



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

June 12, 2015

PR 15-28

Ms. Linda Lottridge Levin

Re: Access/Rhode Island v. Town of Warren

Dear Ms. Levin:

The investigation into your Access to Public Records Act ("APRA") complaint filed on behalf of Access/Rhode Island against the Town of Warren ("Town") is complete. You allege the Town 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 APRA procedures on its website, see R.I. Gen. Laws § 38-2-3(d).

In response to your complaint, we received a response from the Town Solicitor, Anthony DeSisto, Esquire. Mr. DeSisto argues that Access/Rhode Island lacks standing to file this complaint because the APRA provides a remedy only to a "person or entity denied the right to inspect a record of a public body." See R.I. Gen. Laws § 38-2-8(a). Since your allegations do not contend that Access/Rhode Island, or for that matter any other entity, has been improperly denied access to records maintained by the Town, the Town asserts that Access/Rhode Island lacks standing to file the instant complaint. The Town does not address the substantive merits of your complaint.¹ You did not file a rebuttal.

¹ The Town's January 5, 2015 correspondence was based entirely on standing and did not address the substantive allegations raised in your complaint. The Town's January 5, 2015 correspondence requested that if this Department did not dismiss your complaint on standing, the Town be provided the opportunity to address the substance of the allegations. By email dated January 8, 2015, this Department requested that the Town provide its complete response to Access/Rhode Island's complaint, including any substantive response the Town wished this Department to review. By email dated January 8, 2015, the Town advised this Department it would not supplement its response to the instant complaint.

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 Town 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 the 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. Moreover, although Mr. DeSisto suggests 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, and review this complaint solely on the basis of this Department's independent statutory authority. R.I. Gen Laws § 38-2-8(d).

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, which also became effective September 2012, 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."

With respect to your substantive allegations, the Town provides no response. Since this Department has not been presented with any counter arguments to your complaint, we must find that the Town violated the APRA. Indeed, our review of the evidence finds an April 29, 2014 e-mail from the Town Clerk to MuckRock, acknowledging that the Town "doesn't have the procedure in writing" and "will also be posting it on the Town's website."

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, our review finds that injunctive relief is not appropriate. Specifically, this Department’s records reveal that the Town Clerk has submitted an APRA certification and that the Town has promulgated and posted on its website APRA procedures. See <http://www.townofwarren-ri.gov/documentlibraries/openrecordspolicy.html>. Nonetheless, because the Town has not provided a response to your underlying allegations, we are not prepared at this time to find that the instant violations are – or are not – willful and knowing, or reckless.

Therefore, pursuant to R.I. Gen. Laws § 38-2-8(d) and consistent with this Department’s practice, the Town shall have ten (10) business days from receipt of this finding to provide us with a supplemental explanation as to why the instant violations should not be considered knowing and willful violations, or reckless, in light of the APRA, Supreme Court case law,² and this Department’s precedent. Such a determination by this

² The Rhode Island Supreme Court examined the “knowing and willful” standard in Carmody v. Rhode Island Conflict of Interest Comm’n, 509 A.2d 453 (R.I. 1986). In Carmody, the Court determined that:

“the requirement that an act be ‘knowingly and willfully’ committed refers only to the concept that there be ‘specific intent’ to perform the act itself, that is, that the act or omission constituting a violation of law must have been deliberate, as contrasted with an act that is the result of mistake, inadvertence, or accident. This definition makes clear that, even in the criminal context, acts not involving moral turpitude or acts that are not inherently wrong need not be motivated by a wrongful or evil purpose in order to satisfy the ‘knowing and willful’ requirement.” See id. at 459.

In a later case, DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994), the Court expounded on Carmody and held:

“that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute * * * Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to

Department would subject the Town to civil fines. At the end of this time period, we will issue our supplemental finding on this matter and determine whether civil fines are appropriate. Because of this Department's determination concerning Access/Rhode Island's lack of standing, and our determination that the Attorney General is pursuing this matter based upon our independent statutory authority set forth in R.I. Gen. Laws § 38-2-8(d), we are closing this file with respect to Access/Rhode Island, but this file remains open with respect to the Attorney General's independent statutory review as discussed, supra. Whether Access/Rhode Island would have standing to file a lawsuit is, of course, a decision within the jurisdiction of the Superior Court and not this Department.

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: Anthony DeSisto, Esquire

requirements and [he] failed to take steps reasonably calculated to resolve the doubt." (internal citations omitted). Id. at 1164. (Emphasis added).