



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

January 13, 2017

PR 17-01

Mr. Thomas Ryan & Mrs. Mary Ryan

**RE: Ryan v. Oakland Mapleville Fire District**

Dear Mr. and Ms. Ryan:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Oakland Mapleville Fire District (“OMFD”) is complete. Your complaint alleged various APRA violations in the OMFD’s responses to three requests you made to the OMFD on February 12, 2015, February 26, 2015, and April 20, 2015.

On February 12, 2015, you made a request to the OMFD, stating, in relevant part:

“We are filing a request pursuant to the Access to Public Records Act. Would you kindly provide me with the following:

1. An accounting of the taxes for Oakland-Mapleville Fire District from 2007 to the present time regarding the above referenced property [‘Property located at \*\*\* Mapleville, R.I. P/L 231/048’]
2. If there were any tax sales regarding the above-referenced property, could you provide us with a copy of the names of any individual and entity that the Oakland-Mapleville Fire District notified of a tax sale, the dates of notice, as well as, any and all notices with proof of mailing (Green and White slips with U.S. Postal Stamp) and certified return receipts (GREEN CARDS) both front and back.”

The OMFD responded on February 24, 2015, stating, in pertinent part:

- “1. See Exhibit 1 attached.
2. Only tax sale was in 2010. See copy of legal advertisement attached as Exhibit 2A. Additional notices were sent by a third party, RI Tax Titles, LLC to First Union National Bank, Center Funding Company, IRS, and RI Department of Elderly Affairs. Requests have been made to RI Tax Titles, LLC to furnish us copies, and the response from RI Tax Titles, LLC is Exhibit 2B. See receipts of certified mail attached as Exhibit 2C.”

On February 26, 2015, you made a second request to the OMFD, stating, in relevant part:

“We are requesting copies of the following information pursuant to the APRA. The information requested is based on [the OMFD’s] record that was provided by Mr. Richard Nolan and is readily available:

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4. The Affidavits which are referenced in OMFD’s Accounting record.
5. The ‘Exams’ which are referenced in OMFD’s Accounting record dated in 2008 and 2009.
6. The bill for the Exams referenced in OMFD’s accounting record dated in 2008 and 2009.

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10. The bill for 2009 Record Fee Collectore [sic] Return Fee in the amount of \$21.25[] which is referenced in OMFD’s accounting record.

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15. Any communication received by OMFD advising that proper notice had not been received regarding the scheduled tax sale of September 15, 2010.”

In its March 10, 2015 response, the OMFD stated, in pertinent part:

“4. Regarding the Affidavits, after due and diligent search of the records of the Oakland-Mapleville Fire District, these documents could not be to you. [sic]

5. The ‘Exams’ that are listed on the account summary are in fact the title search exams that were performed by RI Tax Titles, LLC at the time of the previous tax sale in 2007 and the tax sale in 2010. This office does not maintain the title search exams, but were the responsibility of RI Tax Titles, LLC. We have inquired of RI Tax Titles, LLC and they do not have copies. Therefore, we cannot provide copies. The charges of \$150.00 each are correct and both were paid at the time of settlement of the Tax Sale in 2010.

NOTE: these charges that are listed under 2008 and 2009 should have been listed under 2007 receivables and 2010 receivables. As to why the previous Tax Collector, at the time of the 2010 tax sale, listed the charges as shown, is unknown.

6. The bill for the ‘Exams’ of Tax Sale 2010 is stated in Exhibit S4. After due and diligent search of the records of the Oakland-Mapleville Fire District, the bill for the ‘Exams’ of Tax Sale 2007 could not be located. Therefore, no copy of the 2007 bill can be provided to you. Upon information and belief that the charge for title search exams have not changed in subsequent years up to and including 2010, the charge of \$150.00 is accurate.

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10. The bill for 2009 Record Fee Collector Return of \$21.25 is correct. The recording fee for the Collector’s Return with the Town of Burrillville was \$85.00. The account portion of the fee was \$21.25 with four (4) parcels listed on the Collector’s Return. Exhibit S6.

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13. 14. and 15. The only notice received was a letter from you dated September 8, 2010. Exhibit S7. No other notices or communication had been received by this office during that time period.”

