HEARING DATE: April 3, 2019

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

DIMITRI LYSSIKATOS
Plaintiff(s)

v.

TINA GONCALVES, IN HER CAPACITY AS THE CHIEF OF POLICE FOR THE CITY OF PAWTUCKET; AND FRANK J. MILOS, JR., ESQ., IN HIS CAPACITY AS CITY SOLICITOR FOR THE CITY OF PAWTUCKET
Defendant(s)

C.A. No. PC-2017-3678

PLAINTIFF, DIMITRI LYSSIKATOS', MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

> A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

Direct Action for Rights & Equal. v. Gannon, 819 A.2d 651, 657 (R.I. 2003) (quoting Letter from James Madison to William T. Barry (Aug. 4, 1822) (on file with the Library of America)). Rhode Island's Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et. seq., (the "APRA") like its federal counterpart—the Freedom of Information Act, 5 U.S.C. § 552—codifies this essential prerequisite of democratic government.

In this case, the Pawtucket Police Department has denied the public access to 57 reports generated by the internal affairs division of the Pawtucket Police Department—even when redacted to protect privacy—without a proper legal basis to do so, thereby denying Plaintiff, and the public, access to the information necessary to appropriately assess the management and

operation of the Pawtucket Police Department. This is a direct violation of the APRA and flies in the face of its stated purpose; government transparency. There is substantial public interest in the documents requested and, given the redaction of the records proposed by Plaintiff, no privacy interest at issue in this case. Simply put, Mr. Lyssikatos seeks the "what?", "when?", "where?", "why?" and "how?" of complaints against police officers but is adamantly not seeking information regarding the "who?". As such, and consistent with the Supreme Court's decisions in The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982) (rejecting the assertion that hearing officer's reports—the equivalent of internal affairs reports—were personnel records and ordering their disclosure in redacted form) and Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998) ("DARE") (holding that records that are redacted to protect the identities of the individuals referenced therein do not qualify for exemption from disclosure under the APRA and ordering the disclosure of police internal affairs records), disclosure is mandated as a matter of law and that summary judgment should, therefore, enter in Plaintiff's favor.

The public is the watchdog for society and to effectively exercise this role it must have access to the information necessary to assess how the government is functioning. William L. Dawson, Chairman of Committee on Government Operations, was correct when he wrote in 1955:

> An informed public makes the difference between mob rule and democratic government. If the pertinent and necessary information on government activities is denied the public, the result is a weakening of the democratic process and the ultimate atrophy of our form of government.

Letter from William L. Dawson, Chairman of Committee on Government Operations, to the Honorable John E. Moss, dated June 13, 1955.[1]

[1] Quoted with approval in House Report No. 93-876, reprinted in 1974 U.S.C.C.A.N. 6267, 6268. This report of the Committee on Government Operations recommended passage of a bill amending the Freedom of Information Act "to strengthen the procedural aspects of the Freedom of Information Act by several amendments which clarify certain provisions of the Act, improve its administration, and expedite the handling of requests for information from Federal

One of the essential functions of government is the provision of safety and security through the operation of a police force. For a police force to properly fulfill its functions and duties it is dependent on public approval. An essential prerequisite to public approval is public knowledge of the police force's activities, including in relation to their internal affairs investigations. This has been recognized by the Pawtucket Police Department. The role of the Internal Affairs division of the Pawtucket Police Department is described as follows on the Pawtucket Police Department's website:

> The Internal Affairs division of the Pawtucket Police Department has as its major function, the receiving, processing and investigation of complaints made against members of the department. To ensure the public trust and maintain the department's integrity, the IA division conducts immediate and objective investigations of all complaints.[2]

In an effort to promote public awareness of, and discourse regarding, the activities of Rhode Island police departments Plaintiff requested and was denied access to copies of internal affairs reports of the Pawtucket Police Department under Rhode Island's APRA. The Defendants' denial of this request flies in the face of the legislative purpose behind the act, the provisions of the act and its interpretation by Rhode Island Courts. There can be no question that the internal affairs reports at issue in this case are public records and subject to disclosure. Indeed, the Rhode Island Supreme Court has already decided this issue, declaring internal affairs reports to be public and subject to disclosure under the APRA. See The Rake, 452 A.2d 1144 and DARE, 713 A.2d 218.

---

agencies **in order to contribute to the fuller and faster release of information, which is the basic objective of the Act.**" Id. at 6267 (emphasis added).

[2] From http://www.pawtucketpolice.com/internalaffairs/ (last visited November 20, 2018). At its core, the internal affairs division has the goal of increasing public trust in the police force. Public disclosure of its investigative reports—once redacted—would serve this core goal; revealing what they do. Hiding behind the APRA and refusing to disclose records does not serve the public interest and only creates an air of secrecy and suspicion.

II. FACTS AND TRAVEL

On February 17, 2017, the Plaintiff, Mr. Lyssikatos—on behalf of the Rhode Island Accountability Project[3]—submitted a request to Mr. Frank Milos, City Solicitor for the City of Pawtucket, requesting "[t]he last 2 years of internally generated reports investigated by the Internal Affairs Division that were not the result of a citizens' complaints against police officers." See Exhibit A, February 17, 2017 request for records;[4] see also Exhibit B, Statement of Undisputed Facts ¶¶ 8-9.

There is no question that the Pawtucket Police Department qualifies as an "agency" or "public body" as defined in R.I. Gen. Laws § 38-2-2(1). See Exhibit B, ¶ 11.

Mr. Milos responded on behalf of the Defendants on April 3, 2017, denying Mr. Lyssikatos' request. Although Defendants acknowledged that the Pawtucket Police Department had identified 57 reports responsive to Mr. Lyssikatos' request, Defendants posited—improperly—that they were not public records on the grounds that the reports were not generated as a result of "citizen's complaints." See Exhibit D, Defendants' April 3, 2017 response to Mr. Lyssikatos's request. This is notable and surprising for a number of reasons. First, there is no

---

[3] The Rhode Island Accountability Project, also known as Aprawatch, of which Mr. Lyssikatos is a founder member, is a non-partisan body engaged in an effort to restore accountability and transparency in local government and law enforcement, particularly with regard to the investigation of police misconduct. The Rhode Island Accountability Project has developed and maintains a database of reports generated by the Internal Affairs divisions of the Police Departments for each of the cities and towns in Rhode Island. In order to maintain its database the Rhode Island Accountability Project, through Plaintiff and others, regularly makes requests for the release of records pursuant to APRA. When these reports are received they are published in a redacted form on the Rhode Island Accountability Project website: http://www.riaccountabilityproject.com/home.html (last visited: November 20, 2018).

[4] Although the request did not specifically state that the records should be provided in redacted form, this was Mr. Lyssikatos' expectation based on the usual practice in Rhode Island. Rather than bar the release of records that contain information that may be deemed exempt from disclosure, the APRA explicitly requires the release of "[a]ny reasonably segregable portion of a public record" containing exempt information. R.I.G.L. §38-2-3(b). Further, the Rhode Island Accountability Project, through Plaintiff and others, strives to protect the privacy interests of those individuals identified in Internal Affairs and other reports through the proper redaction of individually identifiable information (often through collaboration with public agencies) before the reports are published. Indeed, when records have been received without redaction Mr. Lyssikatos and others involved in the Rhode Island Accountability Project have redacted the received records and/or returned them for redaction by the producing police force. See Exhibit C, examples of efforts by the Rhode Island Accountability Project to ensure proper redaction of internal affairs reports.

principled basis for distinguishing between citizen generated complaints and internally generated complaints. Second, and presumably in recognition of this, the Pawtucket Police Department, as well as a number of other police departments in the state, have previously produced internal affairs reports generated as a result of internal complaints. See Exhibit E, internal affairs reports that originated from internal complaints produced by the Pawtucket Police Department. Further, the Providence Police Department recently made information relating to 15 years of internal investigations and disciplinary action public. See Exhibit F. The material published by the Providence Police Department includes information regarding investigations conducted and disciplinary action taken as a result of internally generated complaints.

In denying Mr. Lyssikatos's request, Defendants also cited the decisions of the Rhode Island Supreme Court in The Rake, 452 A.2d 1144 and DARE, 713 A.2d 218. Neither case stands for the proposition for which they have been cited by Defendants. Neither case states that internally generated reports of investigations conducted by an internal affairs division are not public records pursuant to APRA. Further, the Attorney General's opinion in Piskunov v. Town of Narragansett, PR17-05,[5] cited by Defendants does not support Pawtucket's claims in this case. There is no principled basis for distinguishing between Internal Affairs Reports generated as a result of Citizen Complaints and those that result from internal complaints.

Although it is inapplicable to the case at bar, Defendants also relied on R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) in denying Mr. Lyssikatos' request, stating the reports in question were "more

[5] This decision appears to have been driven, in large part, by Mr. Piskunov's failure to indicate the public interest supporting his request for records and the small size of the Narragansett Police Department—which allegedly increased the risk that the officers in question would be identified even if the records were redacted. In contrast, in the present case, Plaintiff has provided a detailed description and analysis of why the public interest justifies the disclosure of the records in question. In addition, the Pawtucket Police Department is significantly larger than the Narragansett Police Department. In making these distinctions, however, Plaintiff does not signal his agreement with the reasoning of the Piskunov decision that requesters must demonstrate an independent public interest in order to obtain these records or that a police department's size can be used to deny what are otherwise clearly public records.

akin to personnel investigations regarding job performance of the affected Officers and, therefore, exempt from disclosure."

Defendants also baldly assert that "even in redacted form, [the documents in question] would not serve to shed light on the official acts and workings of government, nor would it shed light on how the Pawtucket Police Department operates. The city further contends that the public interest in disclosure of these reports, if any, is "negligible" and the disclosure would, therefore, "constitute a clearly unwarranted invasion of personal privacy." See Exhibit D.

Since none of the bases for Defendants' decision to withhold the requested internal affairs reports is supported under the law, summary judgment should enter and the Defendants should be compelled to produce all 57 internal affairs reports—with redactions to protect the identities of individuals named therein.

III. STANDARD OF REVIEW

Summary judgment is appropriate where the moving party demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. "When an examination of the pleadings, affidavits, admissions, answers to interrogatories and other similar matters, viewed in the light most favorable to the party opposing the motion, reveals no such issue, the suit is ripe for summary judgment." Industrial National Bank v. Peloso, 397 A.2d 1312, 1313 (R.I. 1979).

A non-moving party defeats a summary judgment motion by pointing to specific facts demonstrating that there is indeed a trial worthy issue. See Moura v. Mortgage Elec. Registration Sys., Inc., 90 A.3d 852, 855-56 (R.I. 2014). "[T]he nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere

allegations or denials in the pleadings, mere conclusions or mere legal opinions." Daniels v. Fluette, 64 A.3d 302, 304 (R.I. 2013).[6]

IV. ARGUMENT: THE 57 INTERNAL AFFAIRS REPORTS GENERATED AS A RESULT OF INTERNAL COMPLAINTS CONSTITUTE PUBLIC RECORDS THAT SHOULD BE DISCLOSED PURSUANT TO THE APRA

This case does not present a trial worthy issue; there are no material questions of fact. The only issue presented to this court is a legal one; whether, under the APRA, the 57 reports from the Pawtucket Police Department's internal affairs division—redacted to protect the identities of the individuals referenced therein—can properly be withheld. The clear answer to this question is no. In fact, this issue has already been determined by the Rhode Island Supreme Court in The Rake and DARE, wherein redacted internal affairs reports were ordered to be disclosed.

Defendants have cited to the personnel records/privacy exemption in § 38-2-2(4)(A)(I)(b) as the basis for their denial of Mr. Lyssikatos' request, but this exception does not permit Defendants to withhold the records in question. While "a trial justice's determination in balancing the public interest in disclosure against the privacy interests at stake presents a mixed question of law and fact," Providence Journal Co. v. Rhode Island Dep't of Pub. Safety ex rel. Kilmartin, 136 A.3d 1168 (R.I. 2016) ("the Chafee case"), in this case no balancing is required. First, § 38-2-2(4)(A)(I)(b) does not apply, as § 38-2-2(4)(D) explicitly contemplates the publication of the internal affairs reports at issue in this case when it states that "records relating to management and direction of a law enforcement agency … shall be public."

---

[6] Pursuant to R.I. Gen. Laws § 38-2-10, Defendants bear the burden of proof to justify withholding documents:

> In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

Defendants cannot meet this burden.

