



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

February 13, 2014
OM 14-06
PR 14-06

Mr. Kent C. Novak

Re: Novak v. Western Coventry Fire District

Dear Mr. Novak:

The investigation into your Open Meetings Act (“OMA”) and Access to Public Records Act (“APRA”) complaint filed against the Western Coventry Fire District (“Fire District”) is complete. By correspondence dated October 8, 2013, you allege the Fire District violated the OMA when its annual notice filed on the Secretary of State’s website did not include the times of the regularly scheduled meetings. You also allege the location of those meetings was unclear based upon the posting.

You further allege that the Fire District’s September 16, 2013 and the September 19, 2013 meeting agendas were not accurate or otherwise failed to inform the public of the nature of the business to be discussed. In addition, with respect to the September 19, 2013 meeting agenda, you allege the agenda failed to indicate the correct date the notice was posted, namely it listed August 17, 2013. Finally, you allege the Fire District violated the APRA because its public records procedures are not on the Fire District’s website in violation of R.I. Gen. Laws § 38-2-3(d).¹

In response to your complaint, we received a substantive response from the Fire District’s legal counsel, Attorney J. William W. Harsch, Esquire, who also provided a sworn affidavit from the

¹ You submitted additional allegations but in this Department’s correspondence to you dated October 17, 2013, we informed you that those additional allegations did not implicate the OMA and, as a result, would not be investigated by this Department.

Chairperson of the Western Coventry Fire District Board of Directors, Mr. John Humble. Attorney Harsch states, in pertinent part:

“On December 19, 2012, the Clerk of the [Fire District] filed the notice for the 2013 [Fire District] Board of Directors meetings. When this was filed, the clerk inadvertently omitted the time of the meetings. Although the address for the District was at the top of the notice, there was nothing in the notice to indicate that that was where the meetings were to be held. There is no dispute that this notice failed to provide all of the information as required by RIGL § 42-46-6[(a)]. However, there was sufficient information that someone seeking such information would know how it could be found. When the notice for the 2014 Board meetings is filed next month, it will include all of the information that is required by this section of the OMA.

The item on the September 16 agenda (‘Draft and mail letter to [Fire District] taxpayers addressing consolidation of Districts’) and the follow-up item on the September 19 agenda (‘Letter to [Fire District] taxpayers regarding the fire district consolidation’) were to discuss the contents of a letter to be mailed to all residents/taxpayers regarding the possibility of fire district consolidation in Coventry. The Board felt that because of all the information that was being dispersed about the problems of the Central Coventry Fire District and the possibility of consolidation of the Coventry fire districts, as well as concerns that were expressed by some of the residents of the [Fire District], this matter needed to be addressed. After discussion at both of the Board meetings, it was agreed and voted on to have the wording in the letter educate the residents/taxpayers as to the current tax rate as well as the services that were being provided to them. It is our understanding that Mr. Novak did not attend either of these Board meetings, nor does he usually attend any of the other Board or committee meetings that are posted on the Secretary of State’s website. * * *

The agenda for the September 19, 2013 agenda was filed by the [Fire District] clerk on September 17. The District does not dispute that the date of the filing [sic] of this agenda was incorrect and was not changed from a previous agenda that was being used as a template. However, all of the information on the agenda as to the date, time and location of the meeting was correct so that anyone who was interested in attending had all the information that was necessary to do so.

The final matter as to Mr. Novak’s assertion that the District does not have the APRA public records procedure on its website is not correct. There has been a link at the bottom of the website home page (‘APRA SAP’) for some time. In order to have this information clearer for visitors to the website, another link has been added to the website in a more prominent position (‘Access to Public Records Standard Administrative Procedure’). This should alleviate any possible

misunderstanding as to which link to click on to be able to read the District's public records procedure."²

We acknowledge your reply dated November 7, 2013.

At the outset, we note that in examining whether a violation of the OMA or 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 OMA and 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 OMA or the APRA. See R.I. Gen. Laws §§ 42-46-8; 38-2-8. In other words, we do not write on a blank slate.

You allege that the Fire District's annual notice posted on the Secretary of State's website did not include the times of the regularly scheduled meetings and that the location of these meetings is unclear based upon the posting. The OMA states, in pertinent part,

"All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings * * *" See R.I. Gen. Laws § 42-46-6(a).

Based upon the Fire District's candid admission, and our review of the annual notice, we conclude the Fire District violated the OMA. See id.

You further allege that the agenda topics for the September 16, 2013 and the September 19, 2013 meetings did not adequately inform the public of the nature of the business to be discussed. The agenda item for the September 16, 2013 meeting listed "Draft and mail letter to WCFD taxpayers addressing consolidation of Districts." A review of the minutes reveals that the Chairman wanted to inform "the taxpayers that the [Board of Directors] is watching the situations that are going on with fire departments." The Board of Directors also determined that it was an opportunity to generate an interest among the taxpayers to become involved with the Fire District. The agenda item for the September 19, 2013 meeting listed "Letter to WCFD taxpayers regarding fire district consolidation." A review of the minutes reveals that the Board of Directors discussed the letter that was compiled as a result of the September 16 meeting and "[a]fter much discussion," the members chose to keep the letter as reflecting a positive note with no mention of the other fire districts, other than listing each district's tax rate. The members concluded that this was the better, less confrontational approach. In this case, you allege that although the topic of fire district consolidations was an agenda topic, the letter you received mentioned nothing about the consolidation of the fire districts.

