



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

January 29, 2014
PR 14-02

Vicki J. Bejma, Esquire

Re: Rosenfield v. North Kingstown School Department

Dear Attorney Bejma:

Our investigation into your Access to Public Records Act (“APRA”) complaint filed on behalf of your client, Ms. Justine Rosenfield, against the North Kingstown School Department (“School Department”) is complete. By correspondence dated October 11, 2013, you allege the School Department failed to respond to your email dated September 19, 2013 with respect to your request “for the names, licensure, and work assignments of all OTs, COTAs, and OT aides utilized by North Kingstown for the past two years.”¹ As explained, *infra*, you represent Ms. Rosenfield concerning non-APRA litigation against the School Department. Your September 19, 2013 email was sent to the School Department’s legal counsel, Mary Ann Carroll, Esquire, and was a five (5) page email concerning various matters pertaining to the underlying litigation. You provided this Department a heavily redacted version of this email. The only complete sentence that was not redacted was at the very bottom of page 2, where you state, “Further, with this communication, we are making a[n] Access to Public Records request for the names, licensure, and work assignments of all OTs, COTAs, and OT aides utilized by North Kingstown for the past two years.”

After receipt of your complaint, this Department sent you a letter dated October 16, 2013 and stated:

It does not appear that your [September 19, 2013] request complied with the School Department’s APRA procedures...Per this Department’s findings, an

¹ You copied Attorney Mary Ann Carroll, legal counsel to the School Department, on your complaint to this Department.

APRA request must be consistent with a public body's procedures. *** Given this Department's precedent, we will allow you ten (10) business days to supplement your complaint explaining how the APRA request was made consistent with the School Department's procedures, or otherwise distinguish our findings and assert why your complaint, as written, states a violation of the APRA.

After this Department sent out its October 16, 2013 letter, we received a letter dated October 15, 2013 from Attorney Carroll to you, responding to your October 11, 2013 complaint to this Department. Attorney Carroll states, in pertinent part:

I am in receipt of your Complaint to the Attorney General's Office regarding an access to public records request. As I am not the North Kingstown School Department, I do not process requests under the Access to Public Records Act. The North Kingstown School Department has a policy in which all requests for public records are handled through the Superintendent's Office. Furthermore, said policy does not accept electronic requests...In reading your five (5) page e-mail dated September 19, 2013, I did not see that you were making an Access to Public Records Request. Had I seen that, I would have processed it, rather than dealing with any further litigation. Now that you have brought it to my attention that you had in fact made an Access to Public Records Request in that e-mail, rather than sending this Request to the Superintendent's office, I am providing you with the documentation that you requested.

While the above makes clear that on or about October 15, 2013 you received the requested records from the School Department's legal counsel, by letter dated October 31, 2013 to this Department you confirmed that you are "continuing to pursue the Access to Public Records complaint against North Kingstown School Committee" with respect to the untimely response to your request. Attorney Carroll submitted an affidavit addressing this particular allegation, stating, in pertinent part:

4. On or about September 19, 2013, I received an email from Attorney Vicki Bejma regarding some issues and concerns she and her client had involving a student who has been the center of numerous legal matters.
5. The email of September 19, 2013 was five (5) pages long and listed approximately twelve (12) concerns of the parent.
6. At the bottom of page two, in the last sentence, under the fourth concern ***, Ms. Bejma stated that she was 'making an Access to Public Records [Request] for the names, licensure, and work assignments of all OTs, COTAs, and OT aides utilized by North Kingstown for the past two years.'
7. In addressing all of Ms. Bejma's concerns regarding the student, I missed that sentence.

8. I was not aware that Ms. Bejma had made an APRA request until I received a copy of a letter that she had sent to Lisa Pinsonneault filing a complaint.

9. As soon as I received Ms. Bejma's letter to the Attorney General's Office, I sent her the information that she had requested.

10. The North Kingstown School Department has an access to public records request procedure (see attached).

11. The designated public records officer for the North Kingstown School Department is the Superintendent of Schools.

12. I am not the designated public records officer for the North Kingstown School Department.

13. The North Kingstown School Department does not accept email requests.

In your reply dated November 25, 2013 to the School Department's response, you state, in pertinent part:

Attorney Carroll asserts that the complaint should be denied because I made the request to her rather than the designated public records officer, that is, the Superintendent. She also argues that my request was sent in an e-mail, and that the North Kingstown School Department does not accept e-mail Access to Public Records [Act] requests.

