



State of Rhode Island and Providence Plantations

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**VIA EMAIL ONLY**

March 17, 2020  
PR 20-15

Rickey Thompson

Matt Callaghan, Esquire  
Solicitor, North Kingstown

**RE: Thompson v. Town of North Kingstown** [4-10-19 Complaint]  
[9-18-19 Complaint]  
[9-27-19 Complaint]  
[11-7-19 Complaint]  
[2-4-20 Complaint]

Dear Mr. Thompson and Attorney Callaghan:

We have completed an investigation into the five Access to Public Records Act (“APRA”) complaints filed by Mr. Rickey Thompson (“Complainant”) against the Town of North Kingstown (“Town”). Because the five complaints pertain to similar issues, we will address them in a single finding. For the reasons set forth herein, we find that the Town violated the APRA but that its withholding the requested documents was permissible.

**Background and Arguments**

Over the course of five complaints, the Complainant asserts two arguments. First, in his April 10, 2019 (as amended on April 24, 2019), November 7, 2019, and February 4, 2020 Complaints, he contends that the Town violated the APRA by withholding requested Town Council executive session minutes pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) and § 38-2-2(4)(J). The Complainant generally maintains that the reasons the meetings were held in executive session no longer apply and that, accordingly, the executive session minutes should be unsealed.

Second, in his September 18, 2019 and September 27, 2019 Complaints, the Complainant asserts that the Town failed to formally respond to his July 2, 2019 and July 30, 2019 APRA requests, respectively. As with his other APRA requests, both of these APRA requests sought Town Council executive session minutes.

With respect to the Complainant's first argument, the Town maintains that the executive session minutes were properly withheld under R.I. Gen. Laws § 38-2-2(4)(J) because they constituted properly sealed executive session minutes. With respect to the Complainant's second argument alleging a failure to respond, the Town acknowledges that it did not formally respond in writing to the Complainant's July 2, 2019 and July 30, 2019 APRA requests. However, the Town lays out a detailed chronology wherein the Town had multiple communications with the Complainant about the requests. Although some of the finer points are disputed by the Complainant, it is uncontested that the Complainant indicated that he consented to an enlargement of the time to respond to see if the Town Council would vote to unseal the relevant executive session minutes. When the Town Council declined to do so at a September 9, 2019 meeting, the Complainant was notified in person at the meeting.

The Town also provided copies of the withheld executive session minutes for our *in camera* review.

We acknowledge the Complainant's rebuttals.

#### Relevant Law and Findings

When we examine an APRA complaint, our authority is to determine whether a violation of the APRA has occurred. *See* R.I. Gen. Laws § 38-2-8. In doing so, we must begin with the plain language of the APRA and relevant caselaw interpreting this statute.

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or copy such records. *See* R.I. Gen. Laws § 38-2-3(a). Exemption (J) permits nondisclosure of “[a]ny minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.” R.I. Gen. Laws § 38-2-2(4)(J). In other words, executive session minutes that are properly sealed under the Open Meetings Act (“OMA”), R.I. Gen. Laws § 42-46-1 *et seq.*, may be withheld from disclosure under the APRA.

Here, it is undisputed that all the withheld documents are Town Council executive session minutes. Although the Complainant asserts his belief that these minutes should not remain sealed, he does not contest that they were properly sealed under the OMA.<sup>1</sup> Accordingly, the executive session meeting minutes may be permissibly withheld under exemption (J) and we find no violation based on the Town withholding them.

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<sup>1</sup> Similarly, the Complainant did not allege that the implicated executive sessions were improperly convened or that the Town Council otherwise violated the OMA. The Complainant did not file an OMA Complaint and, as such, any issues related to complying with the OMA are outside the scope of the complaints submitted in this matter, as we explained in our acknowledgement letters to the parties.

Although we acknowledge the Complainant's contentions that the executive session minutes should no longer be sealed, there is no provision within the OMA that automatically unseals properly sealed executive session minutes. *See Fortin v. Town of Narragansett*, OM 19-41. In the interests of transparency, we encourage public bodies to review and unseal executive session minutes, or portions thereof, when the need for executive session is no longer applicable. However, nothing in either the APRA or the OMA compels them to do so.

We turn next to the Complainant's assertions that the Town failed to respond to his July 2, 2019 and July 30, 2019 APRA requests. We begin by noting disagreement between the Complainant and the Town over the precise travel of the matter. Nevertheless, it is undisputed that the Town asked for – and received – an undefined extension of time to respond to these requests. As both requests sought sealed Town Council executive session minutes, the Town explained that the Town Council would consider voting to unseal the minutes. This consideration happened at the Town Council's September 9, 2019 meeting, where the Town Solicitor personally informed the Complainant that the Town Council had decided against unsealing the minutes and that they would therefore not be produced. The Town Council's decision to not unseal the minutes was also publicly relayed in open session.

Although it appears the Town went above and beyond the APRA's strict requirements – by asking the Town Council to consider unsealing the executive session minutes in response to Complainant's APRA request – the Town also ran afoul of the APRA's strict requirements. The APRA requires that any denials be made "in writing." R.I. Gen. Laws § 38-2-7(a). The Town did not provide evidence that it ever formally denied the Complainant's July 2, 2019 and July 30, 2019 requests in writing. The Town's failure to do so violated the APRA.

### Conclusion

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting "injunctive or declaratory relief." *See* R.I. Gen. Laws § 38-2-8(b). A court "shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body . . . found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter[.]" *See* R.I. Gen. Laws § 38-2-9(d).

Based on the evidence presented, we find no evidence of a willful and knowing, or reckless, violation. We credit the Town attempting to determine whether the requested executive session minutes could be unsealed and personally notifying the Complainant that the Town Council declined to unseal the minutes. We also do not find injunctive relief appropriate.

Although this Office will not file suit in this matter, nothing within the APRA prohibits an individual from instituting an action for injunctive or declaratory relief in Superior Court. *See* R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

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Sincerely,

PETER F. NERONHA  
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness

Special Assistant Attorney General