



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

July 18, 2016

PR 16-28

Ms. Katrina Lapierre

Re: Lapierre v. City of Woonsocket

Dear Ms. Lapierre:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the City of Woonsocket (“the City”) is complete. By email correspondence dated March 14, 2016, you allege that the City violated the APRA when it failed to respond to your February 11, 2016 APRA request.

In response to your complaint, we received a substantive response from the City’s solicitor, Michael J. Marcello, Esquire. The City states, in pertinent part:

“On or about February 11, 2016, the City received a request from Ms. Katrina Lapierre, requesting two items.

- a) A list of all current City-issued boiler licenses to Synagro employees.
- b) A copy of the ruling from the City of Woonsocket Engineering division stating those exempt from Synagro needing a boiler license per Chapter 1518. * * *

On February 12, 2016, the City formally responded to Ms. Lapierre’s request via first class mail. The City’s formal response is attached with a list of the then current boiler operators. * * *

On February 29, 2016, Ms. Lapierre emailed the City Clerk regarding the status of her February 11, 2016 APRA request. * * *

In response, the City Clerk, Ms. Christina Duarte, correctly stated that the City's response was answered by my office and mailed to her on February 12, 2016. * * *

The next day on March 1, 2016, the City Clerk emailed her an electronic copy of the City's February 12, 2012 [sic] letter. * * *

On or about March 28, 2016, the City of Woonsocket Law Department received a return envelope from the United States Postal Service indicating that the City's official response to Ms. Lapierre could not be forwarded. * * *

In reviewing the return letter, it is evident that the City inadvertently sent the formal response to Ms. Lapierre at [the incorrect home address]. This error was a typographical error and was not done with the intent to deprive Ms. Lapierre of the information that she requested as indicated by the City's prompt response dated February 12, 2016.

Based upon the contents of the February 12, 2016 letter, it is clear that the City provided a list of City-issued boiler licenses to Synagro employees. Ms. Lapierre had also requested a ruling from the City of Woonsocket Engineering Division regarding 'who needs to have a Boiler-license.' However, there is no written ruling regarding the City's position but it is enforced as a matter of a verbal policy. The City is not obligated to produce a record of which it does not possess.

* * *

It is the City's position that but for the miss-addressed envelope, the City did attempt to comply with the APRA in a timely and efficient manner. Ms. Lapierre's failure to receive the official response within ten business days was based upon a non-willful error of the City. Furthermore, she did receive an e-mailed copy of the originally mailed letter by March 1, 2016.

The City produced all physical records that it has in response to Ms. Lapierre's APRA request."

We acknowledge your 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 City violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

In a typical APRA complaint, a person files a complaint with this Department seeking access to a particular document that is being withheld. If this Department determines that a particular complaint is meritorious and that a document is being improperly withheld, among the available remedies is that this Department 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).

In this case, we need not examine whether the City violated the APRA by withholding (or untimely responding) to the requested list of all current City-issued boiler licenses to Synagro employees because the evidence makes it clear that you have already acquired access to this document. As noted above, if this Department were to find that the City violated the APRA by responding to your complaint in an untimely manner – due to the misaddressed envelope – the APRA makes clear that “injunctive or declaratory relief” may be appropriate. R.I. Gen. Laws § 38-2-8(b). Since you already have a copy of the list of all current City-issued boiler licenses to Synagro employees, the remedy you seek – injunctive or declaratory relief – is moot and this Department need not determine whether the City violated the APRA when it failed to respond in a timely manner to this aspect of your request. See Farinelli v. City of Pawtucket, PR 16-27.

While our finding that injunctive relief is not appropriate – and thus we need not determine whether the City’s actions violated the APRA – the fact that you are in possession of the requested document does not completely end our inquiry. The reasons for this conclusion is because 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 willfull violation of this chapter, and a civil fine not to exceed one thousand (\$1,000) against a public body found to have recklessly violated this chapter[.]” See R.I. Gen. Laws § 38-2-9(d). In the appropriate case, we could envision a lawsuit against a public body seeking monetary fines for the willfull and knowing, or reckless denial of a public record, even though the complainant was in possession of the previously withheld document at the time of our finding. Based upon the evidence presented in this case, we conclude that this is not one of those cases. See Fairinelli, PR 16-27. Specifically, on this issue, the evidence reveals that the City responded to your February 11, 2016 APRA request by letter dated February 12, 2016, however, because the envelope was misaddressed, you did not receive the City’s response. No evidence has been presented that the misaddressed envelope satisfies the APRA’s willful and knowing, or reckless, standard; and accordingly, monetary fines are not appropriate.

Notwithstanding the foregoing, we conclude that the City violated the APRA when it failed to respond to the second aspect of your APRA request, seeking a copy of the ruling from the City of Woonsocket Engineering Division. Here, the APRA provides a public body ten (10) business days to respond to a request for documents. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within those ten (10) business days to the person or entity making the request. See R.I. Gen. Laws § 38-2-7 (a).

The City’s February 12, 2016 response failed to provide “the specific reasons for the denial” for your second request. R.I. Gen. Laws § 38-2-7(a). While the City has referred this Department

to its February 12, 2016 response where it references the substance of this issue, the City's response fails to provide "the specific reasons for the denial," i.e., that the requested document does not exist. For this reason, the City violated the APRA.

In this respect it should also be noted that your rebuttal addresses at length the City's response to your apparently repeated requests for written legal authority. While your frustration on this issue is apparent, respectfully, the legal issue before this Department is to determine whether the City violated the APRA and/or whether the City is withholding the requested record. We have already answered the first question and there is no evidence that the City maintains the requested ruling. See Marcello Affidavit, ¶ 9 ("there is no written ruling regarding the City's position but it is enforced as a matter of a verbal policy"). You do not contradict this assertion and your rebuttal seems to support this conclusion. See Lapierre Rebuttal, p. 4 ("The City doesn't have a verbal policy/document allowing such activity because if it did that policy would be in violation of its own Charter.").

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).

We believe that neither remedy is appropriate. Although the City did fail to specifically deny the second portion of your APRA request, there is no evidence of a knowing and willful, or reckless, violation. Most notably, based upon the evidence presented, it appears the City combined its APRA response with a non-APRA but related inquiry that you had sent to the Mayor seeking answers to questions. Moreover, because you are already in possession of the first document you requested, and the City does not maintain a record of the second document you requested, injunctive relief is also not appropriate. This finding does serve as notice to the City that its omission violated the APRA and may serve as evidence of a willful and knowing, or reckless, violation in a future similar situation.

While 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 your file as of the date of this letter.

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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 fluid and cursive, with the first name being the most prominent.

Michael W. Field
Assistant Attorney General

MWF/kr

Cc: Michael J. Marcello, Esq.