



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

July 12, 2016
PR 16-26

Mr. Kenneth W. Paterson

Re: Paterson v. Rhode Island Department of Environmental Management

Dear Mr. Paterson:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against Rhode Island Department of Environmental Management (“DEM”) is complete.

By letter dated February 29, 2016, you made an APRA request to DEM, which sought:

- the Department’s notice to solicit public comment from October 16, 2015 to November 16, 2015,
- minutes from the November 16, 2015 public comment hearing,
- minutes from the open session RIFMC meeting on December 7, 2015,
- the proposed RIMFR changes to section 7.7,
- the business assessment or the requirements set forth by RIGL 42-35.1-3 ‘Economic Impact statements’.

By letter dated April 13, 2016, you filed a complaint with this Department. While your complaint in large portion takes issue with the Administrative Procedures Act process, your April 13, 2016 complaint also related that you “have not received a response to the * * * APRA request from Director Coit.”

In response to your complaint, this Department received an affidavit from Mary E. Kay, Esquire, Executive Council for DEM. As explained by Ms. Kay, on March 3, 2016, DEM’s office of Legal Services received your APRA request dated February 29, 2016, and on March 4, 2016,

“[t]he Office of Legal Services forward this request to its Public Records Officer.” Thereafter, Ms. Kay informs this Department that “[t]he DEM retrieved the records requested and provided the requested records on March 16, 2016.” Accordingly, Ms. Kay contends that the DEM did not violate the APRA.

You did not provide a rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the DEM violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA provides, in relevant part, that:

“[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific case made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.”

R.I. Gen. Laws § 38-2-3(e). Moreover, “[f]ailure to comply with a request to inspect or copy the public record within ten (10) business days of the request * * * shall be deemed to be a denial.” R.I. Gen. Laws § 38-2-7(b).

Here, we find no violation. In particular, your April 13, 2016 complaint alleges that DEM failed to respond to your February 29, 2016 APRA request, but the evidence is undisputed that by letter dated March 16, 2016, the DEM did respond to your APRA request. Moreover, since the evidence is undisputed that DEM received your APRA request on March 3, 2016, the evidence also demonstrates that the DEM’s response was timely. See R.I. Gen. Law §38-2-3(e)(“[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request”)(emphasis added). While your complaint contains allegations regarding the Administrative Procedures Act process, these allegations are outside this

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Department's jurisdiction and no evidence has been presented to contradict the APRA evidence discussed above. Accordingly, we find no violation.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity 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 this file as of the date of this letter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Field". The signature is written in a cursive, flowing style.

Michael W. Field
Assistant Attorney General

MWF/kr

Cc: Mary Kay, Esq.