



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 15-38

Ms. Linda Lotridge Levin

Re: Access/Rhode Island v. Rhode Island State Police

Dear Ms. Levin:

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

1. failed to timely respond to MuckRock’s May 19, 2014 APRA request for a copy of police logs for the past week (postmarked May 23, 2014), see R.I. Gen. Laws § 38-2-3.2; and
2. failed to timely respond to MuckRock’s June 9, 2014 APRA request for arrest log information for the past twenty-four hours (19 business days), see R.I. Gen. Laws § 38-2-3(e).

In response to your complaint, this Department received a substantive response from General Counsel, Danica A. Iacoi, Esquire, who also provided an affidavit from Ms. Leilani Audette. Ms. Iacoi relates that on May 20, 2014, Ms. Audette received the May 19, 2014 APRA request, that this request specified that the requested records be supplied via regular mail, and that on May 21, 2014, Ms. Audette mailed a response to MuckRock containing fifty-eight (58) pages of arrest logs in response to the May 19, 2014 APRA request.

With respect to your second allegation, Ms. Iacoi indicates that on June 9, 2014, the RISP received an email APRA request from MuckRock seeking “[a]ll arrest records, including narrative, for the past 24 hours from the time this request is received.” In response to this request, Ms. Iacoi writes that:

“[o]n June 20, 2014, Ms. Audette sent a letter to [MuckRock] at the address provided on his request stating that RISP was unable to waive any fees incurred as a result of RISP’s search and retrieval time and copying costs associated with

responding to said request. \* \* \* Ms. Audette estimated that search, retrieval and preparation would require approximately four (4) hours and produce approximately 45 pages and indicated in that letter that the response time was tolled pending pre-payment and authorization to continue.”

Subsequently, “[o]n June 30, 2014, Ms. Audette received payment from [MuckRock] confirming authorization to continue processing his request” and “[o]n July 14, 2014, Ms. Audette responded to [MuckRock’s] request with 44 pages of documents attached.”

Based upon the foregoing, with respect to the first APRA request, Ms. Iacoi argues that “[t]he forty-eight (48) hour time frame began running upon receipt of the request by the Office of Legal Counsel of the Department of Public Safety/RISP on May 20, 2014” and that “[o]n May 21, 2014, RISP sent [MuckRock] a response to his request for arrest logs.” With respect to the second APRA request, Ms. Iacoi argues that the RISP response was timely because the RISP received the APRA request on June 9, 2014, sent a letter seeking pre-payment on June 20, 2014 indicating that the time-period to respond was tolled pending receipt of payment, and that the RISP did not receive payment until June 30, 2014. According to the RISP, it was at this time (on June 30, 2014) that “the time frame started again, and [the RISP] response on July 14, 2014 was within the parameters pursuant to R.I.G.L. Section 38-2-3(e).”<sup>1</sup>

You did not file a rebuttal. Additional facts may be set forth as needed.

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

The APRA provides that:

“[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the

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<sup>1</sup> The RISP argues that Access/Rhode Island lacks standing to file this complaint, but for the reasons discussed in Access/Rhode Island v. West Warwick Police Department, PR 15-24, we reject this argument and move to the merits. 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).

public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.” R.I. Gen. Laws § 38-2-3(e). See also R.I. Gen. Laws § 38-2-7.

Notwithstanding the foregoing language, the APRA also provides that adult “arrest logs,” as defined in R.I. Gen. Laws § 38-2-3.2, “shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours.” This provision “shall apply to arrests made within five (5) days prior to the request.” R.I. Gen. Laws § 38-2-3.2(b).

Here, the evidence demonstrates that on May 19, 2014, MuckRock made an in-person APRA request to the RISP, seeking “[a]rrest log for past seven (7) days, to include at minimum: name of arresting officer, date + time of arrest, charge(s), suspect biographical data (full name, year of birth, home address, gender, race).” While the RISP contends that the forty-eight (48) hour time period set forth in R.I. Gen. Laws § 38-2-3.2 did not begin to run until “receipt of the request by the Office of Legal Counsel of the Department of Public Safety/RISP on May 20, 2014,” we assume for purposes of this finding that the time period began to run on May 19, 2014, when the APRA request was received by the RISP, albeit not by legal counsel to the RISP. Despite this conclusion, we find no violation.

