



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

October 14, 2016

PR 16-44

Mark McBurney, Esquire

**RE: Clark v. West Glocester Fire District - February 24, 2014 Complaint  
Clark v. West Glocester Fire District - July 3, 2014 Complaint  
Clark v. West Glocester Fire District - August 21, 2014 Complaint**

Dear Attorney McBurney:

The investigations into your Access to Public Records Act (“APRA”) complaints, all of which were filed on behalf of your client, Mr. Trevor Clark, against the West Glocester Fire District (“WGFD”) on February 24, 2014, July 3, 2014, and August 21, 2014 are complete.

Your complaints allege various APRA violations relating to APRA requests made on January 17, 2014, May 19, 2014, June 10, 2014, and August 21, 2014. In due course, you filed all the above-referenced complaints “on behalf of Trevor Clark,” and in each of these situations this Department responded by acknowledging receipt of your APRA complaint as being filed on behalf of Mr. Clark.

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

Before we can address the merits of your complaints, as a preliminary matter, we must decide whether your client has standing to bring this complaint. For the reasons discussed below, this issue is dispositive.

Rhode Island General Laws § 38-2-7(a) provides that “[a]ny denial of the right to inspect or copy records, in whole or in part . . . shall be made to the person or entity requesting the right[.]” Other APRA provisions address the issue more directly. Specifically, in the event of a denial, a “petition”

may be filed with the chief administrative officer of the public body, but this appeal avenue is limited to “[a]ny person or entity denied the right to inspect a record of a public body.” See R.I. Gen. Laws § 38-2-8(a). If the chief administrative officer denies the review petition, “the person or entity seeking disclosure may file a complaint with the attorney general,” and if meritorious, the Attorney General may file a lawsuit in Superior Court “on behalf of the complainant.” R.I. Gen. Laws § 38-2-8(b).

These APRA provisions make clear that in order to seek review of an alleged injury, i.e., in order to acquire legal standing, a complainant must have requested access to a record and been denied the right to inspect a record. See also Canavan v. City of Central Falls, PR 00-18 (lack of standing of City Council member to file an APRA complaint since the City Council, and not the member, made the APRA request); Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21 (“[I]n order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record”).

This Department addressed this very issue in Cullen v. City of Pawtucket, PR 15-48. See also Clark v. Town of Gloucester / Clark v. Gloucester Police Department, PR 16-12. In Cullen, you submitted an APRA request to the City of Pawtucket on October 10, 2014. The APRA request was made by you on your law firm letterhead. In fact, at no point did Mr. Cullen's name appear on the request. On October 27, 2014, the City denied you access to certain requested documents. Thereafter, on November 7, 2014, you filed an APRA complaint with this Department “on behalf of [your] client John Cullen,” however, since Mr. Cullen neither requested nor was denied access to documents pursuant to the October 10, 2014 APRA request, this Department concluded that Mr. Cullen lacked standing to file the complaint (which you filed on his behalf).

The facts in the three instant complaints are nearly identical to the facts in Cullen and compel a similar result.

Specifically, the evidence demonstrates that on January 17, 2014, you filed an APRA request with the WGFD. Your APRA request was made from your law firm’s email account, contained your law firm’s signature block and website address, and provided, in relevant part:

“Dan,  
Please consider this an APRA request for the West Gloucester Fire District.  
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Thank you.  
Mark McBurney”

Like Cullen, Mr. Clark's name does not appear on the January 17, 2014 APRA request nor does the January 17, 2014 APRA request include any suggestion that it was made by or on behalf of

Mr. Clark.<sup>1</sup> Indeed, it is not until you filed the February 24, 2014 APRA complaint with this Department, “on behalf of Trevor Clark,” that Mr. Clark's name is first associated with being the person on whose behalf the January 17, 2014 APRA request was made.

Identically, on May 19, 2014 and June 10, 2014, you filed APRA requests with the WGFD. The May 19, 2014 APRA request was made from your law firm’s email account, contained your law firm’s signature block and website address, and provided, in relevant part:

“Dear Ms[.] Taylor:  
Please consider this an Access to Public Records Act request.

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Thank you.

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Mark McBurney, Esq.”

The June 10, 2014 APRA request was also made from your law firm’s email account and provided, in relevant part:

“Dear Ms[.] Taylor:  
Under the APRA, please provide evidence that all WGFD contracts awarded to any business owned by WGFD Board Member [John Doe] were competitively bid.

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Thank you. Mark McBurney, Esq.”

Mr. Clark’s name does not appear anywhere on either the May 19, 2014 or June 10, 2014 APRA requests. Again, Mr. Clark’s name is only first introduced with these APRA requests in your July 3, 2014 APRA Complaint, which you indicate was filed “on behalf of Trevor Clark.”

Similarly, on July 31, 2014, you filed an APRA request with the WGFD. This APRA request was made on your law firm’s letterhead and provided, in pertinent part:

“Dear Sir or Madam:  
Under the Public Records Act, please provide:

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Thank you,  
Mark McBurney”

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<sup>1</sup> It appears that Mr. Clark was blind copied on the January 17, 2014 APRA request, but even considering this factor there is no indication the APRA request was made on Mr. Clark’s behalf and, while perhaps of no moment, the WGFD certainly had no knowledge that the January 17, 2014 APRA request was made on Mr. Clark’s behalf.

This APRA request was signed by you. Again, Mr. Clark's name does not appear anywhere in your July 31, 2014 APRA request and instead was first introduced in your August 21, 2014 APRA Complaint, which you indicate was filed "on behalf of Trevor Clark."

Based on the evidence presented, we find that in all three APRA Complaints—February 24, 2014; July 3, 2014; and August 21, 2014—you, and not Mr. Clark, requested and were denied access to records. In all of these instances you made APRA requests through your firm's email or letterhead seeking documents and in none of these situations was it evident that the requests were being made on behalf of Mr. Clark. Stated differently, while the APRA requests associated with all three complaints were made by you, all three APRA complaints are filed on behalf of Mr. Clark. Because Mr. Clark did not make the APRA requests, nor was it evident from the APRA requests that they were made on his behalf, Mr. Clark lacks standing to file these complaints.<sup>2</sup> Our decision is consistent with our past precedent, see supra, and federal case law. See, e.g., McDonnell v. United States, 4 F.3d 1227, 1236–37 (3d Cir. 1993) ("We think a person whose name does not appear on a request for records has not made a formal request for documents within the meaning of the statute. Such a person, regardless of his or her personal interest in disclosure of the requested documents, has no right to receive [] the documents."); Three Forks Ranch Corp. v. Bureau of Land Management, 358 F.Supp.2d 1, 3 (D.D.C 2005) ("although the request made by Mr. Von Holt mentions Three Forks Ranch, it is not clear that the request is being made on behalf of his client").

Although the Attorney General has found no violations 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,



Sean Lyness  
Special Assistant Attorney General

SL/kr

Cc: Noelle K. Clapham, Esq.

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<sup>2</sup> In light of our finding, the "motions" you ask this Department to address associated with your July 3, 2014 complaint need not be addressed.