STATE OF RHODE ISLAND
SUPREME COURT

Dimitri Lyssikatos Plaintiff/Petitioner	:	
v.	:	No. MP-_____-_____ (C.A. No. PC-2017-3678)
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 Defendants/Respondents	:	

DIMITRI LYSSIKATOS'S PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI TO THE PROVIDENCE COUNTY SUPERIOR COURT

Petitioner,
Dimitri Lyssikatos,
By His Attorneys,

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Petitioner, the Plaintiff below, Dimitri Lyssikatos, hereby petitions this Honorable Court for the issuance of a writ of certiorari, pursuant to Rule 13(a) of the Rules of Appellate Procedure, to review and reverse a March 18, 2019 order of the Superior Court denying Mr. Lyssikatos's motion for summary judgment in his action to compel the production of police internal affairs reports pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et. seq.* ("the APRA").

The Superior Court's denial of Mr. Lyssikatos's motion for summary judgment constitutes an error of law; it ignores the plain an unambiguous language in R.I. Gen. Laws § 38-2-2 as well as this Court's decisions in The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982) and Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998) (hereinafter, "DARE"). These errors, in essence, turn the APRA on its head, inviting public bodies to avoid disclosure and hide records by imposing significant transaction costs on the requesting party. The Superior Court's decision turns The APRA, a disclosure statute, into an exemption statute

A writ of certiorari should issue in this case because there is no other adequate remedy available at law or otherwise by which the legal and constitutional rights of Mr. Lyssikatos (and, indeed, the public) can be established. The important constitutional and public policy considerations relating to the application of the APRA at issue in this case combined with the real, and substantial, risk that the Superior Court's decision will evade review by this Court if Petitioner is successful following a trial in this matter, mandate the issuance of a writ of certiorari. To do otherwise risks substantial harm and injustice to Mr. Lyssikatos and the public and invites public agencies to hide their records from public scrutiny through the imposition of significant transaction costs on individuals requesting records pursuant to the APRA as well as the erection of multiple, unnecessary and improper, procedural hurdles to the enforcement of their rights.

I. STATEMENT OF THE CASE

This case arises from Mr. Lyssikatos's request, pursuant to the Access to Public Records Act—R.I. Gen. Laws § 38-2-1 *et. seq.*—for redacted copies of "[t]he last 2 years of internally generated reports investigated by the Internal Affairs Division [of the Pawtucket Police Department] that were not the result of a citizens' complaints against police officers."[1]

In their response to this request, the Pawtucket Police Department identified 57 responsive reports but refused to produce them, even in a redacted form, taking the position that the reports fell within the exemption to disclosure under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) which provides, in the relevant part, that a public body need not disclose:

> Personnel and other personal **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.

(Emphasis added). The Pawtucket Police Department's argument is contrary to settled Rhode Island law. This Honorable Court stated that that § 38-2-2(d)(1), the precursor to § 38-2-2(4)(A)(I)(b), "requires that the records must be **identifiable** to an individual applicant in order for the exemption to take effect." The Rake, 452 A.2d at 1148 (emphasis added). Similarly, this Court's decision in DARE held that "a rule has evolved that permits the disclosure of records that **do not specifically identify individuals** and that represent final action." DARE, 713 A.2d at 224. In so holding, the Supreme Court cited its decision in The Rake with approval noting that, "we also held [in The Rake] that the personnel records exemption was inapplicable **because the**

[1] Although Mr. Lyssikatos's request does not state that the responsive reports should be produced in a redacted form, it was his expectation that the Pawtucket Police Department would follow the practice of all police departments in Rhode Island following this Honorable Court's decisions in The Rake, 452 A.2d 1144, and DARE, 713 A.2d 218, and redact the reports before producing them.

information identifying the police officers or the civilian complainants had been redacted." DARE, 713 A.2d at 223 (emphasis added).

The Pawtucket Police Department's response also cited the Attorney General's opinion in Piskunov v. Town of Narragansett, PR17-05, and argued that because the reports in question were not generated as a result of citizen complaints, but were the result of investigations that were initiated internally, they do not constitute public records. This analysis does not withstand scrutiny. At base, 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. Indeed, adoption of the argument in Piskunov puts form over substance and would ignore the important public interests at stake; revealing important information regarding the Pawtucket Police Department's official actions and allowing an analysis of the substance of the complaints, the manner and nature of the investigation and the ultimate conclusions to determine why the investigations are being conducted and to ensure that they are being conducted in a fair manner.