Specifically, while the evidence is clear that MuckRock made an in-person APRA request on May 19, 2014, no evidence has been presented concerning the time this APRA request was made to the RISP. Ordinarily, the time an APRA request is received is immaterial, because in most cases, the APRA requires a timely response measured in days, and not hours. But in this case, pursuant to R.I. Gen. Laws § 38-2-3.2, the RISP’s response time is measured in hours and not days, and for this reason, the time MuckRock made its in-person APRA request is material. Moreover, while your complaint indicates that the RISP response was “postmarked” on May 23, 2014 and directs our attention to “Appendix A,” this Appendix contains only the documents received by MuckRock and does not contain any evidence concerning the date (or the time) of the postmark, the RISP response, or the APRA request. Equally important is that by affidavit, Ms. Audette affirms that “[o]n Wednesday, May 21, 2014, I mailed a response to [MuckRock] which contained 58 pages of Arrest Logs in response to his request.” Since the evidence establishes that the RISP received MuckRock’s APRA request sometime on May 19, 2014 and responded by mailing the requested documents (pursuant to MuckRock’s request) sometime on May 21, 2014, we conclude that there is insufficient evidence to find that the RISP violated the APRA. See R.I. Gen. Laws § 38-2-3.2 (requiring response within forty-eight (48) hours).

With respect to your second allegation, we find that the RISP violated the APRA. In this respect, the evidence demonstrates that MuckRock made an APRA request via e-mail on June 9, 2014

and that by letter dated June 20, 2014, the RISP responded to this APRA request, provided an estimate for search, retrieval, and photocopying, and sought prepayment. The RISP's June 20, 2014 correspondence was timely and occurred on the ninth (9<sup>th</sup>) business day following MuckRock's June 9, 2014 APRA request. It is important to our conclusion, however, that while the June 20, 2014 letter advised MuckRock that "the time period for [the RISP] to respond to your request is tolled as of the date of this letter pending pre-payment and authorization to proceed," the June 20, 2014 response did not extend the time period for the RISP to respond to MuckRock's June 9, 2014 APRA request. See R.I. Gen. Laws §§ 38-2-3(e); 38-2-7(a). The significance of this omission is that although the RISP's June 20, 2014 letter "tolled" the time period for the RISP to respond "pending pre-payment and authorization to proceed," see R.I. Gen. Laws § 38-2-7(b), upon MuckRock's payment and authorization to proceed, the ten (10) business day time period, which had not been extended, once again began to run. It is undisputed that this prepayment and authorization was received by the RISP on June 30, 2014, and as of this date, the ten (10) business day time period – nine (9) business days of which had already expired – once again began to run.

While the RISP contends that it provided MuckRock the requested records "within ten (10) [business] days of receiving prepayment," i.e., on July 14, 2014, this calculation neglects to consider the nine (9) business days that had elapsed from June 9, 2014 to June 20, 2014. Additionally, although the RISP argues that upon MuckRock's June 30, 2014 pre-payment, the ten (10) business day "time frame started again," the RISP cites no authority for this proposition nor is this Department aware of any statutory or case law authority. For these reasons, we conclude that the RISP's July 14, 2014 response was untimely and violated the APRA.

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. In particular, the documents requested have been provided, so in this respect, injunctive relief would not be appropriate. Based upon the totality of the evidence, we also find insufficient evidence of a willful and knowing, or reckless, violation. As we suggested in West Warwick School Department, PR 15-24, there is no evidence that Access/Rhode Island provided payment for the documents produced by the RISP on July 14, 2014. Clearly, requiring reimbursement to an entity that never provided payment would be inappropriate. Moreover, while the evidence demonstrates that MuckRock provided

payment to the RISP, MuckRock is not a party to this complaint and has not sought our relief. Providing relief to an entity that is not a party to this matter and that has not sought relief is also inappropriate. See e.g., Direct Action for Rights and Equality v. Gannon, 713 A.2d 218, 225 (R.I. 1998)(“nor was it appropriate for the trial justice to award DARE more relief than it sought”).

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. This finding does serve as notice to the RISP that its omissions violated the APRA and may serve as evidence in a future similar situation of a willful and knowing, or reckless violation. 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,



Lisa A. Pinsonneault  
Special Assistant Attorney General

Cc: Danica A. Iacoi, Esquire,  
Paul L. Andrews Esquire