



## State of Rhode Island and Providence Plantations

### DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

### **VIA EMAIL ONLY**

May 12, 2017

PR 17-29

Ms. Ellen DeWolf

### **Re: DeWolf v. Town of Coventry**

Dear Ms. DeWolf:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of Coventry (“Town”) is complete. By email correspondence dated December 11, 2016, you allege the Town violated the APRA when it failed to respond to your APRA request dated November 18, 2016 in a timely manner. Your November 18, 2016 APRA request was directed to the Zoning Clerk of the Department of Planning and Zoning. In our acknowledgment letter, we suggested that you may want to supplement your complaint to advise whether your November 18, 2016 APRA request conformed to the Town’s APRA procedures. We received no response from you on this issue.

In response to your complaint, we received a substantive response from the Town’s legal counsel, David M. D’Agostino, Esquire. Attorney D’Agostino states, in pertinent part:

“[T]he Town’s policy and procedure for obtaining public records pursuant to the APRA are posted on the Town’s website. \* \* \* The policy and procedure clearly establishes the Town Clerk as the authorized party to whom APRA requests are to be directed. A review of the Town’s APRA request form (also posted on the Town’s website) confirms this. \* \* \*

By the Complainant’s own statements, information and documentation, she did not address her APRA request to the Town Clerk; instead her letter was addressed as follows:

Ms. Kerrie Karwoski, Zoning Clerk,  
Dept. of Planning & Zoning, Town of Coventry  
1675 Flat River Road  
Coventry, RI 02816

While Ms. Karwoski is indeed the Zoning/Planning Clerk, she is not the designated person to whom APRA requests are to be directed under the Town's posted APRA policies and procedures. It is also important to note that the 1675 Flat River Road [ ] address is not the address of Town Hall, nor is it the correct address of the Town Clerk. That address, again, provided in the Town's policies and procedures and on the posted APRA request form, is 1690 Flat River Road.

Notwithstanding, the Complainant's letter was received (and signed for) by a 'Lori Avedesian' on November 21, 2016; Ms. Avedesian is a mail room clerk for the School Department – she does not work for the Town (i.e. the municipality) and is not an identified recipient or contact point for Town-related APRA inquiries. In any event, the Complainant's original letter was never delivered to, or received by, either Ms. Karwoski or the Town Clerk prior to November 29, 2016.

\* \* \*

Given the Town's actual receipt of November 29, 2016, the Town was required to respond to the APRA request within an initial ten (10) business days. That initial response period ran on December 13, 2016. The Town Clerk responded to the Complainant (in writing) on December 8, 2016, three (3) full business days in advance of that deadline. Calculating twenty (20) business days from December 8, 2016 (when, arguably, the Town could have counted from the original response due date of December 13<sup>th</sup>) put the Town response at January 9, 2017. The evidence demonstrates that the Town responded to the Complainant with the requested records on January 9, 2017, in compliance with the APRA."

We acknowledge your 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 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 copy such records. See 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. A public body has ten (10) business days to respond in some capacity to a records request, whether by

producing responsive documents, denying the request with reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7.

Additionally, the APRA provides that “[e]ach public body shall establish written procedures regarding access to public records.” R.I. Gen. Laws § 38-2-3(d). As amended in September 2012, the APRA provides that:

“[t]hese procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body’s website if such a website is maintained and be made otherwise readily available to the public.” Id.

The Town does have written procedures regarding access to its public records. See <http://www.coventryri.org/sites/coventryri.org/files/page-attachments/Procedure%20for%20Obtaining%20Public%20Records.pdf>.

The Town’s policy states, in pertinent part:

1. A request to inspect and/or copy public records of the Town of Coventry may be presented orally or in writing to the Coventry Town Clerk at 1670 Flat River Road, Coventry, RI 02816 during normal business hours (8:30 a.m. to 4:30 p.m. Monday through Friday) or (401) 822-9173.

Your correspondence dated November 18, 2016 addressed to the Zoning Clerk at 1675 Flat River Road was inconsistent with the Town’s APRA policy, i.e., making the APRA request to the Town Clerk. As such, and consistent with the plain language of the APRA and our prior findings, we find that your November 18, 2016 APRA request was not made pursuant to the APRA or the Town’s APRA policy. See e.g., Access/Rhode Island v. New Shoreham Police Department, PR 15-26; Ravetti v. Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, PR 16-14.

On past occasions, this Department has examined situations where a public body did, and did not, promulgate APRA procedures as required. For instance, in Stafford v. Rhode Island Family Court, PR 11-13, the Family Court promulgated a procedure concerning where and how APRA requests should be made. In Stafford, the request was not made pursuant to the established procedure, and after the Family Court did not respond to the APRA request in a timely manner, we found no violation. Specifically, we observed that because the APRA request was not made in accordance with the Family Court’s APRA procedures, the Family Court did not violate the APRA.

In the instant case, although you did not comply with the Town’s APRA procedures, the Town responded in a timely manner. Your rebuttal does not challenge that your APRA request was not made consistent with the Town’s promulgated APRA procedure, and you admit that you “did not notice [the Town’s public records request form] when [you] wrote [your] request.” Although you proffer that your “request letter simply needed to be directed to the [Town] clerk,” even

assuming this is true, the undisputed evidence is that this did not occur until November 29, 2016. Using this date (November 29, 2016), the Town timely responded to your APRA request by extending the time to respond within ten (10) business days and thereafter timely responded to your APRA request by providing responsive documents.

As best as we can tell, you seek to hold the Town responsible for the time it took for the Zoning Clerk to forward your APRA request to the Town Clerk, but as described herein, your APRA request to the Zoning Clerk did not comply with the Town's APRA procedures, and in these circumstances, we have determined that a public body does violate 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."); Farinelli v. City of Pawtucket, PR 17-19. Respectfully, a November 29, 2016 correspondence supports this conclusion wherein you advised the Town Clerk that you were "forwarding to you the public records request that was sent via certified mail on 11/18 that the Town has not received." Accordingly, since your APRA request was not made in a manner consistent with the applicable APRA procedures, we find that the Town did not violate the APRA. See Rosenfield v. North Kingstown School Department, PR 14-02 ("This Department has previously determined that an APRA request must first comport with a public body's APRA policy before we can decide whether a violation has occurred, and we see no reason to depart from the plain language of the APRA and our findings."); Stafford, PR 11-13.

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,



Lisa Pinsonneault

Special Assistant Attorney General

LP/kr

Cc: David D'Agostino, Esq.