Although § 38-2-2(d)(1) has since been amended creating § 38-2-2(4)(A)(I)(b), the concept of "identifiability" remains an essential prerequisite to the application of the exemption. Redaction of the records, as proposed by Plaintiff in this case, therefore precludes the application of the personnel records/privacy exemption and mandated the entry of summary judgment in Plaintiff's favor. The Superior Court's decision, therefore, constitutes a clear error of law.

II. REASONS FOR ISSUANCE OF A WRIT OF CERTIORARI

Mr. Lyssikatos has not filed a notice of appeal from the March 18, 2019 order denying his motion for summary judgment. As an interlocutory order, a petition for certiorari is the only available method for seeking immediate review. See Pier House Inn, Inc. v. 421 Corp., Inc., 689 A.2d 1069, 1070 (R.I. 1997). While Mr. Lyssikatos concedes that he could file an appeal from

any eventual judgment in this case, if it is adverse, this Court has exercised its discretion to review the denial of a motion for summary judgment in other cases. Boucher v. McGovern, 639 A.2d 1369, 1373 (R.I. 1994) (collecting cases in which a writ of certiorari was granted to review the denial of a motion for summary judgment). This Court should exercise its discretion and issue a writ of certiorari in this case; the Superior Court's denial of Mr. Lyssikatos's motion for summary judgment, in the absence of any disputed facts, ignores Rhode Island law and endorses a procedure that would impose significant transaction costs on individuals requesting records from public bodies and erects substantial procedural hurdles that they must overcome by requiring independent review of the records by a third-party neutral.

Further, there is a significant likelihood that the Superior Court's error of law will evade review. If this case proceeds to trial and Mr. Lyssikatos is successful, the opportunity to confirm that redaction removes public records from the ambit of the exemption in § 38-2-2(4)(A)(I)(b) and to reverse the Superior Court's error of law will be lost. Thus, unless Mr. Lyssikatos's petition is granted, the potential for public bodies to avoid disclosure of records through an erroneous assertion that § 38-2-2(4)(A)(I)(b) applies will linger beyond this case, impacting the APRA and the public's rights for years to come.

As set forth in further detail in the accompanying memorandum of law, this case presents an important question regarding the APRA with wide ranging implications for Mr. Lyssikatos and for the public: whether the redaction of records removes those documents from the ambit of the personnel records/privacy exemption embodied in R.I. Gen. Laws § 38-2-2(4)(A)(I)(b)? A question that had, until recently, been uncontroversial in light of this Honorable Court's decisions in The Rake and DARE.

The Superior Court's denial of Mr. Lyssikatos's motion for summary judgment has the potential to evade review and, as such, invite further efforts by public bodies to hide their records behind unwarranted procedural hurdles and the imposition of significant transaction costs upon requesting parties. As such, this Honorable Court should issue a writ of certiorari, reverse the decision of the Superior Court and direct the entry of summary judgment in Mr. Lyssikatos's favor. A petition for a writ of certiorari is the only mechanism by which Mr. Lyssikatos can challenge the Superior Court's determination in this case.

III. ENCLOSED DOCUMENTS

In accordance with Rule 13(a) of the Rules of Appellate Procedure, Petitioner, Mr. Lyssikatos, submits the following documents in connection with his Petition:

Exhibit 1: Order Denying Plaintiff's Motion for Summary Judgment, submitted on April 5, 2019 and entered on May 7, 2019.

Exhibit 2: Transcript of the hearing before the Honorable Justice Melissa A. Long on March 18, 2019 wherein Justice Long denied Mr. Lyssikatos's motion for summary judgment.

Exhibit 3: Transcript of the hearing on Mr. Lyssikatos's motion for summary judgment before the Honorable Justice Melissa A. Long on March 6, 2019.

Exhibit 4: Plaintiff, Mr. Lyssikatos's Motion for Summary Judgment and Memorandum of Law in Support with Exhibits, December 6, 2018.

Exhibit 5: Defendants' Objection to Mr. Lyssikatos's Motion for Summary Judgment and Memorandum of Law in Support with Exhibits, February 14, 2019.

Exhibit 6: Amicus Memorandum of Law in Opposition to Mr. Lyssikatos's Motion for Summary Judgment filed by the Pawtucket Fraternal Order of Police, February 14, 2019.

Exhibit 7: Plaintiff, Mr. Lyssikatos's, Reply to Defendants' Objections to Plaintiff's Motion for Summary Judgment and the Amicus Memorandum of Law Submitted by the Pawtucket Fraternal Order of Police Lodge No. 3 and Exhibits, February 22, 2019.

Wherefore, Petitioner, Dimitri Lyssikatos, respectfully requests that this Honorable Court issue a writ of certiorari, reverse the March 18, 2019 Order of the Superior Court and direct entry of summary judgment in favor of Mr. Lyssikatos, and issue any other relief that this Court deems appropriate.

