



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

February 11, 2014
PR 14-05

Ms. Tammy J. Duxbury

Re: Citizens Advocating for a Safe Environment v. Central Coventry Fire District

Dear Ms. Duxbury:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Central Coventry Fire District (“Fire District”) is complete. By correspondence dated September 12, 2013, you allege the Fire District violated the APRA when it did not respond to your July 19, 2013 APRA request. In relevant part, your July 19, 2013 APRA request sought “to review all documents required under the Emergency Planning and Community Right-to-Know-Act, related site plans, fire inspection reports and evacuation plans for all businesses located at 75 Airport Road, Coventry, RI.” As of the date of your September 12, 2013 complaint, you relate that “we have not received all requested documents nor have we received correspondence requesting additional time under the Access to Public Records Act.”¹ (Emphasis added). You also supplied a document representing a chronology of events.

In response to your complaint, we received a substantive response from the Fire District’s legal counsel, David M. D’Agostino, Esquire, along with an unsigned chronology of events that Attorney D’Agostino represents is from the Chief of the Fire District, Chief Andrew Baynes. Attorney D’Agostino states, in pertinent part, that the Fire District is presently in receivership and that “the practical impact of [the Fire District] being in receivership may have likely created the lack of timely response.”² Mr. D’Agostino adds that “many of the documents requested by

¹ This, of course, suggests that at least some documents were provided to you. It is unclear what documents may have been provided.

² Mr. D’Agostino suggests that the receivership may act as a bar to any enforcement action. As we understand, this issue was presented to the Superior Court and the Superior Court held that the receivership did not bar this Department’s investigation into this APRA complaint, but might

the Complainant are not within the care, custody or control of the [Fire District]³ and Mr. D'Agostino acknowledges that "no written response was provided (as required under the APRA)." (Emphasis added). Mr. D'Agostino also points out that the Fire District, through the Fire Chief, "did respond to the Complainant via telephone several times in an effort to provide the requested information." The Fire District also "acknowledges that it did not comply with the time deadlines under the APRA."

By letter dated October 15, 2013, you replied and asserted that your APRA request was made to the public safety agency responsible for first response in the event of a toxic release or fire. According to your reply, the "Emergency Planning and Community Right-to-Know Act (EPCRA)" established local emergency planning committees comprised of:

"elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements." (Emphasis added).

Your reply continues that relative to your APRA request, the Fire District "would be the responding fire district" and "[a]lthough some of the requested documents may not be in the 'care, custody or control' of [the Fire District], the district shares responsibility with other state and local agencies in developing and maintaining the requested documents [pursuant to the EPCRA]." You continue that "[r]egardless of whether the documents were in the 'care, custody or control' of [the Fire District], the responsibility falls with the District in fulfilling public document requests" and you request that this Department direct the Fire District "to develop and/or gather the documents requested under APRA and provide these documents promptly and without charge to our organization."

By letter dated October 21, 2013, legal counsel to the Special Master for the Fire District provided a response, and on October 28, 2013, you replied, indicating that your APRA request "was for records that are under the purview of [the Fire District] and, in some cases, required under federal law to further public safety." You again referenced the EPCRA and indicate that "[t]he expectation is that [the Fire District] would participate in the [local emergency planning committee], if not directly, indirectly through notification and record retention as the first responders in our area." Further, you cite the EPCRA for the position that each local emergency planning committee must complete (and for purposes of this finding we assume maintain) certain emergency plans and you suggest that "[w]ithout these records, [the Fire District] is out of compliance with this law and jeopardizes the safety of its residents." Lastly, you note that your APRA request includes a review of "fire inspection reports and evacuation plans for all businesses located at 75 Airport Road, Coventry, RI." With respect to this request, you relate

bar any enforcement action. For the reasons stated herein, this latter issue is not presently before this Department.

³ This, of course, suggests that at least some documents are maintained by the Fire District. It is unclear what documents may be maintained.

that it is your understanding that a fire inspection at 75 Airport Road was not completed during the tenure of the current Fire District Fire Marshal:

“until our record request was received in July, 2013. According to [the Fire Chief], a fire inspection of the location was then completed in August, 2013 [and w]e are still awaiting a copy of the formal report with the inspection results.”

At the outset, we note that 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.