Further, even if this Court finds that the personnel records/privacy exemption under § 38-2-2(4)(A)(I)(b) has potential application in this case, the redaction of the records in question eliminates any balancing of interests under the statute; once the records are redacted there is no privacy interest to be invaded and Defendants certainly cannot show that there would be a "clearly unwarranted invasion of personal privacy" in order to justify the application of the personnel records/privacy exemption. See, e.g., The Rake, 452 A.2d 1144 and DARE, 713 A.2d 218. As such, there are no material questions of fact, no triable issues, and Mr. Lyssikatos' motion for summary judgment must be granted.

A. A plain reading of R.I. Gen. Laws § 38-2-1 et. seq. compels disclosure of the 57 internal affairs reports at issue in this case

a. The default position under the APRA is disclosure

When construing a statute a Court must consider the statute in its entirety, Montaquila v. St. Cyr, 433 A.2d 206 (R.I. 1981), giving effect to the meaning that is most consistent with its policies and stated or obvious purposes. See, The Rake, 452 A.2d at 1147. See also Providence Journal Co. v. Mason, 359 A.2d 682 (R.I. 1976); and Edward A. Sherman Pub. Co. v. Carpender, 659 A.2d 1117, 1119 (R.I. 1995).

The Rhode Island Supreme Court has stated that:

> [i]t has long been a cardinal principle of statutory construction in this jurisdiction that when a statute is free from ambiguity and expresses a clear and definite meaning, the Court must accord to the words of the statute such clear and obvious import without adding to or detracting from the plain everyday meaning of the words contained in the statute.

Rhode Island Federation of Teachers, AFT, AFL-CIO v. Sundlun, 595 A.2d 799, 802 (R.I. 1991).

The primary purpose of the APRA is to achieve public access to information regarding the activities of the various organs of government; it is therefore a remedial statute that must be

liberally construed to promote its ultimate purpose;[7] here disclosure. The APRA's purpose is explicitly laid out in §38-2-1:

> The public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

The use of the phrase "unwarranted invasion of personal privacy" in §38-2-1 is significant; it tips the scale in favor of disclosure. It is, therefore not surprising that our Supreme Court, in DARE, 713 A.2d 218, held that "[w]ith the passage of the APRA, the R.I. General Assembly expressed its intent to enlarge the scope of the public's access to documents in the possession of governmental agencies." Id. at 222.

§ 38-2-1 shows that the General Assembly's default position is that some invasion of privacy in pursuit of the goal of governmental transparency is permitted. Significantly, the exemption Defendants rely on in this case, § 38-2-2(4)(A)(I)(b), deviates from this default and mandates disclosure of records unless there is a "clearly unwarranted invasion of personal privacy[,]" thus tipping the scale further in favor of disclosure. Given that "[t]he Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the [C]ourt will give effect to every word, clause, or sentence, whenever possible[,]" Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283, 288 (R.I. 2012) (citations and quotations omitted), the

[7] Although it has long been recognized that individuals have a right of access to public records provided the individual has "an interest therein which is such as would enable him to maintain or defend an action for which the document or record sought can furnish evidence or necessary information[,]" In re Caswell's Request, 29 A. 259, 259 (1893), this right was significantly expanded by the APRA. As such, there is no question that the APRA is a remedial statute which must be construed liberally to promote its ultimate purpose; disclosure of public documents. See e.g. Gem Plumbing & Heating Co. v. Rossi, 867 A.2d 796, 811 (R.I. 2005); City of Warwick v. Almac's, Inc., 442 A.2d 1265, 1273 (R.I. 1982).

significance of the inclusion of the word "clearly" in § 38-2-2(4)(A)(I)(d) cannot, and must not, be underestimated.

The Rhode Island Supreme Court has repeatedly recognized the clearly articulated purpose of public accountability and the APRA's obvious preference for disclosure. The Supreme Court has acknowledged that the legislative thumb is firmly on the side of the scale in favor of disclosure. For example, in Charlesgate Nursing Ctr. v. Brodeleau, 568 A.2d 775 (R.I. 1990), the Rhode Island Supreme Court held that:

> In these days of enhanced public participation in government, it has obviously been a legislative consensus that documents possessed by public bodies in the course of their supervisory activities **should generally be made public unless specifically exempted by the relevant act.**

Id. at 777-78 (emphasis added).[8]

That the legislative intention was to ensure that there is transparency in government in all but very limited circumstances finds further support in other decisions from the Rhode Island Supreme Court. For example, in Pawtucket Teachers All. Local No. 920, AFT, AFL-CIO v. Brady, 556 A.2d 556, 558 (R.I. 1989) the Court noted, "[w]e are mindful that the **basic policy of the act is in favor of disclosure.**" Id. at 558 (emphasis added). See also, In re New England Gas Co., 842 A.2d 545, 548 (R.I. 2004) (emphasizing the "strong public policy in the APRA in favor of public disclosure); and Kilmartin, 136 A.3d 1168, 1173 (R.I. 2016) ("the Chafee case")

[8] Similarly, the Supreme Court of the United States when interpreting the federal Freedom of Information Act as well as the courts of many states in interpreting their equivalent of the APRA have universally concluded that disclosure is the predominant purpose of these acts. For example, in Chrysler Corp. v. Brown, 441 U.S. 281, 290 (1979), the Supreme Court of the United States noted that it had "consistently recognized that the basic objective of the [Freedom of Information] Act is disclosure." See also Department of Air Force v. Rose, 425 U.S. 352, 361 (1976) ("disclosure, not secrecy" is the dominant objective of the Act.); Rutland Herald v. City of Rutland, 84 A.3d 821, 824 (Vt. 2013); Superintendent of Police v. Freedom of Information Commission, 609 A.2d 998 (Conn. 1992); Charleston Gazette v. Smithers, 752 S.E.2d 603, 614 (W. Va. 2013) (holding that West Virginia's equivalent of APRA should be liberally construed because "[t]he people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created.")

(recognizing that the underlying policy of the APRA favors the "free flow and disclosure of information to the public.").

The intent that disclosure should be the default position for government agencies finds further support in other provisions of the statute. For example, R.I. Gen. Laws § 38-2-3 requires that "any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion."[9] Further, the statutory mandate that "[i]n all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter[,]" § 38-2-10, also reinforces the conclusion that disclosure is the default position under the act. Additionally, the APRA itself expressly prohibits a public body from withholding records based on the purpose for which the records are sought and from requiring that a person or entity provide a reason for a request for records. § 38-2-3(j).

The General Assembly's goal of ensuring access to public records is maintained to as great an extent as possible is also amply illustrated by their 2006 enactment of the Government Oversight and Fiscal Accountability Review Act, see R.I. Gen. Laws § 37-2.3-2, which provides, "the legislature finds it necessary to ensure that access to public information guaranteed by the access to public records act is not in any way hindered by the fact that public services are provided by private contractors."

Given that the purpose of the APRA was to "enlarge the scope of the public's access to documents in the possession of governmental agencies," DARE, 713 A.2d at 222, it is not

[9] Pursuant to § 38-2-3, Defendants were obligated to produce redacted copies of the reports at issue rather than asserting blanket objections to their production.

surprising that exemptions to the APRA have been subject to narrow interpretation. See, e.g., Providence Journal Co. v. Convention Ctr. Auth., 774 A.2d 40, 56 (R.I. 2001). This accords with the federal courts' interpretation of the freedom of information act. See e.g. Carpenter v. United States DOJ, 470 F. 3d 434, 438 (1st Cir. 2006) ("the nine FOIA exemptions are to be construed narrowly, with any doubts resolved in favor of disclosure.").

In analyzing this case, this Court must, therefore, place its thumb on the scale in favor of disclosure. Given that there is no dispute of material fact and because the law so clearly favors disclosure of the records at issue in this case, the only appropriate result is the entry of summary judgment in Plaintiff's favor.

b. The Pawtucket Police Department is an "agency" or "public body" within the meaning of the APRA and therefore its records must be disclosed unless one of the exemptions in R.I. Gen. Laws § 38-2-2(4) applies

It is essentially uncontroverted and incontrovertible that the Pawtucket Police Department qualifies as an "agency" or "public body" under § 38-2-2(1) of the APRA. See Exhibit B, ¶ 11.

Section 38-2-3 of the APRA provides for broad disclosure of the records of agencies and public bodies:[10]

> (a) Except as provided in § 38-2-2(4), 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 at such reasonable time as may be determined by the custodian thereof.

[10] R.I. Gen. Laws § 38-2-2(4) defines public records as:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities), or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The records at issue here clearly fall within this definition and are not the subject of any exemptions.

As such, the records of the Pawtucket Police Department must be disclosed unless they fall within one of the exemptions enumerated in the APRA. As the Rhode Island Supreme Court has stated, despite the language in §38-2-1, the Court does not engage in a balancing test to determine if records should be disclosed:

> This Court has previously held that applicability of APRA to records held by a public body is not determined by a balancing test. Simply put, the records are subject to public disclosure unless they fall within one of the enumerated exceptions contained in APRA.

Convention Ctr. Auth., 774 A.2d at 46. Here, none of the exemptions apply. As such, the records should be disclosed without balancing the interests of the parties.

B. The only exemption relied upon by Defendants in this case, the personnel/privacy exemption under § 38-2-2(4)(A)(I)(b), is inapplicable

Since the only exemption that the Defendants rely upon in their letter denying Mr. Lyssikatos' request is the so-called personnel records/privacy exemption in § 38-2-2(4)(A)(I)(b) that is the only exemption that ought to be considered in this case; all other exemptions have been waived.[11] An analysis of the plain language of the personnel records/exemption demonstrates that it is inapplicable in this case. Further, a plain reading of § 38-2-2(4)(A)(I)(b) in the broader context of the APRA demonstrates that the legislature had no intent of excluding from disclosure internal affairs reports—whether generated as a result of an internal complaint or a citizen complaint.

a. A plain reading of § 38-2-2(4) shows that § 38-2-2(4)(A)(I)(b) is inapplicable in this case; the General Assembly has specifically provided that "records relating to management and direction of a law enforcement agency ... shall be public"

The Rhode Island Supreme Court has held that legislation should not be given a meaning that leads to an unjust, absurd, or unreasonable result. In re John Doe, 435 A.2d 330 (R.I. 1982).

[11] R.I. Gen. Laws § 38-2-7 provides that, "[e]xcept for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body."

In addition, it has stated that, "we presume that the drafters intended each word or provision of a statute to express a significant meaning, and the court will give effect to every word, clause, or sentence, whenever possible." Prew v. Employee Ret. Sys. of City of Providence, 139 A.3d 556, 561 (R.I. 2016) (quotations omitted). Indeed, "it is a well-settled principle of statutory interpretation that an isolated part of a particular statute cannot be viewed in a vacuum; rather, each word and phrase must be considered in the context of the entire statutory provision." Power Test Realty Co. P'ship v. Coit, 134 A.3d 1213, 1221 (R.I. 2016).

Reading the exemption cited by Defendants in this case, § 38-2-2(4)(A)(I)(b), in a vacuum and ignoring the specifics of § 38-2-2(4)(D) would, therefore, be a mistake. The personnel records/privacy exemption must be considered in the context of the full statutory scheme. In this regard, the provisions of §38-2-2(4)(D) are telling. § 38-2-2(4)(D) explicitly excludes from its ambit records "relating to management and direction of a law enforcement agency."

In addition, because § 38-2-2(4)(D) is specific, dealing directly with records relating to the management and direction of a law enforcement agency its provisions shall prevail over less specific provisions. See R.I. Gen. Laws § 43-3-26; S. Cty. Post & Beam, Inc. v. McMahon, 116 A.3d 204, 215 (R.I. 2015). As such, § 38-2-2(4)(A)(I)(b) is inapplicable in this case.

There can be no question that records "relating to management and direction of a law enforcement agency" include internal affairs reports like those at issue in this case. Indeed, in DARE, the Rhode Island Supreme Court, stated that:

> DARE also directs our attention to § 38–2–2(d)(4), as amended by P.L.1991, ch. 208, § 1. In pertinent part this provision excludes from disclosure:
>
> "All records maintained by law enforcement agencies for criminal law enforcement; and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency * * * *provided, however, records relating to management and direction of a law enforcement agency* and

> records reflecting the initial arrest of an adult and the charge or charges brought against an adult *shall be public.*" (Emphases added.)
>
> Here DARE argues that the emphasized portion of this subsection was added by the General Assembly in 1991 **"in recognition of the overwhelming public interest in allowing open scrutinization of the Providence police department's civilian complaint process"** and thus provides additional evidence supporting the disclosure of the requested records. With respect to request (d) [Reports on all disciplinary action that's [*sic*] been taken as a result of recommendations made by the Hearing Officers['] Division since 1986 to present.] **we agree.**

DARE, 713 A.2d at 224 (emphasis in italics original, emphasis in bold added). The Court in DARE, concluded that "**the manner in which a law enforcement agency addresses the concerns of its citizens regarding civilian complaints "'relat[es] to management and direction of a law enforcement agency.'"** Id. at 224 (emphasis added). The same rationale can be applied to all investigations conducted by internal affairs. As such, the records at issue in this case are public as a matter of law and summary judgment must be granted in Plaintiff's favor.

