



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

May 31, 2018
PR 18-11

Mr. James Pierson

RE: Pierson v. Central Coventry Fire District

Dear Mr. Pierson:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Central Coventry Fire District (“Fire District”) is complete. By email correspondence dated October 5, 2017, you allege that the Fire District violated the APRA when it failed to respond to your APRA request dated September 18, 2017.

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

“As a threshold matter, the [Fire District] asserts that the Complainant’s request on September 18, 2017 does not, anywhere in the email, indicate that he was implicating the APRA in his request. Because the Complainant did not make his request under the APRA, the [Fire District] * * * had no way of knowing or expecting that it needed to comply with the time constraints of the APRA.”

Alternatively, the Fire District argues that it timely complied with the September 18, 2017 request.

We acknowledge your rebuttal.

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 Fire District violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Based on the facts presented, we glean the following facts.

On Friday, September 15, 2017 at 3:07 PM, you emailed the Fire District the following:

“Please send me an electronic copy of the final voter list to be used for the annual CCFD budget meeting to be held on Monday, September 18, 2017.”

On Monday, September 18, 2017 at 4:00 PM, the Fire District replied:

“Attached is the Central Coventry Fire District voter list.”

You take no issue with this response, but on Monday, September 18, 2017 at 9:14 PM – about five hours after the Fire District provided you the above-referenced document – you emailed the Fire District another request, stating:

“Please provide me with the list of people who voted in the Sept. 18, 2017 CCFD election. Electronic version preferred.”

Thereafter, on Wednesday, September 20, 2017 at 12:26 PM, you e-mailed the Fire District:

“Can you confirm that the same voter list that was provided to me [on September 15, 2018] was used by the poll workers during the CCFD election and meeting on Sept. 18, 2017?”

Mr. D’Agostino later replied:

“The same voter list that you were provided was used during the CCFD election and annual meeting on Monday, September 18, 2017. I am in possession of the sealed ballots and have the original voting machine tape.”

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 § 38-2-3(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. Among these requirements is “[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request.” R.I. Gen. Laws § 38-2-3(e).

The Fire District’s first argument is easily dispatched. This Department has “never required an APRA request to contain talismanic language in order to be considered an APRA request.” See Campbell v. Coastal Resources Management Council, PR 08-33. Equally important, the Fire District poses no argument that your September 18, 2017 request was made inconsistent with the

Fire District's APRA procedures. In the absence of such argument, and given our precedent, we deem your September 18, 2017 request to have been made consistent with the APRA.

The Fire District's second argument – that it complied with your September 18, 2017 request – requires more discussion. As evidence of its compliance, the Fire District directs our attention to an e-mail chain and submits that “[t]his email chain shows that [the Fire District] responded to the Complainant's request *on the same day it was made.*” (Emphasis in original). The attached e-mail demonstrates that the Fire District sent you an e-mail on September 18, 2017, stating “[a]ttached is the Central Coventry Fire District voter list.” What the Fire District fails to explain, however, is how this response – made at 4:00 pm on September 18, 2017 – was responsive to your APRA request, which was made at 9:14 pm on September 18, 2017.

Admittedly, our first glance of the September 15, 2017 APRA request – which sought the final voter list to be used for the annual Fire District budget meeting to be held on September 18, 2017 – and our first glance to your September 18, 2017 APRA request – which sought the list of people who voted in the September 18, 2017 election – did not appreciate the difference in the two requests. A second glance, however, and any reasonable reading, makes clear that you sought different records. Seemingly, after you submitted your rebuttal explaining the difference between your September 15, 2017 and September 18, 2017 requests, the Fire District realized its error and submitted to this Department another response, unauthorized by our procedures.