PETITIONER,
DIMITRI LYSSIKATOS
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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of May, 2019,

[X] I filed and served this document on the following parties:

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STATE OF RHODE ISLAND
SUPREME COURT

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v.	:	No. MP-_____-_____ (C.A. No. PC-2017-3678)
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PETITIONER, DIMITRI LYSSIKATOS'S, MEMORANDUM OF LAW IN SUPPORT OF HIS PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI TO THE PROVIDENCE COUNTY SUPERIOR COURT

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> 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") codifies this essential prerequisite of democratic government and Mr. Lyssikatos seeks to defend it.

I. QUESTION PRESENTED

This case presents an important question regarding the APRA with wide ranging implications for Mr. Lyssikatos and for the public:

- Whether the redaction of records removes those documents from the ambit of the personnel records/privacy exemption embodied in R.I. Gen. Laws § 38-2-2(4)(A)(I)(b)?[1]

This is a question that had, until recently, been uncontroversial in light of the plain language of the APRA and this Honorable Court's decisions in The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982), and Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998) ("DARE"). This Court should act now to reaffirm its jurisprudence and answer this question in the affirmative.

Implicit in this question is the subsidiary issue of whether there is a material difference between so-called "citizen generated" internal affairs reports and internal affairs reports that are

[1] While Mr. Lyssikatos is not waiving his argument that § 38-2-2(4)(D)—which provides that "[r]ecords relating to management and direction of a law enforcement agency … shall be public"—operates to preclude the application of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) because it is more specific and therefore controls over the general exemption in § 38-2-2(4)(A)(I)(b), see R.I. Gen. Laws § 43-3-26; S. Cty. Post & Beam, Inc. v. McMahon, 116 A.3d 204, 215 (R.I. 2015), it is not the focus of this memorandum.

generated as the result of internal processes. As a matter of law, the answer to this question has to be no. The APRA is clear, if records are not individually identifiable then § 38-2-2(4)(A)(I)(b) does not apply; the source of the underlying internal affairs report is irrelevant.

II. INTRODUCTION

Now comes Petitioner, Dimitri Lyssikatos, and hereby files, pursuant to Rule 13(a) of the Rules of Appellate Procedure, this memorandum of law in support of his request for the issuance of a writ of certiorari to the Providence County Superior Court and reversal of that Court's denial of his motion for summary judgment.

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—without a proper legal basis for doing so, thereby denying Mr Lyssikatos (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.

On February 17, 2017, Mr. Lyssikatos requested the "last 2 years of internally generated reports investigated by the [Pawtucket Police Department's] Internal Affairs Division that were not the result of a citizens' complaints against police officers." See Mr. Lyssikatos's February 17, 2017 request for records, Exhibit A to Exhibit 4; see also Statement of Undisputed Facts ¶¶ 8-9, Exhibit B to Exhibit 4 and Exhibit A to Exhibit 5.

The Pawtucket Police Department has indicated that there are 57 reports responsive to this request and has denied Mr. Lyssikatos access to them on the basis of a mistaken interpretation of the APRA, namely the exemption enumerated in R.I. Gen. Laws § 38-2-2(4)(A)(I)(b)[2] (the

[2] The statute exempts from mandatory disclosure:

"personnel records/privacy exemption"). See the April 3, 2017 response from the Pawtucket Police Department, Exhibit D to Exhibit 4.

The primary and dispositive question in this case is the application of the personnel records/privacy exemption to the Mr. Lyssikatos's request. As a matter of law, § 38-2-2(4)(A)(I)(b) has no application in this case because an essential prerequisite to its applicability—that the records are identifiable to an individual—cannot be met where the records are redacted. The decisions of the Rhode Island Supreme Court in The Rake, 452 A.2d 1144, and DARE, 713 A.2d 218 are dispositive.

In The Rake, this Court stated that § 38-2-2(d)(1), the precursor to § 38-2-2(4)(A)(I)(b), "requires that the records must be **identifiable** to an individual applicant in order for the exemption to take effect." The Rake, 452 A.2d at 1148 (emphasis added). Similarly, the Court in DARE held that "a rule has evolved that permits the disclosure of records that **do not specifically identify**

> Personnel and other personal **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.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects that are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state, municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(Emphasis added). Notably, the exemptions in APRA are not mandatory. A public body can elect to disclose items covered by exemptions in the APRA.

individuals and that represent final action." DARE, 713 A.2d at 224. Although § 38-2-2(4)(A)(I)(b) has since been amended, the concept of "identifiability" remains an essential prerequisite to the application of § 38-2-2(4)(A)(I)(b). Redaction of the records, as proposed by Mr. Lyssikatos, therefore precludes the application of the personnel records/privacy exemption and summary judgment should have entered in Mr. Lyssikatos's favor. The Superior Court's denial of summary judgment represents an error of law.