Further support for the proposition that the records at issue relate to the management and direction of a law enforcement agency can be found in the Pawtucket City Code and Charter. Article III Section 4 of Chapter 3 of the City of Pawtucket Code provides that:

> The members of the police force shall perform all such duties as are or may be required of them by the laws of the state and the ordinances of the City. They shall severally obey their superior officers and shall faithfully conform to and observe all lawful rules and regulations made for the management of the police force.

Article IV of Chapter 7, section 4-701, of the Pawtucket Charter provides that:

> The police division shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the state and the ordinances of the city and all rules and regulations made in accordance therewith. ... **The chief of police shall be in direct command of the division. ... the chief of police shall make rules and regulations in conformity with the ordinances of the city, concerning the operation of the division and the conduct of all officers and employees thereof; shall assign all members of the division to their respective posts, shifts,**

details and duties; and shall be responsible for the efficiency, discipline and good conduct of the division and for the care and custody of all property used by the division.

(Emphasis added). The Chief of Police is responsible for ensuring the Police department's "efficiency, discipline and good conduct." This is clearly an integral aspect of the management and direction of a law enforcement agency. The delegation of the investigation of all complaints to the internal affairs division is therefore one mechanism of managing the Pawtucket Police Department. As such, the requested documents clearly and indisputably relate directly to its management and direction and fall within the provisions of § 38-2-2(4)(D).

The internal affairs reports at issue in this case are "public" and since there is no question of material fact, summary judgment should be granted in Mr. Lyssikatos' favor. This Court should not consider an analysis of the case under § 38-2-2(4)(A)(I)(b).

b. Even if this Court finds that § 38-2-2(4)(D) does not apply in the present circumstances, the prerequisites to exemption under § 38-2-2(4)(A)(I)(b) cannot be met

R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) currently provides,[12] in the relevant part, that the following shall be exempt from disclosure under the APRA:

> [p]ersonnel and other individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.

[12] This version of § 38-2-2(4)(A)(I)(b) was enacted in 2012 and is much more favorable to disclosure than its predecessor. See *infra*. In addition, § 38-2-2(4)(A)(I)(b) became more closely aligned with exemption 6 in the federal Freedom of Information Act which provides an exemption from disclosure for, "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). As such, the federal precedents are particularly persuasive in analyzing Rhode Island's personnel records/privacy exemption.

This statute is clear and unambiguous and, therefore, must be given its plain and ordinary meaning. In addition, this exemption must be narrowly construed so as to give effect to the primary purpose of the statute, i.e. disclosure. See, e.g., Convention Ctr. Auth., 774 A.2d at 56.

In essence, in order to show that a record is exempt from disclosure under § 38-2-2(4)(A)(I)(b), the Defendants must show that the record in question is (1) a personnel or other individually-identifiable record deemed confidential by federal or state law or regulation; or (2) a personnel or other individually-identifiable record the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Defendants can do neither.

There is no material question of fact at issue in this case, Defendants cannot satisfy their burden of proof and establish that the internal affairs reports are personnel records, that they are deemed confidential by federal or state law or regulation or that the disclosure of these reports would constitute a clearly unwarranted invasion of personal privacy.

i. The 57 internal affairs reports at issue in this case do not constitute traditional personnel records

The suggestion that internal affairs investigations constitute personnel records was rejected in The Rake, 452 A.2d 1144. In The Rake, students and editors of the Brown University publication, the Rake, requested copies of reports concerning civilian complaints of police brutality from the Providence Police Department. Id. at 1146. The Providence Police Department rejected this request and a lawsuit ensued. Id. In opposing the plaintiff's requests for the release of the records, the Providence Police Department, in essence, asserted that the records were protected from disclosure by the personnel records/privacy exemption in the APRA. Id. at 1147-48. Although the exemption at the time provided that an agency or public body was not required to disclose "records which are identifiable to an individual ... employee; including, but not limited to, *personnel,* medical treatment, welfare, employment security, and pupil records and all records

relating to a client/attorney relationship and to a doctor/patient relationship[,]" id. at 1147, an analysis of The Rake is still instructive. In The Rake the Rhode Island Supreme Court rejected Defendants' arguments that the reports in question were personnel records noting that:

> this court does not consider the reports to be personnel records simply because the police department regards them as such or because the personnel bureau conducts and arranges the hearings. If the court allowed the above factors to be determinative of whether or not the reports are personnel records, the purpose of the statute could easily be circumvented. A governmental agency could label all of its records personnel records, leaving nothing accessible to the public. Clearly this is not a result hoped for by those who drafted the legislation.

Id. at 1147-1148. The court, thus, concluded that the reports at issue were not personnel records. The identical conclusion is warranted here. There is no rational or good faith basis for this, or any, court to distinguish between reports generated as a result of citizen complaints and internal complaints; none of those reports constitute personnel records.

Similar conclusions have been reached by other courts. For example, in Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 787 N.E.2d 602 (Mass. App. 2003), the Massachusetts Appeals Court concluded that internal affairs investigations are different in kind from ordinary evaluations, performance assessments and disciplinary determinations usually encompassed in "personnel files." Id. at 604. Despite acknowledging that internal affairs records could have an impact on a police officer's employment, the Court stated that because "these documents bear upon such decisions does not make their essential nature or character 'personnel [file] or information.' Rather, their essential nature and character derive from their function in the internal affairs process." Id. 606–07 (emphasis added). In so holding, the Court noted that:

> **It would be odd, indeed, to shield from the light of public scrutiny as "personnel [file] or information" the workings and determinations of a process whose quintessential purpose is to inspire public confidence.** Accordingly, we consider the officers' reports, the witness interview summaries, and the internal affairs report itself to be substantially different from the single, integrated report held to be "personnel [file] or information" in *Wakefield.* **The nature and**

> **character of these materials, and the context in which they arise, take them beyond what the legislature contemplated when exempting "personnel [file] or information."**

Id. at 608 (emphasis added). The same is true here, where the self-confessed purpose of the internal affairs division of the Pawtucket Police Department is to inspire public confidence.

Similarly, in Maryland Dep't of State Police v. Maryland State Conference of NAACP Branches, 988 A.2d 1075, 1080 (Md. 2010), the Court held that complaints relating to events occurring while the trooper is on duty and engaged in public service "are exactly the types of material the [Maryland equivalent of the APRA] was designed to allow the public to see. It is notable that the Court also acknowledged with approval its earlier statement that "*we do not believe that the General Assembly intended that any record identifying an employee would be exempt from disclosure as a personnel record.*" Id. at 1082 (2010) (emphasis original) (quoting Kirwan v. The Diamondback, 721 A.2d 196 (Md. 1998)).

An identical conclusion is warranted in the present case. The purpose of the internal affairs department is clear, as stated on its website:

> The Internal Affairs division of the Pawtucket Police Department has as its major function, the receiving, processing and investigation of complaints made against members of the department. **To ensure the public trust and maintain the department's integrity**, the IA division conducts immediate and objective investigations of all complaints.[13]

(Emphasis added). The nature of the 57 reports at issue in this case are, therefore, different from the types of records normally conceived of as "personnel records." As we explain further, *infra*, the reports at issue in this case are identical to the types of reports recognized as being public by Courts around the country and have repeatedly been found to be different in nature from personnel

[13] Significantly, the Pawtucket Police Department, like the General Assembly in § 38-2-2(4)(D), makes no distinction between reports based on the source of the complaint.

records. Indeed, the Rhode Island Supreme Court in The Rake has concluded that identical reports (albeit those generated as a result of citizen complaints) are public.[14]

ii. The 57 records in question are not deemed confidential by federal or state law or regulation

A review of federal and state law does not reveal any provision that Defendants could rely upon to support a conclusion that the 57 internal affairs reports at issue in this case are deemed confidential and, therefore, are not subject to disclosure.

While Defendants may argue that the disclosure of some of the records in question is precluded under the Law Enforcement Officer's Bill of Rights, when subject to analysis it is obvious that this statute is not intended to apply to the circumstances of this case.

The particular provision that Defendants are likely to cite, § 42-28.6-2(12), states:

> No public statement shall be made prior to a decision being rendered by the hearing committee and no public statement shall be made if the officer is found innocent unless the officer requests a public statement; provided, however, that this subdivision shall not apply if the officer makes a public statement. The foregoing shall not preclude a law enforcement agency, in a criminal matter, from releasing information pertaining to criminal charges which have been filed against a law enforcement officer, the officer's status of employment and the identity of any administrative charges brought against said officer as a result of said criminal charges.

The disclosure of the records at issue here, particularly when redacted, would not constitute a "public statement." Indeed, such a conclusion would be absurd in light of the requirement that a court when interpreting a statute must give its words their plain and ordinary meaning. See e.g. Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire, 637 A.2d 1047, 1049 (R.I. 1994).

Here there can be but one conclusion; that section 42-28.6-2(12) does not apply. Plaintiff is not asking for a "public statement" from the Pawtucket Police Department, in fact he is not

[14] Notably, the City of Pawtucket, the City of Providence and other towns and cities have repeatedly made internal affairs reports generated as a result of internal complaints public. This is undoubtedly because there is no principled basis to distinguish between reports generated as a result of internal complaints as opposed to citizen complaints.

asking for any statement at all. Rather, the Plaintiff is seeking disclosure of redacted documents relating to internal affairs investigations of internal complaints. On its face, section 42-28.6-2(12) precludes only the Pawtucket Police Department from making "public statements"; it makes no provision for access to documents—which is governed by the APRA.

In addition, when this provision is analyzed in conjunction with R.I. Gen. Laws § 38-2-2(4)(D), see *supra*, it is obvious that the legislature intended that reports of the type at issue in this case would be subject to public disclosure. This court must therefore conclude as a matter of law that the records in question are not personnel or other individually identifiable records "deemed confidential by federal or state law or regulation." As such, this portion of § 38-2-2(4)(A)(I)(b) does not apply.

iii. The 2012 amendment to § 38-2-2(4)(A)(I)(b) demonstrates the General Assembly's intention to ensure that the goal of disclosure is achieved in cases like the case at bar

That disclosure is mandated in this case is reinforced by the amendments to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) enacted in 2012. These amendments rendered the exemption much more favorable to disclosure than its predecessor; while the statute in its current iteration maintains the concept that the records in question are exempted because they are "individually identifiable[,]"—the phrase at the core of the Rhode Island Supreme Court's analysis of the personnel records/personal privacy exemption[15]—the amendment to § 38-2-2(4)(A)(I)(b) means that the records are only exempt if their disclosure would "constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et. seq.[.]" This addition explicitly contemplates the release of "personnel and other personal individually identifiable records" where there is no "clearly unwarranted invasion of privacy."

[15] See *infra* section III, B, b, iv.

The General Assembly undisputedly expected that there would be circumstances where the disclosure of personnel and other personal individually identifiable records would be justified even where there was an invasion of privacy. Indeed, the General Assembly obviously intended to allow disclosure of such records even if there was an unwarranted invasion of privacy, as disclosure is only precluded where the disclosure of records would constitute a clearly unwarranted invasion of privacy. Where, as here, the requesting party agrees that the records should be redacted there is no invasion of privacy. In such a circumstance there is no need for balancing under the exemption and the records at issue in this case should be subject to automatic disclosure.

In addition to mandating the disclosure of more records, the amendment to the personnel records/privacy exemption is also telling because it aligns the APRA more closely with its Federal counterpart and thus lends additional weight to the persuasive value of those cases.

iv. An analysis of Rhode Island cases supports the conclusion that redaction of the internal affairs reports at issue in this case negates any privacy interest and, therefore, precludes the application of 38-2-2(4)(A)(I)(b)

The Rhode Island cases that present the closest analogy to the present facts, The Rake, 452 A.2d 1144 and DARE, 713 A.2d 218, support the release of the requested documents with redactions. In both cases, the plaintiffs requested copies of internal affairs reports generated following citizen complaints and in both cases the Supreme Court ordered the release of the relevant records, with redactions of personally identifiable information. There is no principled basis for distinguishing between internal affairs reports on the basis of the status of the individual who filed the complaint.[16] The significant public interest in those reports remains the same no matter who the complainant is. Disclosure of all internal affairs reports will allow the public to

[16] Although not addressed in Rhode Island cases, this conclusion is supported by multiple decisions from federal courts as well as other state courts.

analyze the conduct of its police forces by demonstrating: (1) the types of complaints being made against its police officers; (2) the number of complaints that are being made; (3) the types of complainant;[17] (4) how those complaints are investigated and handled; (5) whether the complaints are treated differently depending upon who the complainant is; (6) the outcomes of the complaints and (7) whether the outcomes are fair.