Under the APRA, a public body has ten (10) business days to respond to a request for documents. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within those ten (10) business days to the person or entity making the request. See R.I. Gen. Laws § 38-2-7(a). If no response is sent within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). If, for good cause, the public body cannot comply with a records request within ten (10) business days, the public body may extend the period an additional twenty (20) business days, for a total of thirty (30) business days. See id.; see also R.I. Gen. Laws § 38-2-3(e).

Here, there is no dispute that the Fire District has not responded in writing to your APRA request. Indeed, even as of the date of this finding, we have been presented no evidence that the Fire District responded in writing to your APRA request and the Fire District “acknowledges that it did not comply with the time deadlines under the APRA.” Accordingly, this omission violated the APRA. See R.I. Gen. Laws § 38-2-7.

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).

Based upon the evidence presented, we find insufficient evidence to establish a willful and knowing, or reckless, violation. Indeed, based upon our review, the lack of response seems to concern, at least in large part, two factors – one of which is personal in nature and will not be discussed herein and the other relating to the Fire District’s attempts to obtain documents not within its possession in order to satisfy your APRA request.

In this respect, you indicate that you request that this Department direct the Fire District “to develop and/or gather the documents requested under APRA and provide these documents promptly and without charge to our organization.” Respectfully, this direction is inappropriate. No evidence has been presented (by anyone or any entity) concerning what documents responsive to your APRA request the Fire District may or may not maintain. Simply put, having reviewed this matter, we have no evidence on this issue and have no way to know what documents the Fire District maintains that are responsive to your request. This issue –as well as your request that this Department direct the Fire District to develop and gather documents – is highlighted by R.I. Gen. Laws § 38-2-3(h), which provides that:

“[n]othing in [the APRA] shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.”

For this reason, the APRA simply provides no authority for this Department to direct the Fire District to gather and produce documents not within its possession. Also, as noted, supra, no evidence has been produced concerning what responsive documents the Fire District maintains.

Indeed, your October 28, 2013 correspondence suggests that it is your understanding that the Fire District did not maintain a copy of responsive fire inspection reports “until our request was received in July, 2013,” and that according to the Fire Chief, “a fire inspection of the location was then completed in August, 2013.” While your correspondence suggests the Fire District is non-compliant with the APRA because “[w]e are still awaiting a copy of the formal report with the inspection results,” as noted above:

“[n]othing in [the APRA] shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.” (Emphasis added).

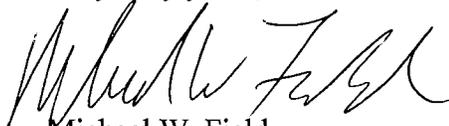
While the Fire District’s failure to maintain certain records may – or may not – violate other laws, this Department’s focus is on whether the Fire District violated the APRA. As such, any APRA inquiry must focus on whether the Fire District maintains responsive records, not on whether the Fire District should maintain responsive records. For the reasons already stated, however, whether the Fire District maintains responsive records is uncertain and, respectfully, neither party has clarified this issue to this Department. Accordingly, while we find that a civil fine is not appropriate at this time, we conclude that the Fire District must respond to your July 19, 2013 APRA request, in writing, in a manner consistent with the APRA and this finding. To the extent the Fire District maintains public records, these public records must, of course, be disclosed. If the Fire District does not maintain documents requested, it must appropriately respond. See R.I. Gen. Laws § 38-2-7(c) (“A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the

request in accordance with this chapter, state that it does not have or maintain the requested records.”).⁴ Of course, nothing herein prevents you from tendering an updated APRA request. If you do not receive a response to your July 19, 2013 APRA request within ten (10) business days, or believe that the Fire District’s response is inconsistent with the APRA or this finding, you should feel free to contact this Department.

While the Attorney General will not file suit in this matter, 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). Please be advised that we are closing your file as of the date of this letter, although this Department reserves the right to reopen this matter should it deem appropriate.

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

Very truly yours,



Michael W. Field
Assistant Attorney General

Cc: David M. D’Agostino, Esquire
Douglas J. Emanuel, Esquire

⁴ For the reasons set forth in this finding, among others, whether the Fire District must produce documents maintained by the local emergency planning committee, assuming that the Fire District is associated with the local emergency planning committee, is beyond the scope of the evidence presented and this finding. We express no opinion on this hypothetical situation at this time.