State of Rhode Island and Providence Plantations

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

April 28, 2017
PR 17-19

Ms. Lynn Farinelli

Re: **Farinelli v. City of Pawtucket**

Dear Ms. Farinelli:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the City of Pawtucket ("City") is complete. The facts are largely undisputed and recited below.

On July 7, 2016, you filed an APRA request with the City. Your APRA request sought four categories of documents, but only the first category is relevant to this finding. Your first category related:

> "I would like the investigation into the City Worker working on his private home during the work day in the CITY VEHICLE. I contacted Mr. Grebien and also told Mr. Pires about this activity. Although they didn't contact me about the location of this activity or the PHOTOS taken. I'm sure they JUMPED right in and disciplined this person."

With respect to categories 2, 3, and 4, the City responded, respectively, it was "not in possession of any records, which would satisfy your request;" your request was "broad, vague and imprecise," but "construing your request as one for a copy of an internal affairs report generated from an investigation into the matter you reference * * * the City is not in possession of any records;" and your request was "broad, vague and imprecise," but "construing your request as one for copies of police reports generated from the 2015 investigation into the Tolman High School matter * * * since the RI Department of Public Safety previously opted to release the joint report of the RI Police and the Pawtucket Police Department, I am enclosing a copy of the RI State Police Inter-Departmental Memo * * * with redactions made by the RI Department of Public Safety pursuant to R.I. Gen. Laws § 3[8]-2-2(4)(D)(c)." The City also noted that "[i]f you are also seeking the incident and/or arrest report of the two juveniles involved in the matter, please be advised that the records may not be disclosed since they are not public records. See R.I. Gen. Laws § 38-2-2(4)(S) and R.I. Gen. Laws § 14-1-64."

Regarding category 1, the City responded that your request was "broad, vague and imprecise," but unlike categories 3 and 4 where they City responded with a denial or access to the requested documents, the City's response to category 1 further explained:

> "[t]he City contends that a requesting party has an obligation to identify with reasonable particularity those documents which he or she wishes to review. When a requesting party submits a request for records and /or information on a particular subject, without specifying with reasonable particularity timeframes and/or the actual documents or records being requested, this puts the City in the position of having to guess or assume what is being sought. Please clarify your request at your convenience. It would be helpful if you could include dates and perhaps an address."

The City's July 20, 2016 response was sent to you through e-mail by its paralegal, Ms. Jessie Washington, on behalf of its City Solicitor Frank J. Milos, Jr., Esquire. The July 20, 2016 response also contained the electronic signature of Mr. Milos.

Later that evening (at 11:28 p.m.), you replied to Ms. Washington (but did not copy Mr. Milos). With respect to category 1, you provided additional clarification that "[t]he City Worker complaint was in September 2015" and that "[t]his was also brought to the Mayor's attention on September 14, 2015 and also Mr. Pires." Although not entirely clear, it appears the way this was "brought" to the Mayor's and Mr. Pires' attention was by e-mail or other communication from you to these two individuals.

The next morning, Thursday, July 21, 2016, Ms. Washington replied to you (and did not copy Mr. Milos):

> "[t]he Response you received was not prepared by me, it was prepared by Mr. Milos, the City Solicitor, as indicated in the signature block. I just send the responses out for him. If you have any issues with the Response you received, please see the last paragraph of the response, for options available to you."

You replied shortly thereafter (on the same day) to Ms. Washington and this e-mail was also sent to Mr. Milos:

> "[t]he City waited 9 Business days to state: 'The City contends that this request is broad, vague and imprecise.' Instead of asking for clarification. I then sent clarification of the documents needed and you are refusing to accept the clarification and ask me to see the last paragraph for other options? Is this to say you didn't want clarification and this is a straight forward denial?" (Emphases added).

While it does not appear that Ms. Washington responded to this latest e-mail, you did receive an out-of-office reply from Mr. Milos, indicating that he would be out of the office until Monday,

July 25, 2016, and that in his absence, Ms. Washington could be contacted concerning APRA inquires.

Approximately two hours after you sent the above-referenced reply (and received the above-referenced out-of-office reply), you filed the instant complaint. In your complaint, you observe that on July 20, 2016, the City responded to your APRA request contending that your request was "broad, vague and imprecise" and that you sent clarification on July 20, 2016. According to your complaint, you received a response from Ms. Washington, "stating I had my options in the last paragraph if I have issues with the response." You continue that "[t]he City never asked for clarification and have opted to have me now go to the Attorney General to complain. * * * Never did they contact me about any clarification of this APRA request." A subsequent email from you to this Department noted that you "took the time to clarify the request and she[1] went right to DENYING that Request." (Emphasis added).

In due course, this Department acknowledged your complaint and summarized your allegation as alleging:

> "the City violated the APRA when you sent an APRA request on July 7, 2016 and the City indicated your request was 'broad, vague and imprecise,' and that you should clarify your request, yet when you clarified your request on July 20, 2016, the City refused to accept the clarification." (Emphasis added).

Our acknowledgment letter also advised that if our correspondence did not accurately reflect your complaint, or if you wished to provide additional information, you should do so within five business days. We received no further clarification or information within this timeframe.