A writ of certiorari should issue in this case because there is no other adequate remedy available at law, or otherwise, by which the legal and constitutional rights of Mr. Lyssikatos (and, indeed, the public) can be established. The important constitutional and public policy considerations relating to the application of the APRA at issue in this case combined with the real, and substantial, risk that the Superior Court's decision will evade review by this Court if Petitioner is successful following a trial in this matter, mandate the issuance of a writ of certiorari. To do otherwise risks substantial harm and injustice to Mr. Lyssikatos and the public, and invites public agencies to hide their records from public scrutiny through the imposition of significant transaction costs and multiple procedural hurdles on individuals requesting records pursuant to the APRA.

III. STANDARD OF REVIEW

Typically, this Honorable Court's review pursuant to a writ of certiorari is limited to "examining the record to determine if an error of law has been committed." Crowe Countryside Realty Assocs., Co., LLC v. Novare Engineers, Inc., 891 A.2d 838, 840 (R.I. 2006) (quoting State v. Santiago, 799 A.2d 285, 287 (R.I. 2002). However, questions of law and questions of statutory interpretation are "reviewed de novo by this Court." Id. (quoting Carnevale v. Dupee, 783 A.2d 404, 408 (R.I. 2001). See also, Cashman Equip. Corp. v. Cardi Corp., 139 A.3d 379, 381 (R.I. 2016).

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). The same standard applies when this Court reviews the denial of a motion for summary judgment pursuant to a writ of certiorari. Boucher v. McGovern, 639 A.2d 1369, 1373 (R.I. 1994).

Under the APRA the public body has the burden of proof; it must show that the requested records are not subject to disclosure. R.I. Gen. Laws § 38-2-10 states 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." (Emphasis added). Further, it has the obligation of producing "[a]ny reasonably segregable portion of a public record excluded by subdivision 38-2-2(4)[.]" § 38-2-3(b).

IV. ARGUMENT

A review of the Statement of Undisputed Facts (Exhibit B to Exhibit 4 and Exhibit A to Exhibit 5) reveals that there were no questions of fact in this case. The only question before the

Superior Court was a legal question regarding the application of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), The Rake and DARE. The Superior Court Justice committed clear error in her analysis and application of Rhode Island Law to this case when she denied Mr. Lyssikatos's motion for summary judgment.

a. Where documents are not identifiable to an individual the personnel records/privacy exemption under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) does not apply.

R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) exempts "[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." from disclosure under the APRA.[3] Since redaction of the records means that they will no longer be "individually identifiable" the exemption does not apply to the 57 documents requested by Mr. Lyssikatos, and the subject of this action. This conclusion is supported by two decisions of this Court, The Rake, 452 A.2d 1144 and DARE, 713 A.2d 218.

i. This court has held that redaction of public records removes them from the ambit of the personnel records/privacy exemption.

In The Rake, students and editors of the Brown University publication requested copies of reports concerning civilian complaints of police brutality from the Providence Police Department. 452 A.2d 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

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[3] The predecessor to § 38-2-2(4)(A)(I)(b) was embodied in § 38-2-2(d), which provided an exemption from disclosure for:

> [a]ll records which are **identifiable** to an individual applicant for benefits, clients, patient, student, or 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.

(Emphasis added).

Department, in essence, asserted that the records were protected from disclosure by the personnel records/privacy exemption in the APRA. Id. at 1147-48. This Court rejected the application of this exemption noting that:

> [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 (emphasis added). This analysis is not changed by the nature of the reports in question; the statutory question remains the same whether the reports are generated as a result of citizen complaints or internal complaints.

This Court arrived at an identical conclusion in DARE, holding that the defendant must disclose internal affairs reports that are substantively identical to the records at issue in this case, namely, "(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," 713 A.2d at 225, on the basis that "a rule has evolved that **permits the disclosure of records that do not specifically identify individuals** and that represent final action." Id. at 224 (emphasis added). In so holding, this Court cited its decision in The Rake with approval noting that, "[in The Rake] we also held that the personnel records exemption was inapplicable **because the information identifying the police officers or the civilian complainants had been redacted.**" DARE, 713 A.2d at 223 (emphasis added).

While the exemption at issue in The Rake and DARE, §38-2-2(d)(1)—which 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" (emphasis added)—was amended in 2012 to create § 38-2-2(4)(A)(I)(b), the legislature retained the concept of identifiability as an important prerequisite to the application of the exception. Therefore The Rake and DARE apply with equal force today, and are dispositive in this case.

