



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

Peter F. Neronha
Attorney General

VIA EMAIL ONLY

December 09, 2019
PR 19-12B

Mr. Richard Langseth

Mr. John M. Boehnert, Esquire
Legal Counsel, Buttonwoods Fire District

Re: **Langseth v. Buttonwoods Fire District**

Dear Mr. Langseth and Attorney Boehnert:

We have reviewed the supplemental submission filed by the Buttonwoods Fire District (“Fire District”) in connection with the above-referenced Access to Public Records Act (“APRA”) Complaint.

In our prior finding, PR 19-12, we determined that the Fire District violated the APRA by not having written APRA procedures established at the time the Complainant submitted his APRA request, *see* R.I. Gen. Laws § 38-2-3(d), and by failing to file its annual Certificate of Compliance with the Office of Attorney General. *See* R.I. Gen. Laws § 38-2-3.16.¹ We directed the Fire District to file a

¹ In PR 19-12, we also determined that the Fire District did not violate the APRA when it failed to provide a Fire District “Road Maintenance Program document” Complainant requested, based on the undisputed evidence that the Fire District did not maintain such a document at the time of the APRA request. More than a month after the issuance of PR 19-12, the Complainant contacted this Office to contend that he had discovered new evidence that the Fire District did in fact maintain the requested document. The basis for Complainant’s contention is a “Buttonwood Beach Association 10 Year Plan” dated May 2018 that Complainant provided to us in an altered format and that he contends is now posted on the Fire District’s website. Based on the limited information provided by the Complainant, it is not apparent to us when the Fire District obtained this document or whether this document was actually responsive to Complainant’s APRA request. Given that Complainant’s new arguments were not presented to us when the initial Complaint in this matter was pending, determining whether this document was responsive to the APRA request and whether the Fire District maintained this document at the time of the request would require re-opening this Office’s investigation and collecting additional evidence. Since the Complainant is in possession of this document and there is no need for injunctive relief, the only issue before us would be whether the Fire District committed a violation by not producing this document, and whether such violation was willful and knowing, or

supplemental submission providing this Office with evidence that it has established written procedures regarding the APRA, including whether these procedures have been posted on the Fire District's website (if one is maintained) or how these procedures have otherwise been made available to the public. *See* R.I. Gen. Laws § 38-2-3(d). This Office also allowed the Fire District ten (10) business days to provide evidence that it is in compliance with R.I. Gen. Laws § 38-2-3.16 and has submitted a Certificate of Compliance to this Office for all officers and employees who have the authority to grant or deny access to records under the APRA. *See* R.I. Gen. Laws § 38-2-3.16. We also asked the Fire District to address whether the violations we found in PR 19-12 were willful and knowing, or alternatively reckless, under the APRA. *See* R.I. Gen. Laws § 38-2-9.

The Fire District filed its supplemental submission, through counsel, which included an affidavit from Fire District Senior Supervisor, John Carbone. Senior Supervisor Carbone attested that the Fire District established written APRA procedures with the assistance of counsel and posted these procedures to the Fire District's website. Our independent internet search confirms that the Fire District has APRA procedures posted on its website. Additionally, the Fire District provided evidence that Senior Supervisor Carbone viewed the Office of Attorney General Access to Public Records Act video presentation on November 2, 2019 and subsequently submitted a Certificate of Compliance to this Office pursuant to R.I. Gen. Laws § 38-2-3.16. The affidavit submitted by the Fire District also indicated that the Fire District does not have experience with processing many APRA requests, but that the Fire District has now undertaken a good faith effort to research the relevant law and bring itself into compliance with the APRA.

In light of the evidence provided by the Fire District regarding their compliance with the APRA, we do not discern a need for injunctive relief. Additionally, we do not find a willful and knowing, or alternatively reckless, violation. Our determination is based in part on the Fire District's response to this Office's directives and the evidence that it has now taken the necessary steps to remedy the violations found in our prior finding. We also acknowledge the Fire District's representations that the Fire District "is an all-volunteer organization." Although the Fire District should have been aware of its obligations under the APRA and should have rectified its failures in a more timely manner, we believe the affidavit submitted by Senior Supervisor Carbone evidences a good faith effort to respond to this Office's directives and comply with the law. Nevertheless, the Fire District is on notice that the conduct discussed in *Langseth v. Buttonwoods Fire District*, PR 19-12, violates the APRA and may serve as evidence of a willful and knowing, or alternatively, reckless violation in any similar future situation.

reckless. If the Complainant wishes for this Office to investigate this new contention that the Fire District maintained a responsive document and committed a willful and knowing, or reckless, violation by not producing it, then Complainant may submit a new complaint on that specific issue, at which time the Fire District will have an opportunity to respond and present evidence. Any Complaint should present evidence concerning, at a minimum, the issues addressed in this footnote. The only matter currently before this Office is whether the Fire District's failure to comply with the APRA's requirements regarding establishing procedures and obtaining certification was willful and knowing, or reckless, and as such those will be the only issues addressed in this supplemental finding.

Langseth v. Buttonwoods Fire District

PR 19-12B

Page 3

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

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

Sincerely,

Peter F. Neronha
Attorney General

By: /s/ Kayla E. O'Rourke
Kayla E. O'Rourke
Special Assistant Attorney General