On April 20, 2015, you made a third request to the OMFD, stating, in relevant part:

“As a follow-up to our APRA requests, could you please provide us with the following information:

1. A copy of OMFD’s policy with regard to the retention and protection of all records of the Oakland-Mapleville Fire District from 1999 to the present time;

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3. Copies of *any and all documents* (including communications, emails, notices, etc.) received from Rhode Island Housing and the name of the individual who provided the documents to you as you referenced in your response No. 6 to our SECOND REQUEST for documents;

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5. A copy of any notice(s), communications or any other documents, including, but not limited to, letters or emails regarding Thomas and Mary Ryan and/or property located at \*\*\* Mapleville, R.I. which took place between OMFD, its representatives, Glenn Andreoni, R.I. Tax Titles, and other *third parties* including, but not limited to, Rhode Island Housing, [email address deleted] and ‘Kerry Hubert’ at [email address deleted] and the purpose of those communications;

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11. An accounting of RI Tax Titles, LLC’s invoice dated September 15, 2010, with supporting documentation to substantiate the costs set forth in said invoice. (Exhibit S4 attached OMFD’s response dated 3/10/15);

12. The name of the OMFD representative who determined that a discussion regarding Thomas and Mary Ryan and/or their property of \*\*\* Mapleville, Rhode Island should be placed on the Agenda to be discussed at the February 26, 2014 OMFD meeting, and the date that determination was made;

13. A copy of the Agenda Notice that Thomas and Mary Ryan and/or their property would be discussed at the February 26, 2014 meeting, and the date and location(s) that the Agenda Notice was posted;

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15. The names of the members eligible to vote whom were present at the February 26, 2014 OMFD meeting;

16. Whether a motion was made to discuss Thomas and Mary Ryan and/or their property on February 26, 2014 meeting, the names of the individuals whom [sic] initiated the motion and who seconded it;

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18. Whether there were votes [t]aken on February 26, 2014 regarding Thomas and Mary Ryan and/or their property;

19. If so, the names of the individuals who voted on issues regarding Thomas and Mary Ryan and/or their property;

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23. The names of the individuals who voted on the validation of the minutes for [the] February 26, 2014 [meeting], if any;

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25. The name of the OMFD representative who determined that a discussion regarding Thomas and Mary Ryan and/or their property of \*\*\* Mapleville, Rhode Island should be placed on the Agenda to be discussed at the March 26, 2014 OMFD meeting, and the date that determination was made;

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28. The name(s) of the member(s) eligible to vote whom [sic] were present at the March 26, 2014 OMFD meeting;

29. Whether a motion was made to discuss Thomas and Mary Ryan and/or their pr [sic] property at the March 26, 2014 meeting, and the names of the individuals whom [sic] initiated the motion and seconded it

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31. Whether there were votes taken on March 26, 2014 regarding Thomas and Mary Ryan, and/or their property;

32. If so, the names of the individuals who voted on said issues during the March 2014 meeting regarding Thomas and Mary Ryan and/or their property;

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34. The name of the individual(so) [sic] who prepared the minutes of the March 26, 2014 meeting;

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36. The names of the individuals whom [sic] voted to validate said minutes[.]”

The OMFD responded on April 30, 2015, stating, in pertinent part:

“1. No written policy unique to Oakland-Mapleville Fire District exists; however we adhere to the State of Rhode Island’s policy which can be found on the RI Secretary of State website.

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3. Although we previously submitted these documents to you as Exhibit 2, 3, and S1 in our response dated March 10, 2015, we will again provide copies as Exhibit

2. These documents were provided by Joanne Noonan of RI Housing.

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5. See Exhibits 2 & 3 from previous questions. See also attached Exhibit 4 & 5. The balance of request i.e. for “purpose” for receiving information does not constitute a request for records.

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11. We have furnished another copy of document dated September 15, 2010, as Exhibit 6. It speaks for itself. No other supporting documents exists [sic] other than our contract previously identified as Exhibit 1.

12. As a result of your letter dated February 22, 2014 to all members of the OMFD Operating Committee (see Exhibit 7) and due to receipt of your letter on February 25, 2014 there was no time to amend the agenda for the February 26<sup>th</sup> meeting. No predetermination by any OMFD representative regarding Thomas and Mary Ryan

being discussed at the subject meeting. Under New Business the situation of property owners P/L 231/048 was discussed without indicating the name of taxpayer in question. See minutes of meeting February 26, 2014 Exhibit 8 and agenda for meeting February 26, 2014 Exhibit 8A.