The conclusion that the personnel records/privacy exemption does not apply where the records have been redacted, is also supported by an analysis of the plain and unambiguous language in § 38-2-2(4)(A)(I)(b).

ii. While the personnel records/privacy exemption has been amended since this Court issued its decisions in The RAKE and DARE, an analysis of the plain language of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) demonstrates that redaction continues to preclude the application of § 38-2-2(4)(A)(I)(b).

When construing a statute, this Court has repeatedly held that 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. 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).

Here, the purpose of the APRA is undisputed and indisputable; it is a disclosure statute intended to "enlarge the scope of the public's access to documents in the possession of governmental agencies." DARE, 713 A.2d at 222. See also Pawtucket Teachers All. Local No. 920, AFT, AFL-CIO v. Brady, 556 A.2d 556, 558 (R.I. 1989) (stating "[w]e are mindful that the **basic policy of the act is in favor of disclosure.**" (Emphasis added)); 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 Providence Journal Co. v. Rhode Island Dep't of Pub. Safety ex rel.

Kilmartin, 136 A.3d 1168, 1173 (R.I. 2016), (recognizing that the underlying policy of the APRA favors the "free flow and disclosure of information to the public.").[4]

All provisions of the APRA, including the personnel records/privacy exemption, must be reviewed with this primary goal—disclosure—in mind. It is therefore, no surprise that this Court has concluded that all exemptions to the disclosure of public records must be narrowly construed because they conflict with the "dominant public-disclosure objective of APRA." Providence Journal Co. v. Convention Ctr. Auth., 774 A.2d 40, 53 (R.I. 2001).[5]

A narrow or strict construction of § 38-2-2(4)(A)(I)(b), in light of the overriding purpose of the APRA, mandates disclosure of the 57 internal affairs reports at issue in this case in a redacted form. Once the 57 reports are redacted, they are not "individually identifiable" and, as such, the personnel records/privacy exemption does not apply.

This Court has stated 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,

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[4] Similarly, the Supreme Court of the United States when interpreting the federal Freedom of Information Act ("FOIA") 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.")

[5] This accords with the federal courts' interpretation of the FOIA. 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.").

57 A.3d 283, 288 (R.I. 2012) (citations and quotations omitted). See also Prew v. Employee Ret. Sys. of City of Providence, 139 A.3d 556, 561 (R.I. 2016) ("[W]e 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" (quotations omitted)). In addition, the "Legislature is presumed to know the state of existing law when it enacts or amends a statute." Simeone v. Charron, 762 A.2d 442, 446 (R.I. 2000) (quotations and citations removed). Therefore, the Legislature's retention of the concept of "identifiability" as a prerequisite to the application of the personnel records/privacy exemption when it amended the APRA in 2012, especially in light of this Court's decisions in The Rake and DARE, cannot be ignored. The legislature intended to preserve the holdings and results of The Rake and DARE, which, therefore, remain good law. Thus, we must conclude that redaction removes the 57 reports from the ambit of the personnel records/privacy exemption because the records do not meet the prerequisite to the application of the exemption; they are not "individually identifiable[.]"

Another significant aspect of the 2012 amendment to the APRA creating § 38-2-2(4)(A)(I)(b) is that it explicitly created the possibility for disclosure of un-redacted records. Prior to 2012, § 38-2-2(d) provided an exemption for:

> All records which are identifiable to an individual applicant for benefits, clients, patient, student, or 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.

(Emphasis added). This exemption applied to "all records which are identifiable to an individual" and, as such, did not contemplate the production of records that were identifiable to an individual. This has now changed; while § 38-2-2(4)(A)(I)(b) continues to mandate identifiability as prerequisite to the application of the exception, it also created a class of individually identifiable

records that could be deemed to be public under the statute despite the privacy interests of the identified individuals. The statute provides:

> Personnel and other personal **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.**

(Emphasis added). The legislature, therefore, explicitly contemplated circumstances where the public interest in the records would be such that their disclosure would appropriate even in the absence of redaction.[6] This legislative gloss is significant because it explains why the balancing test is included in § 38-2-2(4)(A)(I)(b). The balancing test must be employed to determine whether a requestor is entitled to records that contain information that identifies individuals. Whereas when the records are requested with redactions, as is this case here, no balancing test is necessary and this Court's holdings in The Rake and DARE are controlling.

The Superior Court's denial of Mr. Lyssikatos's motion for summary judgment is, therefore a manifest error of law mandating the issuance of a writ of certiorari and reversal of the decision below.