Although the personnel records/privacy exemption at the time that The Rake was decided was somewhat different in that it provided that a public body was not required to disclose "records which are identifiable to an individual ... employee; including, but not limited to, *personnel,* medical treatment, welfare, employment security, and pupil records and all records relating to a client/attorney relationship and to a doctor/patient relationship [,]" id. at 1147, an analysis of The Rake is still instructive in determining the meaning of § 38-2-2(4)(A)(I)(b) because the personnel records/privacy exemption's primary concern remains the disclosure of records that identify particular individuals:

> [t]he statute requires that the records must be identifiable to an individual applicant in order for the exemption to take effect. In the present case, the reports do not identify the citizen complainants or the police officers because the names of both have been deleted as ordered by the Superior Court justice. Consequently, an important prerequisite for application of the exception has not been met.

Id. at 1148. Since redaction rendered the personnel records/privacy exemption inapplicable when it was less favorable to disclosure, there can be no question that redaction is sufficient to avoid the application of § 38-2-2(4)(A)(I)(d) as it is currently constituted. Redaction means that the records

[17] The type of complainant—whether a citizen or a police officer—as well as a comparison between the scrutiny given to internally generated complaints when compared with that given to citizen complaints will provide important and useful information regarding the management and direction of the Pawtucket Police Department. The fact that this analysis would serve to enhance the public's understanding of the management and direction of Rhode Island police departments further bolsters the need for disclosure of the reports at issue in this case.

in question will not be "identifiable" to any individual, thus no individual will have a privacy interest in those records.

Similarly, in DARE, the plaintiff had requested the following documents from the Chief of Police for the City of Providence:

> a.) Every 'Providence Police Civilian Complaint report' (Form 210) filed within the Providence Police Dept. from 1986 to present.
> b.) A listing of all findings from investigations that was [*sic*] conducted by the Bureau of Internal Affairs, in reference to all 'Providence Police Civilian Complaint reports' (Form 210) on record from 1986 to present.
> c.) All reports made by the 'Providence Police Department Hearing officers [ ] on thier [*sic*] decesions [*sic*] from the findings of investigations conducted in Re: Providence Police Civilian Complaints' (Form 210) from 1986 to present.
> d.) Reports on all disciplinary action that's [*sic*] been taken as a result of recommendations made by the Hearing Officers['] Division since 1986 to present.

DARE, 713 A.2d at 220.[18]

During arguments on the cross-motions for summary judgment in the Superior Court, the city expressed willingness "to disclose the final hearing officers' report with their final action taken on it and the final action of the police chief ... **with all of the names of both complainant and the police officer involved having been redacted.**" Id. at 221 (emphasis added). Despite this, and DARE's concession—like Plaintiff's in this case—that it "[did] not seek the names of police officers accused of misconduct and seem[ed] to concede that the law prohibits the disclosure of identities"—the motion justice ordered disclosure of the relevant records without redaction, reasoning that "people in a free and democratic society [ought] to have access to governmental records which are 'relevant to the public health, safety and welfare[.]'" Id.

On appeal, the Rhode Island Supreme Court noted that "[w]ith the passage of the APRA, the Rhode Island General Assembly expressed its intent to enlarge the scope of the public's access

[18] As with the exemption in The Rake, the personnel records/privacy exemption at issue in DARE was different from the exemption at issue today. However, the general conclusion is still applicable in analyzing this case.

to documents in the possession of governmental agencies[,]" id. at 222 (citing Sundlun, 616 A.2d at 1133) but also acknowledged that although APRA favors the free flow of information to the public, it does not provide "carte blanche" for either the press or the public to demand the release of all records held by government agencies. Id. at 222-223. Based on a review of its jurisprudence, including Carpender, 659 A.2d 1117; Sundlun, 616 A.2d 1131; Kane, 577 A.2d at 665 and Brady, 556 A.2d at 559, the Rhode Island Supreme Court held that "a rule has evolved that **permits the disclosure of records that do not specifically identify individuals and that represent final action.**" DARE, at 224 (emphasis added). As such, the Rhode Island Supreme Court ordered disclosure of:

> those documents described in categories (a) [civilian complaint forms], (c) ["All reports made by the 'Providence Police Department Hearing officers [ ] on thier [*sic*] decesions [*sic*] from the findings of investigations conducted in Re: Providence Police Civilian Complaints' (Form 210) from 1986 to present"], and (d) [reports on disciplinary action taken] of its request in redacted form; however, DARE is not entitled to access records in category (b) [a list of all findings from investigations conducted by the Bureau of Internal Affairs in relation to civilian complaints from 1986 to present] of its request.

Id. at 225.[19] While "identifiability" continues to be an important criterion under the personnel records/privacy exemption, it is no longer definitive—indeed the statute now contemplates the release of records that would be identifiable to an individual as long as there is not a clearly unwarranted invasion of privacy—and redaction remains a viable solution. Redaction eliminates any privacy concerns and therefore renders the documents public as a matter of law.

---

[19] DARE's request for a list of findings from investigations conducted by the Bureau of Internal Affairs was denied on the basis of § 38-2-3(f)—now § 38-2-3(h) of the APRA which provides:

> Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

Plaintiff, here, is seeking the reports in their original form—with redactions, § 38-2-3(h) is, therefore, not implicated here.

It is anticipated that Defendants will rely upon the decision of the Rhode Island Supreme Court in Brady, 556 A.2d 556, in support of their decision to withhold the 57 records at issue and to argue that redaction does not preclude the application of the personnel records/privacy exemption. However, in addition to preceding the 2012 amendments to the personnel records/privacy exemption, the facts of Brady are entirely distinguishable. As such, Brady does not support the Defendants' position in this case.

In Brady, the plaintiffs requested disclosure of a report compiled on behalf of the Pawtucket School Department by a consultant retained to investigate a number of complaints relating to the operation of the Varieur Elementary School in Pawtucket. Id. at 557. The plaintiffs' requests were denied and they filed an action under APRA seeking a mandatory injunction compelling production of the report. Id. The Superior Court justice denied an injunction concluding that the report fell within the personnel-record exception of § 38-2-2(d)(1).[20] On appeal, the Supreme Court affirmed the superior court's decision distinguishing The Rake and noting that "the report at issue in the present case specifically relates to the job performance of a **single readily identifiable individual.** Even if all references to proper names were deleted, the principal's identity would still be abundantly clear from the entire context of the report." Id. at 559 (emphasis added). The same cannot be said for any of the fifty-seven reports at issue in the case at bar. Here, Mr. Lyssikatos had an expectation that the reports would be redacted to protect the identities of the individuals in the reports. Defendants have provided no evidence, and will be unable to do so, that any of the reports would specifically identify a given individual. Redaction here is, therefore, more than sufficient to eliminate any privacy interest at issue. Further, even if some individuals

[20] This section is the predecessor to §38-2-2(4)(A)(I)(b). Notably, and as discussed elsewhere in this memorandum, §38-2-2(4)(A)(I)(b) is more favorable to parties seeking disclosure of records.

could be identified based on the redacted reports, this fact, alone, is not sufficient to justify wholesale withholding of the reports in question. See e.g., The Rake, 452 A.2d at 1149; and Rose, 425 U.S. at 361, discussed *infra*.

Further, it is notable that in deciding Brady, the Supreme Court stated that "Section 38-2-2 is designed to protect from public disclosure information which is highly personal and intimate in nature." 556 A.2d at 559. While the same privacy concerns underlie § 38-2-2(4)(A)(I)(b), the personnel records/privacy exemption only allows records to be exempted from public disclosure where there is a clearly unwarranted invasion of personal privacy. Whereas the rationale for the Court's decision in Brady was undoubtedly the fact that the principal in question could not be protected from identification, the same is simply not true here. Id. at 559-560. The potential for harm here, to the extent there is any, is entirely eliminated by the redaction of individual identifiers from the reports. Redaction more than adequately protects the police officer's identities and any privacy interest they may have in the information in the report.

Similarly, any attempt by Defendants to rely on Kilmartin, 136 A.3d 1168 ("the Chafee case"), would be misplaced. Not only is that decision based on a different exemption, the exemption for criminal investigative records under § 38-2-2(4)(D),[21] but the Supreme Court's decision in the Chafee case was clearly motivated by the fact that the requested documents related to named and identified individuals. In the Chafee case, the Court adjudicated the Providence Journal's request for information regarding to the investigation of underage drinking during a party hosted by Caleb Chafee, son of then Governor Lincoln Chafee at a property owned by the Governor. Id.

[21] § 38-2-2(4)(D) is more favorable to disclosure than § 38-2-2(4)(A)(I)(b). § 38-2-2(4)(D) exempts records from disclosure where those records "could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]" It does not require a "clearly unwarranted" invasion of personal privacy as required by § 38-2-2(4)(A)(I)(b).

While the Supreme Court denied the Providence Journal's request for the records in question because the records "could reasonably be expected to be an unwarranted invasion of personal privacy," id. at 1171, this analysis was conducted under the exemption for records maintained for law enforcement purposes,[22] not the personnel records/privacy exemption. Id. This is significant because the balancing test under § 38-2-2(4)(A)(I)(b) is significantly weighted in favor of disclosure requiring a **"clearly unwarranted invasion of privacy"** before an agency may choose to exempt the records from public disclosure as opposed to the **"unwarranted invasion of privacy"** that would permit an agency to exempt the records under section 38-2-2-(4)(D)(c). Like the situation in Brady, and unlike the situation here, the Court's decision in the Chafee case was motivated by the obvious connection between the records requested and one or two known individuals and would, therefore, have significant implications for the privacy of the individuals involved even though the records were redacted. The facts of the Chafee case are, therefore, distinguishable from the facts in the present case because, once redacted, no one will be identified in the records at issue in the case at bar and, therefore, no privacy interest will exist to be invaded. As a matter of law § 38-2-2(4)(A)(I)(b) does not apply.

v. The fact that the reports at issue in this case were generated following internal complaints is not dispositive; there is no rational basis for distinguishing between the source of the complaint.

The Rake, 452 A.2d 1144 and DARE, 713 A.2d 218, support the release of the requested documents with redactions. While both decisions addressed requests for internal affairs reports generated following citizen complaints and in both cases the Supreme Court ordered the release of the relevant records, with redactions of personally identifiable information, there is nothing in their language that would compel a contrary result in this case. There is no principled basis for

[22] § 38-2-2(4)(D)(c).

distinguishing between internal affairs reports based on the status of the individual who filed the complaint.

In Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 787 N.E.2d 602, 610 (Mass. App. 2003), the Massachusetts Court of Appeals held that the trial court was correct when it permitted discovery of an internal affairs report generated as a result of a citizen complaint, holding, "[t]he city failed in its burden of proving, with specificity," the applicability of the "personnel [file] or information" exemption. Id. at 11.

Although the decision in Worcester Telegram related to internal affairs reports generated as a result of citizen complaints, it is clear that its holdings, like those in The Rake and DARE, apply equally to all internal affairs reports, regardless of the source. Indeed, in 2006, a justice of the Massachusetts Superior Court agreed with this conclusion in Leeman v. Cote, 2006 WL 2661436 (Mass. Super. Aug. 30, 2006). In Leeman, the plaintiff sought access to an internal affairs investigation initiated following complaints by other members of the police department relating to cheating on the Sergeant's Exam—an exam taken by police officers seeking promotion. Id. at 1. The Superior Court found that the records of the internal affairs investigation were public and noted that the police department could "redact the names, and only the names, of persons confronting an invasion of privacy or unnecessary harm to reputation by disclosure of the internal affairs records." Id. at 1 (citing Globe Newspaper Co. v. Police Comm'r of Boston, 419 Mass. 852, 861, 648 N.E.2d 419 (1995)). In arriving at this conclusion the justice in Leeman found no basis to distinguish the decision in Worcester Telegram:

> Upon reviewing the record, I find no basis upon which to distinguish the present case from the decision of the Appeals Court in Worcester Telegram. In both cases, the core issue is whether an internal affairs file is a public record. Absent an applicable exemption, the presumption is that the record is public. In its analysis of the personnel files exemption, Worcester Telegram drew a line between the actual

> internal affairs file and the notice to the subject officer of its findings and conclusion. It found the former to be public and the latter exempt. Hence, **the internal affairs case file is a public record.** Any actual notice or order of disciplinary action addressed to Lt. Leeman or other named officers, however, is not because it is certainly a document "useful in making employment decisions regarding an employee."

