



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

September 13, 2016

PR 16-38

Mr. Mike Piskunov

**RE: Piskunov v. Town of North Providence**

Dear Mr. Piskunov:

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

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

“records related to the North Providence 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 noted it had forwarded the request to Ms. Julie Zanni, Executive Secretary to the Chief of Police in the Town, and provided Ms. Zanni’s contact information.

On March 27, 2016, you emailed Ms. Zanni, in pertinent part, the following:

“I was just going through my files and saw that on February 16th[,] 2016 I sent the Town [of] North Providence an APRA request for the last 10 Internal Affairs reports through the Town Clerk[’]s email. The Deputy Clerk spoke with you and forwarded my email but I have never received a response. I am aware that a lack of response may be considered a denial but I wanted to contact you first to see if there may be another reason for the delay.”

By email correspondence dated April 5, 2016, you filed the instant APRA complaint. You allege that the Town, and specifically the Police Department, violated the APRA when it failed to respond to your APRA request. By e-mail dated April 21, 2016, Ms. Zanni e-mailed you and advised you that the Town would be providing the requested records in a redacted manner, and on April 27, 2016, you responded to Ms. Zanni, indicating that you would like the requested documents scanned and e-mailed. The requested documents were subsequently sent to you.

In response to your complaint, this Department received a substantive response from Anthony M. Gallone, Esquire, Town Solicitor. Attorney Gallone states, in relevant part:

“It is clear that the request that was made of the Town of North Providence was also made of other municipalities along with the State Police. However, due to the complexity of the legal issues involved there was a great deal of uncertainty as [to] how each entity would respond or whether there would be one uniform protocol as to how a response should be formulated. Ms. Zanni[] inadvertently failed to request an extension to answer the initial request while attempting to gain some guidance as to how other municipal departments would handle this request. However, it is clear from the evidence that there was no intentional or willful violation of the statute. Ms. Zanni engaged in a balancing act in order to protect the privacy rights of the individuals that were the subject of the internal affairs complaints along with any other confidential information that needed to be protected while at the same time provide Mr. Piskunov what he was legally entitled to receive.”

Enclosed in the Town’s substantive response was the affidavit of Ms. Zanni. The affidavit states, in relevant part:

“On or about February 17, 2016, the Town Clerk’s office forwarded me a request for records relating to internal affairs reports that was erroneously sent to their office. \*\*\*

Initially, it was my understanding that collectively, it was going to be the position of each of the Departments and the State Police that the information requested fell within the protected exemption for personnel records under the APRA but that the issue would be researched further. \*\*\*

During this time I realized I mistakenly forgot to request an extension with respect to the pending APRA request while each of the municipal entities along with the State Police determined how to legally respond to this request without subjecting the Town to a potential law suit [sic] for invasion of privacy. \*\*\*

On March 28, 2016, when I arrived at work I noticed that [] Mike Piskunov [] sent me an email requesting an update on his request. \*\*\*

I ultimately contacted our Town Solicitor for an opinion since I still did not have a definitive answer as to how a response should be formulated. He informed me that the Town would have to retrieve the archived records and redact that information which protects the privacy rights of the officers that were subject to the complaints in order to insulate the Town from any potential civil liability and that once the reports were redacted that the information requested should be provided to Mr. Piskunov. \*\*\*

On April 21, 2016, I sent Mr. Piskunov an email informing him that the Town would be providing him copies of the records requested in a redacted manner. \*\*\*

On or about April 27<sup>th</sup>, 2016, I received a follow up email from Mr. Piskunov who informed me that he would like the documents scanned to his attention. The documents were then sent to Mr. Piskunov.”

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.

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 to copy such records. See R.I. Gen. Laws § 38-2-7. To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws §§ 38-2-7, 38-2-3(e).

Here, since you are now in possession of the requested documents, we need not determine whether the Town violated the APRA—and thus seek injunctive relief—but rather we need only determine whether your allegation represents a knowing and willful, or reckless, violation of the APRA that would subject the Town to civil penalties. See R.I. Gen. Laws § 38-2-8. This decision is consistent with our finding in Farinelli v. City of Pawtucket, PR 16-27, where our rationale is more fully explained.

Having framed this narrow issue, and after reviewing all the evidence presented, we find no evidence of a willful and knowing, or reckless, violation. Significantly, we note that you initially filed your request for Police Department documents with the Town Clerk and not the Police Department, contrary to the APRA request procedure outlined on the Police Department’s website.<sup>1</sup> See Access/Rhode Island v. New Shoreham Police Department, PR 15-26 (APRA requests must be made in a manner consistent with applicable APRA procedures). While it is true that the Town Clerk forwarded your APRA request to the Police Department, for purposes of determining whether this Department should seek monetary fines against the Police Department, it is undisputed that you never made an APRA request to the Police Department and the Police Department’s promulgated procedures require a requestor seeking law enforcement related records

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<sup>1</sup> The North Providence Police Department website is <http://www.nppolice.com/>. Records request procedures are found on the link labeled “Records Request.”

to make an APRA request with the Police Department. In past cases, we have observed that in order to have standing, a complainant must first have requested access to a record and been denied the right to inspect a record. See, e.g., Access/Rhode Island v. West Warwick School Department, PR 15-24. While we need not resolve this precise standing question presented, this procedural history and the fact that you never complied with the Police Department's APRA procedures provides us sufficient hesitation to warrant not pursuing civil penalties.

Although the Attorney General 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). 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,

A handwritten signature in cursive script that reads "Sean Lyness". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Sean Lyness  
Special Assistant Attorney General

SL/kr

Cc: Anthony Gallone, Esq.