In response to your complaint, we received an affidavit from Mr. Milos and Ms. Washington (in part). Mr. Milos relates that "[a]lthough the City believed that three of the requests (i.e., Requests numbered 1, 3, and 4) were broad, vague and imprecise, the City attempted to construe the requests based on the limited information provided by Mrs. Farinelli." In fact, Mr. Milos affirms that he "met with four (4) City officials to review and attempt to interpret each request and to learn whether the City was in possession of records which might satisfy the requests." As a result of this meeting, Mr. Milos avers, "the City was able to provide definitive responses to Requests numbered 2, 3, and most of Request numbered 4 but not Request numbered 1."

With respect to your July 20, 2016 e-mail, Ms. Washington affirms that she "did not realize that [Mr. Milos] had asked Mrs. Farinelli to clarify Request numbered 1," and as a result, "invited Mrs. Farinelli to file an appeal if she was not satisfied with the City's July 20, 2016 response, which is the standard response sent when someone is unsatisfied with an APRA response." Mr. Milos adds that "even upon his return to the office the following week, [he] did not realize that Mrs. Farinelli had provided some additional information as it pertained to Request numbered 1" and that "[o]nce cognizant of the additional information * * * [Mr. Milos] followed-up with the Director of

[1] In context, "she" references Ms. Washington.

Administration, Antonio Pires and has now determined that the City is not in possession of any records which would satisfy Mrs. Farinelli's request."

We acknowledge your rebuttal.[2]

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 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 states that, unless exempt, "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." R.I. Gen. Laws § 38-2-3(a). 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 within ten (10) business days, by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. "Any 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 in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial." See R.I. Gen. Laws § 38-2-7(a)(emphasis added).

Here, while not expressly part of your complaint, we conclude that the City did not violate the APRA when it asked you to clarify category 1. We have previously observed that "it is the requester's responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested." See Go Local Prov v. City of Providence, PR 16-20. Although clearly a public body's clarification request must be made in good faith and not intended to obfuscate, based upon the evidence presented, we find no improper motive.

Most importantly, your July 7, 2016 APRA request (for category 1) provided no time reference for the City to consider. Upon receiving the City's clarification request, you promptly responded that this complaint was "in September 2015" and that this was brought to the Mayor's and Mr. Pires' attention (perhaps by you) "on September 14, 2015." The inclusion of this additional relevant information was an appropriate clarification. The City's overall response to your July 7, 2016 APRA request also evidences no intent to obfuscate. Specifically, although the City noted

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[2] To the extent that your rebuttal alleges any additional violations of the APRA not already raised in your initial complaint, such new allegations will not be addressed. As stated in this Department's acknowledgment letter to you, "[y]our rebuttal . . . should not raise new issues that were not presented in your complaint[.]" See also Save the Bay v. Department of Environmental Management, PR 15-19.

that your categories 2 and 3 were also "broad, vague and imprecise," the City nonetheless was able to formulate a response to these categories after meeting with officials concerning your APRA request.[3]

Having resolved this potential issue, we address your central issue, which is that the City denied your APRA request when it declined to accept your July 20, 2016 clarification. Your August 1, 2016 e-mail to this Department appropriately frames the issue:

> "I wanted to add this to the complaint so you can see that Ms. Washington was actually left in charge of the APRA requests during Mr. Milos's absence and instead of assisting me with that request, she went right to pointing out that the last paragraph had my 'options.' I took the time to clarify the request and she went right to DENYING that Request." (Emphases added).

Respectfully, we conclude that Ms. Washington did not deny your request nor did Ms. Washington have authority to deny your APRA request.

To begin, we conclude that the premise that Ms. Washington was "actually left in charge of the APRA requests during Mr. Milos's absence" is incorrect as a matter of fact and law. The basis for your argument is Mr. Milos' out-of-office message, but in relevant part, this message merely represents "[p]lease forward all Access to Public Records Requests to Jessie Washington" and that "[f]or inquiries regarding Access to Public Records matters, please call Jessie Washington." In no way does this out-of-office message convey that Ms. Washington was "left in charge" of APRA matters for the City in Mr. Milos' absence.

More importantly, as a matter of law, Ms. Washington could not have been "left in charge" of APRA matters and had no authority "to grant or deny persons or entities access to records." R.I. Gen. Laws § 38-2-3.2. The foregoing provision requires all public bodies to submit annual certification that "all officers and employees who have the authority to grant or deny persons or entities access to records under this chapter have been provided orientation and training regarding this chapter." Id. You have presented no evidence that Ms. Washington received training or otherwise had "the authority to grant or deny persons or entities access to records," and our review of this Department's certification records finds no occasion where Ms. Washington was authorized to grant or deny records under the APRA. See Access/Rhode Island v. Town of New Shoreham, PR 15-26 ("Having recognized that the Town Clerk, and not the Police Chief, was the designated public records officer, we are hard pressed to find that the Police Department, through the actions or omissions of the Police Chief, violated the APRA when the Police Chief did not direct MuckRock to the proper entity to make an APRA request."). As such, we conclude that the City (through Ms. Washington) did not and could not have denied your APRA request/clarification, particularly under these circumstances where you e-mailed only Ms. Washington on July 20, 2016 (and not Mr. Milos), and where Ms. Washington's July 21, 2016 response serves as the basis for

[3] Like the City, we conclude that your complaint is focused on category 1 since this is the only category that the City asked you to clarify and neither provided a denial nor access to documents.

this complaint. We also observe that based upon the evidence presented the two foregoing e-mails occurred prior to you receiving Mr. Milos' out-of-office notification. We find no violation.

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.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

Michael W. Field
Assistant Attorney General

MWF/kr

Cc: Frank Milos, Esq.