Leeman v. Cote, 2006 WL 2661436, at *5 (emphasis added). The justice continued by stating:

> The competence and integrity of a police force are intrinsically public concerns. **That concern endures without regard to the identity of a complainant or inquisitor as either a member of the force or a member of the citizenry. Both groups are entitled to know that the police possess the competence and integrity to police themselves.**

Id. at *6 (emphasis added).[23]

In Rutland Herald v. City of Rutland, 84 A.3d 821 (Vt. 2013), the Supreme Court of Vermont affirmed a trial court decision concluding that Vermont's "personal records" exemption[24] did not apply to records concerning Police Department employees who were investigated and disciplined for sending pornography on work computers while on duty. Id. at 822. The investigation at issue arose as a result of an internal complaint. Id.

The trial justice, after an in camera review, concluded that the documents should be produced with redactions. Id. The Supreme Court agreed. In so deciding the Supreme Court of Vermont held that "there is a significant public interest in knowing how the police department

---

[23] It is notable that under the Massachusetts freedom of information statute, personnel files are absolutely exempt from disclosure, see Globe Newspaper Co. v. Boston Retirement Bd, 446 N.E.2d 1051, whereas the APRA in Rhode Island clearly contemplates the release of such records in certain circumstances—even if they would constitute an invasion of privacy.

[24] The provision in question 1 V.S.A. § 317(c)(7) provides:

> Personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative.

Vt. Stat. Ann. tit. 1, § 317.

supervises its employees and responds to allegations of misconduct[,]" Id. at 825 (Vt. 2013), and noted that the records relating to an internal investigation allow the public to:

> gauge the police department's responsiveness to specific instances of misconduct; assess whether the agency is accountable to itself internally, whether it challenges its own assumptions regularly in a way designed to expose systemic infirmity in management oversight and control; the absence of which may result in patterns of inappropriate workplace conduct.

Id. (quotations and citations omitted).

The Court in Rutland Herald ultimately concluded that:

> Even assuming, as we have, that the records in the instant case contain "personal information" that falls within § 317(c)(7), there remains a balancing test to be conducted. We recognized in Kade that there may be a broad public interest served by the release of documents that contain "personal information." That is precisely the conclusion we reach here. As set forth above, given the significant public interest at stake, the balance here tips in favor of disclosure.

Id. at 826–27. A similar conclusion is warranted in relation to the records at issue in this case. The requested records would illustrate how the internal affairs investigations at issue began, how they were conducted and what factors played a role in the disciplinary action, if any, that was taken. This information would, therefore, contribute meaningfully to the public's understanding of the police department's oversight and management. There is, therefore, significant public interest in the documents in question justifying their disclosure. Indeed, with redaction—not required in Rutland Herald—individual's privacy interests would cease to exist.

Similarly, in Charleston Gazette v. Smithers, 752 S.E.2d 603, (W. Va. 2013), the Supreme Court of Appeals for West Virginia concluded that "conduct by a state police officer while the officer is on the job in his or her official capacity as a law enforcement officer and performing such duties, including but not limited to, patrolling, conducting arrests and searches and investigating crimes does not fall within the Freedom of Information Act invasion of privacy

exemption set forth in West Virginia Code § 29B-1-4(a)(2)."[25] Smithers, 752 S.E.2d at 619. While that Court concluded that "alleged misconduct that occurs while the state police officer is not on the job" would not be subject to mandatory disclosure under FOIA, id., it is significant that records relating to all official activities were required to be disclosed; no distinction was made on the basis of the source of the complaint. In fact, the Court noted that:

> when a request is made under the West Virginia Freedom of Information Act, West Virginia Code §§ 29B–1–1 to –7 (2012), for information from the West Virginia State Police regarding an internal investigation or inquiry stemming from **either an external or internal complaint of misconduct** by a state police officer in connection with the officer's official capacity as a law enforcement officer, such information is subject to release to the public only after completion of the investigation or inquiry and a determination made as to whether disciplinary action is authorized by the Superintendent as set forth in West Virginia Code of State Rules § 81–10–8.13 (2008). After the investigation or inquiry into the complaint has been concluded and a determination made as to whether disciplinary action is authorized by the Superintendent, **the public has a right to access the complaint, all documents in the case file, and the disposition, with the names of the complainants or any other identifying information redacted in accordance with the confidentiality requirements established by West Virginia Code of State Rules §§ 81–10–1 to –11 (2008).**

Id. at 624 (emphasis added, footnotes omitted). This is a sensible approach; it is the substance of the complaint, not the source that should be definitive. The same conclusion should apply here.

---

[25] West Virginia Code § 29B-1-4(a)(2) exempts from disclosure:

> Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an **unreasonable invasion of privacy**, unless the public interest by clear and convincing evidence requires disclosure in the particular instance

Smithers, 752 S.E.2d at 615 (emphasis added). While not a perfect facsimile for § 38-2-2(4)(A)(I)(b), the legislation is sufficiently analogous for the decision of the West Virginia Supreme Court of Appeals to be instructive. Indeed, West Virginia's "unreasonableness" standard would permit less disclosure than Rhode Island which requires a "clearly unwarranted invasion of privacy."

While Defendants have relied on the Attorney General's opinion in Piskunov v. Town of Narragansett, PR 17-05,[26] in support of their decision to withhold the reports in question, a close analysis of that opinion does not provide any support for their position in this case. Although Defendants' letter to Plaintiff did not indicate the portion of the Attorney General's opinion that they rely upon, it is presumably the Attorney General's statement that "we find little to no public interest in the disclosure of the three citizen-initiated internal affairs reports ... and even less public interest in the disclosure of non-citizen initiated internal affairs reports." 2017 WL 1154201, at 3. While the Attorney General appears to rely on The Rake and DARE to support this proposition, the opinion does not provide any logical or rational basis for this conclusion. The Attorney General's conclusion that DARE "clearly has no application to the non-citizen generated initiated complaints responsive to your request" is simply wrong. As we have seen, there is no basis for concluding that the Supreme Court in The Rake or DARE intended to limit its reasoning to citizen generated reports. Indeed, the rationales for those decisions support a determination that all internal affairs reports are public. In both decisions the Rhode Island Supreme Court rejected arguments that the equivalent of § 38-2-2(4)(A)(I)(b) exempted internal affairs reports. Numerous other courts, both federal and from other states, agree. The redaction of internal affairs reports removes them from the ambit of § 38-2-2(4)(A)(I)(b).

Significantly, the Attorney General's conclusion in Piskunov appears, in large part, to have been reached because Mr. Piskunov did not provide a description of the public interest that would be served by disclosure of the non-citizen initiated internal affairs report—a fact that is referenced on at least six occasions in the Attorney General's opinion in Piskunov. Here, too, the Attorney

[26] 2017 WL 1154201. Mr. Piskunov had requested the last 10 completed internal affairs reports from the Narragansett Police Department. His request was denied. He appealed this decision to the Rhode Island Attorney General.

General's opinion is wrong. Nothing in the APRA requires an affirmative demonstration of public interest in order to obtain documents that are public records under the law and inherently of public interest. Indeed, such a position is in tension with §38-2-3(j), which bars agencies from requiring requesters to provide a reason for a records request, particularly where there is no legitimate claim of a clearly unwarranted invasion of privacy to be rebutted. In any event, here Plaintiff has provided a detailed description of the interest served by the release of the reports in question with citations to numerous courts that have reached the conclusion that the release internal affairs reports serves the public interest.

Taken together, the decisions in The Rake, DARE as well as Worcester Telegram, Leeman, Rutland Herald and Smithers demonstrate that the source of the complaint resulting in the internal affairs report is irrelevant to this court's inquiry. All internal affairs reports relate to the management and direction of a law enforcement agency and are, therefore, public records as a matter of law.

vi. The decisions of the United States Supreme Court and of courts in other states support the conclusion that redaction of the internal affairs reports at issue in this case negates any privacy interest and, therefore, precludes the application of 38-2-2(4)(A)(I)(b)

The Rhode Island Supreme Court has stated that "[b]ecause APRA mirrors the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 1996), it is appropriate to look to Federal case law interpreting FOIA to assist in our interpretation of the statute." Convention Ctr. Auth., 774 A.2d at 46. The force and value of Federal precedents in relation to the application of the personnel records/privacy exemption in § 38-2-2(4)(A)(I)(b) has only increased since its amendment in 2012. In 2012, the APRA was amended and now includes the same language as exemption 6 to the federal Freedom of Information Act, requiring "a clearly unwarranted invasion of privacy" before the exemption applies. As such, § 38-2-2(4)(A)(I)(b) became more closely aligned with exemption

6 in the federal Freedom of Information Act. In interpreting exemption 6, federal courts have repeatedly noted that the redaction of records to protect individual's identities is appropriate and renders the exemption inapplicable.

The United States Supreme Court dealt with a closely analogous situation in Rose, 425 U.S. 352. In Rose, student editors of the New York University Law Review who were conducting research on disciplinary systems and procedures in the military service academies were denied access to case summaries of honor and ethics hearings (with personal references and other identify information deleted). Id. These records were, in essence, related to internal investigations conducted by the Air Force Academy, id. at 354-355, and therefore constitute a close analog for the records at issue in the case at bar.

The Air Force Academy argued that the requested summaries were "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy" and were therefore exempt from disclosure under 5 U.S.C. §552(b)(6). Id. at 357. The Federal District Court rejected this argument on the grounds that disclosure of the summaries, when redacted to remove names or other identifying information, would not expose any cadets to public identification and the ensuing stigma. Id. In addition, the Federal District Court concluded that "the possibility of identification by another former cadet could not, in the context of the Academy's practice of distribution and official posting of the summaries, constitute an invasion of personal privacy proscribed by s 552(b)(6)." Id. On appeal, the Court of Appeals ordered an in camera review of the documents commenting "[w]e think it highly likely that the combined skills of court and Agency, applied to the summaries, will yield edited documents sufficient for the purposes sought and sufficient as well to safeguard affected persons in their legitimate claims of privacy." Id at 358.

In affirming the Court of Appeals' decision that an in camera review was required, id., the United States Supreme Court noted that Congress, when it enacted the Freedom of Information Act, reflected "a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." Id. at 360-361 (quoting S.Rep.No.813, 89th Cong., 1st Sess., 3 (1965)). As such, the Court reaffirmed its position that the exemptions listed in 5 U.S.C. 552 must be construed narrowly, holding:

> But these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act. "These exemptions are explicitly made exclusive, 5 U.S.C. s 552(c) . . . ," and must be narrowly construed.

Id. at 361 (quotations and citations omitted).

In analyzing the arguments relating to exemption 6, the United States Supreme Court stated that it did not create a "blanket exemption for personnel files," id. at 371, agreeing with the Court of Appeals that the "key words" in the exemption "are 'a clearly unwarranted invasion of personal privacy[.]'" Id. Continuing in this vein, the Supreme Court held that:

> Congress, sought to construct an exemption that would require a balancing of the individual's right of privacy against the preservation of the basic purpose of the Freedom of Information Act "to open agency action to the light of public scrutiny." The device adopted to achieve that balance was the limited exemption, where privacy was threatened, for "clearly unwarranted" invasions of personal privacy.

Id. at 372. The Supreme Court therefore, concluded that:

> **"the in camera procedure (ordered) will further the statutory goal of Exemption Six: a workable compromise between individual rights 'and the preservation of public rights to Government information.' "** Id., at 269.
>
> To be sure, redaction cannot eliminate all risks of identifiability, as any human approximation risks some degree of imperfection, and the consequences of exposure of identity can admittedly be severe. **But redaction is a familiar technique in other contexts and exemptions to disclosure under the Act were intended to be practical workable concepts**[.] Moreover, **we repeat, Exemption 6 does not protect against disclosure every incidental invasion of privacy only such disclosures as constitute "clearly unwarranted" invasions of personal privacy.**

Id. at 381-382 (emphasis added). This is significant, although the Supreme Court agreed with the Court of Appeals that an in camera review was necessary—to ensure that the proposed redactions were sufficient—it expressed a clear preference for the redaction of records to ensure that as much information as possible is disclosed pursuant to the Freedom of Information Act and noted that some invasion of privacy should be tolerated in order to ensure transparency in government action.[27]

In Champa v. Weston Pub. Sch., 39 N.E.3d 435 (Mass. 2015), the Supreme Judicial Court of Massachusetts noted its position that redaction can preclude the application of its version of the privacy exemption.[28] The court in Champa held that disclosure of settlement agreements between a school and the parents of a student who required special education services where individually identifiable information had been removed was appropriate. Id. at 445. The Supreme Judicial Court noted that:

> **once personally identifiable information is redacted**, the financial terms of such agreements, which necessarily reflect the use of public monies, partially or fully, to pay for out-of-district placements, do not constitute an unwarranted invasion of personal privacy; indeed, the public has a right to know the financial terms of these agreements. As is true with exemption (*a*), **once the appropriate redactions of personally identifiable information are made, the agreements will no longer fit within the scope of exemption (*c*) and must be disclosed.**"

---

[27] That redaction is an appropriate mechanism to protect and ultimately eliminate the privacy concerns at issue in exemption 6 finds further support in the Supreme Court's quotation, with approval, of comments made by Senator Kennedy who noted that "deletion of names and identifying characteristics of individuals would in some cases serve the underlying purpose of exemption 6, which exempts 'personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.'" Id. at 375.

