

STATE OF RHODE ISLAND
PROVIDENCE, S.C.

SUPERIOR COURT

HANNAH STERN, in her capacity as Policy)
Associate of the American Civil Liberties Union)
of Rhode Island, and the AMERICAN CIVIL)
LIBERTIES UNION OF RHODE ISLAND,)

Plaintiffs,)

v.)

C.A. No. PC-2022-_____

CITY OF PROVIDENCE by and through its)
Treasurer, James Lombardi,)

Defendants.)

COMPLAINT

1. This is an action for injunctive, declaratory and other relief under the Access to Public Records Act, R.I. Gen. Laws §38-2-1, *et seq.* (“APRA”), seeking the production of public records concerning a cease & desist order issued by the Providence Board of Licenses at the request of the Providence Police Department, preventing a musical artist from performing at a Providence nightclub.

2. Plaintiff Hannah Stern is a Rhode Island resident and Policy Associate of the American Civil Liberties Union of Rhode Island.

3. Plaintiff American Civil Liberties Union of Rhode Island is a Rhode Island non-profit corporation with its principal place of business in Providence, dedicated to preserving civil liberties and civil rights of residents of the state, including rights related to open government.

4. Defendant City of Providence (“Providence” or the “City”) is a Municipal Corporation and political subdivision of the State of Rhode Island. The City, including its Board

of Licenses and Police Department, are “agencies” or “public bodies” as defined in R.I. Gen. Laws §38-2-2(1).

5. This Court has jurisdiction over this action pursuant to R.I. Gen. Laws §38-2-9(a) and §9-30-1.

6. Venue is proper in this Court pursuant to R.I. Gen. Laws §38-2-8(b).

7. On October 27, 2021, Providence Board of Licenses (the “Board”) held a meeting at which a representative of the Providence Police Department (“PPD”) requested that the Board issue a Cease and Desist order to a venue doing business as “LIT Lounge” to prohibit a performance by the rap artist Jeffrey Alexander (known professionally as “22Gz”) planned for October 30, 2021.

8. Among other things, the PPD representative told the Board that 22Gz is “a member of Wookie Gang, they call it Gun Gang,” and that “this particular group . . . also has ties to the Crip Gang.”

9. The PPD representative further told the Board that 22Gz “spent five months in jail in 2017 on a second-degree murder charge related to a shooting in Miami in which the charges were later dropped by the victim.”

10. The PPD representative further stated that in 2019, the New York Police Department (“NYPD”) asked an event organizer to remove 22Gz and four other performers from an event because “if they were allowed to perform, there would be a higher risk of violence.”

11. At the same Board meeting on October 27, 2021, the Board voted to issue the Cease and Desist order requested by PPD.

12. In a letter to CC Lounge, LLC dated October 27, 2021, the City stated:

“Specifically, your entertainment scheduled for Saturday, October 30, ‘22 GZ’ has been denied. At the Board of Licenses hearing on October 27th 2021, the Providence Police

Department presented numerous incidents of violence at previous performances of this artist. The Board determined that allowing this artist to perform would pose a significant safety threat to your establishment, your staff, your patrons, and the City as a whole.”

A copy of the October 27, 2021 letter is attached hereto as Exhibit A.

13. On or about November 8, 2021, the plaintiffs filed an open records request with the City pursuant to APRA, requesting “any documents provided to the Board of Licenses regarding” incidents of violence at previous 22Gz performances, and “any documents which delineate the specific incidents of violence referenced in the Providence Police Department presentation leading to the denial of this event for the applicant.” A copy of the initial open records request is attached hereto as Exhibit B.

14. The City responded to the plaintiffs’ initial APRA request by providing a link to the City’s Open Meetings Portal “where you may find documents that have been filed with the Board of Licenses pertaining to Lit Lounge.” The City did not provide the plaintiffs with any other documents or records, and specifically failed to provide any documents “regarding incidents of violence at previous 22Gz performances,” or “the specific incidents of violence referenced in the Providence Police Department presentation” on October 27, 2021. A copy of the City’s response to the initial APRA request is attached hereto as Exhibit C.

15. Following receipt of the City’s November 22, 2021 response, the plaintiffs sent a follow-up APRA request to the City, again requesting documents related to the “incidents of violence” that the PPD cited in its request to the Board of Licenses for a Cease and Desist Order. The plaintiffs noted in the follow-up request that even if the PPD never provided the Board of Licenses with any documents to support its request, any such documents in the possession of the PPD were also covered by the APRA request. A copy of the follow-up APRA request is attached hereto as Exhibit D.

16. The City again failed to provide any documents whatsoever in response to the follow-up APRA request. In its written response to the plaintiffs, the City responded that the PPD never provided the Board of Licenses with any documents in support of its request. The City further responded that the PPD's responsive documents:

have been withheld pursuant to R.I. Gen. Laws §38-2-2(4)(E) because they "would not be available by law or rule of court to an opposing party in litigation" and pursuant to §38-2-2(4)(S) because they are "records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court."