13. No records maintained as to date and locations posted, however posting were in compliance with OMA.

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15. See minutes of meeting February 26, 2014 Exhibit 8

16. See minutes of meeting February 26, 2014 Exhibit 8

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19. See minutes of meeting February 26, 2014 Exhibit 8

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23. See minutes of meeting March 26, 2014 Exhibit 9

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25. As a result of your letter dated March 3, 2014 to all members of the OMF D Operating Committee (see Exhibit 10) the agenda (see Exhibit 9A) for the March 26<sup>th</sup> meeting included under Old Business the discussion of your request. See minutes of meeting March 26, 2014 Exhibit 9.

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28. See minutes of meeting March 26, 2014 Exhibit 9

29. See minutes of meeting March 26, 2014 Exhibit 9

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32. See minutes of meeting March 26, 2014 Exhibit 9

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34. See last page of minutes of meeting March 26, 2014, which indicates the preparer. Exhibit 9

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36. See minutes of April 23, 2014 Exhibit 11[.]”

By email correspondence dated August 11, 2015, you filed the instant APRA complaint. You allege that the OMF D violated the APRA when it failed to adequately respond to portions of your three requests as follows:

February 12, 2015 Request

Paragraph (1): “OMF D did not provide an accounting from 2007 forward”

Paragraph (2): “OMF D did not provide any dates of notice, notices, proof of mailing receipts or certified return receipts”

February 26, 2015 Request

Paragraph (4): “OMF D did not provide copies of the Affidavits”

Paragraph (5): “OMF D did not provide a copy of the ‘Exams’”

Paragraph (6): “OMF D did not provide a copy of the bill regarding charges for title exams in 2008 and 2009, nor did OMF D provide a copy of a bill regarding their allegations of a 2007 tax sale”

Paragraph (10): "OMFD did not provide a copy of the bill for a 2009 Record fee for Collector's Fee"

Paragraph (15): "Aside from providing a copy of our September 8, 2010 letter to OMFD, OMFD did not provide any other communications which took place regarding lack of notice issues involving an OMFD 2010 tax sale."

April 20, 2015 Request

Paragraph (1): "OMFD did not provide a copy of the OMFD's policy regarding OMFD's retention of public records"

Paragraph (3): "Aside from copies of two notices addressed to us, OMFD did not provide any and all communications they received from R.I. Housing."

Paragraph (5): "OMFD withheld documents involving communications involving us and/or our property which took place between OMFD, its representatives, Glenn Andreoni, RI Tax Titles, and/or other third parties, including, but not limited to, RI housing, Pierre Rondeau, Esq. and/or Kerry Hubert"

Paragraph (11): "OMFD did not provide an accounting of RI tax Titles' invoice dated September 15, 2010, nor did OMFD provide copies of supporting documents that verify the the [sic] charges as they are set forth in the invoice"

Paragraph (12): "OMFD withheld the name of the OMFD representative who determined that we and/or our property should be placed on the Agenda of the OMFD's February 26, 2015"

Paragraph (13): "OMFD did not provide us with the date and locations that the Agenda; for OMFD's February 26, 2014 meeting had been posted"

Paragraph (15): "OMFD did not provide the names of its members who are eligible to vote and who were present at the February 26, 2014 OMFD meeting"

Paragraph (16): "OMFD did not provide the information regarding whether an motion [sic] was made to open a discussion about us and/or our property and the names of the individual who initiated a motion, if any and if so, whom seconded it"

Paragraph (19): "OMFD did not provide the names of the individuals who voted on issues regarding us and/or our property"

Paragraph (23): "OMFD did not provide the names of the individuals who voted on the validation of the minutes of the February 26, 2014 meeting"

Paragraph (25): "OMFD did not provide the name of the individual(s) who determined that we and/or our property would be discussed and placed on the agenda of the March 26, 2014 meeting"

Paragraph (28): "OMFD did ont [sic] provide the names of the members who were eligible to vate [sic] and were present at the March 26, 2014 meeting"

Paragraph (29): "OMFD did not provide whether there was an actual motion made to open a discussion regarding us or our property, nor did they provide the name of the voting member whom made a motion, if any, and who it was that seconded it"

Paragraph (32): "OMFD did not provide the names of the members who voted on issues involving us and/or our property"

Paragraph (34): "OMFD did not provide the name of the individual who prepared the minutes of the March 26, 2015 meeting...Anne Chretien is the individual who submitted the minutes, but it us [sic] not clear whether the same person who prepares the minutes is the same who submits them"

Paragraph (36): "OMFD did not provide the names of the members whom [sic] voted to validate said minutes"

In response to your complaint, this Department received a substantive response from Pierre G. Rondeau, Esq., on behalf of the OMFD. Attorney Rondeau states, in relevant part:

"Enclosed is the response of the Oakland-Mapleville Fire District.