[28] In Globe Newspaper Co. v. Boston Ret. Bd., 446 N.E.2d 1051 (Mass. 1983), the Supreme Judicial Court of Massachusetts concluded that under its freedom of information act "medical and personnel files or information are absolutely exempt from mandatory disclosure where the files or information are of a personal nature and relate to a particular individual. **But information which does not permit the identification of any individual is not exempt.**" Id. at 1058 (emphasis added). The Court went on to note that "we must therefore consider whether the deletion of particular identifying details from the documents sought ... may bring the documents outside the exemption." Id. Although the Court ultimately concluded that redaction of the records requested (medical certificates provided to the Boston Retirement Board) would not be sufficient to protect the privacy at interests at stake, its recognition of redaction as a potential solution to the problem is significant. Further, the nature of the documents at issue in this case are materially less personal and private than certificates containing individual's medical information. As such, redaction would be appropriate and sufficient to protect any privacy interests in this case.

Id. Redaction here serves the same purpose—once redacted the records do not fit within the scope of § 38-2-2(4)(A)(I)(b) and must be disclosed as a matter of law. Summary judgment is, therefore, entirely appropriate.

Defendants may attempt to rely upon the Ninth Circuit Court of Appeal's decision in Hunt v. F.B.I., 972 F.2d 286 (9th Cir. 1992), wherein the Court reversed the District Court's decision ordering disclosure of an F.B.I. file of an internal investigation with redaction of the name of the agent in question on the grounds that disclosure would constitute an unwarranted invasion of privacy because the public interest in the report was negligible. However, the Hunt decision is clearly distinguishable from the facts in the present case. In Hunt, the request for a single record was made by an individual who knew the identity of the agent in question because he had made the complaint resulting in the investigation. Id. at 287.[29] Here plaintiff is not seeking information regarding any specific individual and, in fact, expects the reports in question to be redacted so no individual is identifiable.

In addition, Hunt involved a single file rather than the 57 reports at issue in this case. In this regard, it is significant that the Ninth Circuit distinguished the Supreme Court's decision in Rose:

> In Rose a collection of summaries describing Honor Code violations at the Air Force Academy was sought under FOIA. Id. at 355, 96 S.Ct. at 1596–97. **The public interest in disclosure of the summaries was significant because conclusions could be drawn concerning the efficacy and fairness of Air Force disciplinary procedures.** Further, the Court emphasized that the summaries were to be disclosed with all "personal references or other identifying information deleted." *Id.* at 380, 96 S.Ct. at 1608. While redaction would not eliminate all risks of identifiability, the Court reasoned that each summary had, at one time, been posted on the Academy bulletin boards, and numerous redacted summaries were to be disclosed. As a result, disclosure of the summaries did not constitute a "clearly

[29] Hunt is much more akin to the Rhode Island Supreme Court's decisions in Brady, 556 A.2d 556 and Kilmartin, 136 A.3d 1168 which we have previously distinguished.

> unwarranted" invasion of the cadets' personal privacy. *Id.* at 382, 96 S.Ct. at 1609. In contrast, Hunt has requested one investigative file, focused completely on the conduct of one agent. The file cannot be redacted and disclosed without the risk of subjecting that agent to undeserved embarrassment and attention.

Hunt v. F.B.I., 972 F.2d 286, 289 (9th Cir. 1992) (emphasis added). The circumstances in Rose are much more analogous to the facts of the present case than the situation in Hunt. As such, the Supreme Court's decision in Rose should guide this Court; redaction alone is sufficient to remove the records in this case from the ambit of the personnel records/privacy exemption because it eliminates the privacy interest that section 38-2-2(4)(A)(I)(b) is intended to protect.[30]

The United States Supreme Court has found that "privacy" in freedom of information act cases contemplates two different interests, "[o]ne is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press, 489 U.S. 749, 762–63 (1989), (quoting Whalen v. Roe, 429 U.S. 589, 598-600 (1977)). Here, like the situation in Reporters Comm.—where the FBI was being asked to disclose so-called "rap sheets" it maintained on individuals to a third party—the interest at stake is one of "avoiding disclosure of personal matters." Id. Although it acknowledged that the information contained in the rap sheets was generally available to the public, the United States Supreme Court decided that disclosure would not be appropriate because individuals have a "substantial" privacy interest in the rap sheets. Id. at 770-771. In essence, the Supreme Court's decision in Reporters Comm. was driven by its concern regarding the unusually detailed and comprehensive nature of the rap sheets and the fact that they were identifiable to an individual, private person and would not reveal information about government activity. The Supreme Court stated:

[30] Further, it is notable that when published on the Rhode Island Accountability Project's website, the import of any single report will be diluted given the volume of material already available.

> the FOIA's central purpose is to ensure that the *Government's* activities be opened to the sharp eye of public scrutiny, not that information about *private citizens* that happens to be in the warehouse of the Government be so disclosed. Thus, it should come as no surprise that in none of our cases construing the FOIA have we found it appropriate to order a Government agency to honor a FOIA request for information about a particular private citizen

Reporters Comm., 489 U.S. at 774–75. The request at issue in this case will open the "Government's activities to the sharp eye of public scrutiny" and does not relate to, or seek, "information about private citizens[.]" Indeed, any such concerns are negated by redaction in the instant case. Unlike the situation in Reporters Comm., where the rap sheets would "reveal little or nothing about an agency's own conduct[,]" id. at 773, the reports of the internal affairs division are directly related to the agency's own conduct and do not focus on the activities of private citizens.

Further, in Reporters Comm. the Supreme Court commented that:

> the FOIA provides that "[t]o the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction." 5 U.S.C. § 552(a)(2). **These provisions, for deletion of identifying references and disclosure of segregable portions of records with exempt information deleted, reflect a congressional understanding that disclosure of records containing personal details about private citizens can infringe significant privacy interests.**

Id. at 765-766 (emphasis added).[31] Although these comments were made in support of the Supreme Court's conclusion that individuals have a substantial privacy interest in personally identifiable information, they also suggest a ready solution to the problem—redaction of the records. While such a solution was not an option in Reporters Comm., it is both reasonable and effective here.

[31] The APRA contains an identical provision requiring disclosure of all reasonably segregable portions of otherwise exempt records, § 38-2-3(b).

In another exemption 6 case, U.S. Dep't of State v. Ray, 502 U.S. 164, 166, 112 S. Ct. 541, 543, 116 L. Ed. 2d 526 (1991), the United States Supreme Court held that the Department of State's decision to disclose redacted of copies of reports it had compiled following interviews with repatriated Haitian immigrants was justified. Id. at 170-171. The respondent, a Florida lawyer who represented a group of Haitians seeking asylum in the United States, id. at 168, wanted to obtain un-redacted copies of the relevant reports so he could contact the individuals in question to rebut government claims that repatriated Haitians were not the subject of persecution. Id. Acknowledging this purpose, the Supreme Court ultimately concluded that there was only a de minimis public interest in the disclosure and the identities of the individuals involved would result in a "clearly unwarranted invasion of the interviewee's privacy." Id. at 177-178. In so holding, the Court noted that redaction of the information would reduce the privacy interest such that it did not justify withholding the documents:

> Thus, if the summaries are released without the names redacted, highly personal information regarding marital and employment status, children, living conditions and attempts to enter the United States, would be linked publicly with particular, named individuals. Although disclosure of such personal information constitutes **only a *de minimis* invasion of privacy when the identities of the interviewees are unknown, the invasion of privacy becomes significant when the personal information is linked to particular interviewees.**

Id. at 175-176. Applying this reasoning to the case at hand, the redaction of identifiers in the internal affairs reports results in, at most, a de-minimis invasion of privacy because the information in the reports is not linked to an individual. Indeed, the information at issue in the reports in this case is much less personal than those in Ray—highly personal information regarding marital status, children and living conditions is unlikely to be implicated by these reports and, to the extent it is, privacy is protected through redaction. As such, disclosure of the reports would not result in

a clearly unwarranted invasion of privacy, especially where, as here, there is a significant public interest in the records in question.

Redaction has also been found to be sufficient to protect privacy interests in the application of the less disclosure friendly exemption 7(c) under the federal Freedom of Information act. The differences between exemption 6 (the personnel records exemption) and exemption 7(C) under the Federal FOIA, were recognized by the United States Supreme Court in Reporters Comm., 489 U.S. 749, noting that

> the standard for evaluating a threatened invasion of privacy interests resulting from the disclosure of records compiled for law enforcement purposes is somewhat broader than the standard applicable to personnel, medical, and similar files.

Id. at 755-56. See also Am. Civil Liberties Union v. U.S. Dep't of Justice, 655 F.3d 1, 6 (D.C. Cir. 2011). The fact that redaction is sufficient to protect privacy under exemption 7(c) adds force to the argument that redaction more than meets the requirements under exemption 6 and § 38-2-2(4)(A)(I)(d). For example, in Nation Magazine, Washington Bureau v. U.S. Customs Serv., 71 F.3d 885, 894–95 (D.C. Cir. 1995), the Court of Appeals explicitly rejected a categorical rule that allowed an agency to:

> exempt from disclosure *all* of the material in an investigatory record solely on the grounds that the record includes some information which identifies a private citizen or provides that person's name and address. Because such a blanket exemption would reach far more broadly than is necessary to protect the identities of individuals mentioned in law enforcement files, it would be contrary to FOIA's overall purpose of disclosure, and thus is not a permissible reading of Exemption 7(C).

Id. The Court noted that as a general rule, agencies should "redact the names, addresses, or other identifiers of individuals mentioned in investigatory files in order to protect the privacy of those persons." Id. at 896. See also Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice, 746 F.3d 1082, 1096 (D.C. Cir. 2014) ("CREW"); and Lurie v. Dep't of Army, 970 F.

Supp. 19, 37 (D.D.C. 1997). If redaction is enough to prevent an invasion of privacy under exemption 7(c) it is certainly more than sufficient to prevent a "clearly unwarranted" invasion of privacy under exemption 6 and § 38-2-2(4)(A)(I)(b).

C. Even if this court is required to engage in a balancing of the public interest in disclosure against the privacy interests of the individuals in the reports, the balance clearly tips in favor of disclosure

The Federal district Court for the District of Columbia has noted that the language "clearly unwarranted invasion of privacy" in exemption 6 of the Freedom of Information Act requires that the balancing undertaken by the court be **"tilted emphatically** in favor of disclosure." Bast v. U.S. Dep't of Justice, 665 F.2d 1251, 1254 (D.C. Cir. 1981) (emphasis added). The balance engaged in by this Court under § 38-2-2(4)(A)(I)(b) should also tilt emphatically in favor of disclosure.

In its analysis of exemption 6 to the Federal Freedom of Information Act in Rose, the United States Supreme Court commented on the important public interest at stake in disclosure of the disciplinary records of cadets at military academies. In particular, the Supreme Court noted that the military "constitutes a specialized community governed by separate discipline from that of civilians, in which the internal law of command and obedience invests the military officer with a particular position of responsibility." Rose, 425 U.S. at 367. The same can be said of the police; they operate in a special community that is governed by its own internal laws of command and obedience not dissimilar to military service. As such the rationale for allowing disclosure of the internal investigations at issue in Rose applies with the same, if not greater, force in this case.

The Supreme Court in Rose noted that:

> the purpose of the Honor and Ethics Codes administered and enforced at the Air Force Academy is to ingrain the ethical reflexes basic to these responsibilities in future Air Force officers, and to select out those candidates apparently unlikely to serve these standards, it follows that the nature of this instruction and its adequacy

> or inadequacy is significantly related to the substantive public role of the Air Force and its Academy. Indeed, the public's stake in the operation of the Codes as they affect the training of future Air Force officers and their military careers is underscored by the Agency's own proclamations of the importance of cadet-administered Codes to the Academy's educational and training program.

