



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

April 17, 2017
PR 17-13

Mr. Mike Piskunov

RE: Piskunov v. Town of Glocester

Dear Mr. Piskunov:

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

On February 3, 2016, you made an APRA request to the Town seeking the last ten completed internal affairs reports from the Glocester Police Department.

The Town responded on February 9, 2016, invoking an additional twenty business days to respond to the APRA request, pursuant to R.I. Gen. Laws § 38-2-3(e), “[d]ue to the possible voluminous nature of th[e] request[.]” On February 25, 2016, the Town further responded to your APRA request, noting that the Town had “conducted a balancing test to determine whether the public interest in this information outweighs the privacy interest of the individuals involved in these investigations.” The Town concluded that “your request is being denied pursuant to RIGL 38-2-2[(4)](D)(c)[,]” and declined to release any documents.

By email correspondence dated March 3, 2016, you filed the instant APRA complaint. You allege that the Town violated the APRA when you were denied access to the requested documents and contend that the requested documents should have been released in redacted form.

In response to your complaint, this Department received a substantive response from William L. Bernstein, Esquire, on behalf of the Town. Attached to the Town’s response was an affidavit from Lieutenant Matthew Fague of the Town Police Department. Lt. Fague stated:

“I concluded that the individuals’ right to privacy far outweighed the public’s interest in the materials.”

You did not provide a rebuttal.

In the course of its investigation, this Department obtained a subsequent correspondence from the Town to you dated April 13, 2016. The correspondence states, in pertinent part:

“[W]e have reconsidered your request in spite of your failure to follow proper appeal procedures. The records requested will be released with certain redactions. Prior to providing copies of the requested documents, a fee of \$31.50 is due; all fees have been set pursuant to ‘RIGL [§] 38-2-4 Cost.’ ***
Upon receipt of payment the requested documents will be made available for pickup at the Gloucester Police Station or to be sent to you electronically.”

It is this Department’s understanding that you have not since paid for or received the requested documents.

At the outset, we observe 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, we view the issue as extraordinarily narrow. The Town has already offered to produce the requested records to you in a redacted manner, and as such, we have no occasion to determine whether the requested records must be disclosed in accordance with the APRA.¹ See Farinelli v. City of Pawtucket, PR 16-27. However, in its April 12, 2016 correspondence advising you that the Town would make the requested documents available to you, the Town conditioned such access upon pre-payment, after it already denied your APRA request and over two months after your initial APRA request. Rhode Island General Laws § 38-2-7(b) provides, in relevant part, that “[a]ll copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner.” Since the Town no longer challenges the denial, and because the Town did not produce the requested records in a timely manner, it may not charge for access to the requested records. Accordingly, by failing to waive all copying and search and retrieval fees, the Town violated R.I. Gen. Laws § 38-2-7(b).

¹ It bears mentioning that your complaint acknowledged that the documents should have been provided in redacted form.

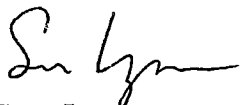
Upon a finding that a complaint brought pursuant to the APRA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 38-2-9(d). There are two remedies available in suits filed under the APRA: (1) the court may issue injunctive relief and declaratory relief and/or (2) the court may impose a civil fine of up to two thousand dollars (\$2,000) against a public body or any of its members found to have committed a willful and knowing violation of the APRA, or a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated the APRA. R.I. Gen. Laws §§ 38-2-8(b), 38-2-9(d).

Here, we do not find – nor do you present – any evidence of a willful and knowing, or reckless, violation. Nevertheless, the Town may not charge for access to the requested documents. See R.I. Gen. Laws § 38-2-7(b). Considering the Town's offer to provide you access to the requested (redacted) documents, and our finding that the Town may not charge for access in this situation, we would expect the Town to provide you access within ten (10) business days of this finding. If the Town does not respond within this time frame in a manner consistent with the APRA and this finding, you should contact this Department so that we may further review this matter.

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). This finding serves as notice that the Town violated the APRA and may serve as evidence of a willful and knowing, or reckless, violation in a similar future situation. 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: William L. Bernstein, Esq.