

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

MICHAEL BILOW and NOBLE BRIGHAM, :
Plaintiffs, :

v. :

Civil Action No. PC-2025-02879

BROWN UNIVERSITY DEPARTMENT :
OF PUBLIC SAFETY, by and Through :
BROWN UNIVERSITY, :
Defendant. :

**DEFENDANT BROWN UNIVERSITY DEPARTMENT
OF PUBLIC SAFETY'S MEMORANDUM IN SUPPORT OF THE MOTION TO
DISMISS PLAINTIFFS' COMPLAINT**

Plaintiffs Michael Bilow (“Bilow”) and Noble Brigham (“Brigham”) (collectively, “Plaintiffs”) are journalists claim that the Brown University Department of Public Safety (“BDPS”) violated Rhode Island’s Access to Public Records Act (“APRA”) by failing to produce certain arrest reports. The Rhode Island Attorney General found that BDPS **did not** violate APRA by not producing these reports.

Now, Plaintiffs seek a second bite at the apple in this Court. In their one-count Complaint, Plaintiffs allege BDPS violated APRA by failing to produce requested arrest reports. They ask the Court to issue a declaratory judgment that BDPS is required to comply with APRA and for a permanent injunction requiring BDPS to produce the arrest reports. Plaintiffs fail to state a claim under APRA, and the Court should dismiss their Complaint for two reasons.

First, Plaintiffs’ claim is moot because Plaintiffs have obtained or can obtain the arrest reports they seek from the City of Providence. BDPS is **required** to produce all its arrest reports to the Providence Police Department. Because the Providence Police Department is a “public body” under APRA, it is required to produce these reports upon request. In fact, one of the

Plaintiffs **obtained the reports he sought from the City of Providence.** Thus, Plaintiffs have obtained or can obtain the records they seek by simply asking a different entity, rendering this lawsuit a mere academic exercise and a waste of the Court’s time and resources.

Second, only “public bodies” are required to comply with APRA and produce records such as arrest reports. BDPS is **not** a “public body.” Indeed, the state and local governments do not control BDPS, and BDPS does not act in place of state and local police departments. BDPS also neither holds itself out as a public body, nor does it conduct open meetings. Because BDPS is not a “public body,” it is not required to produce the arrest reports under APRA.

For these reasons and those set forth below, the Court should grant BDPS’s Motion to Dismiss.

ALLEGATIONS AND PROCEDURAL BACKGROUND

Brown University (“Brown”) is a private university located in Providence, Rhode Island. Compl., ¶ 4. BDPS is a “fully functioning police department” that Brown “established and maintains.” *Id.* BDPS has “approximately sixty-five (65) trained members serving the Brown community.” *Id.* BDPS’s officers are “sworn, state-certified special police officers” who are appointed by the Superintendent of the Rhode Island State Police but are employees of Brown. R.I. Gen. Laws § 12-2.1-1; Compl., ¶¶ 26, 28.

BDPS officers are permitted to conduct law enforcement functions on Brown’s campus and in the immediate vicinity. *See* R.I. Gen. Laws § 12-2.1-2; Compl., ¶¶ 24–28. They are also required to file all arrest reports with the Providence Police Department. R.I. Gen. Laws § 12-2.1-5; Compl. ¶ 7.

Plaintiffs are journalists who are seeking reports of certain arrests BDPS allegedly made (“Arrest Reports”). Compl., ¶¶ 2–3, 5–6, 15–17. In furtherance of that end, Plaintiffs filed APRA

requests for those Arrest Reports with BDPS. *Id.* at ¶¶ 9, 15. BDPS did not provide Plaintiffs with the Arrest Reports, but Bilow ultimately obtained the Arrest Reports he sought from the City of Providence. *Id.* at ¶¶ 10–11, 13, 15, 18.

