State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

July 18, 2016
OM 16-11

Ms. Lisa Tanguay

Re: Tanguay v. City of Warwick

Dear Ms. Tanguay:

The investigation into your Open Meetings Act ("OMA") complaint filed against the City of Warwick ("the City") is complete. A fair reading of all the correspondences related to this matter raises several issues, but as explained below, your OMA complaint raises only one issue. Consistent with our acknowledgement letter and precedent, we examine only this one issue.

By email correspondence dated February 8, 2016, you relate that you submitted an Access to Public Records Act request to the City, seeking records relating to two vicious dog hearings held at the Warwick Police Department on May 9, 2012 and September 19, 2015. You relate that the Police Department's response is "unacceptable" since the letter "makes no mention of the vicious dog hearings nor does it acknowledge that minutes were or were not taken." You continue that upon receiving the above-referenced response letter, you "called the Records Division and was told that minutes are never taken at the open meetings." You relate that you "would like to file a complaint against the City of Warwick for violating the Open Meetings Act by not recording any minutes for the two vicious dog hearings held on September 19, 2015 and May 9, 2012.

In response to your complaint, this Department received a response from Ms. Diana E. Pearson, Esquire. Ms. Pearson's letter states, in relevant part:

> "Vicious dog hearings by their very nature constitute an emergency measure providing for the immediate preservation of the public health, safety and welfare, as cited in § 4-13.1-1. The panels are not permanent but are constituted each time the need might arise. There are no regular meetings of these panels. Admittedly, posting of agendas, albeit as emergencies, were not done. The records of the minutes, although sparse, do indicate the members present and their votes on each

> element on vicious and requirements, but do not cite the place or time nor were filed with the secretary of state, but were maintained as police records.[[1]]
>
> The Warwick Police Department responded to Ms. Tanguay's request for minutes of the vicious dog hearings by advising her of the incident report which contained the determination and narrative of the vicious dog hearing and that it was available to her. The Department maintained minutes, although not complete and properly filed nor posted as an emergency agenda.
>
> * * *
>
> Based on the circumstances of this complaint, I am requesting that a finding of a technical violation be made and no further action be taken."

You provided a rebuttal, which in relevant part, requests that this Department find the City "negligent and in violation of the Open Meetings Act and all actions taken in both vicous dog hearings be null and void."

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred or to examine the wisdom of a given statute, but instead, to interpret and enforce the OMA 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 OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

We begin with several threshold matters. First, as suggested above, you appear to raise several issues involving the underlying vicious dog hearing and, at times, your complains suggests issues relating to the Access to Public Records Act. The former issue falls outside this Department's jurisdiction and the latter issue was not raised in your complaint, therefore, consistent with our precedent, we need not address it. See Costantino v. Smithfield School Committee, PR 13-22 ("Since those allegations were not raised in your original complaint and since the School Committee did not have an opportunity to respond to those allegations, respectfully, those allegations are not addressed in this finding."). To be clear, both your complaint and your rebuttal raise issues relating to the OMA and ask that we find a violation of the OMA, and neither your complaint nor your rebuttal expressly raises any issue with the Access to Public Records Act.

Moreover, your complaint makes clear that you "would like to file a complaint against the City of Warwick for violating the Open Meetings Act by not recording any minutes for the two vicious dog hearings held on September 19, 2015 and May 9, 2012." Your Access to Public Records Act request had previously requested, inter alia, the vicious dog hearing minutes from these two dates. The City provided us no documents relating to a September 19, 2015 hearing

---

[1] The OMA contains no requirement that municipalities file open session minutes on the Secretary of State's website.

and in your rebuttal, you make clear that you "need the minutes from the vicious dog hearings from 5/9/12 and 10/7/15." (Emphasis added). Your rebuttal later makes clear that the incident date was on September 19, 2015, but the hearing date was on October 7, 2015. While the foregoing raises the specter that your complaint regarding a lack of meeting minutes for September 19, 2015 may not be properly before this Department – or perhaps more appropriately stated, may not be a violation since there is no evidence that a hearing occurred on September 19, 2015 – we see no harm in reaching the merits of your complaint concerning a lack of meeting minutes for the May 9, 2012 hearing and the October 7, 2015 hearing. In this respect, the City appears to have realized – and accounted for – this error since it supplied this Department with what it contends is the October 7, 2015 minutes. Moreover, since we have been presented with no evidence (or argument) that (what the City contends are) the May 9, 2012 minutes have been approved, the statute of limitations relating to this allegation never began to run. See R.I. Gen. Laws § 42-46-8. Accordingly, with this background, we reach the merits.

Rhode Island General Laws § 42-46-7 (a) states in relevant part:

> "[A]ll public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:
>
> (1) The date, time, and place of the meeting;
>
> (2) The members of the public body recorded as either present or absent;
>
> (3) A record by individual members of any vote taken; and
>
> (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes."

Here, we have reviewed the documents submitted by the City and find what may fairly be characterized as meeting minutes. These documents – for both the May 9, 2012 and October 7, 2015 meetings – contain the date of the meeting, the three panel members present, as well as the vote for specific requirements. Despite the existence of what can be fairly characterized as minutes, our review finds that no "time" for the hearing has been listed and in one instance (on the May 9, 2012 minutes), the minutes reference a 2-1 vote, but does not contain a "record by individual members of any vote taken." In other words, while the other votes were unanimous – and thus susceptible to determining that all listed panel members voted in agreement – the 2-1 vote fails to indicate the dissenting panel member as required by R.I. Gen. Laws § 42-46-7(a)(3).

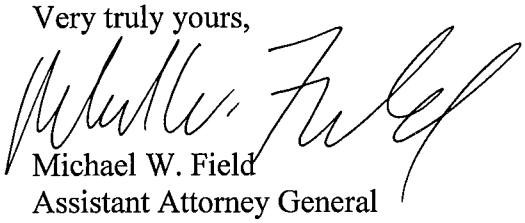
Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General "may file a complaint on behalf of the complainant in the superior court against the public body." R.I. Gen Laws § 42-46-8(a). "The court may issue injunctive relief" and/or may impose a civil fine not exceeding five thousand dollars ($5,000) against a public body or any of its members" for a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d). In this instance we find that the City did not knowingly and willingly violate the OMA. To the extent possible – and realizing that memories fade and the existence of inaccurate minutes may be more detrimental to the public interest than the existence of incomplete minutes – the City should amend its May 9, 2012 and October 7, 2015 minutes to ensure its compliance with R.I. Gen.

Laws § 42-46-7(a). This finding serves as notice to the City that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation.[2]

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days from the date 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 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,



Michael W. Field
Assistant Attorney General

MWF/kr

Cc: Peter Ruggiero, Esq.

[2] The City does not contest that its vicious dog hearings fall within the ambit of the OMA, and accordingly, we have no occasion to consider this issue.