Neither assertion should excuse failing to respond to respond [sic] to my request in a timely fashion. As I indicated in previous communications, I had addressed my request to Attorney Carroll because those records pertained directly to a legal matter in which Attorney Carroll is representing the North Kingstown School Department, and I am representing Ms. Rosenfield. Clearly, under the Rules of Professional Conduct, it would be inappropriate for me to directly contact the North Kingstown School Department in any way with respect to the records relating to the dispute. For that reason, I needed to refer it to Attorney Carroll. If she felt it appropriate for me to contact the Superintendent directly on this matter, she certainly could have authorized that contact, or simply referred the request to the Superintendent herself. She did neither, and in fact, did not respond at all.

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

At the outset, we note that 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 copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA states that each public body shall establish written procedures regarding access to public records. See R.I. Gen. Laws § 38-2-3(d). The School Department does have written procedures regarding access to its public records. See <http://www.nksd.net/apra/>. Thus, the issue before us is whether your September 19, 2013 email request was made consistent with the School Department's APRA policy and procedure.

The School Department's policy states, in pertinent part:

1. The designated public records officer for the North Kingstown School Department is the Superintendent of Schools. ***
2. In order to request to inspect and/or to obtain copies of documents maintained by the School Department, the North Kingstown School Department requests that you complete the form on the back side of this document, or otherwise provide a written request for records that clearly identifies the records you seek and state that your request is made pursuant to the Access to Public Records Act. A written request for public records need not be made on the form if the request is otherwise readily identifiable as a request for public records.
3. Requests to inspect public records can be mailed or dropped off at the North Kingstown School Department, 100 Fairway Drive, North Kingstown, RI 02852 and directed to the Superintendent's Office. **E-mail requests cannot be accepted.** *** (Emphasis in original).

While the APRA procedures for other public bodies are sometimes ambiguous, the School Department's policy is very clear. The School Department designates the Superintendent as the public records officer, and explicitly states that "[e]-mail requests cannot be accepted." Here, your September 19, 2013 email, which you assert is an APRA request, was made via email to a person other than the designated public records officer. You make no argument that your September 19, 2013 email did in fact comport with the School Department's APRA procedure. Instead, you contend that since you are an attorney who has litigation pending against the School Department, the Rules of Professional Responsibility require you to contact opposing counsel and Ms. Carroll's untimely response should not "excuse failing to respond to [your] request in a timely fashion."² You do not direct this Department to any provision within the APRA to

² This statement assumes that Attorney Carroll recognized your September 19, 2013 email as an APRA request, but the evidence does not support this assumption. Specifically, Attorney Carroll's affidavit indicates that she was unaware that your September 19, 2013 email was an APRA request until she received your complaint. Considering that your one sentence reference

support your position and we are not aware of any APRA authority to support this argument. This Department has previously determined that an APRA request must first comport with a public body's APRA policy before we can decide whether a violation has occurred, and we see no reason to depart from the plain language of the APRA and our findings. See, e.g., Catanzaro v. East Greenwich Police Department, PR 13-08; Hazelwood v. Town of West Greenwich, PR 13-09. See also Hydron Labs., Inc. v. Dep't of Atty. Gen. for State, 492 A.2d 135, 139 (R.I. 1985) ("APRA was not designed to provide an alternative method of discovery for litigants. The Superior Court Rules of Civil Procedure provide for litigation discovery and place appropriate limitations on the scope of that discovery."). Since your September 19, 2013 email request did not comport with the School Department's APRA procedures, we find no violation.

While the Attorney General has found no violation, nothing within the APRA prohibits an individual 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).

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

Very truly yours,



Maria R. Corvese
Special Assistant Attorney General
Extension 2225

Cc: Mary Ann Carroll, Esquire (by email only)
macarroll@brasm.com

to the APRA occurred at the bottom of page two (2) (of a five (5) page email) we have little difficulty with the veracity of Attorney Carroll's assertion. We need not consider whether we would reach the same conclusion if your correspondence was solely dedicated to (and clearly identified as) an APRA request. It bears noting, however, that among the reasons to mandate that public bodies promulgate APRA procedures is to ensure a means by which the public can make an APRA request and the public body can timely recognize and process the APRA request. Again, there is no dispute that your September 19, 2013 email did not comport with the School Department's APRA procedures.