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[6] It is also significant that the legislature, when it amended the personnel records/privacy exemption in the APRA stated that the exemption for personnel and individually identifiable records would only apply if the disclosure would result in a "clearly unwarranted invasion of person privacy." See § 38-2-2(4)(A)(I)(b). This represents a departure from the default position established by § 38-2-1 which states that:

> 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.**

(Emphasis added). The clear implication of this deviation from the default is that the legislature is willing to tolerate a greater invasion of privacy in situations where personnel and other individually identifiable records are requested than in other circumstances under the act.

b. An *in camera* review of the 57 reports at issue in this case is neither necessary nor an appropriate means by which to resolve this dispute.

In their argument in opposition to Mr. Lyssiakatos's motion for summary judgment, the Pawtucket Police Department made much of the fact that neither Mr. Lyssikatos nor his counsel had seen the 57 internal affairs reports at issue in this case and, thus, that an *in camera* review was the only "fair" way to resolve this case. Such an argument is inapt; not only does it conflict with Rhode Island law but it imposes significant transaction costs and procedural burdens on Mr. Lyssikatos, the public and, indeed, the Court. Further, the Pawtucket Police Department's reliance on Brady, 556 A.2d 556, and Rose, 425 U.S. 352 is misplaced. Neither case justifies the denial of Mr. Lyssikatos's motion for summary judgment or an *in camera* review.

i. The Pawtucket Police Department's reliance on Brady was misplaced and does not justify either *in camera* review of the records in question or denial of Mr. Lyssikatos's motion for summary judgment.

In opposing Mr. Lyssikatos's motion for summary judgment, the Pawtucket Police Department relied on Brady, 556 A.2d 556, in support of their argument that an *in camera* review is necessary. This argument fails for two reasons: (1) the facts in Brady are entirely distinguishable from those at issue in this case; and (2) it ignores the plain language of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) and this Court's holdings in The Rake and DARE.

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. 556 A.2d. 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).[7] On appeal, this Court affirmed the superior court's decision, distinguished its decision in The Rake and noted 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. Redaction, thus, renders the personnel records/privacy exemption inapplicable.

Despite the fact that the Pawtucket Police Department is the only party to this suit with access to the records at issue, they have provided no evidence to support their argument that privacy rights will be invaded even when the reports are redacted or that an *in camera* review is necessary. Indeed, at oral argument below, counsel for the Pawtucket Police Department repeatedly pointed to internal affairs reports relating to the length of officer's hair or uniform violations, asking:

> Does the disclosure of an internally-generated IA report warning a police officer against the length of his hair and informing him to get a haircut, or warning an officer who was wearing a summer uniform in the wintertime, or a report investigating how the side-view mirror of a police car parked in the police parking lot was damaged overnight in a snowstorm, do those instances let citizens know about what their government is up to?

See Exhibit 3, Transcript of the hearing before Judge Long on March 6, 2019, page 23. Apart from the fact that it is almost impossible to envision anyone finding a significant privacy interest in reports relating to hair length or uniform violations, or indeed, an investigation into damage to government property, this is both the wrong question and the wrong focus.

[7] 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.

The APRA is clear, records of a public body are presumptively public until proven otherwise; "[e]xcept 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." R.I. Gen. Laws § 38-2-3(a). "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, they do not.

The Pawtucket Police Department also argued that Brady requires that a Court engage in an individualized analysis to determine which reports, if any, constitute personnel records. While the Pawtucket Police Department is correct that this Court in Brady stated that "[i]n determining whether documents constitute a personnel file, we examine the report in light of the particular circumstances of each case[,]" Brady, 556 A.2d at 559, this ignores this Court's holding in The Rake.

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. This 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. Indeed, this conclusion is reinforced because the self-confessed purpose of the internal affairs division of the Pawtucket Police Department is to inspire public confidence:

> 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.[8]

[8] From http://www.pawtucketpolice.com/internalaffairs/ (last visited April 17, 2019). 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.

Further, the Pawtucket Police Department's suggestion that an *in camera* review is necessary creates unworkable procedural burdens that would undermine the purpose of the APRA. Not only would such a process encourage public bodies to withhold records in violation of the APRA but it would impose substantial procedural burdens, and concomitant transaction costs on both the parties requesting records and the reviewing court (or other third party neutral asked to review the records). Such a process does not serve fundamental fairness or the purpose of the APRA.

