



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

April 2, 2018
PR 18-09

Ms. Johanna Harris

Re: **Harris v. City of Providence**

Dear Ms. Harris:

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

On October 18, 2017, you submitted an APRA request to the City seeking “[c]opies of Mayor Jorge Elorza’s schedules for all available dates from March 13, 2016 to the present.” The requested time period exceeded one and half years.

The City responded by estimating “that it will take 123 hours of review and redaction to respond to your request.” The City accordingly requested a prepayment of \$1852.50.

You filed the instant Complaint alleging that “this estimate is grossly inflated.”

In response to your complaint, we received a substantive response and affidavit from Natalya Buckler, Associate City Solicitor, stating, in pertinent part:

“8. I reviewed several pages of the report at random and noted that they contained between 47 and 50 entries per page.

9. I also spoke with David Ellison, a now-former Assistant City Solicitor and a member of the Public Records Unit, who at the time had commenced reviewing documents responsive to an identical request for the Mayor’s schedule, albeit for a different time period.

10. Attorney Ellison informed me that, although his review was not complete at that time, it was taking him, and other City individuals working on the request, a combined average of at least one (1) minute to review each entry and, where appropriate, make redactions.

11. Attorney Ellison further informed me that his review required him to confer with various individuals outside of the City Solicitor’s Office, including [Mayor Elorza’s Director of Scheduling] Ms. Little, Deputy Chiefs of Staff Marisa O’Gara

and Theresa Agonia, Public Safety Commissioner Steven Pare, and Human Resources Department personnel.

12. Based upon the foregoing, for the purposes of coming up with an estimate, I used one (1) minute per entry for review and redaction. I then multiplied that one (1) minute by 7,400 entries, which I obtained by multiplying 50 entries per page by 148 pages.

13. I then took the estimate of 7,400 minutes (or 123 hours) and multiplied it by \$15 per hour[.] ***

15. In coming up with the estimate of 123 hours, I used 50 entries per page with the expectation that it would account for the additional time necessary at the end of the initial review (but which time I did not include as a separate item in the estimate) to conduct follow-ups on various entries, to perform a macro-level review of the document for personal privacy, safety, and other concerns, to finalize redactions, and to respond appropriately.”

You provided a rebuttal stating, in relevant part:

“The City’s one-minute estimate is no more than a guess based on an undocumented conversation. It has no clearly supported evidentiary basis.

[The City] purports to be searching for calendar entries whose disclosure might constitute a clearly unwarranted invasion of personal privacy. To that end, the City contends that its review would ‘entail obtaining context from various City personnel.’ [] In fact, the City is simply running out the clock looking for anything that might appear to be personal or private.

[I]t should take no more than a fraction of a second to ascertain that the public, and not the City, should determine the context.

[A]n unsupported guess is no science at all.

To accept the City’s exorbitant charge of \$1,852.50 would effectively shut out public access to information that any court would deem to be overwhelmingly in the public interest under R.I. Gen. Laws § 38-2-4(e).” (Emphasis in original).

At the outset, we note 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 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 § 38-2-7. In other words, we do not write on a blank slate.

The APRA provides that “[a] reasonable charge may be made for the search or retrieval of documents,” which shall not exceed fifteen (\$15.00) per hour, with the first hour free. R.I. Gen. Laws § 38-2-4(b). A public body may also assess a charge “per copied page of written documents

provided,” but “shall not exceed fifteen (\$.15) per page for documents copyable on common business or legal size paper.” R.I. Gen. Laws § 38-2-4(a). The Rhode Island Supreme Court has also explained that other costs not expressly mentioned within the APRA may be assessed, specifically, the “costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested documents.” DARE v. Gannon, 819 A.2d 651, 661 (R.I. 2003).