Id. at 368. If anything, the police have a greater public role than the air force. Therefore, the same point can be made, with greater force, in relation to the internal affairs investigations of police officers. As discussed further below, Courts have regularly recognized the important role of the police in government and as such, it is equally true that the police force's ability to ensure that its officers live up to the standards of conduct expected of them is "significantly related to the substantive role" of the police force in society. It follows that the nature of a police force's self-analysis, in the form of internal affairs investigation, its adequacy and inadequacy, is significantly related to its public role. As such, all internal affairs reports are of significant public interest.

Further, the Supreme Court in Rose also noted a general societal interest in ensuring "the fairness of any system that leads, in many instances, to the forced resignation of some cadets." Id. at 369. The same interest is implicated here. Internal affairs investigations can and do lead to disciplinary actions. Fairness is, therefore, paramount and society has an interest in reviewing internal affairs actions to ensure that they are fair.

While Plaintiff is not required to give the reason for his request, R.I. Gen. Laws § 38-2-3 (j), Plaintiff has explained, in detail, that the goal of his request is to promote transparency and increase the public's understanding of the operation of police forces across Rhode Island. The public has an interest in disclosure of the internal affairs reports because they relate to matters of law enforcement—a core government function.

Therefore, on the one hand we have a non-existent, or at best de-minimis, privacy interest, while on the other hand we have a significant interest in public scrutiny of police action. Indeed,

Courts have recognized the "relevant public interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" CREW, 746 F.3d at 1093. Here, Plaintiff has demonstrated that the disclosure of the requested internal affairs reports, with redactions, will shed light on the Pawtucket Police Department's activities. There is also a public interest in learning whether the internal affairs division of the Pawtucket Police Department is being used appropriately; is conducting proper investigations; and in analyzing and verifying what the internal affairs department is actually doing. The reports at issue will shed significant light on matters of substantive law enforcement policy and the management and direction of the department and, as such, are clearly and indisputably public.

In CREW, 746 F.3d 1082, the United States Court of Appeals for the District of Columbia Circuit noted that:

> CREW alleges no impropriety on the part of the FBI or the DOJ; it has nonetheless established a sufficient reason for disclosure independent of any impropriety: "**'[M]atters of substantive law enforcement policy are properly the subject of public concern,' whether or not the policy in question is lawful.**" ACLU, 655 F.3d at 14 (quoting Reporters Comm., 489 U.S. at 766 n. 18, 109 S.Ct. 1468) (ellipsis omitted). Whether government impropriety might be exposed in the process is beside the point. See id. ("Whether the government's [ ] policy is legal or illegal, proper or improper, is irrelevant to this case."). There is, then, a significant public interest to be weighed.

Id. at 1095 (emphasis added, footnotes omitted). See also People for the Ethical Treatment of Animals v. Nat'l Institutes of Health, Dep't of Health & Human Servs., 745 F.3d 535, 542 (D.C. Cir. 2014) (recognizing a public interest in how National Institutes of Health decides whether to investigate complaints of animal abuse and misappropriation of research funds and how it conducts investigations); and Stern v. FBI, 737 F.2d 84, 92 (D.C. Cir. 1984) ("[T]he public may have an interest in knowing that a government investigation itself is comprehensive").

In Globe Newspaper Co. v. Police Com'r of Boston, 648 N.E.2d 419 (Mass. 1995), the Supreme Judicial Court of Massachusetts considered the release of materials compiled during an internal affairs investigation of alleged police misconduct during a murder investigation. Id. at 423. The Supreme Judicial Court noted that the privacy exemption required a balancing between the claimed invasion of privacy and the public interest in the disclosure of the internal affairs records. Id. at 425. The Court indicated that a privacy interest was implicated when disclosure would result in embarrassment to an individual, i.e. where the materials contain intimate or highly personal information. Id. The Court also noted that "[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner." Id. (citations and quotations omitted). Balancing these interests, the Supreme Judicial Court held that the judge properly ordered disclosure of the materials in this case with redaction of "previously undisclosed[32] names and addresses of citizen witnesses, references to incarceration, release dates, data concerning probation, references to grand jury testimony, and other information of a personal nature." Id. at 426. Notably, the Court concluded that there was no basis under the privacy exemption for withholding the identities of police officers interviewed by the internal affairs investigators. Id. at 428.

The Court of Appeal for Louisiana (First Circuit) has similarly concluded that the internal affairs files of a police department are subject to disclosure—after redaction of certain protected information. City of Baton Rouge/Par. of E. Baton Rouge v. Capital City Press, L.L.C., 4 So. 3d 807, 809–10 (La. App. 1 Cir. 2008). Following hurricane Katrina police officers from a number of jurisdictions were sent to Louisiana to assist the local police. A number of out-of-state officers

[32] Some of the materials at issue had previously been made publicly available and those materials contained names of certain individuals.

made complaints about misconduct on the part of certain officers in the Baton Rouge Police Department and an internal affairs investigation followed. Id. at 810. A local paper, the Advocate, requested records relating to these investigations and the request was denied. Id. A lawsuit was filed and the trial judge concluded that the records were confidential under the Louisiana Public Records Act and, therefore, not subject to disclosure. Id. at 815-816.

On Appeal, the Louisiana Court of Appeals reversed this decision, finding that the records were not protected from disclosure by the exemption at issue, which provided:

> No person, agency, or department shall release to the news media, press or any other public information agency, a law enforcement officer's home address, photograph, or any information that may be deemed otherwise confidential, without the express written consent of the law enforcement officer, with respect to an investigation of the law enforcement officer.

Id. at 817-818. (Emphasis omitted). The Court held that the officers did not have any "legitimate reasonable expectations of privacy" in the internal affairs records. Id. at 821. The court noted that the investigations "concerned public employee's alleged improper activities in the workplace" and held that the "public has a strong, legitimate interest in disclosure." Id. Holding that "[o]ne of the purposes of the Public Records Act is to insure that public business is subject to public scrutiny," id, the Court stated that "[t]he public should be ensured that both the activity of public employees suspected of wrongdoing and the conduct of those public employees who investigate the suspects is open to public scrutiny." Id. (quotations and citations omitted). Indeed, the Court explained that "**[i]t would be an incongruous result to shield from the light of public scrutiny the workings and determinations of a process whose main purpose is to inspire public confidence.**" Id. at 821-822 (emphasis added). The same is true here; public interest, and confidence in the process, require that the 57 internal affairs reports be disclosed.

Notably, the Court stated that "[r]edaction will afford the public access to these records and to the details of the IAD investigations, while simultaneously safeguarding unsuspecting persons' reasonable rights to privacy and avoiding needless subjection to serious embarrassment and possible harm." Id. at 822.[33] However the Court did not require redaction of the police officer's identities.

In Smithers, 752 S.E.2d 603, the Supreme Court of Appeals in West Virginia was tasked with determining whether certain information gathered by the West Virginia State Police in relation to allegations of misconduct and incidents of use of force by police officers in the state police were subject to disclosure under the West Virginia Freedom of Information Act. Id. at 614. In opposing disclosure, the state police cited to the West Virginia "invasion of privacy exemption" which states:

> Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file[.]

---

[33] The Court later clarified that:

> For these reasons, we modify our October 10, 2008 judgment to clarify that based on the IAD records presented in this case, medical information properly deemed confidential pursuant to La. R.S. 40:2532 is "any medical information unrelated to the alleged officer misconduct at issue in the IAD complaints under consideration." In all other respects, our instructions for redaction remain the same as in our October 10, 2008 judgment. As such, we reissue the writ of mandamus, hereby directing *25 the BRPD and the Metropolitan Council within ten days of the finality of this opinion to make available to Capital City Press for inspection and copying, after redaction in accordance with our modified instructions pursuant to this rehearing, a redacted copy of the IAD files.

City of Baton Rouge v. Capital City Press, L.L.C., 2007-1088 (La. App. 1 Cir. 2/13/09), 7 So. 3d 21, 24–25

Id. at 615. The Court cited to its earlier decisions and noted that it engages in a five factor balancing test to determine whether disclosure of the records under FOIA would constitute an unreasonable invasion of privacy. Id. at 617-618. The five factors the Court considered were:

> 1. Whether disclosure would result in a substantial invasion of privacy and, if so, how serious.
> 2. The extent or value of the public interest, and the purpose or object of the individuals seeking disclosure.
> 3. Whether the information is available from other sources.
> 4. Whether the information was given with an expectation of confidentiality.
> 5. Whether it is possible to mould relief so as to limit the invasion of individual privacy.

Id. The only relevant factor from this analysis under Rhode Island's APRA is the first factor.[34]

In analyzing the first factor, the Court noted that:

> The release of information involving alleged misconduct that occurs while the state police officer is not on the job and not acting in any official capacity as a state police officer could include information that is personal which could constitute an unreasonable invasion of privacy. However, this Court holds that conduct by a state police officer while the officer is on the job in his or her official capacity as a law enforcement officer and performing such duties, including but not limited to, patrolling, conducting arrests and searches, and investigating crimes does not fall within the Freedom of Information Act invasion of privacy exemption set forth in West Virginia Code § 29B–1–4(a)(2) (2012).

---

[34] However, it is significant that the Court in analyzing the fifth factor noted that there is no material difference between internal affairs reports based on external as opposed to internal complaints:

> We therefore hold when a request is made under the West Virginia Freedom of Information Act, West Virginia Code §§ 29B–1–1 to –7 (2012), for information from the West Virginia State Police regarding an internal investigation or inquiry stemming from **either an external or internal complaint** of misconduct by a state police officer in connection with the officer's official capacity as a law enforcement officer, such information is subject to release to the public only after completion of the investigation or inquiry and a determination made as to whether disciplinary action is authorized by the Superintendent as set forth in West Virginia Code of State Rules § 81–10–8.13 (2008). After the investigation or inquiry into the complaint has been concluded and a determination made as to whether disciplinary action is authorized by the Superintendent, the public has a right to access the complaint, all documents in the case file, and the disposition, **with the names of the complainants or any other identifying information redacted in accordance with the confidentiality requirements established by West Virginia Code of State Rules §§ 81–10–1 to –11 (2008).**

Id. at 624 (2013).

Id. at 619 (footnotes omitted). While Plaintiff agrees that there could be some, minimal, invasion of privacy where there is disclosure of misconduct that occurs while the police officer is not on the job, this concern is eliminated by the redaction of officer names from the relevant records. In addition, to the extent that the records at issue in this case concern on the job activity, there is an even greater need for disclosure and the privacy interest is much less significant. As a matter of law, the only conclusion is that disclosure is warranted even where the activities investigated by internal affairs occurred off the job.[35]

That redaction affects the balance of interests in favor of disclosure cannot be doubted. In Newark Morning Ledger Co. v. Saginaw Cty. Sheriff, 514 N.W.2d 213, 218–19 (Mich. 1994), the Court of Appeals of Michigan criticized a lower court for failing to consider the possibility of redaction—as suggested by the plaintiff—in resolving the issues of privacy:

> Had plaintiff requested the internal affairs records pertaining to a particular individual, redaction would serve no purpose. See Hunt v. FBI, 972 F.2d 286, 288 (C.A.9 1992). However, in this case, we cannot conclude that the redaction proposed by plaintiff would not have affected the balance of public interests. Having chosen to conduct the in camera review, the trial court erred in granting defendant's motion for summary disposition without determining whether a particularized justification exists for exemption of redacted documents.

Id. at 219.

Although arising in the context of disclosure of judicial records, the decision of the United States District Court for the Eastern District of Pennsylvania in Haber v. Evans, 268 F. Supp. 2d 507 (E.D. Pa. 2003), is also instructive. In Haber, a § 1983 action arising out of allegations of

[35] In this regard, it is notable that the records recently released by the Providence Police Department, see Exhibit F, include reference to investigations and discipline imposed on officers following improper off-duty conduct. The records produced by Providence were redacted to protect the identities of the subject individuals and those redactions appear to be more than sufficient to protect privacy and thus remove the records from the personnel records/privacy exemption. There is clearly a significant public interest in understanding how and why discipline is being imposed on our public servants and the publication of all internal affairs reports, with redactions, is therefore warranted and required by law.

sexual misconduct against various police officers, id. at 509, a local newspaper sought copies of over 50 internal affairs department documents containing allegations of sexual misconduct against various police officers that had been appended to the plaintiff's complaint. Id. at 510. The Court engaged in a balancing of the competing public and private interests. Weighing in favor of disclosure was the fact that the named defendants were "public officials and that the records are of great public import." Id. at 511. While the Court noted that the records in question contained allegations—some of which were withdrawn, unfounded or not sustained—the Court concluded that disclosure was proper. In so holding the Court noted, as Plaintiff acknowledges here, that: "the officers who are the subject of those General Investigation Reports are public officials and the public has a strong interest in learning the nature of allegations against them, the public has less of an interest in learning the identities of the officers who have not been adjudged to have committed the alleged acts." Id. at 511-512. Indeed, it was held that:

> if a complaint was filed and then withdrawn, or after investigation found to be not sustained or unfounded, there is less cause to reveal the cleared officer's name than if the internal affairs investigating process found evidence of wrongdoing. Rather, it is the fact of and process of the investigation that is important to the public interest in each of these cases, regardless of the results in individual investigations.