Plaintiffs then filed a complaint with the Rhode Island Attorney General alleging that BDPS violated APRA by failing to produce the Arrest Reports. *Id.* at ¶¶ 10, 19. The complaint filed with the Attorney General’s office, Brown’s response thereto, and Plaintiffs’ reply in support of their complaint are attached to this Motion as **Exhibit A**. The Attorney General found that BDPS did not violate APRA by not producing the Arrest Reports because BDPS is not a “public body” under APRA. **Exhibit B at 8**; Compl. at ¶¶ 12, 20. Plaintiffs now ask this Court to reach a different conclusion than the one reached by the Attorney General. The Court should not do so.

ARGUMENT

A. Legal Standards

1. Motion to Dismiss

A motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief may be granted challenges the legal sufficiency of the allegations in the complaint. *Barrette v. Yakavonis*, 966 A.2d 1231, 1234 (R.I. 2009). A “defendant’s Rule 12(b)(6) motion to dismiss must be granted as a matter of law” where the plaintiff’s claim has no legal basis. *City of Warwick v. Aptt*, 497 A.2d 721, 723 (R.I. 1985). Granting a motion to dismiss under Rule 12(b)(6) is also warranted if a claim is moot. *See Tompkins, Jr. v. Buhrendorf*, 2020 WL 5392082, at *2, 5 (R.I. Super. Sept. 1, 2020). In sum, a “motion to dismiss is proper if it is clear beyond a reasonable doubt that plaintiff will not be entitled to relief under any set of facts that could be proved to

support the claim.” *A.F. Lusi Const., Inc. v. Rhode Island Convention Ctr. Auth.*, 934 A.2d 791, 795 (R.I. 2007).¹

Generally, the Court’s review of a motion to dismiss “is confined to the four corners of” the complaint. *Barrette*, 966 A.2d at 1234 (citation omitted). The Court also may consider “documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs’ claim; or for documents sufficiently referred to in the complaint.” *Montaquila v. Flagstar Bank, FSB*, 288 A.3d 967, 971 (R.I. 2023) (quotations omitted).²

2. APRA

Rhode Island law requires that certain government records be made available to the public. With limited exceptions, “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[.]” R.I. Gen. Laws § 38-2-3(a) (emphasis added). As that provision makes clear, only the records of a “public body” are subject to the APRA’s disclosure requirements. Thus, if an entity is not a “public body,” it is not required to produce the arrest reports under APRA.

Under APRA, an “‘agency” or ‘public body’ means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but

¹ Some courts treat mootness as an issue of subject-matter jurisdiction. *See Soto v. City of Cambridge*, 193 F. Supp. 3d 61, 69 (D. Mass. 2016) (“Since ‘mootness is an issue of subject matter jurisdiction,’ it was appropriate for the court to raise the issue *sua sponte*.” (quoting *Coll. Standard Magazine v. Student Ass’n of State Univ. of N.Y. at Albany*, 610 F.3d 33, 35 (2d Cir. 2010))). Therefore, BDPS moves to dismiss Plaintiffs’ Complaint under Rule 12(b)(1) too. *See* R.I. R. Civ. P. 12(b)(1).

² In their Complaint, Plaintiffs reference the APRA complaint they filed with the Attorney General, Brown’s response thereto, and the Attorney General’s ruling on their APRA complaint. Compl., ¶¶ 10–12, 19–20. Moreover, the Attorney General’s ruling and the underlying pleadings are public records. Therefore, the Court may consider **Exhibit A** and **Exhibit B** in ruling on the Motion. *See Montaquila*, 288 A.3d at 971.

not limited to: any department, division, agency, commission, board, office, bureau, authority; any school, fire, or water district, or other agency of Rhode Island state or local government that exercises governmental functions; any authority as defined in § 42-35-1(b); **or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.**” § 38-2-2(1) (emphasis added). It is the plaintiff’s burden to show that a defendant entity acts on behalf of or in place of a public agency within the meaning of § 38-2-2(1). *Blais v. Beacon Mutal Insurance Company a/k/a The Rhode Island Workers’ Compensation Insurance Fund*, 2001 WL 35828804 (R.I. Super. Apr. 26, 2021) (“Plaintiff has the burden of demonstrating to this Court that defendant, here, acts on behalf of (or if the most recent amendment to the statute is of significance to the facts here ‘or in place of’) any public agency.”).