Here, we find no violation. In particular, while much of your complaint focuses on your allegation that the letter you received was inconsistent with the September 16 and September 19

² The contents of Mr. Humble's affidavit are substantially similar to those presented in Attorney Harsch's response. As such, the contents will not be duplicated.

agenda items, our focus is on whether the agenda items contained a sufficient “statement specifying the nature of the business to be discussed.” R.I. Gen. Laws § 42-46-6(b). On this point, the September 16, 2013 minutes reveal that the Fire District discussed “send[ing] a message to the taxpayers that the [Board of Directors] is watching the situations that are going on with fire departments.” The September 19, 2013 minutes reveal that the Fire District again discussed the letter, but decided to modify the letter. As Mr. Humble’s affidavit relates:

“[t]he Board felt the possibility of consolidation needed to be addressed as it was widely known and discussed, plus there was much concern among residents about the potential impacts on their tax rates among other matters. In fact, at both Board meetings there were discussions about the letter and what information would be best to incorporate in it.”

Based upon the foregoing, we conclude that the agenda items provided a sufficient statement specifying the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b). In fact, you note that the Chairman’s affidavit averred, in part, that at the meetings the Fire District decided “not [to] get into how [the Fire District’s] services are compared to the other Coventry fire districts.” While you may have expected a letter concerning consolidation, this issue was discussed at the September 16 and 19 meetings and the Fire District concluded that the final letter would not discuss consolidation. We find no violation.

With respect to the September 19, 2013 agenda, you additionally allege the Fire District incorrectly listed the date the notice was posted as August 17, 2013, instead of September 17, 2013. The Fire District admits that the clerk filed the agenda on September 17, 2013, but that the date of August 17, 2013 was taken from the previous month’s agenda that was being used as a template. Legal counsel for the Fire District also submits that all of the information on the agenda as to the date, time and location of the meeting was correct, so that anyone who was interested in attending the meeting had all the information necessary to do so. Rhode Island General Laws § 42-46-6(b) states, in pertinent part,

“[p]ublic bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed.”

Based upon the Fire District’s candid admission and our review of the notice, the Fire District incorrectly listed the date the notice was posted. We conclude the Fire District violated the OMA with respect to this allegation.

Finally, you allege the Fire District did not have APRA procedures on its website in violation of R.I. Gen. Laws § 38-2-3(d). This section of the APRA states, in pertinent part:

“[e]ach public body shall establish written procedures regarding access to public records...These 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[s] 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."

The Fire District's legal counsel indicated that the APRA procedures had been posted "for some time," but "in order to have this information clearer for visitors to the website, another link has been added to the website in a more prominent position ('Access to Public Records Standard Administrative Procedure')." You included as part of your complaint a screenshot of the Fire District's Standard Administrative Procedure. On that page we note a line item at 5211.05, which states "Access to Public Records." As best as we are able to determine, however, there was no link allowing citizens to click on this line item. In your reply, you also included a screenshot of the Fire District's home page dated October 7, 2013 at 3:56 P.M. There was no link at the bottom of the page entitled "APRA SAP." Based upon the evidence presented, we conclude that the Fire District violated the APRA by failing to have a copy of its APRA procedures on its website at the time you filed your complaint. In particular, although the Fire District submits that it has posted its APRA procedures "for some time," we are unable to determine when the procedures were posted and the Fire District has presented no evidence on this precise point. As legal counsel for the Fire District indicated, and as we have confirmed, the APRA procedures are currently on the Fire District's website and there is a link on the Fire District's homepage entitled "Access to Public Records Standard Administrative Procedure."

Upon a finding that a complaint brought pursuant to the APRA or the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws §§ 38-2-9(d), 42-46-8(a). There are two remedies available in suits filed under the APRA: (1) the court may issue injunctive relief and declaratory relief and/or (2) the court may impose a civil fine of up to two thousand dollars (\$2,000) against a public body or any of its members found to have committed a willful or knowing violation of the APRA, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated the APRA. R.I. Gen. Laws § 38-2-8(b); § 38-2-9(d). Under the OMA, a court may also impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d).

Here, we conclude that neither remedy is appropriate. With respect to the Fire District's failure to include a copy of its APRA procedures on its website, the procedures are currently on the website's homepage so injunctive relief would not be appropriate. Additionally, there is no evidence that the Fire District willfully or knowingly, or recklessly, failed to include a copy of its APRA procedures on its website.

With respect to the annual notice and the September 19, 2013 meeting agenda, injunctive relief also is not appropriate. In particular, there is no evidence (or even argument) that the Fire District's supplemental notices did not provide appropriate notice and there is no evidence that any notice defect prohibited you (or anyone else) from attending the Fire District's meetings. Similarly, we find no evidence of a willful or knowing violation. This finding serves as notice to the Fire District that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing, or reckless, violation in any similar future situation.

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Although the Attorney General will not file suit in this matter, nothing in the OMA or the APRA precludes an individual from pursuing a complaint in the Superior Court. The complainant may pursue an OMA complaint within "ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later." R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our 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,

A handwritten signature in black ink, appearing to read "Lisa A. Pinsonneault", written over a horizontal dashed line.

Lisa A. Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: J. William Harsch, Esquire