



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org | info@riaclu.org

December 23, 2015

Legal Office
RI State Police Headquarters
311 Danielson Pike
North Scituate, RI 02857

BY FAX AND MAIL

Dear Sir or Madam:

Please consider this a formal request pursuant to the Access to Public Records Act (APRA), R.I.G.L. §38-2-1 et seq. This request is being filed on behalf of the American Civil Liberties Union of Rhode Island, the NAACP Providence Branch, the George Wiley Center, the Providence Student Union, and the American Friends Service Committee - South East New England.

According to news stories yesterday, the R.I. State Police, in conjunction with the Pawtucket Police Department, has completed its review of, and issued a report regarding, an October 14th incident at Tolman High School in Pawtucket where a school resource officer was video-recorded body-slammng a student. We are writing to seek records relating to that incident and review. Specifically, we are interested in receiving:

1. A copy of the report that has been shared with school and other officials, as well as any accompanying cover letters, summaries, news releases, or other documents distributed with, or in lieu of, the report;
2. A copy of the witness reports and/or interviews, videos, audio recordings, correspondence, training standards, and any other written documents used in reaching the conclusions contained in the report; and
3. A copy of any report issued or investigation conducted involving the propriety of the pepper-spraying of students who were participating in a demonstration outside Tolman High School on October 15th over the October 14th incident.

We believe that, with the potential exception of a few redactions necessary to protect individual privacy, these materials are disclosable records under APRA and therefore should be released.

First, there should be no question about the public nature of the final report that your department has issued, along with any letters accompanying the submission and distribution of the report to school and other officials.

However, as explained in more detail below, we also believe that the underlying documents used in preparing the report are public as well.

Under APRA, records of law enforcement agencies are exempt from public disclosure:

“only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual.” R.I.G.L. 38-2-2(4)(D).

Since the State Police and Pawtucket Police Department have concluded there was no wrongdoing on the part of the school resource officer, exemptions (a) and (b) serve as no bar to disclosure of the requested documents. That is, under the circumstances, release of the underlying documents could neither “reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings” or “deprive a person of a right to a fair trial or an impartial adjudication.”¹ Exemptions (e) and (f) strike us as similarly irrelevant, as we would not expect any of the requested documents to “disclose techniques and procedures [or guidelines] for law enforcement investigations or prosecutions,” or “endanger the life or physical safety of any individual.”

The only potentially relevant exemptions are (c) and (d), involving records that “could reasonably be expected to constitute an unwarranted invasion of personal privacy” or reveal “confidential sources.” Certainly the names and other identifying information of students who were interviewed for the report deserve

¹ In light of the release of the report’s findings and the attendant media coverage of it, there is also no basis for concluding that release of the documents themselves could deprive the *juveniles* involved in the altercation of a fair trial either. Any pending Family Court proceedings are private. To the extent that any affirmative litigation by the two students directly involved in the incident is pursued, we note that their names have been voluntarily disclosed for months. Any adverse impact on *their* fair trial rights is not only completely speculative, but if there were such an impact, it would largely flow from the public disclosure of the findings that has already been made, not from release of documents.

protection. Keeping confidential the identity of some of the adults interviewed may, depending on the circumstances, be appropriate as well. But even here, the solution under APRA is not the withholding of the records, but instead the redaction of those names and other personally identifying information. This is in accordance with APRA's requirement, under R.I.G.L. 38-2-3(b), that any "reasonably segregable portion of [an exempted] public record ... shall be available for public inspection after the deletion of the information which is the basis of the exclusion."

Even if the underlying documents we have requested could be withheld under APRA – which, for the reasons mentioned above, we would dispute – it remains within your department's discretion to release the records. APRA sets a floor, not a ceiling, for release of information, and even records that *could* be withheld *need not be* withheld. In light of the enormous public interest in this incident – as demonstrated by the significant media coverage; your department's involvement in the investigation; the aftermath of the incident which prompted a mass demonstration by, and arrest of, additional students; and the public discussion that has ensued over the role of SROs in public schools – there can be little question of the strong public interest in this entire matter. That interest includes an examination of the records involving the investigation, as well as the final report. While we have no reason to doubt the report's conclusion, we believe it is important that the public be able to see all the evidence in order to confirm for themselves that the SRO's actions were justified and to see how the State Police reached the conclusions it did based on all the available evidence.

Less than five months ago, your agency came to a similar conclusion in voluntarily releasing the very detailed report it had prepared on the so-called Ticketgate scandal in the Cranston Police Department. Indeed, your agency released the report even though the Mayor of Cranston objected that it contained confidential personal information that warranted non-disclosure. Like that report, release of this information would shed light on important government issues, and particularly the role, responsibilities and powers of school resource officers in the schools.

Release of the requested information would also be in keeping with the October 20, 2015 memo that Stephen Neuman, Governor Raimondo's chief of staff, distributed to the Governor's cabinet. Labeled "Transparency," the memo emphasized that state agencies "should endeavor to disclose documents and information whenever possible." In balancing the public's right to know versus any general privacy interests in the information we are requesting, we clearly believe the public interest is paramount in this instance.

As provided for by APRA, we are willing to pay reasonable copying costs for the documents. Regarding our request #1, because we believe these documents should be readily available for release, we look forward to receiving those records within ten business days as provided by APRA. Because we recognize that a more extensive review may need to be made to address possible redactions in the documents sought in our request #2, we authorize in advance a "good cause"

extension of up to 20 days, to the extent necessary, to fulfill that portion of the request. We offer the same extension for request #3, as it is unclear to us to what extent, if any, an investigation of that follow-up incident has been undertaken.

Thank you in advance for your prompt attention to this request, and we look forward to receiving the requested material. We request that the information be provided in electronic format, to the extent available. For purposes of convenience, all material and correspondence can be sent to the ACLU's mailing and email addresses contained on the letterhead, and it will be shared with the other signatories.

Sincerely,



Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island

Jim Vincent, President
NAACP Providence Branch

Martha Yager, Program Coordinator
AFSC- SENE

Camilo Viveiros, Lead Organizer
George Wiley Center

M. Zachary Mezera
Providence Student Union