

SUPREME COURT OF RHODE ISLAND

The Providence Journal Company v. The Rhode Island Department of Public Safety, by and through Peter Kilmartin, Attorney General

136 A.3d 1168 (R.I. 2016) · No. No. 2014-182-Appeal (PC 12-5458) · Decided April 11, 2016

SUMMARY

The Rhode Island Supreme Court affirmed summary judgment for the Rhode Island Department of Public Safety and related defendants in an action under Rhode Island’s Access to Public Records Act. The court held that investigative records concerning an underage drinking incident were exempt from disclosure because release could constitute an unwarranted invasion of personal privacy. Adopting the framework from *National Archives and Records Administration v. Favish*, the court held that a requester asserting government impropriety must present evidence warranting a reasonable belief that official misconduct may have occurred.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Gilbert V. Indeglia; Frank A. Suttell, Chief Justice; Maureen McKenna Goldberg; William P. Robinson III
JURISDICTION	Rhode Island
DECIDED	April 11, 2016
DOCKET	No. 2014-182-Appeal (PC 12-5458)
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Providence Journal Company and Amanda Milkovits appealed from a Providence County Superior Court order granting defendants' motion for summary judgment and denying plaintiffs' cross-motion for summary judgment in an action seeking access to law-enforcement investigative records under Rhode Island's Access to Public Records Act.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, applying the same standards and rules as the motion justice and viewing the evidence in the light most favorable to the nonmoving party. Statutory interpretation is reviewed de novo. A trial justice's balancing of the public interest in disclosure against privacy interests is treated as a mixed question of law and fact and receives the same deference as factual findings; such

	findings are not overturned absent clear error or overlooking or misconceiving material evidence.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential
PARTIES	The Providence Journal Company, Amanda Milkovits v. Rhode Island Department of Public Safety, Rhode Island State Police, Steven G. O'Donnell, in his capacity as Commissioner of the Rhode Island Department of Public Safety and Superintendent of the Rhode Island State Police

TOPICS

administrative law

judicial review of agency action

statutory interpretation

summary judgment

standard of review

PRACTICE AREAS

administrative law

freedom of information

privacy law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether investigative records maintained by the Rhode Island State Police concerning an underage-drinking investigation were exempt from disclosure under the Rhode Island Access to Public Records Act because disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
2. Whether a requester asserting a public interest in exposing possible governmental negligence or impropriety must provide evidence warranting a reasonable belief that the impropriety might have occurred.
3. Whether the requested records could be disclosed through redaction or segregation of third-party identifying information.
4. Whether Caleb Chafee's public charge, nolo contendere plea, media coverage, or expungement substantially eliminated his privacy interest in the investigative materials.

HOLDINGS

1. When a requester seeks law-enforcement records protected by the APRA's personal-privacy exemption and asserts that disclosure would reveal governmental negligence or impropriety, the requester must produce evidence that would warrant a reasonable person's belief that the alleged governmental impropriety might have occurred; bare suspicion is insufficient.
2. The APRA permits withholding the investigative records because Caleb Chafee's substantial privacy interest in the contents and personal details of the investigation outweighed the Journal's unsubstantiated public interests in disclosure.

3. Redaction would not cure the privacy problem because, given the media attention surrounding the investigation, the subject of the records would remain readily identifiable even if identifying information were removed.
4. The court did not decide what effect Caleb Chafee's expungement order would have on disclosure because the records were properly withheld under the APRA based on the privacy exemption.

KEY QUOTATIONS

“First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.” (at 1176)

“Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.” (at 1177)

“Pursuant to the APRA, records need not be disclosed where such disclosure could create an unwarranted invasion of privacy—here, Caleb’s privacy interest created a barrier that the public interests in disclosure as asserted by the Journal could not overcome.” (at 1183)

FACTUAL BACKGROUND

Caleb Chafee, the son of then-Governor Lincoln Chafee, hosted a party at property owned by the Governor, where underage attendees consumed alcohol and an underage female was later hospitalized for alcohol-related illness. The Rhode Island State Police investigated and compiled 186 pages of materials, including witness statements, reports, witness lists, and land records. Caleb was charged under Rhode Island's Social Host Law, pled nolo contendere, paid a \$500 civil penalty, and later obtained expungement. The Providence Journal sought the investigative records, but the Department of Public Safety denied access under the Access to Public Records Act.

PROCEDURAL HISTORY

After the Rhode Island State Police denied the Journal's requests for investigative records concerning an underage-drinking incident at the then-Governor's property, the Journal pursued administrative review and then filed suit in Providence County Superior Court. The parties filed cross-motions for summary judgment. After an in camera review, the Superior Court held that the records were exempt from disclosure because production would constitute an unwarranted invasion of personal privacy and granted judgment for defendants. The Supreme Court of Rhode Island affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The materials associated with the case may be remanded to the Superior Court.

CASES CITED

- Symonds ex rel. Symonds v. City of Pawtucket, 126 A.3d 421 (R.I. 2015)
- Narragansett Indian Tribe v. State, 81 A.3d 1106 (R.I. 2014)
- Beacon Mutual Insurance Co. v. Spino Brothers Inc., 11 A.3d 645 (R.I. 2010)
- National Refrigeration, Inc. v. Travelers Indemnity Co. of America, 947 A.2d 906 (R.I. 2008)
- Twenty Eleven, LLC v. Botelho, 127 A.3d 897 (R.I. 2015)
- Webster v. Perrotta, 774 A.2d 68 (R.I. 2001)
- Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283 (R.I. 2012)
- Waterman v. Caprio, 983 A.2d 841 (R.I. 2009)
- Long v. Dell, Inc., 984 A.2d 1074 (R.I. 2009)
- Brennan v. Kirby, 529 A.2d 633 (R.I. 1987)
- Direct Action for Rights and Equality v. Gannon, 819 A.2d 651 (R.I. 2003)
- In re New England Gas Co., 842 A.2d 545 (R.I. 2004)
- National Archives and Records Administration v. Favish, 541 U.S. 157 (2004)
- Citizens for Responsibility and Ethics in Washington v. United States Department of Justice, 746 F.3d 1082 (D.C. Cir. 2014)
- Hunt v. Federal Bureau of Investigation, 972 F.2d 286 (9th Cir. 1992)
- Citizens for Responsibility and Ethics in Washington v. United States Department of Justice, 846 F. Supp. 2d 63 (D.D.C. 2012)
- United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)
- American Civil Liberties Union v. United States Department of Justice, 655 F.3d 1 (D.C. Cir. 2011)