February 12, 2015 APRA Request

Paragraph (1): Exhibit 1 of OMFD's response dated February 24, 2015 covers the dates in question. Rhode Island General Laws [§] 38-2-3 (h) does not require a public body to compile data not maintained in the form requested.

Paragraph (2): Copies of documents requested in number 2 which were in possession of OMFD were furnished. Please refer to the e-mail from Glenn Andreoni to Anne Chretien dated February 20, 2015 previously furnished as part of OMFD's initial response wherein he advised that he did not keep copies of notices. See affidavit of Anne Chretien, office clerk of OMFD, pertaining to her February 2015 contacts with Mr. Andreoni's office. When Mr. Andreoni was asked in January of 2016 to furnish an affidavit in response to the complaint filed by Mr. and Mrs. Ryan, Mr. Andreoni furnished the notices identified in his affidavit dated January 11, 2016. See affidavit of Mr. Andreoni with documents attached.

February 26, 2015 Supplemental APRA Request

Paragraph (4): OMFD's previous response omitted a line. Prior response No. 4 should have read "regarding the affidavits, after due and diligent search of the records of the Oakland-Mapleville Fire District these documents could not be located; therefore we cannot provide copies to you". As indicated in OMFD's previous response, OMFD does not have copies of these Affidavits. The tax collector who was in office at the times at issue is no longer the tax collector. The tax collector worked from her house. After the transition was made to the acting tax collector, the records at her house were turned over. The Affidavits requested could not be located in the records turned over. The former tax collector claims that all records were turned over. See affidavits of Richard Nolan and Anne Chretien.

[Paragraph (5): 'The original response submitted to Mr. and Mrs. Ryan in March 2015 by OMFD indicated that OMFD did not maintain the title search exams and therefore could not furnish copies. When Glenn Andreoni of Rhode Island Tax Titles was asked to sign an affidavit in January of 2016, among the documents furnished was a document entitled "Tax Title Request Exam Sheet". See affidavit of Glenn Andreoni dated January 11, 2016 and documents attached previously submitted as part of OMFD's original response on January 15, 2016.

Rhode Island Tax Titles had previously been asked by Anne Chretien in 2015 for copies of documentation pertaining to the 2010 tax sale. Anne Chretien was advised in 2015 by an employee of Rhode Island Tax Titles that Rhode Island Tax Titles

did not have copies of the documentation. See paragraphs 6 and 7 of affidavit of Anne Chretien dated January 14, 2016 previously submitted as part of OMFD's original response on January 15, 2016.'<sup>1</sup>

Paragraph (6): As mentioned in OMFD's previous response, the bill for the exam was furnished as Exhibit S4. The other bills could not be located. As I mentioned previously, there was another tax collector in office at the time these bills would have been rendered who worked out of her home. When she turned over the records to the new tax collector, the bills were not included. See affidavits of Patricia St. Pierre and Richard Nolan. When Glenn Andreoni of Rhode Island Tax Titles LLC was asked in January of 2016 to execute an affidavit, he furnished the documents identified in his affidavit. See affidavit of Glenn Andreoni; no bills are referenced.

Paragraph (10): Whatever bill was in the file of OMFD was attached as Exhibit S4 of OMFD's initial response. See affidavits of Richard Nolan and Patricia St. Pierre. Please refer to original response No. 5 of OMFD to the February 26, 2015 request. The charges that are listed under 2008 and 2009 should have been listed under 2007 receivables and 2010 receivables. As to why the previous tax collector at the time of the 2010 sale listed the charges as shown is unknown.

Paragraph (15): As indicated in OMFD's prior response, the only written notice received was attached as Exhibit S7.

#### April 20, 2015 APRA Request

Paragraph (1): As mentioned in OMFD's prior response, there is no separate written policy other than what is posted on the Secretary of State's website.

Paragraph (3): OMFD furnished what was in their files at time of the initial request. When Glenn Andreoni of Rhode Island Tax Titles was asked to sign an affidavit in January of 2016, he furnished the documents identified in his affidavit which are attached to his affidavit. See affidavit of Mr. Andreoni.

Paragraph (5): All written communications in the possession of [the] OMFD between RI Tax Titles LLC, Pierre Rondeau and/or Kerry Hubert were furnished.