The problems with the process being proposed by the Pawtucket Police Department are brought into stark relief by the claims of the Pawtucket Police Department in this case. During oral argument below, counsel for the Defendant's/Respondents stated, "[w]e want to be clear, we're not arguing for a broad-based wholesale denial of Plaintiff's request." See Exhibit 3, page 21. This statement was repeated again on pages 22, lines 13-14, and 34, lines 16-17. Despite these protestations, however, this is in fact what the Pawtucket Police Department did. They denied, in its entirety, Mr. Lyssikatos's request and ignored their obligation to produce "any reasonably segregable" portion of the requested documents pursuant to R.I. Gen. Laws § 38-2-2(b). Ironically, the Pawtucket Police Department's response in this case is directly contrary to their earlier actions, they have previously produced records of the type requested in this case, i.e. internal affairs reports generated as a result of internal complaints. See Exhibit E to Exhibit 4.[9]

The Pawtucket Police Department's derogation of their obligations under the APRA and their efforts to delegate responsibility to the Superior Court should not be permitted. The

[9]A number of other police departments in the state have done the same, for example, the Providence Police Department. See Exhibit F to Exhibit 4.

Pawtucket Police Department's misinterpretation of the decision in Brady should, therefore, be rejected by this Court.

ii. Piskunov v. Town of Narragansett, PR 17-05, was wrongly decided based on the erroneous assumption that § 38-2-2(4)(A)(I)(b) required a balancing test in all circumstances and should be rejected by this Court.

The Pawtucket Police Department has also relied on the Attorney General's opinion in Piskunov v. Town of Narragansett, PR 17-05,[10] 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. Indeed, it appears to have been decided based on a mistaken assumption that § 38-2-2(4)(A)(I)(b) always requires a balancing test, which it does not.

The Attorney General's conclusion in Piskunov appears, in large part, also 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. While § 38-2-2(4)(A)(I)(b) may require a requesting party to explain the public interest underlying their request for reports, it does so only in circumstances where the party is requesting records that would be identifiable to individuals. Here, Mr. Lyssikatos is seeking redacted records so the balancing test does not come into play and need not, and should not, be considered by this Court. Piskunov is, therefore, distinguishable.

Further, the position taken by the Pawtucket Police Department in this case is in tension with §38-2-3(j), which bars agencies from requiring requestors to provide a reason for a records request, particularly where there is no legitimate claim of a clearly unwarranted invasion of privacy

[10] 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.

to be rebutted. In any event, and despite having no obligation to do so, here Mr. Lyssikatos provided the Superior Court with a detailed description of the interests 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.

iii. While the decision of the United States Supreme Court in Rose endorses an *in camera* review of records similar to those in this case, the statutory differences between the APRA and the FOIA are such that this aspect of the decision is inapplicable in Rhode Island.

It is correct that the United States Supreme Court in Rose, 425 U.S. 352,[11] endorsed an *in camera* review of records similar to those at issue in this case—summaries of honor and ethics hearings from the Air Force Academy—however, it did so based on a very different statutory scheme. The FOIA does not contain the same prerequisite to the application of its personnel records/privacy exemption as the APRA. Put simply, the FOIA does not require that the records be "individually identifiable" before the Court is required to engage in a balancing test.

Although the 2012 amendments to the APRA brought it into closer alignment with the federal Freedom of Information Act, 5 U.S.C. § 552 et. seq. (the "FOIA"), there remains a significant and dispositive distinction between the two acts. While both § 38-2-2(4)(A)(I)(b) and its equivalent under FOIA, 5 U.S.C. § 552(b)(6) call for a balancing test when exploring the disclosure of personnel and similar records, FOIA's personnel records/privacy exemption does not contain the prerequisite that the records be individually identifiable before the balancing applies. § 38-2-2(4)(A)(I)(b) provides for an exemption to disclosure for:

> Personnel **and other personal individually identifiable records** otherwise deemed confidential by federal or state law or regulation, or the disclosure of which

[11] Mr. Lyssikatos cited Rose below in support of his argument that redaction is a satisfactory resolution of potential privacy issues. He did not intend to, and does not, endorse *in camera* review of the records at issue in this case (or, indeed, any other) as a means of resolving this dispute.

would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 *et seq*.

(Emphasis added). In contrast, 5 U.S.C. 552(b)(6) provides an exemption to disclosure for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"

The obvious distinction between the two statutes is dispositive. Reliance on the pure balancing test employed under federal law is misplaced in Rhode Island. In Rhode Island, unlike under federal law, there is no balancing where the records are not "individually identifiable[,]" as would be the case here when the 57 reports in question are redacted.

Notably, Rose was decided in 1976, six years before this Court's decision in The Rake (1982) and 22 years before its decision in DARE (1998). Reliance on Rose now would not only rewrite 35 years of Rhode Island precedent but would fly in the face of this Court's jurisprudence as well as the clear legislative intent manifest in the 2012 amendments to the APRA.

iv. An incidental identification of an individual based on the review of a redacted internal affairs report does not justify either denial of Mr. Lyssikatos's motion for summary judgment or the implementation of an *in camera* review.

