



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

November 27, 2017
PR 17-38B

Ms. Margo Sullivan

RE: Sullivan v. City of Newport

Dear Ms. Sullivan:

This correspondence serves as a supplemental finding to Sullivan v. City of Newport, PR 17-38, released on August 2, 2017. In Sullivan, we reviewed your April 10, 2017 Access to Public Records Act (“APRA”) complaint and concluded that the City of Newport (“Newport”) did not knowingly and willfully, or recklessly, violate the APRA when, in the course of responding to your complaint, it subsequently provided you access to the documents that you claimed were initially improperly withheld. The sole issue to be addressed in this finding is whether your rebuttal dated May 4, 2017, which was inadvertently not considered in our original finding, alters our conclusion.

Your May 4, 2017 rebuttal states, in pertinent part:

“I am still attempting to obtain all the public records referenced in my original March 1 request. The City has provided some of them, but I do not have all of them. Referencing Paragraph 11 on page 3 of Assistant City Solicitor Girard Galvin’s letter of April 28, he states the City has recently discovered ‘three informal lists,’ which he attached to his response to my APRA complaint. However, the third list, Newport to Imperia, Italy, Sept. 6-12, 2016, omits Colleen McGrath’s name. As a matter of fact and not addressing anyone’s motive, I would point out in my follow-up letter of April 21, I provided a link to a Newport This Week captioned photograph, which showed the mayor’s delegation in Imperia. Ms. McGrath is clearly pictured. I also provided a link to the Newport Hospitality Commission’s 2014 annual report, the most recent I could find. That report states the commission, which is a City commission, is charged with helping the mayor’s office make Sister City trip arrangements. ***

However, in its response, the City is silent on the chairwoman’s presence on the trips and the source of funds used to pay for her travel. ***

Finally, the commission's meetings are posted on the Secretary of State's website per the Open Meetings law. Its meeting agendas indicate its members have reported on the Sister City trips. I believe these documents are public records and that therefore, most of the information I have requested is in the City's hands.

Also, his response of April 28 in no way acknowledges or addresses my follow-up letter of April 21. ***

I do not consider that hypothetical response adequate. I see no reason why the City will not provide the information in a declarative statement, such as to say, for example, 'Vin Ceglie – Self Pay.' That's the format used for the 2015 Shimoda Trip.

*** I maintain the City does have records of the 'delegations,' whether they're official delegations, unofficial delegations, delegations as a term used loosely or used any other way.

*** Again, my request asks strictly for facts: the names, the costs, the source of funds, and the legal agreements, regardless of reimbursements.

*** I maintain the City does have records of everyone who went on those trips and the sources of funds used.

In Paragraph 10, the City recounts its efforts to find the documents. I accept the possibility a new administrative assistant might not have managed to locate the records. However, the two trips in question happened in 2016. Not even a year has passed since the trip to Imperia. I would question Mr. Galvin's statement these records were 'buried deep in the archives of the Mayor's office.' I deliberately asked only for the past two years, so the request would not be unduly onerous."

In Sullivan, we found that:

"In this case, however, through the course of responding to this complaint, the City has provided you access to the documents that you contend were improperly withheld. Within the City's response, Attorney Galvin explained that upon further review of the Mayor's archived files "three informal lists" were found "buried deep" within the City's files. Such lists were "created by a former employee, and no one other than this former employee knew of the existence of this record." Although this Department recognizes that these lists were not in the original packet of documents provided to you, there can be no question that seeking "injunctive or declaratory" relief, *i.e.*, a lawsuit to obtain the originally withheld documents, is moot as a result of Attorney Galvin providing these documents to you. See Piskunov v. Town of North Providence, PR 16-38 ("since you are now in possession of the requested documents, we need not determine whether the Town violated the APRA – and thus seek injunctive relief – but rather we need only determine whether your allegation represents a knowing and willful, or reckless, violation of the APRA that would subject the Town to civil penalties").

Attorney Galvin continues to explain when notified by our Office of your complaint, the lists were discovered by the new Administrative Assistant during a second review and that only the creator of these documents, *i.e.*, the former assistant, knew of the existence of the lists. For this reason, a civil fine for a willful and knowing, or reckless, violation would not be appropriate. Moreover, while you do not expressly take issue with the adequacy of the City's search and retrieval, it is notable that the City did provide other documents pursuant to your APRA request."

As an initial matter, we note what appears to be a misunderstanding about the APRA's requirements. The APRA governs the public's right to access public documents, but does not mandate or require that public bodies answer questions. *See Gagnon v. City of East Providence*, PR 12-23; *see also Setera v. City of Providence*, PR 95-20. Additionally, 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). Indeed, only documents "maintained or kept on file by any public body . . . shall be public records[.]" R.I. Gen. Laws § 38-2-3(a) (emphasis added).

While not entirely clear your rebuttal suggests that at times you take issue with the City's failure to provide a narrative answer to your APRA request. For instance, in response to the City's averment that it would only have the names of people on trips "if those travel plans were initiated through the City," you criticize the City and assert "[t]hat was not the question asked, but the City has continually recast my original question to narrow its scope." *See* May 4, 2017 Rebuttal. Your rebuttal contains other examples. *See e.g., id.* ("I see no reason why the City will not provide the information in a declarative statement"); *id.* ("my request asks strictly for facts"); *id.* ("the City should have been able to state as a matter of fact who went on the trip").

Despite your rebuke, however, as described above, documents only fall within the ambit of the APRA if such records are "maintained or kept on file by any public body." R.I. Gen. Laws § 38-2-3(a). Accordingly, your request for the City to provide a "declarative statement," and other portions of your rebuttal that suggest the City should have responded in a narrative manner, is not governed by the APRA and the City's failure to do so does not violate the APRA. *See Chase v. Department of Corrections*, PR 11-36 (finding APRA violation where DOC responded in a narrative manner, rather than providing access to documents).