Paragraph (11): The invoice is self-explanatory. No other supporting documents.

Paragraph (12): There was no decision made in advance to discuss the taxpayer or the taxpayer's property. The issue was brought up under new business.

Paragraph (13): No records are maintained by the OMFD as to where the notices were posted.

Paragraph (15): The names of the members are set forth in the minutes which were attached as Exhibit 8 previously furnished. The APRA does not require a public body to reorganize, consolidate or compile data not maintained by the public body in the form requested. RIGL [§] 38-2-3 (h).

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<sup>1</sup> The OMFD's response to paragraph five of the February 26, 2015 APRA request was sent in a March 2, 2016 correspondence to this Department. We include their response here in the chronology for convenience and clarity.

Paragraph (16): The minutes of the meeting were furnished in response to paragraph 16. The minutes contained the information requested. See Exhibit 8 previously furnished. See also RIGL [§] 38-2-3(h).

Paragraph (19): The minutes of the meeting were furnished in response to paragraph 19. The minutes contained the information requested. See Exhibit 8 previously furnished. See also RIGL [§] 38-2-3(h).

Paragraph (23): The minutes of the meeting were furnished in response to paragraph 23. The minutes contained the information requested. See Exhibit 8 previously furnished. See also RIGL [§] 38-2-3(h).

Paragraph (25): The issue was discussed under the old business portion of the agenda. No predetermination was made.

Paragraph (28): The minutes of the meeting were furnished with respect to paragraph 28. See Exhibit 9 previously furnished. See RIGL [§] 38-2-3(h).

Paragraph (29): The minutes of the meeting were previously furnished which contains the information requested. See Exhibit 9 previously furnished. See RIGL [§] 38-2-3(h).

Paragraph (32): The minutes of the meeting were previously furnished which contains the information requested. See Exhibit 9 previously furnished. See RIGL 38-2-3(h).

Paragraph (34): See minutes of meeting previously furnished as Exhibit 9. The name of Anne Chretien, as clerk, clearly appears on the minutes. It should be evident that Anne Chretien prepared the minutes. Please note that Anne Chretien is not the elected Clerk (Peter Leone is the elected Clerk of the Fire District). Anne Chretien is the office clerk-a paid employee.

Paragraph (36): OMFD responded to this request by furnishing a copy of the minutes of the April 23 meeting at which the prior meeting minutes were approved. Those minutes were attached as Exhibit 11. The minutes indicate the individuals present who approved the prior meeting's minutes and that the vote was unanimous.

In summary, all documents which were in possession of OMFD at [the] time of the 2015 requests were furnished to Mr. and Mrs. Ryan by OMFD. OMFD had previously been advised by the third party conducting the background work for the tax sale that no copies were retained of the documents pertaining to the 2010 tax sale. When request was made in 2016 of Mr. Andreoni of Rhode Island Tax Titles LLC that an affidavit be executed in response to the 2016 complaint filed by Mr. and Mrs. Ryan, the documents referenced in Mr. Andreoni's affidavit were provided. The documents are attached to Mr. Andreoni's affidavit."

The OMFD's substantive response also included affidavits from Ms. Anne Chretien, office clerk for the OMFD, Mr. Richard Nolan, Tax Collector for the OMFD, Ms. Patricia St. Pierre, Treasurer for the OMFD, and Mr. Glenn J. Andreoni, principal of Rhode Island Tax Titles, LLC.

We acknowledge your rebuttals dated February 29, 2016 and March 21, 2016.<sup>2</sup>

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

As a preliminary matter, it appears that a number of your requests are not proper APRA requests for documents. See 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”). Pursuant to R.I. Gen. Laws § 38-2-1, “[t]he purpose of this chapter is to facilitate public access to public records[,]” and to accomplish this purpose, among others, the APRA mandates that “[e]xcept as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.” R.I. Gen. Laws § 38-2-3(a).

The APRA further provides that “[n]othing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.” R.I. Gen. Laws § 38-2-3(h). Based upon these provisions, as well as others, this Department has repeatedly expressed that “the APRA requires public bodies to provide access to public documents, not respond to interrogatories.” See Calouro v. Town of Bristol, PR 14-21; see also Schmidt v. Ashaway Volunteer Fire Association and Ashaway Fire District, PR 97-23; Gagnon v. East Providence School Committee, PR 12-12; Block v. Block Island Volunteer Fire Department, PR 15-45. The conclusion that the APRA requires public bodies to provide access to public records, but does not mandate a public body to respond to questions, is beyond any doubt.