B. Plaintiffs’ APRA claim is moot.

Plaintiffs’ lawsuit is moot because Plaintiffs either have obtained or can obtain the Arrest Reports from the City of Providence. “As a general rule,” Rhode Island courts “will only consider cases involving issues in dispute; [they will] not address moot, abstract, academic, or hypothetical questions.” *Campbell v. Tiverton Zoning Bd.*, 15 A.3d 1015, 1022 (R.I. 2011) (quotations omitted). A “case is moot if it raised a justiciable controversy at the time the complaint was filed, but events occurring after the filing have deprived the litigant of an ongoing stake in the controversy.” *In re Briggs*, 62 A.3d 1090, 1097 (R.I. 2013) (quotations omitted). In other words, “when, as here, later events deprive the litigants of an ongoing personal stake in the controversy, the action is moot.” *Campbell*, 15 A.3d at 1022 (quotations omitted).

As Plaintiffs admit, BDPS is required to submit arrest reports to the Providence Police Department. *See* R.I. Gen. Laws § 12-2.1-5 (“The special police officers shall submit reports concerning an arrest to the department processing the arrest, whether the division of state police

or the police in the city or town in which the educational institution is located.”); *see also* Compl., ¶ 7. The Providence Police Department is unquestionably a “public body” under Rhode Island law and therefore is required to provide the reports (if they exist) under APRA.³ In fact, Plaintiffs admit that Bilow “filed an APRA request with the City of Providence for copies of” certain of the Arrest Reports and eventually obtained these reports. Compl., ¶¶ 8, 13. There is no reason Plaintiff Brigham cannot do the same.

Because Plaintiffs have obtained or can obtain the Arrest Reports from a source other than BDPS, their APRA claim is moot. *See Murphy v. Soc. Sec. Admin.*, No. C.A.03-12165-MLW, 2006 WL 2691614, at *2 (D. Mass. Sept. 19, 2006) (holding that “any claim for an injunction ordering that the plaintiff be provided the requested records is moot” where the “plaintiff concede[d] that he eventually received the information he requested”); *see also Ingraham v. U.S. Postal Serv.*, 1987 WL 37025, *1 (4th Cir. 1987) (per curiam) (“[S]ince Ingraham was given access to the reports his claim under the Freedom of Information Act is moot.” (collecting cases)); *Crooker v. U.S. State Department*, 628 F.2d 9, 10 (D.C. Cir. 1980) (per curiam) (after finding that the FBI had already produced the documents that plaintiff requested from the U.S. State Department, the Court held that “[o]nce the records are produced the substance of the controversy disappears and becomes moot since the disclosure which the suit seeks has already been made”). Therefore, the Court should dismiss this case.

C. Plaintiffs fail to state a claim for a violation of APRA.

Even if the APRA claim is not moot with respect to one or both Plaintiffs, the Court should dismiss the Complaint because BDPS is not a “public body” and is therefore not required to

³ In fact, Plaintiffs admit that Bilow “filed an APRA request with the City of Providence for copies of” certain of the Arrest Reports and eventually obtained these reports. Compl., ¶¶ 8, 13.

disclose the Arrest Reports under APRA. Rhode Island courts and authorities consult four factors in determining whether an entity is a “public body” for purposes of APRA: (1) whether the government controls the entity at issue; (2) whether the entity acts on behalf of or in place of the government; (3) whether the entity holds itself out as a public body; and (4) whether the entity has open meetings. *See* § 38-2-2(1) (“‘Agency’ or ‘public body’ means . . . any other public or private agency, person, partnership, corporation, or business entity **acting on behalf of and/or in place of** any public agency” (emphasis added)); *Key Corp. v. Greenville Pub. Library*, 288 A.3d 974, 979–80 (R.I. 2023) (considering whether the library held itself out as a public body, conducted open meetings, and the amount of funding it received from the town);⁴ **Exhibit B**, at pp. 4–5 (discussing various authorities). Each of these factors militate against finding that BDPS is a “public body.”