The Pawtucket Police Department attempts to bolster their argument in favor of a balancing test, and an *in camera* review of the 57 internal affairs reports at issue in this case, by noting the potential risk that someone could identify the individuals in the reports despite redaction.[12] This argument is unavailing; in fact, it was explicitly rejected in The Rake. This Court rejected the defendant's argument that "the facts set forth in each report could be matched with newspaper accounts that gave rise to the complaint" resulting in the identification of the parties involved

[12] The Pawtucket Police Department points to the United States Supreme Court's decision in Rose in support of this proposition.

stating, "[w]hile recognizing that the scenario defendant presents us with could occur, we feel that on balance the public's right to know outweighs such a possibility." The Rake, 452 A.2d at 1149.

In Brady, 556 A.2d 556, this Court explaining its holding in The Rake stated:

> [w]e noted that the plain language of APRA required the records in issue to identify a specific individual in order for the personnel record exemption to apply. ... **The public's right to know under APRA, we stated, outweighed the fortuitous possibility that police officers' identities might be ascertained by matching the reports with newspaper accounts of the incidents.**

Id. at 559 (emphasis added). The Pawtucket Police Department's attempt to rely on the United States Supreme Court decision in Rose and its arguments regarding incidental identification in support of an *in camera* review are therefore misplaced and should be ignored. The Superior Court's decision below ignored the plain and ordinary meaning of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) and should therefore be reversed.

c. There is no statutory or other legal basis for concluding that there is a distinction between internal affairs reports generated as a result of citizen complaints and internal affairs reports generated as a result of internal complaints.

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 Supreme Court ordered the release of the relevant records, with redactions of personally identifiable information. While both decisions addressed requests for internal affairs reports generated following citizen complaints and there is nothing in their language that would compel a contrary result in this case. There is no principled basis for distinguishing between internal affairs reports based on the status of the individual who filed the complaint. The Pawtucket Police Department cannot, and does not, point to any legal or logical basis for distinguishing between reports generated as a result of citizen complaints and reports generated as a result of internal processes.

The Pawtucket Police Department's reliance on Piskunov is misplaced. In Piskunov, the Attorney General stated 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. 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 held that redaction removed records from the ambit of the predecessor to § 38-2-2(4)(A)(I)(b) and those decisions remain good law. Put simply, the nature and/or origin of the report is irrelevant to the analysis under § 38-2-2(4)(A)(I)(b). This conclusion is supported by the decisions of courts in other jurisdictions.

i. Courts in other jurisdictions have concluded that there is no rational basis for distinguishing between reports based on the source of the complaint.

In Worcester Telegram & Gazette Corp.,787 N.E.2d 602, 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), 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).[13]

Similarly, in Charleston Gazette v. Smithers, 752 S.E.2d 603, (W. Va. 2013), the Supreme Court of Appeals for West Virginia made no distinction 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.

While the Pawtucket Police Department has argued that a "one size fits all approach" is inappropriate, it is clear that this is what the legislature has mandated. If the records are not identifiable then § 38-2-2(4)(A)(I)(b) does not apply. Although somewhat procrustean, this is what the APRA demands.

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[13] 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.

V. CONCLUSION

This case raises important questions or public policy and the application of the APRA. If the Superior Court's decision is permitted to stand, there is a significant risk of material damage to our democracy. William L. Dawson, Chairman of the Committee on Government Operations was correct when he wrote:

> 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.[14] The Superior Court's denial of Mr. Lyssikatos's motion for summary judgment, therefore, represents a significant threat to the continued viability of the APRA and should be subject to immediate review and reversal by this court. The denial of Mr. Lyssikatos's motion for summary judgment ignores long-standing precedent of this Court favoring the disclosure of public records and invites public bodies to hide their records from public view by creating procedural burdens and transaction costs that undermine the purpose of the APRA.

Rhode Island law is clear, pursuant to The Rake and DARE, redaction of the 57 internal affairs reports removes them from the ambit of the personnel records/privacy exemption embodied

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[14] 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 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).

in R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). The Superior Court's denial of Mr. Lyssikatos's motion for summary judgment represents a manifest error of law.

Wherefore, Petitioner, Dimitri Lyssikatos, respectfully requests that this Honorable Court issue a writ of certiorari, reverse the March 18, 2019 Order of the Superior Court and direct entry of summary judgment in favor of Mr. Lyssikatos, and issue any other relied that this Court deems appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of May, 2019,

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