Id. at 512. The same is true here. Plaintiff's request for the records in question aims to make public the fact an investigation took place, the process used in the investigation and the results of the investigation, Plaintiff is not seeking disclosure of the identities of the subjects of, or witnesses interviewed during, the investigation, i.e. Plaintiff seeks the "what?", "when?", "where?", "why?" and "how?" of complaints against police officers but is adamantly not seeking information regarding the "who?". It is, therefore, notable that the Court's ultimate conclusion in Haber required more disclosure than is being requested here; the Court ordered redaction of the names of only those officers who were cleared of wrongdoing:

> any accused officer who was cleared of wrongdoing by virtue of a withdrawn complaint or a determination that the charges were unfounded or not sustained. This latter protection will not apply to those employees of the Pennsylvania State Police who were adjudicated of wrongdoing, either by the Bureau's own investigation and/or disciplinary process or by any other process that has caused the matter to have been previously revealed to the public, such as the officer's being a named party in a civil or criminal proceeding relating to the investigative report.

Id. at 512-513. The Court also acknowledged the privacy interests of non-public individuals identified in the documents and found that redactions of their identities was also appropriate. Id. at 512.

Here, Plaintiff has conceded that redaction of all of the records is appropriate. As such, there is no basis upon which the Defendants can claim that any privacy interests amount to a clearly unwarranted invasion justifying exemption of these records. Since redaction essentially eliminates all privacy concerns, once redaction has been done, the records in question must be disclosed.

a. The balance is further tipped in favor of disclosure because police officers, of all ranks, are public figures.

The argument that there is a significant public interest in internal affairs reports relating to police activity—whatever the source of the complaint that initiated the investigation—finds further support in the fact that multiple courts have concluded that police officers—including patrol level officers—constitute public officials/public figures for purposes of defamation. Notable in this regard is the decision of the Supreme Judicial Court of Massachusetts in Rotkiewicz v. Sadowsky, 730 N.E.2d 282, 287 (Mass. 2000), a defamation case, wherein the Court concluded that because of the broad powers they are given and their visibility within the community, "police officers, even patrol-level police officers ... are 'public officials' for purposes of defamation." Id. at 287 (footnotes omitted).

A similar conclusion was reached by the Supreme Judicial Court of Maine in Roche v. Egan, 433 A.2d 757 (Me. 1981). In Roche the court noted that:

> Law enforcement is a uniquely governmental affair. The police detective, as one charged with investigating crimes and arresting the criminal, is in fact, and also is generally known to be, vested with substantial responsibility for the safety and welfare of the citizenry in areas impinging most directly and intimately on daily living: the home, the place of work and of recreation, the sidewalks and streets. The nature and extent of the responsibility of a police detective is punctuated by the fact that a firearm, no less than a badge, comes with his office.

Id. at 762. The Court found that "every court [other than the Sixth Circuit Court of Appeals] that has faced the issue has decided that an officer of law enforcement, from ordinary patrolman to Chief of Police, is a 'public official' within the meaning of federal constitutional law[.]" Id. (citing Dixon v. Int'l Bhd. of Police Officers, 504 F.3d 73, 88 (1st Cir.2007) (school resource officer was a public official); Coughlin v. Westinghouse Broad. & Cable Inc., 780 F.2d 340, 342 (3d Cir.1986) (police officer is a public official); McKinley v. Baden, 777 F.2d 1017, 1021 (5th Cir.1985) (same); Meiners v. Moriarity, 563 F.2d 343, 352 (7th Cir.1977) (DEA agents are public officials); Speer v. Ottaway Newspapers, 828 F.2d 475, 476 (8th Cir.1987) (applying actual malice standard to police officer's defamation claim); Rattray v. City of Nat'l City, 36 F.3d 1480, 1486 (9th Cir.1994) (same); Gray v. Udevitz, 656 F.2d 588, 591 (10th Cir.1981) (police officer is a public official).

This conclusion is reinforced by the decision of the Connecticut Supreme Court in Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 177, 635 A.2d 783, 792 (1993), wherein the Court stated that, "when a person accepts public employment, he or she becomes a servant of and accountable to the public." Id.

Police officers, therefore, have less interest in privacy than others who are identified in the internal affairs reports but will be equally well protected by redaction of identifying information in conformance with The Rake and DARE.

b. A speculative risk that the disclosure of redacted records will result in the identification of individuals and, therefore, an invasion of privacy is insufficient to justify the Defendants' denial of Mr. Lyssikatos' request

That there is some risk that the disclosure of the records in question would permit an intrepid investigator willing to invest the time and energy to track down the information necessary to identify the individuals in the internal affairs reports whose names and personal information has been redacted does not justify exemption of the documents under § 38-2-2(4)(A)(I)(b). This argument was explicitly rejected by the Rhode Island Supreme Court in The Rake:

> In the Superior Court defendant argued that the privacy interests of the police officer and of the complaining citizen would be infringed upon if the reports were made public. The Superior Court judge found this argument to be persuasive. He ordered the names of the parties deleted from the reports. ... defendant again raises this issue on appeal. He contends that the facts set forth in each report could be matched with newspaper accounts of the incident that gave rise to the complaint. The result of this effort would be the identification of the parties involved. **While 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.**

The Rake, 452 A.2d at 1149 (emphasis added).

Similarly, the argument was rejected by the United States Supreme Court in Rose, 425 U.S. 352, which stated "no one can guarantee that all those who are 'in the know' will hold their tongues, particularly years later when time may have eroded the fabric of cadet loyalty." Id. at 381.

In light of these decisions, any attempt by the Defendants to rely on the Attorney General's opinion in Piskunov v. Town of Narragansett, ought to be rejected. The Attorney General's decision ignored the Supreme Court's statements in The Rake and the United States Supreme Court's decision in Rose. Ultimately, redaction is sufficient to protect privacy in this case; the public's right to know outweighs the minimal risk to privacy.

c. The risk of undermining the "investigative process" is not sufficient to justify exemption of the records at issue in this case.

It is anticipated that Defendants may argue that the process of investigating internal complaints will be materially affected by disclosure of the internal affairs reports, that such disclosure will "chill" potential complainants and witnesses, leading to a decrease in the effectiveness of the internal affairs process. Such arguments have been rejected by multiple courts.

The idea that disclosure of evaluations could result in a chilling effect on candor in investigations was rejected by the United States Supreme Court in Univ. of Pennsylvania v. E.E.O.C., 493 U.S. 182, 200–01 (1990). The University of Pennsylvania sought to resist a subpoena from the E.E.O.C. for records relating to tenure review on the grounds that it would chill the honesty of academics and, thus, hinder the review process. The Supreme Court rejected this, stating:

> the "chilling effect" petitioner fears is at most only incrementally worsened by the absence of a privilege. Finally, we are not so ready as petitioner seems to be to assume the worst about those in the academic community. Although it is possible that some evaluators may become less candid as the possibility of disclosure increases, others may simply ground their evaluations in specific examples and illustrations in order to deflect potential claims of bias or unfairness. Not all academics will hesitate to stand up and be counted when they evaluate their peers.

Univ. of Pennsylvania v. E.E.O.C., 493 U.S. at 200–01. See also Rose, 425 U.S. at 384 ("The Agency suggests that the disclosure of the identities of disciplined cadets through release of the case summaries will weaken the Honor and Ethics Codes, principally because other cadets will be less likely to report misconduct if they cannot be assured of the absolute confidentiality of their reports. But even assuming that this speculation raises an argument under Exemption 2 rather than Exemption 6 alone it is unpersuasive in light of the deletion process ordered by the Court of Appeals to be conducted on remand."). We should not assume the worst of the Pawtucket Police Department's Internal Affairs division or its officers in this case either.

Other Courts have arrived at a similar conclusion. For example, in Bradley v. Saranac Cmty. Sch. Bd. of Educ., 455 Mich. 285, 299–300, 565 N.W.2d 650, 657 (1997), holding modified on other grounds by Michigan Fed'n of Teachers & Sch. Related Pers., AFT, AFL-CIO v. Univ. of Michigan, 753 N.W.2d 28 (Mich. 2008), the Supreme Court of Michigan rejected arguments that the disclosure of personnel records of public school teachers would undermine or compromise the integrity of the evaluation process. In rejecting this argument, the Court noted that the reverse was more likely to be true:

> Making such documents publicly available seems more likely to foster candid, accurate, and conscientious evaluations than suppressing them because the person performing the evaluations will be aware that the documents being prepared may be disclosed to the public, thus subjecting the evaluator, as well as the employee being evaluated, to public scrutiny. The knowledge that their efforts may be brought before the public at some distant date may encourage those who evaluate their peers to accurately reflect the achievements, or lack thereof, of those being evaluated.

Id. at 299-300.

In City of Baton Rouge/Par. of E. Baton Rouge, 4 So. 3d 807, the Baton Rouge Police Department argued that the release of internal affairs records (generated following complaints from other police officers in Baton Rouge after Hurrican Katrina) would undermine the investigative process on the basis that "if the confidentiality feature of IAD investigations was removed, it would have a crippling and devastating effect on the BRPD. He further stated that where a complaint arises internally, the lack of confidentiality would discourage cooperation on the part of the officers." Id. at 814. This argument was emphatically rejected by the Louisiana court. Id. at 822. The same result is mandated here.

d. Redaction does not represent a significant burden for the Defendants

§ 38-2-3(b) of the APRA provides that:

> Any **reasonably segregable** portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

Section 38-2-3(b) mirrors 5 U.S.C 552 which also requires production of any reasonably segregable portion of an exempt record. In interpreting this provision, the Court of Appeals for the First Circuit has stated that

> [i]n determining segregability, courts must construe the exemptions narrowly with the emphasis on disclosure[.] An agency may withhold non-exempt information only if it is so interspersed with exempt material that separation by the agency, and policing of this by the courts would impose an inordinate burden.

Church of Scientology Int'l v. U.S. Dep't of Justice, 30 F.3d 224, 228 (1st Cir. 1994). Here, the nature of the information that would need to be redacted, namely names and other identifiers, combined with a review of other internal affairs reports that have been produced by Defendants suggests that the burden of redaction is relatively insignificant and as such, does not impose an inordinate burden.

V. CONCLUSION

The 57 internal affairs reports, with appropriate redactions, are public and should be disclosed. Indeed, that is the result that was reached by our Supreme Court in The Rake and DARE. There is no reason for this Court to depart from the conclusion. Put simply, the personnel records/privacy exemption does not apply. Further, even if this Court analyzes this case under § 38-2-2(4)(A)(I)(b) and applies a balancing test, the balance is in favor of disclosure. With appropriate redactions, there is no invasion of any individual's privacy—never mind "a clearly unwarranted invasion of privacy"—and, as such, the significant public interest in discovering how the Pawtucket Police Department and, indeed, any police department, handles complaints

regarding officer misconduct far outweighs any privacy issues that could be raised against the disclosure in this case.

For the foregoing reasons, Plaintiff requests that this Court enter summary judgment in his favor compelling Defendants to produce the records responsive to his February 17, 2017, without charging fees for the search or retrieval of the records; declaring that the records requested by Plaintiff on February 17, 2017, constitute public records; declaring that there is public interest in the records requested by Plaintiff on February 17, 2017; and awarding reasonable costs and attorney fees.

PLAINTIFF,
DIMITRI LYSSIKATOS
By His Attorney(s),

/s/ James D. Cullen

James D. Cullen (#8376)
ROBERTS, CARROLL, FELDSTEIN & PEIRCE, INC.
Ten Weybosset Street, 8th Floor
Providence, RI 02903
(401) 521-7000 FAX 401-521-1328
jcullen@rcfp.com

Cooperating Attorney,
American Civil Liberties Union Foundation of Rhode Island

CERTIFICATE OF SERVICE

I hereby certify that, on the 6th day of December, 2018,

[X] I filed and served this document through the electronic filing system on the following parties:

Marc DeSisto, Esq.
DeSisto Law, LLC
60 Ship St.
Providence, RI 02903
marc@desistolaw.com

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

[ ] I caused this document to be [ ] mailed or [ ] hand-delivered to the attorney for the opposing party (and/or the opposing party if self-represented) whose name(s) and address(es) are as follows:

/s/ James D. Cullen

JDC:jdc
5588-1
(3396692)