While typically we would disregard such an unauthorized response, the Fire District's response is noteworthy in that rather than acknowledge its error, the Fire District emphasized that it “clearly” responded to your September 15, 2017 APRA request. Of course, the subject of your September 15, 2017 APRA request is not relevant to whether the Fire District timely responded to your September 18, 2017 APRA request. The Fire District also averred – with absolutely no explanation – that your September 18, 2017 APRA request “clearly” represented “more than one (1) [APRA] request in a 30-day period.” While this factor may have implicated R.I. Gen. Laws § 38-2-4(b)¹ – as the Fire District referenced in its unauthorized response – in no way would this provision have excused the Fire District's complete failure to respond to your September 18, 2017 APRA request. Lastly, the Fire District's unauthorized response makes some reference to “sealed envelopes,” but the Fire District makes no effort to explain the contents of these “sealed envelopes” or how it relates to your September 18, 2017 APRA request. Since the Fire District did not timely respond to your September 18, 2017 APRA request, it violated the APRA.

Our disappointment with the Fire District's response is obvious, but we also fail to understand why you did not reach out to the Fire District and attempt to resolve what from our vantage point was easily resolvable. Nothing in the record we have reviewed reveals any attempt by you to contact the Fire District with respect to your September 18, 2017 APRA request prior to filing a

¹ This provision provides “[a] reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.”

complaint with this Office. To be sure, a person denied access to records need not exhaust their administrative remedies prior to filing a complaint with this Office or the Superior Court, see Downey v. Carcieri, 996 A.2d 1144, 1151 (R.I. 2010), but we cannot help to ponder that this matter was easily resolvable without this Office's intervention.

You had made a September 15, 2017 APRA request for a similarly-related document, which the Fire District provided on September 18, 2017, apparently at no charge. Thereafter, the record reveals that although not required pursuant to the APRA, the Fire District responded to your inquiry concerning the provided document. Nothing in the record we have reviewed suggests that the Fire District would not have responded in a similar manner had you brought this issue to the Fire District's attention. Indeed, the record we have reviewed suggests that the Fire District was not aware of the distinction between your two APRA requests until after you filed your rebuttal in this case. See Fire District's November 6, 2017 Response ("This email chain shows that [the Fire District] responded to the Complainant's request on the same day it was made.").

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting "injunctive or declaratory relief." See R.I. Gen. Laws § 38-2-8(b). A court "shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body ...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter***." See R.I. Gen. Laws § 38-2-9(d).

We are aware that this Department had previously found a similar violation in Citizens Advocating for Safe Environment v. Central Coventry Fire District, PR 14-05, but for the reasons expressed herein, we decline to take such action. Specifically, the evidence suggests that the Fire District believed your September 18, 2017 and September 15, 2017 APRA requests were similar and that its September 18, 2017 response was responsive to both APRA requests. Had what we believe to be a misunderstanding been brought to the Fire District's attention and not remedied prior to filing this complaint, we may very well have a different viewpoint. In the absence of such notice until after you filed your rebuttal, we simply find no evidence that the Fire District knowingly and willfully, or recklessly, violated the APRA when it failed to respond to your September 18, 2017 APRA request in a timely manner.

Our decision should not be misinterpreted as an unwillingness to enforce the APRA or the suggestion that this Office will not file a lawsuit seeking civil penalties where a complainant does not exhaust their administrative remedies. Rather, our determination is based on the specific facts of this case. The Fire District must respond to your September 18, 2017 APRA request within ten (10) business days of this finding in a manner consistent with this finding and the APRA. Since we have not had the opportunity to examine the substance of your APRA request, or whether the document requested therein is a public record under the APRA, we express no opinion on this issue. The Fire District may not assess a charge in connection with its response to your September 18, 2017 APRA request. See R.I. Gen. Laws § 38-2-8(b). The Fire District is advised that its actions violated the APRA and that this finding may serve as evidence of a willful and knowing, or reckless, violation in a similar future case.

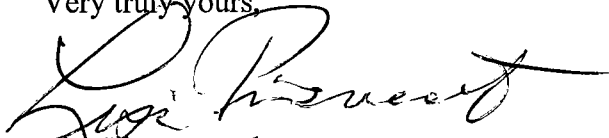
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We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault", written in a cursive style.

Lisa Pinsonneault

Special Assistant Attorney General

LP/kr

Cc: David M. D'Agostino, Esq.