Meetings Act and APRA have separate scopes. Law-enforcement agencies regularly engage in internal operational meetings that are not open to the public; they remain fully subject to public-records obligations.

III. THE ATTORNEY GENERAL'S ADVISORY OPINION IS NOT BINDING

BDPS heavily relies on the Attorney General's informal determination, but such opinions do not bind this Court. **See Key Corp., supra** at 979 (noting but not relying upon prior opinions of the Attorney General). Courts routinely overturn or depart from Attorney General interpretations where statutory analysis warrants it. The Superior Court is the appropriate forum to resolve the legal questions presented here. See also **Downey v. Carcieri**, 996 A.2d 1144, 1151 (R.I. 2010) (Allowing requestors to apply to the courts for equitable relief without first pursuing alternate avenues of administrative appeal promotes the public's timely access to government records and is not inconsistent with the General Assembly's intent.)

CONCLUSION

BDPS unlawfully denied Plaintiffs' requests for public arrest records and continues to assert that it is categorically exempt from APRA. The controversy is not moot, and BDPS is plainly a "public body" within the meaning of § 38-2-2(1).

For the foregoing reasons, Plaintiffs respectfully request that this Court **deny Defendant's Motion to Dismiss** in its entirety.

Plaintiffs,
By their attorney,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 10, 2026:

- ☑ I electronically filed and served this document through the electronic filing system.
- ☑ The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

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