Here, paragraphs (12), (13), (15), (16), (19), (23), (25), (28), (29), (32), (34), and (36) of your April 20, 2015 request appear to seek information (or interrogatories) related to two public meetings of the OMFD, not documents.<sup>3</sup> For example, paragraphs (12), (15), (16), (19), (23), (25), (28), (29), (32), (34), and (36) all request the OMFD to provide “the names” of various individuals or

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<sup>2</sup> Although this Department does not usually accept more than one rebuttal, we expressly permitted you to make your March 21, 2016 rebuttal.

<sup>3</sup> Paragraph (13) includes a request for a document (“[a] copy of the agenda notice”) and a request for information or interrogatory (“and the date and location(s) that the Agenda Notice was posted”). However, in your August 11, 2015 Complaint you only allege a violation of the latter request for the date and locations that the Agenda Notice was posted.

members of the OMFD present at or involved with the OMFD's February 26, 2014 and March 26, 2014 meetings. Paragraph (13) asks for "the date and location(s) that the Agenda Notice [for the February 26, 2014 OMFD meeting] was posted[.]" Paragraphs (16) and (29) ask "whether a motion was made . . ." at the OMFD's February 26, 2014 and March 26, 2014 meetings, respectively. Paragraphs (12) and (25) also ask for "the date that determination was made" relating to the OMFD's February 26, 2014 and March 26, 2014 meetings, respectively. The OMFD responded to these requests by providing the agenda and meeting minutes for both the February 26, 2014 and March 26, 2014 meetings.<sup>4</sup>

While we remain concerned whether you have standing to bring these complaints—since the very design and content of these requests appear to require a narrative response or answer, not documents—we note that to the extent that any documents would be responsive to these requests, it would be the agendas and minutes for the OMFD's February 26, 2014 and March 26, 2014 meetings. Indeed, all of the above-enumerated requests ask specific questions (or seek specific information) about what transpired at the OMFD's February 26, 2014 and March 26, 2014 meetings. The only responsive documents plausibly maintained by the OMFD responsive to these requests are those meetings' agendas and minutes, which were provided to you.<sup>5</sup> The allegation that some of the requested information may not be in the agendas and minutes only suggests that the OMFD does not maintain documents responsive to those requests. In this situation, the APRA imposes no obligation on the OMFD to create, compile, or reorganize documents that it does not maintain. See R.I. Gen. Laws §38-2-3(h). Respectfully, you provide no evidence to the contrary. Accordingly, we find no violations.

The remaining allegations concern the following requests: paragraphs (1) and (2) of your February 12, 2015 request, paragraphs (4), (5), (6), (10), and (15) of your February 26, 2015 request, and paragraphs (1), (3), (5), and (11) of your April 20, 2015 request. See R.I. Gen. Laws § 38-2-8(b). With respect to these requests, you allege either that the OMFD did not produce any documents responsive to these requests or that the OMFD did not produce enough documents responsive to these requests. The OMFD's consistent response to each of these allegations is either that they do not have or maintain any records responsive to your request, or that they already produced any and all documents they did maintain that were responsive to your request.

The APRA provides that, unless exempt, "all records maintained or kept on file by any public body . . . shall be public records[.]" R.I. Gen. Laws § 38-2-3(a) (emphasis added). The APRA further provides that:

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<sup>4</sup> See Exhibits 8, 8A, 9, 9A to the OMFD's April 30, 2015 response to your April 20, 2015 request. In response to your request in paragraph (36) of your April 20, 2015 request, the OMFD provided the minutes of the April 23, 2014 meeting. See Exhibit 11 to the OMFD's April 30, 2015 response to your April 20, 2015 request. These minutes were responsive to your request about the vote to validate the March 26, 2014 meeting minutes.

<sup>5</sup> See Exhibits 8, 8A, 9, 9A to the OMFD's April 30, 2015 response to your April 20, 2015 request.

“Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.” R.I. Gen. Laws § 38-2-3(h) (emphasis added).

After reviewing all of the evidence presented, including the dozens of documents produced by the OMFD in response to your requests, and based on the totality of the circumstances, we find no violations. The evidence reveals that the OMFD reasonably and adequately searched for responsive documents and either produced numerous responsive documents or credibly stated, after a reasonable search, that they did not have or maintain responsive documents. See R.I. Gen. Laws §§ 38-2-3(a), (h). We consider each request in turn.

