



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

September 23, 2016

PR 16-39

Mr. Robert Cote

**Re: Cote v. City of Warwick**

Dear Mr. Cote:

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

By email correspondence dated June 20, 2016, you allege that the City violated the APRA when it improperly redacted information in its response to your May 24, 2016 APRA request. Specifically, on May 24, 2016, you made an APRA request via email to Ms. Judy Wild, the City’s Clerk, wherein you sought “copies of W2 forms issued in Jan 2016, 2015, and 2014.” Your request listed three identifiable individuals whose information you sought.

On June 13, 2016, the City responded to your request and provided you W2 forms for the three individuals you requested, but redacted certain information, namely tax withholding information. As related in the City’s June 13, 2016 response, “[a]ttached is the documentation, please note certain information has been redacted on the basis of privacy interest and that the redacted information was not relevant to the request, all pursuant to the relevant provisions of RIGL 38-2-2(4)(A)(1)(b).”

On June 20, 2016, you filed the instant complaint, and related:

“[t]he original request asked for 3 random employee W2 forms with address and SS# redacted. The city redacted all of the tax withholding information. Based upon the research that I have performed and also based upon other similar APRA requests, I feel as this withholding information is not private and should be released.”<sup>1</sup>

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<sup>1</sup> Although your complaint references that you asked for information related to “3 random employee[s],” to be clear, you sought information related to three specific and identifiable employees. Also, although you indicate that you performed research that leads you to conclude the requested information is a public record, you have not provided this Department with any of this research.

In response to your complaint, this Department received a substantive response from Peter D. Ruggeiro, Esquire, the City's solicitor. The City references this Department's finding in Higgins v. Lonsdale Fire District, PR 15-20, where this Department determined that W-2 forms, such as the one at issue in this case, were not public records.

You did not provide a rebuttal.

At the outset, we observe that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether a violation 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.

The APRA provides, in relevant part, that the following records shall not be deemed public:

“[p]ersonnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.” See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

As noted by the City, this Department addressed the issue of whether W-2 forms were public records in Higgins v. Lonsdale Fire District, PR 15-20. In Higgins, the Fire District denied the release of W-2 statements. We found no APRA violation, noting:

“the disclosure of these documents, even in the redacted manner sought, would violate federal law. See 28 U.S.C. § 6103(a) (general rule is that “[r]eturns and return information shall be confidential”). See also 28 U.S.C. § 6103(b)(2) (defining “return information” as, inter alia, “other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return”); R.I. Gen. Laws § 38-2-2(4)(0) (exempting “[a]ll tax returns”); Office of the Budget v. Campbell, 25 A.3d 1318, 1319 (Pa. Comm. 2011) (“the W-2 forms fall within the definitions of ‘return’ and ‘return information’; as such, they are confidential and cannot be disclosed.”).” Higgins v. Lonsdale Fire District, PR 15-20.

In light of the relevant statutory laws and prior decision concerning this issue, we conclude that the City did not violate the APRA by redacting certain portions of the W-2 forms you requested.

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.

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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 cursive script that reads "Sean Lyness".

Sean Lyness  
Special Assistant Attorney General

SL/kr

Cc: Attorney Peter Ruggiero