



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

August 29, 2016

PR16-36

Mr. Mike Piskunov

RE: Piskunov v. Town of Coventry

Dear Mr. Piskunov:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of Coventry (“Town”) is complete.

On February 13, 2016, you made an APRA request by email correspondence to the Town seeking:

“records related to the Coventry Police Internal Affairs department. In particular, I am requesting the last 10 completed Internal Affairs reports.”

The Town responded to your February 13, 2016 APRA request on February 17, 2016. In its response, the Town asserted an extension stating, in its entirety, “[w]e will be requesting the 30 day extension on this APRA.”¹

By email correspondence dated March 3, 2016, you filed the instant APRA complaint. You allege that the Town violated the APRA when it failed to specify the reason(s) for requesting a time extension.

In response to your complaint, this Department received a substantive response from Nicholas Gorham, Esquire, Town Solicitor. Attorney Gorham stated, in relevant part:

¹ We hasten to clarify that the APRA does not allow for a thirty business day extension; the APRA allows for an extension of “up to an additional twenty (20) business days” to run subsequent to the original ten business days allotted for responding to an APRA request. R.I. Gen. Laws § 38-2-3(e). Thus, in total, a public body has thirty (30) business days to respond to a request and we interpret the Town’s extension in this context. The timeline of this case supports this interpretation.

“[t]he request required extensive paperwork, review, assembly, redaction, and presentation. The police department was well within its right to request an extension. No objection to the extension was returned by Mr. Piskunov.

After extensive research, assembly, redaction, and presentation, the police department notified Mr. Piskunov on March 8, 2016 that the request was complete and would be available for pick up as soon as he paid the costs associated therewith in the sum of \$ 107.25. Notably, Mr. Piskunov has not picked up the records that have been ready since March 8, 2016.

While it is true that the department did not explain in writing the “need for additional time to comply with the request[,]” it should be obvious to any individual making a request for the “last ten completed internal affairs reports” that it is going to take an inordinate amount of to comply. ***

Thus, while the police department may have technically violated the statute, in not explaining in detail the need for a request, it should be of no consequence. *** In any event, as the complainant has not even picked up the papers, no prejudice has accrued to him other than that occasioned by his own delay.”

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

Rhode Island General Laws § 38-2-3(e) provides in full:

“[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 request 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.” (Emphasis added).

Here, as acknowledged by Attorney Gorham, the Town's response to your APRA request did not include any reason why the time to respond was extended. The Town's failure to "explain in writing the need for additional time to comply with the request" thus violated the APRA. R.I. Gen. Laws § 38-2-3(e).

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 upon the specific facts of this case, we find no evidence of a willful, knowing, or reckless violation. In particular, we note that while you challenge the sufficiency of the Town's explanation in extending the time to respond, you did not challenge the validity of the Town extending the time to respond. Since no evidence or argument (or even a complaint) has been presented to this Department concerning the validity of the Town extending the time to respond to the instant APRA request, and since the Town notified you that the requested documents were available for your retrieval upon payment, we also find that injunctive relief is not appropriate. This finding does serve as notice to the Town that its omission violated the APRA and may serve as evidence in a future similar situation of a willful and knowing, or reckless violation.

Although the Attorney General will not file suit in this matter at this time, 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). We are closing this file as of the date of this correspondence.

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

Very truly yours,



Sean Lyness
Special Assistant Attorney General

SL/kr

Cc: Mr. Nicholas Gorham, Esq.