With respect to your February 12, 2015 request, you allege that the “OMFD did not provide an accounting from 2007 forward” and that the “OMFD did not provide any dates of notice, notices, proof of mailing receipts or certified return receipts[.]” The OMFD maintains that all “[c]opies of documents requested . . . which were in possession of OMFD were furnished.” We note that on February 24, 2015, the OMFD provided the following documents:

- Tax roll documents from 2007–2014 addressed to “Ryan Thomas A & Mary E & RI Housing TS”;
- A “Collector’s Sale of Estates for Taxes and/or Assessments Due and Unpaid” advertisement that includes your property;
- An email from Mr. Andreoni of RI Tax Titles, LLC to the OMFD Tax Collector stating that he served tax sale notice for your property to, among others, Thomas and Mary Ryan;
- United States Postal Service domestic return receipts dated August 17, 2010 and August 27, 2010 addressed to Mary E. Ryan and Thomas Ryan, respectively.<sup>6</sup>

Based on the evidence presented, we find that the OMFD’s search was reasonably calculated to discover all responsive documents. See Nye v. Rhode Island Department of Public Safety, PR 16-46. The affidavit of Mr. Nolan, Tax Collector for the OMFD, notes that potentially responsive documents would have been in the records turned over by the previous Tax Collector, and that he searched all of those records. The affidavit of Ms. Chretien, office clerk for the OMFD, confirms that all of the previous Tax Collector’s documents were turned over to the OMFD and searched for responsive documents. Respectfully, you provide no evidence that this search was unreasonable or inadequate.

With respect to your February 26, 2015 request, you allege that the OMFD did not provide copies of the following documents:

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<sup>6</sup> See Exhibits 1, 2A, 2B, and 2C to the OMFD’s February 24, 2015 response to your February 12, 2015 request.

- “The Affidavits which are referenced in OMFD’s Accounting record” (paragraph 4);
- “The ‘Exams’ which are referenced in OMFD’s accounting record dated in 2008 and 2009 (5);
- “[T]he bill regarding changes for title exams in 2008 and 2009” (6);
- “[A] bill regarding [OMFD’s] allegations of a 2007 tax sale” (6);
- “[T]he bill for a 2009 Record fee for Collector’s Fee” (10);
- “[A]ny communication received by OMFD advising that proper notice had not been received regarding the scheduled tax sale of September 15, 2010” (15).

In its March 10, 2015 response, the OMFD stated that it did not possess or maintain copies of the following: affidavits; any additional bills for or related to title exams; or any additional written notices or communications regarding written notices. Also, in its response, OMFD produced the following responsive documents:

- A 2010 tax sale invoice prepared by RI Tax Titles, LLC;
- A 2010 letter written by you concerning notice of a tax sale.<sup>7</sup>

We similarly find that the OMFD’s search here was reasonably calculated to discover responsive documents. See Nye v. Rhode Island Department of Public Safety, PR 16-46. As noted above, the affidavit of Mr. Nolan states that potentially responsive documents would have been in the records turned over by the previous Tax Collector, and that he searched all of those records. The affidavit of Ms. Chretien states that she made a request to Rhode Island Tax Titles, LLC “for copies of documentation . . . pertaining to the 2010 tax sale” and that she “was advised by an employee of Rhode Island Tax Titles, LLC that [they] did not have copies of the documentation pertaining to the 2010 tax sale.” Respectfully, you have provided no evidence that this search was insufficient or that other responsive documents exist that have not been provided. Because the OMFD searched multiple locations and sources that were likely to have responsive documents, and because we have been presented with no evidence that responsive documents exist that have not been provided, we find that the OMFD’s search was reasonable. See Duxbury v. Town of Coventry, PR 13-16.

With respect to your April 20, 2015 request, you allege that the OMFD did not provide copies of the following documents:

- “[T]he OMFD’s policy regarding OMFD’s retention of public records” (paragraph 1);
- “[A]ny and all communications [the OMFD] received from R.I. Housing” (3);
- “[D]ocuments involving communications involving [you] and/or [your] property which took place between OMFD, its representatives, Glenn Andreoni, RI Tax Titles, and/or other third parties” (5);
- “[A]n accounting of RI Tax Titles’ invoice dated September 15, 2010” (11);

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<sup>7</sup> See Exhibits S4 and S7 to the OMFD’s March 10, 2015 response to your February 26, 2015 request.