1. Factor 1: Whether the state or local governments control BDPS.

The Court must first ask whether the state or local governments control BDPS. They do not. There is no dispute that Brown is a *private* university and that BDPS is an arm of Brown. *See* Compl., ¶ 4 (“Brown is a university Brown **has established and maintains a police department, the BDPS**” (emphasis added)). Plaintiffs further acknowledge BDPS is a unit of Brown given they sued BDPS “**by and through** Brown University.” *Id.* (emphasis added).

Furthermore, under state law, BDPS’s officers are employees of Brown, not the state or local government. R.I. Gen. Laws § 12-2.1-1 (“The superintendent of state police, upon the petition of a private college, university, junior college, or other private educational institution of higher learning located in this state, may from time to time appoint **qualified employees of those institutions** as special police officers.” (emphasis added)).

⁴ Unlike Brown or BDPS, *see infra*, the Greenville Public Library was “listed on the Town’s web pages as a department of the Town,” “posts notices of its *public* meetings, and minutes of its meetings,” and its board of trustees was “listed as a public body on the Rhode Island Secretary of State’s open meetings website.” *See Key Corp.*, 288 A.3d at 979–80 (emphasis added).

Based on the allegations in the Complaint, the state and local governments do not control BDPS. Therefore, this factor weighs against finding that BDPS is a “public body” under APRA.

2. Factor 2: Whether BDPS acts in place of the state or local governments.

Next, the Court must ask whether BDPS, in exercising its authority, acts in place of state or local police. It does not. BDPS’s authority is limited to Brown’s campus and the immediate adjacent vicinity. R.I. Gen. Laws § 12-2.1-2 (“Upon issuance of a license under § 12-2.1-1, the person so designated as a special police officer shall have the same immunities and may exercise, **in and upon the lands and buildings of the institution by which he or she is employed, and upon streets and highways immediately adjacent to those lands**, 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” (emphasis added)). As discussed above, the police officers of BDPS are employees of Brown, *see* § 12-2.1-1, and Plaintiffs do not allege that these officers take orders from the state or local police or that the state or local police delegated their authority to BDPS. In fact, Rhode Island law explicitly provides that the appointment of special officers to BDPS **did not** divest the state or local police of their authority over areas BDPS officers patrol. *See* R.I. Gen. Laws § 12-2.1-5 (“Appointment of special police officers under this chapter ***shall in no way limit the powers, authority, and responsibility of state police and police of the various cities and towns to enforce state law and municipal ordinances on property owned by the educational institutions employing the special police officers.***” (emphasis added)).

State and local police do not dictate the conduct of BDPS, and the existence of BDPS does not prevent the state and local police from exercising their authority over the area BDPS officers’ patrol. In other words, BDPS, in exercising its authority over Brown’s campus and the immediate

vicinity, does not act in place of state or local police. Therefore, this factor weighs against finding BDPS is a “public body” under APRA.

3. Factors 3 & 4: Whether BDPS holds itself out as a public body and conducts open meetings.

Finally, the Court must ask whether BDPS holds itself out as a public body and conducts open meetings. BDPS does not hold itself out as public body or conduct open meetings. *See Exhibit B*, at p. 5. Plaintiffs do not make allegations to the contrary. *See generally* Complaint. Therefore, these factors weighs against finding BDPS is a “public body” under APRA.

CONCLUSION

Plaintiffs’ claim is moot. Furthermore, and as the Attorney General found, BDPS is not a “public body” and is therefore not required to disclose the Arrest Reports under APRA. Thus, Plaintiffs’ APRA claim fails as a matter of law, and the Court should dismiss it, *see Aptt*, 497 A.2d at 723, and grant BDPS’s Motion.

Respectfully submitted,

/s/ Mitchell R. Edwards

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CERTIFICATE OF SERVICE

I, Mitchell R. Edwards, attorney for Defendant, Brown University Department of Public Safety, by and Through Brown University, hereby certify that I filed and served this document through the electronic filing system on August 22, 2025. A copy of this document will be uploaded and served to all counsel of record via File & Serve Express once made available.

/s/ Mitchell R. Edwards
Mitchell R. Edwards