Your rebuttal also appears to contend that the City's response was inadequate, not only because it failed to provide you all names of those who participated in Sister City trips for 2016, but also because other portions of your March 1, 2017 APRA request were not fulfilled. Our finding was limited to whether the City violated the APRA when it "failed to provide access to documents concerning the names of the entire delegation who attended trips to Shimoda, Japan in 2016 and Imperia, Italy in 2016," *see Sullivan*, PR 17-38, and our review of the entire record affirms that this – as opposed to other aspects of your March 1, 2017 APRA request – was the only issue properly before this Department.

For example, after identifying the nature of the documents requested in your APRA request, your April 10, 2017 complaint noted that “I am missing the names of the entire delegation for trips to Shimoda, Japan in 2016 and to Imperia, Italy, also in 2016.” Later in your complaint you identified that the names for a 2015 trip had been provided, but reiterated that “[t]he city failed to provide a complete list of the names of the people on the two other trips.” Nowhere in your April 10, 2017 complaint, or in your April 21, 2017 follow-up, do you clearly identify any issue, other than your allegation that the City had not provided documents identifying all travelers to the two 2016 trips. For this reason, to the extent that your rebuttal complains about the City’s failure to provide access to other documents, *i.e.*, other than the names of travelers to the two 2016 trips, it is beyond the scope of our original finding or this supplemental finding. See Mudge v. Town of North Kingstown, PR 15-44.

Having addressed these preliminary issues, we address your rebuttal and note that although your rebuttal was inadvertently not considered when we issued our finding, many of the arguments raised in your rebuttal were addressed in our previous finding. Indeed, much of your rebuttal concerns the adequacy of what was produced and generally insists that the City has additional responsive documents that it has not provided. As discussed *supra*, much of this rebuttal takes issue with the City’s failure to provide a “declarative statement” that addresses the substance of your APRA request and/or takes issue with other aspects of your APRA request not identified in your April 10, 2017 complaint or your April 21, 2017 follow-up. As such, the only aspect of your rebuttal that is relevant to our inquiry is your assertion that the Newport Hospitality Commission’s Chairperson participated in the Imperia, Italy trip in 2016, yet none of the documents you were provided document this travel. Respectfully, you do not provide any support for the assertion that the City does maintain documents responsive to this traveler, and yet after an appropriate search and retrieval, has failed to provide such documents. See Nye v. Rhode Island Department of Public Safety, PR 16-46 (noting that the APRA only requires a reasonable search and retrieval). In contrast, the City provided an affidavit supporting its position that all responsive documents were produced and makes clear – as noted in your rebuttal – that the City would only have responsive documents “if those travel plans were initiated through the City.” Based on the evidence presented, we fail to find any evidence that would lead us to conclude that other responsive documents exist that are being improperly withheld by the City, and in this respect, note that the City did provide you with other documents responsive to your APRA request. In substance, this was precisely our finding in Sullivan, PR 17-38.

Notwithstanding the foregoing, your rebuttal does question why the City searched only records from the Mayor’s Office and failed to extend its search to records from the Newport Hospitality Commission (“NHC”). After inquiry from this Department, the City conceded that it did not initially request records from the NHC, but insisted that such course of action was reasonable given that the “NHC’s function is to help with hosting duties when visitors come to Newport” and that the “NHC has no funding authority or control over who goes on the trips.” (Emphasis added). This contention is generally supported by the NHC’s meeting minutes. While the NHC has, on occasion, remarked on the City’s trips to sister cities, it has nonetheless maintained that its “primary role is welcoming delegates and assisting with the planning and details of their visit to Newport.” See NHC Meeting Minutes, January 20, 2016; see also NHC Meeting Minutes, June 15, 2016 (noting

that “the group has adjusted its focus over the years” and that it serves “as a welcoming organization for visiting dignitaries”); NHC Meeting Minutes, November 16, 2016 (stating that a NHC member views the commission “as a marketing function, as the commission sends press releases and alert the arrival of delegations”). Although a close question, given the NHC’s limited scope of authority, the fact that records regarding trips to sister cities were “traditionally kept by the Mayor’s administrative assistant,” the fact that your request was specifically tailored to those going on the trips to the sister cities, and the fact that the City searched for records with the Mayor’s Office and the Finance Department, we find that the City’s search was reasonably calculated to discover all responsive documents. See Nye v. Rhode Island Department of Public Safety, PR 16-46. While certainly not dispositive, our conclusion is supported by your acknowledgment in your April 21, 2017 follow up letter that “[w]hen I submitted this complaint, I felt certain that complete records *** were available through the mayor’s office.”¹

Your rebuttal also appears to take issue with the method and manner by which the City stores and maintains its records, an argument outside the scope of the APRA. This is particularly so where, as here, there is no evidence or argument that the City maintains records in a way that intentionally hinders the APRA. See APRA Watch v. City of Providence, PR 17-46. For all these reasons, we affirm our previous finding. R.I. Gen. Laws § 38-2-3(a). Please be advised that we are closing your 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

SL/kr

Cc: Girard Galvin, Esq.

¹ You take issue with the City not addressing your April 21, 2017 follow-up in its response, but respectfully, we place less significance on this factor. While your April 21, 2017 follow-up raises the issue (for the first time) that the NHC may have responsive documents, you filed your APRA complaint on April 10, 2017 and the issue before this Department is whether the City’s search and retrieval was reasonably conducted to locate responsive documents. By the time you first raised the NHC issue in your April 21, 2017 follow-up, the City had already searched for responsive records, responded to your APRA request, and you had already filed this complaint.