



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 12, 2015

PR 15-29

Ms. Linda Lotridge Levin

Re: Access/Rhode Island v. Charlestown Police Department

Dear Ms. Levin:

The investigation into your Access to Public Records Act ("APRA") complaint filed on behalf of Access/Rhode Island against the Charlestown Police Department ("Police Department") is complete. You allege the Police Department violated the APRA when it:

1. failed to provide certification that it had received APRA training pursuant to R.I. Gen. Laws § 38-2-3.16; and
2. failed to maintain APRA procedures/failed to post its APRA procedures on its website, see R.I. Gen. Laws § 38-2-3(d).

In response to your complaint, we received a substantive response from the Town Solicitor, Peter D. Ruggiero, Esquire. In sum, Mr. Ruggiero relates that "although the employee in the Police Department who had the authority to grant or deny access to public records under APRA had received training and orientation, they had failed to meet specific compliance with the requirement promulgated by the Department of Attorney General." Mr. Ruggiero also observes that the "Town Clerk had filed a Certificate of Compliance with the Department of Attorney General for the time period in question for the entire Town of Charlestown." As such, Mr. Ruggiero questions whether subdivisions or departments, such as the Police Department, are required to comply with R.I. Gen. Laws § 38-2-3.16 when "the Town of Charlestown filed the Certificate of Compliance and maintained written procedures to access records maintained by them and posted those procedures on the Town website." See Mr. Ruggiero letter dated January 16, 2015 ("Does APRA require the Police Department to separately—and in addition to the Town—comply with the certificate and publication requirements?"). Based on the foregoing, Mr. Ruggiero questions "whether the Charlestown Police Department had separate compliance requirements pursuant to the relevant provisions of APRA in addition to those of the Town." Lastly, Mr. Ruggiero contends that Access/Rhode Island lacks standing to raise this complaint.

You provided a rebuttal dated January 30, 2015.

At the outset, we observe that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether a violation 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 Police Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

With respect to Mr. Ruggiero's arguments that Access/Rhode Island lacks standing to file the instant complaint, we previously addressed this issue in a related complaint and our conclusion is equally applicable to this case. See Access/Rhode Island v. West Warwick School Department, PR 15-24. As such, we review this complaint solely on the basis of this Department's independent statutory authority. R.I. Gen. Laws § 38-2-8(d). Moreover, although Mr. Ruggiero contends that this complaint does not involve denying access to records, and therefore, the APRA provides no remedy, we simply do not agree with this interpretation of the APRA. See R.I. Gen. Laws § 38-2-8(b) ("if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief"); § 38-2-9(d) (imposing fines for a "knowing and willful violation of this chapter" and for a public body found to have "recklessly violated this chapter"). Accordingly, we reach the merits of your complaint.

The issue presented in this complaint is whether the Police Department violated the APRA when it failed to maintain written APRA procedures, failed to post these written procedures on the Police Department's website, and failed to provide certification to this Department in accordance with R.I. Gen. Laws § 38-2-3.16. As Mr. Ruggiero writes in his response, the issue can fairly be summarized as "Does APRA require the Police Department to separately—and in addition to the Town—comply with the certificate and publication requirements?" This is, as Mr. Ruggiero observes, an issue of first impression in Rhode Island. See Access/Rhode Island v. Town of New Shoreham, PR 15-26.

The APRA provides that "[e]ach public body shall establish written procedures regarding access to public records[.]" R.I. Gen. Laws § 38-2-3(d). Effective September 2012, "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." Id. In addition, R.I. Gen. Laws § 38-2-3.16 provides that:

"[n]ot later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access to records under this chapter have been provided orientation and training regarding this chapter."

While on the proper factual record, Mr. Ruggiero's ultimate argument, i.e., that as a department of the Town, the Police Department falls within the Town's compliance, might be appropriate, see Town of New Shoreham, PR 15-26, in this case, such an argument must fail. For starters,

Mr. Ruggiero simply raises this issue, but presents no evidence that the Police Department had previously considered that it falls within the Town's APRA procedures or vice-versa. The evidence is clear that by e-mail dated April 4, 2014, the Police Department responded to MuckRock's APRA request and indicated that it did not maintain APRA procedures. The Police Department has further indicated that APRA procedures for the Police Department were not promulgated and posted on its website until October 1, 2014. While our research reveals that the Town had an APRA procedure since at least February 10, 2014, and that this procedure apparently was posted on the Town's website within the same time frame, our review of the Town's procedure finds little suggestion that this procedure was applicable to all Town departments, including the Police Department. Cf. Town of New Shoreham, PR 15-26. While admittedly, the Town's APRA procedure does at times reference the "Town," our reading of this procedure, as a whole, leave us uncertain whether such a procedure was applicable to the Police Department at the time of MuckRock's request and the Police Department's inability to affirmatively resolve this ambiguity (or even assert that the Police Department was governed by the Town's APRA procedure) requires us to find that the Police Department did not have a written APRA procedure at the time of MuckRock's APRA request. Cf. id. Additionally, there would have been little reason for the Police Department to promulgate and post its own APRA procedure.

Likewise, no evidence has been presented that the Police Department complied with R.I. Gen. Laws § 38-2-3.16 by providing written certification to the Department of Attorney General prior to January 1, 2014. Mr. Ruggiero does supply this Department with the written certification attesting that the Town Clerk participated in APRA training on August 2, 2013, and we acknowledge that the Town Clerk indicates that she is certifying compliance for the "Town of Charlestown." But, even if we were to extend this certification to the Police Department, the evidence demonstrates that although trained prior to January 1, 2014, this certification was not submitted to the Department of Attorney General until after January 1, 2014. Since certification is required annually by January 1, this untimely certification violated the APRA, regardless of whether the certification covered all entities within the Town, including the Police Department.

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). In this case, for the reasons discussed in West Warwick School Department, PR 15-24, we have reviewed this matter pursuant to the Attorney General's independent statutory authority, and accordingly, any complaint or other action must be initiated on behalf of the public interest and not the Complainant. 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).

In this case, we find neither remedy is appropriate. Because the Police Department has subsequently provided its APRA certification, promulgated its APRA procedures, and posted its APRA procedures on its website, injunctive relief is not appropriate. Furthermore, based upon the evidence presented, we simply find insufficient evidence that the Police Department willfully and knowingly, or recklessly, violated the APRA. In this respect, although not determinative, we

note that the Police Department's remedial efforts preceded the filing of the instant complaint. Even your rebuttal acknowledges that this type of "after-the-fact compliance may be a factor to consider in determining appropriate remedies." The Police Department is advised, however, that its actions/omissions violated the APRA and that this finding may serve as evidence in a future similar situation of a willful and knowing, or reckless, violation.

Although the Attorney General will not file suit in this matter, nothing within the APRA prohibits an individual or entity 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). Whether Access/Rhode Island would have standing to do so is, of course, a decision within the jurisdiction of the Superior Court and not this Department. We are closing this file as of the date of this correspondence.

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: Peter D. Ruggiero, Esquire