A copy of the City's response to the follow-up APRA request is attached hereto as Exhibit E.

17. The City's response to the follow-up APRA request specifically referenced "news articles" in the possession of the PPD, including an article from the *New York Times*. According to the City, "copyright law" prevented the City from "re-publishing" the "news articles" to plaintiffs in response to the APRA request.

18. As records maintained or kept on file by a public body, the requested records are public records as defined in R.I. Gen. Laws §38-2-2(4).

19. Other than the reference to "news articles," the City did not indicate what other types of documents it withheld from disclosure pursuant to R.I. Gen. Laws §38-2-2(4)(E) and (S).

20. To the extent that the documents withheld are "news articles," such as the *New York Times* article referenced in the City's response, those documents are not exempt from disclosure pursuant to any provision of APRA. "Copyright law" also does not justify the City's non-response. Under federal copyright law, "[r]eproduction of copyrighted material for use in litigation or potential litigation is generally fair use, even if the material is copied in whole." *Stern v. Does*, 978 F.Supp.2d 1031, 1044-49 (C.D. Cal. 2011).

21. There is significant public interest in the requested records. The City's decision to prevent 22Gz from performing at Lit Lounge constitutes a prior restraint on speech, which may have been unconstitutional. To the extent that the City maintains that the prior restraint was warranted because of legitimate concerns about public safety, the public is entitled to see the documents and records underpinning that decision.

22. Plaintiffs have a right of access to the requested records under R.I. Gen. Laws §38-3-2, *et seq.*, and there is no legal basis for the City's denial of such access.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Advance this matter on the calendar pursuant to R.I. Gen. Laws §38-2-9(c).
2. Declare that the records requested by plaintiffs on November 8, 2021, constitute public records and must be released.
3. Declare that it is in the public's interest that the records sought in the plaintiffs' APRA request be released and produced to plaintiffs.
4. Order the defendants to produce all documents and records responsive to the plaintiffs' APRA request.
5. Order that the defendants waive any fees for the copying, search and retrieval of said records.
6. Enter judgment in favor of the plaintiffs.
7. Impose civil fines on the defendants pursuant to R.I. Gen. Laws §38-2-9(d).
8. Award plaintiffs their costs and reasonable attorneys' fees.
9. Award plaintiffs such other and further relief as the Court finds just and equitable.

HANNAH STERN in her capacity as Policy
Associate of the American Civil Liberties
Union of Rhode Island and the AMERICAN

CIVIL LIBERTIES UNION OF RHODE
ISLAND,

By their attorney,

/s/ Jeffrey L. Levy
Jeffrey L. Levy (#9233)
LEVY & BLACKMAN LLP
469 Angell Street
Providence, Rhode Island 02906
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Cooperating Attorney, American
Civil Liberties Union Foundation
Of Rhode Island

Dated: March 28, 2022.

EXHIBIT A



CITY OF PROVIDENCE

Jorge O. Elorza, Mayor

October 27, 2021

CC Lounge, LLC
d/b/a CC Lounge
971 Broad Street
Providence, RI 02905

To Whom It May Concern:

The Providence Board of Licenses this date has issued a **Cease and Desist Order with regard to all entertainment** on the premises located at 971 Broad Street **effective immediately**. To date, you have not paid for your September and October entertainment licenses. Specifically, your entertainment scheduled for **Saturday, October 30th, '22 GZ'** has been denied. At the Board of Licenses hearing on October 27th 2021 the Providence Police Department presented numerous incidents of violence at previous performances of this artist. The Board determined that allowing this artist to perform would pose a significant safety threat to your establishment, your staff, your patrons, and the City as a whole.

In order for this cease and desist to be lifted, you must pay for your entertainment licenses and appear before the Board of Licenses for any future entertainment. As you are aware, entertainment licenses are renewed on a monthly basis. Note that all matters before the Board are subject to the Open Meetings Act and must be posted a minimum of forty-eight (48) hours in advance of a hearing, excluding holidays and weekends.

If you have any questions, you may contact this office.

Sincerely,

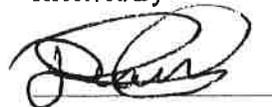

Stephany Lopes
License Administrator

cc: Captain DeAndrade, License Enforcement Unit
Mario Martone, Esquire, Assistant City Solicitor

Hand Delivered


10/28/21
2155M

Received By



BOARD OF LICENSES
PROVIDENCE CITY HALL / 25 DORRANCE STREET, ROOM 104
PROVIDENCE, RHODE ISLAND 02903
401 680-5000 / 401 272-2430 FAX
www.providencerl.com

EXHIBIT B

To Whom It May Concern:

Please consider this letter an open records request under the state Access to Public Records Act, R.I.G.L. §38-2-1 et seq. I am writing to request certain documents related to the denial of the calendar event for performer “22gz” for the applicant LIT Lounge by the Board of Licenses on October 27, 2021.

