

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

JENNIFER COX  
Plaintiff

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  
Defendants

C.A. No. PC-2018-

### **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 reports generated by the Internal Affairs Division of the Pawtucket Police Department.

2. This court has jurisdiction over this action pursuant to R.I. Gen. Laws § 38-2-9.

3. Venue is proper pursuant to R.I. Gen. Laws § 38-2-8(b).

4. Plaintiff, Jennifer Cox, is a resident of the town of Exeter in the state of Rhode Island and a member of the Rhode Island Accountability Project.

5. The Rhode Island Accountability Project is a non-partisan body engaged in an effort to restore accountability and transparency in local government and law enforcement, particularly the investigation of police misconduct.

6. 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.

7. This database is published online at:

<http://www.riaccountabilityproject.com/request-and-view-internal-affairs-reports..html>.

8. 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.

9. 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.

10. Defendant, Tina Goncalves, is the Chief of the Pawtucket Police Department.

11. The Pawtucket Police Department is in possession of the documents that Plaintiff seeks.

12. The Pawtucket Police Department is an “agency” or “public body” as defined in R.I. Gen. Laws § 38-2-2(1).

13. Article 3 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.”

14. 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.

15. Defendant, Frank J. Milos, Jr., Esq., is the City Solicitor for the City of Pawtucket.

16. On April 14, 2018, Plaintiff issued a request for records to the Pawtucket Police Department.

17. Plaintiff's April 14, 2018, request was addressed to Defendant Milos in his capacity as the City Solicitor for the City of Pawtucket.

18. Plaintiff's April 14, 2018, APRA request sought "records related to the Pawtucket Police Internal Affairs department. In particular, ... the last 10 completed Internal Affairs reports."

19. A true and accurate copy of Plaintiff's April 14, 2018, APRA request is attached hereto as Exhibit A.

20. In conformance with both Rhode Island law and the usual custom and practice, Plaintiff expected the requested records to be produced with redactions to protect the privacy interests of the individuals referenced in the requested reports.

21. The Rhode Island Supreme Court has determined that Police Internal Affairs reports, when redacted, are public records. See 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. 1988).

22. Other police departments have, recognizing the public interest in police internal affairs and disciplinary records, routinely released this information. For example, the Providence Police Department recently made public information and data relating to fifteen (15) years of police discipline. Similarly, the Pawtucket Police Department has previously released similar information.

23. On April 30, 2018, Defendant Milos issued a letter denying access to certain reports responsive to Plaintiff's request for records.

24. Defendant Milos denied Plaintiff's request for access to six (6) reports:

- a. # 18-005-IA;
- b. # 18-008-IA;
- c. # 18-030-IA;
- d. # 18-031-IA;
- e. # 17-100-IA; and
- f. # 18-012-IA.

25. Defendant Milos denied access to reports #18-005-IA; #18-008-IA # 18-030-IA; and # 18-031-IA on the following improper bases:

- a. Report # 18-005-IA “concerns an investigation performed in response to issues raised by a citizen, however, the citizen ultimately stated that she was not interested in pursuing a formal complaint.”
- b. Report # 18-008-IA “concerns a formal complaint by a citizen that was withdrawn and/or not pursued by said citizen.”
- c. “Reports # 18-030-IA and 18-031-IA concern complaints filed by citizens who are known to the police and who are suspected of suffering from mental illness.”
- d. And, concludes that “these reports [Reports # 18-005-IA, # 18-008-IA, and # 18-030-IA and 18-031-IA] are not subject to disclosure and that there is little if any public interest to be advanced in the disclosure of these reports, even if redacted.”

26. Defendant Milos denied access to Reports # 17-100-IA and # 18-012-IA on the following improper ground: “disclosure of the requested records, in whole or in part, ‘would

constitute a clearly unwarranted invasion of personal privacy[.]’ R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).”

27. Defendant Milos also denied access to Report # 17-100-IA on the improper ground that the identity of the officers involved “are known to the APRA Watch.”

28. Defendant Milos improperly denied access to Report # 18-012-IA stating that it “would not, in and of itself, serve to shed light on how the Office of Professional Responsibility operates or performs investigations. In the absence of a specifically articulated public interest, the City respectfully denies your request for these reports.”

29. A true and accurate copy of Defendant Milos’ April 30, 2018, letter is attached as Exhibit B.

30. The requested records are 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 an agency or public body.

31. 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).

32. As public records, the requested records are subject to the provisions of R.I. Gen. Laws § 38-2-2(3) granting “every person or entity ... the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.”

33. Defendants have not articulated a legally cognizable basis for refusing to disclose Reports #18-005-IA; #18-008-IA # 18-030-IA; and # 18-031-IA.

34. Defendants have not articulated a legally cognizable basis for refusing to disclose Reports # 17-100-IA and # 18-012-IA:

35. The records requested do not constitute “personnel records” as defined in R.I. Gen. Laws. 38-2-4(A)(I)(b).

36. Limited redaction of the requested records—as anticipated by Plaintiff—would protect the privacy interests of persons identified therein.

37. There would be no invasion of personal privacy if the requested records were redacted to protect the identities of persons identified therein.

38. The requested records, if redacted to protect the identities of individuals referenced therein, would not be deemed confidential by federal or state law or regulations.

39. Even if some of the requested records contained individually-identifiable, private and/or confidential information, Defendants had an obligation to produce any reasonably segregable portion of the requested records following deletion of the information which is the basis of the exclusion.

40. There is significant public interest in the requested records. The reports of investigations conducted by the internal affairs department shed light on one of the core functions of government, policing; particularly the operation of the Pawtucket Police Department and the conduct of its officers in the execution of their duties.

41. Defendants’ denial of Plaintiff’s request for access to Reports # 18-005-IA; # 18-008-IA; # 18-030-IA; # 18-031-IA; # 17-100-IA; and # 18-012-IA was improper.

42. Plaintiff has a right of access to the requested records under R.I. Gen. Laws § 38-2-1 et. seq, and there is no legal basis for Defendants' denial of such access.

Wherefore, Plaintiff requests:

- a. A declaration from this court that the records requested by Plaintiff on April 14, 2018, constitute public records and therefore are required to be released;
- b. A declaration from this court that there is public interest in the records requested by Plaintiff on April 14, 2018;
- c. An order of this court compelling Defendants to produce the records responsive to Plaintiff's APRA request (with or without any lawfully authorized redactions) in a timely manner;
- d. An order of this court waiving the fees for the copying, search and retrieval of the records requested on April 14, 2018;
- e. An award of reasonable costs and attorney fees; and
- f. Any other relief that this court deems proper.

Plaintiff demands a trial by jury on all issues triable to a jury and designates James D. Cullen as trial counsel.

JENNIFER COX  
By Her Attorney(s),

/s/ James D. Cullen

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