-“[S]upporting documents that verify the [] charges as they are set forth in the invoice” (11).

In its April 30, 2015 response, the OMFD stated that it does not have a written policy regarding retention of public records; that it does not have more communications from Rhode Island Housing other than what was already produced; that it does not have more communications between OMFD or Mr. Glenn Andreoni and other third parties other than what was already produced; and that it does not have any accounting or supporting documents regarding the 2010 invoice other than what was already produced. The evidence reveals that the OMFD produced the following responsive documents:

- A notice of proposed sale for your property addressed to Thomas & Mary E. Ryan;
- A 2010 check from Rhode Island Housing to the OMFD;
- An email from Mr. Andreoni of RI Tax Titles, LLC to the OMFD Tax Collector including an attachment of a 1999 mortgage by Thomas and Mary Ryan;
- Tax roll documents from 2007–2014 addressed to “Ryan Thomas A & Mary E & RI Housing TS”;
- United States Postal Service domestic return receipts dated August 17, 2010 and August 27, 2010 addressed to Mary E. Ryan and Thomas Ryan, respectively;
- A February 15, 2013 memorandum from the Town of Burrillville Office of Finance Director regarding potential joint tax sales;
- Meeting minutes and agenda for the February 26, 2014 meeting;
- Letters from Thomas and Mary Ryan to the OMFD dated February 19 and 22, and March 3, 2014;
- Meeting minutes and agenda for the March 26, 2014 meeting;
- Meeting minutes for the April 23, 2014 meeting.<sup>8</sup>

Here, we conclude that the OMFD’s search was reasonably calculated to discover responsive documents. See Nye v. Rhode Island Department of Public Safety, PR 16-46. As noted above, the affidavits of Mr. Nolan and Ms. Chretien evidence that the OMFD thoroughly searched the places most likely to contain responsive documents: the records of the previous tax collector and documentation maintained by Rhode Island Tax Titles, LLC. The evidence demonstrates that all responsive documents found by this search were provided to you. Respectfully, you have provided no evidence to the contrary. Because the OMFD searched multiple locations and sources that were likely to have responsive documents, we find that the OMFD’s search was reasonable. See Duxbury v. Town of Coventry, PR 13-16.

Additionally, we note that the OMFD’s assertions concerning documents associated with Rhode Island Tax Titles, LLC are substantiated, in part, by the affidavit of Mr. Andreoni, principal of Rhode Island Tax Titles, LLC. In his affidavit, Mr. Andreoni stated that fourteen enumerated documents had been sent to you and that “there are no other records of tax sale documents in RI Tax Title’s possession.” After reviewing all of the evidence presented, we are unable to find any

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<sup>8</sup> See Exhibits 2–9, 11 to the OMFD’s April 30, 2015 response to your April 20, 2015 request.

additional Rhode Island Tax Titles, LLC documents responsive to your requests in the OMFD's possession that were not already disclosed to you.

With respect to all three sets of requests, we emphasize that the OMFD has presented numerous affidavits indicating that they disclosed every responsive document in their possession after a diligent search. Indeed, we note that the OMFD produced a plethora of documents and responded completely to each one of your sixty-nine separate requests, including the twenty-three requests contested here.

Moreover, we observe that there is no evidence that any withheld document exists. It appears that some potentially responsive documents were lost in the transition between tax collectors. Affidavits from Ms. Chretien, Mr. Nolan, and Ms. St. Pierre all attest to the fact that the previous tax collector worked from home and that when she turned over OMFD documents, the transition did not go particularly smoothly. The evidence suggests that this transition may be responsible for fewer documents being in the OMFD's possession. However, this Department has previously held that the failure of a public body to produce records that it does not maintain does not violate the APRA. See e.g., Harris v. City of Providence, PR 16-37; see also R.I. Gen. Laws §§ 38-2-3(a), (h).

Despite the evidence presented, you claim, but do not support, that additional public records are being withheld from you. We note that your insistence that more documents are available here is identical to an argument you advanced in a previous APRA complaint you filed, which we similarly found to be unsubstantiated by the evidence. See Ryan v. Town of Burrillville, PR 16-22. If there was any indication that the OMFD's search here was inadequate or incomplete, our finding may be different. However, based on the voluminous record before us, we find no evidence that the OMFD inadequately searched for or improperly withheld any documents responsive to your requests. As such, we find no violations.

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,



Sean Lyness

Special Assistant Attorney General

Cc: District Tax Collector and Public Records Officer