In the Cease and Desist Order issued by the City of Providence to the applicant, it was noted that the “Providence Police Department presented numerous incidents of violence at previous performances of this artist.” Specifically, I would like to request any documents provided to the Board of Licenses regarding such incidents, and any documents which delineate the specific incidents of violence referenced in the Providence Police Department presentation leading to the denial of this event for the applicant.

As provided for by APRA, I look forward to receiving the requested documents within ten (10) business days. We are willing to pay reasonable costs for this information in accordance with the Act. I would like to request that all responsive documents be sent in an electronic format to my email at hstern@riaclu.org.

If you have any questions regarding this request, please feel free to reach out to me at the above email address. Thank you in advance for your prompt attention to this matter.

EXHIBIT C

 **External Message** Hide

Requester + Staff

Dear Requester - for your convenience we have released a link to the City's Open Meetings Portal where you may find documents that have been filed with the Board of Licenses pertaining to Lit Lounge. Please note, in regards to your request, specifically, "documents related to the denial of the calendar event for performer "22Gz" for the applicant LIT Lounge by the Board of Licenses on October 27, 2021," the Board of Licenses does not have any additional documents other than what has been posted on the portal. Please further note the Providence Police Department conducted a thorough search and In 2021 there were 4 reports taken: 1) simple assault 2) assistance rendered 3)larceny-theft 4) fraud. In 2020 there were 3 reports taken: 1) assistance rendered 2)disorderly conduct 3) disorderly conduct. Those reports do not relate to 22 Gunz.

November 22, 2021, 10:20am by Rosa Arias-Perry (Staff)

EXHIBIT D

To Whom It May Concern:

This is a follow-up to an Access to Public Records Act request, #21-1078, that I filed on November 8, 2021 and was responded to on November 22, 2021. The request was for certain documents related to the denial by the Board of Licenses on October 27, 2021 of the calendar event for the performer "22Gz" sought by the LIT Lounge. Your response appears to have misconstrued my request.

My November 8th request sought the following records from the City, and particularly the Board of Licenses and the Police Department:

"In the Cease and Desist Order issued by the City of Providence to the applicant, it was noted that the 'Providence Police Department presented numerous incidents of violence at previous performances of this artist.' Specifically, I would like to request any documents provided to the Board of Licenses regarding such incidents, and any documents which delineate the specific incidents of violence referenced in the Providence Police Department presentation."

The response provided to me on November 22 contained a link to documents "that have been filed with the Board of Licenses pertaining to Lit Lounge," and further noted that "the Board of Licenses does not have any additional documents." While the response then references "reports taken" by the Providence Police Department, it acknowledged that these "reports do not relate to 22 Gunz [sic]." However, our request specifically sought the documents referenced in the Cease and Desist Order regarding "numerous incidents of violence at previous performances of this artist," not of the establishment. If no such documents were provided to the Board of Licenses, we should have received the documents from the police department itself, per our request for any records "which delineate the specific incidents of violence" regarding 22Gz that were referenced in the police department's presentation. Yet no such documents were provided us.

Therefore, per my original request, please provide me all documents in the possession of the police department, or any other municipal entity, that delineate the "numerous incidents of violence at previous performances of [22Gz]" which were referenced in the Cease and Desist Order.

If you still have any questions about this follow-up request, please feel free to reach out to me at hstern@riaclu.org. If necessary, please consider this follow-up another formal request for records pursuant to A.P.R.A. Thank you very much in advance for your prompt attention to this matter.

Best,
Hannah Stern

EXHIBIT E

Request Closed [Hide](#)

Public

With respect to your request for documents provided by the Providence Police Department (PPD) to the Board of Licenses regarding the artist 22Gz, the City of Providence does not maintain responsive documents. Specifically, the PPD did not provide the Board with any documents, but rather, provided the Board with information gathered from a variety of sources, including fellow officers and print media. Should you wish to hear the PPD's presentation to the Board on Oct. 27, 2021, we have released an audio recording of the open meeting, without redaction.

With respect to your request for documents "which delineate the specific incidents of violence referenced in the Providence Police Department presentation," documents have been withheld pursuant to R.I. Gen. Laws § 38-2-2(4)(E) because they "would not be available by law or rule of court to an opposing party in litigation" and pursuant to § 38-2-2(4)(S) because they are "records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court." Although copyright law prevents us from re-publishing the relevant news articles here, an example of one such article is The New York Times' Oct. 12, 2019 article "5 Rappers Dropped From New York Music Festival at Police Request." Please note that this example is provided as a courtesy and should not be construed to waive our reliance on Exemptions S or E. No portion of these documents contains reasonably segregable information that is releasable. R.I. Gen. Laws § 38-2-3(b).

In accordance with R.I. Gen. Laws § 38-2-8, you may wish to appeal this decision to the Chief Administrative Officer. In this instance, Steven M. Paré, Commissioner of Public Safety, fulfills that role. You may also wish to file a complaint with the Department of the Attorney General or the Rhode Island Superior Court.