



CITY OF PROVIDENCE

Jorge O. Elorza, Mayor

September 29, 2016

VIA EMAIL AND HAND DELIVERY

lpinsonneault@riag.ri.gov

Lisa Pinsonneault
Special Assistant Attorney General
State of Rhode Island and Providence Plantations
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Re: Harris v. City of Providence

Dear Special Assistant Attorney General Pinsonneault:

This office is in receipt of your August 16, 2016 correspondence, in which you conveyed an Access to Public Records Act ("APRA" or the "Act") complaint against the City of Providence by Johanna Harris dated May 30, 2016. Enclosed, please find my affidavit prepared in response.

As the sole basis for her Complaint, Ms. Harris relies on R.I. Gen. Laws § 38-2-2(4)(K), which exempts the following from public record: "preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public."

Consistent with the plain language of this provision, as well as Attorney General opinions interpreting same, the City of Providence submits that § 38-2-2(4)(K) does not apply in this instance.

In *Chrabaszcz*, the Department of the Attorney General reaffirmed that "exemption (K) is limited to '[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products' and that '[o]nly these preliminary documents, when submitted at a public meeting, become public.'" See *Chrabaszcz v. Johnston School Department* PR 04-15. As the Department has previously and aptly observed, to take the Complainant's view of (K) would mean to "urge this Department to apply the plain language of the second clause, but ignore the plain language of the first clause." See *The Providence Journal v. Rhode Island Office of General Treasurer* PR 14-15.

CITY SOLICITOR'S OFFICE

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The City of Providence withheld the requested video pursuant to R.I. Gen. Laws § 38-2-2(4)(D)(a) and 38-2-2(4)(D)(c) to protect the privacy interests of the individuals in the video and the ongoing investigation of the fight captured in the video. Lastly, because the requested record was not a “preliminary” record within the meaning of (K), it is not a public record and it was proper for the Public Records Unit to exempt it under other provisions.

The Public Records Unit and other city officials have endeavored to fully and properly respond to the request of Ms. Harris, in accordance with the law. To the extent that the Attorney General reaches a different conclusion and determines that the City has violated the APRA, the Public Records Unit submits that any such violation was not reckless, knowing, or willful.

The Public Records Unit would be pleased to provide any additional information or answer any questions. We look forward to your decision.

Very truly yours,



David Ellison
Assistant City Solicitor
Public Records Unit

Enclosures
cc: Johanna Harris

IN RE: *Harris v. City of Providence*

AFFIDAVIT

I, DAVID ELLISON, being first duly sworn, depose and state as follows:

1. I am an Assistant City Solicitor for the City of Providence and am a member of the Public Records Unit. As a member of the Public Records Unit, I am responsible for responding to certain requests for records made pursuant to the Access to Public Records Act (“APRA”).
2. I have reviewed the APRA Complaint dated May 30, 2016, made by Johanna Harris against the City of Providence.
3. On April 30, 2016, the Public Records Unit received a submission on our public records request online portal from Johanna Harris, in which she requested the following records pursuant to APRA: “The videotape in the matter of Mile and Quarter House d/b/a The Loft, submitted and shown at the April 28, 2016 public meeting of the Providence Board of Licenses. R.I.G.L. § 38-2-2(4) specifically includes ‘tapes,’ ‘films,’ ‘sound recordings,’ ‘or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.’ R.I.G.L. § 38-2-2(4)(K) states, ‘any documents submitted at a public meeting of a public body shall be deemed public.’ In accordance with R.I.G.L. § 38-2-3(4)(K), please provide an ‘electronic’ version of the requested document.”
4. I spoke with Assistant City Solicitor Mario Martone, who handles matters before the Providence Board of Licenses.
5. Mr. Martone showed me portions of the video which depict a fight amongst the crowd at Mile and a Quarter.
6. Mr. Martone explained that he showed portions of the video on a computer to the Board. The video was not edited and is hours long with multiple camera angles. He showed a fraction of the video to the Board.
7. The video shows patrons, including individuals who are not partaking in the fight.
8. The City of Providence does not have the ability to redact or blur the faces of the individuals in the video, in order to adequately protect their privacy.
9. Additionally, the video is on a “zip drive” that has over 7 gigabytes worth of information, mainly security footage throughout the night. The City of Providence does not have the ability to edit this video to only the portion shown to the Board.
10. Mr. Martone and I confirmed with the Providence Police Department that nobody had been arrested at the time for criminal charges. Due to the close proximity in

time of the APRA request to the fight and the possibility of arrests coming, I determined that the investigation was still ongoing.

11. I determined R.I. Gen. Laws § 38-2-2(4)(K) did not apply because of my review of APRA and Attorney General opinions, which make clear that documents submitted at a public meeting of a public body shall be deemed public if they are preliminary drafts, notes, impressions, memoranda, working papers, and work products. Here, the video is not a preliminary draft, note, impression, memorandum, working paper, or work product. Therefore, R.I. Gen. Laws § 38-2-2(4)(K) does not apply.
12. On May 16, 2016, the City of Providence sent the following response to the requester: "Kindly note that records are withheld pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-2(4)(D), to prevent the disclosure of information which (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings and (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy. 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."
13. The requester did not appeal this decision to the Chief Administrative Officer.
14. To the extent that this determination on the part of the Public Records Unit was erroneous, it was made in good faith and in an effort to comply with the law, and was in no way knowing, willful, or reckless.



DAVID ELLISON

In Providence, Rhode Island on this 29th day of September, 2016, before me personally appeared DAVID ELLISON, to me known and known by me to be the person executing the foregoing instrument and he acknowledged said instrument, by him executed, to be his free act and deed.



Notary Public
My Comm. Expires: 05/20/2020