As a general matter, we recognize the challenges associated with providing a reasonable estimate. This is particularly so in instances like the case at hand, where the subject matter may contain personal details and the volume of records so great that the actual time spent reviewing and redacting is subject to a host of variables that are hard to predict beforehand. We reiterate our earlier statement that “estimating the time to search, retrieve, review, and redact documents is an inexact science.” Harris v. City of Providence, PR 17-51. We also note that nothing with the APRA requires a public body’s estimate to be exact, but to be sure, a public body’s estimate must be reasonable based on the totality of facts. See R.I. Gen. Laws § 38-2-4(b) (“A reasonable charge may be made for the search or retrieval of documents.”).

With these points in mind, and based on the evidence presented, we do not find that the City’s estimate of one (1) minute per calendar entry is unreasonable. Our conclusion is buttressed by our in camera review of the Mayor’s calendar conducted in companion cases. See Harris, PR 17-51; see also Harris v. City of Providence, PR 18-08. As we noted in Harris, PR 17-51,

“some entries that appear to be appropriate for redaction, such as what appear to be home or cellular telephone numbers, as well as other entries that appear to concern personal non-City related events. We are also quite cognizant that certain entries – such as [] meeting[s] or other entries with an identifiable person – may require [the reviewing City attorney] to consult with other City officials to learn whether such an entry concerns City business or non-City business.”

While Harris, PR 17-51, concerned a different time period than the time period at issue in this finding, both matters concerned the Mayor’s calendar entries. These same considerations hold true for the instant calendar entries, as asserted in affidavit form by the City. Indeed, contrary to your rebuttal assertion, the City’s estimation of one (1) minute per calendar entry is supported not just by a hypothetical calculation, but by actual review and redaction of similar calendar entries in responding to your previous APRA requests for the Mayor’s calendar, specifically done by former-Assistant City Solicitor David Ellison.

With respect to this previous APRA request, which sought the Mayor’s schedule for a period of fourteen (14) months containing nearly 5,000 calendar entries, the City noted that it actually took 80.5 hours to review, redact, and respond accordingly.¹ The instant request seeks the Mayor’s

¹ This information came from Associate City Solicitor Natasha Buckler in response to an inquiry from this Department as to the total time it took to respond to your previous similar APRA request. Although you contest this assertion by claiming that the City “has failed to provide a credible, reliable response to your inquiry[,]” we simply do not agree with this characterization and note

schedule over nineteen (19) months containing approximately 7,400 calendar entries, for which the City estimated 123 hours to review, redact, and respond accordingly. When adjusted for the number of months and calendar entries sought, this estimate is roughly comparable to the actual response time spent on your prior APRA requests. Specifically, the City spent roughly 80 hours reviewing approximately 5,000 entries in your prior APRA request, and therefore, an estimate of an additional 40 hours to review approximately 2,400 additional entries is hardly without a factual basis. This documented evidence belies your suggestion that it should take only a “fraction of a second” to review these calendar entries.²

As a final matter, we note that although in Harris, PR 17-51, we did find the City’s estimate unreasonable, we highlight that the City’s estimate there was four (4) minutes to review each calendar entry. The estimate here of one (1) minute for each entry is a 75% reduction in time – and, accordingly, cost. For these reasons, we find the City’s estimate of one (1) minute per entry to be reasonable, particularly in comparison to the actual time expended on a prior related APRA request. See R.I. Gen. Laws § 38-2-4(b).

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). 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

Cc: Etie Schaub, Esq.

that Associate City Solicitor Buckler is an officer of the Court. Additionally, contrary to your contention, this Department did not ask the City to respond to this specific inquiry in affidavit form. For these reasons, we find that the City’s response to our inquiry to be credible and you present no evidence to the contrary. It should also be noted that the actual expenditure of 80.5 hours was done at no cost to you as a result of our finding in Harris, PR 17-51.

² It bears noting that in your rebuttal for Harris v. City of Providence, PR 18-08, you asserted just the opposite: “In its evaluation of the public interest in disclosing the Mayor’s calendar entries, the attorney general needs to understand that each entry may have substantially greater significance than may meet the untrained eye at first glance.” We concur, and this statement supports the City’s estimate and its contention that review by other City personnel, including but not limited to the Commissioner of Public Safety, was appropriate.