



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

August 21, 2015

PR 15-47

OM 15-15

Mr. Ken Block

**Re: Block v. Ashaway Fire District**

Dear Mr. Block:

Your Access to Public Records Act (“APRA”) and Open Meetings Act (“OMA”) complaint filed against the Ashaway Fire District (“Fire District”) is complete. By email correspondence dated March 2, 2015, you alleged the Fire District violated the APRA when it failed to respond to your Fire Survey. You also alleged that the Fire District violated the OMA when it failed to timely post meeting minutes on the Secretary of State’s website, in violation of R.I. Gen. Laws § 42-46-7(b)(2),<sup>1</sup> for the following meeting dates:

1. January 20, 2015
2. December 17, 2014
3. December 16, 2014
4. November 18, 2014
5. October 21, 2014
6. September 16, 2014
7. August 19, 2014

With respect to your APRA complaint, you allege, in relevant part:

“In summary, we (members of the non-profit group WatchDogRI) have sent via registered mail and email an APRA request to the Fire Chief’s attention...Repeated phone calls to the Chief were not returned. Several email messages were sent, with no response of any kind.

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<sup>1</sup> Your complaint does not reference the section of the OMA you allege the Fire District violated, but our acknowledgment letter references R.I. Gen. Laws § 42-46-7(b)(2) and you have provided no correspondence indicating this statutory reference was incorrect.

The survey that we sent to the Ashaway Fire District was one of almost 70 fire surveys that we sent to fire organizations around the state. Given the fact that we received a delivery confirmation of our letter, we believe that the District is in violation of Rhode Island's APRA law by failing in any way to respond to our request.

My purpose in filing this complaint is to gain assistance in compelling the District to reply to the request in compliance with Rhode Island's APRA laws. More than 60 Rhode Island fire organizations have returned completed fire surveys to us."

Mr. Vincent Naccarato, Esquire, submitted a response to your complaint on behalf of the Fire District. In relevant part, the Fire District states:

"The Block request and the so called Block Fire Survey does not satisfy the requirements of RIGL 38-2-3 in that the survey requests data that requires the Ashaway Fire District to reorganize, consolidate, or compile data not maintained by the Ashaway Fire District in the form requested in violation of RIGL 38-2-3(h).

In addition RIGL § 38-2-3(a) gives any person or entity the right to inspect and/or copy public records at reasonable times, the statute is completely silent and does not require the custodian of the records to answer questions or complete a written survey. Public records are defined in RIGL 38-2-2(4) and it is clear that it refers to existing data and does not compel completing answers to a survey as in the instant matter. Complainant is entitled to inspect or copy existing documents that will supply some of the information that he is seeking however the Ashaway Fire District is not required to answer the questions posed by the survey."

You submitted a rebuttal.

In examining whether a violation of the APRA or OMA 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 and the OMA as the General Assembly has written these laws 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 and the OMA. See R.I. Gen. Laws §§ 38-2-8; 42-46-8. In other words, we do not write on a blank slate.

There are two (2) APRA issues presently before us, namely, whether your Fire Survey is a proper APRA request and whether the Fire District violated the APRA by failing to respond to your Fire Survey.

The first issue – whether your Fire Survey is a proper APRA request – was addressed in Block v. Block Island Volunteer Fire Department, PR 15-45, and subsequently addressed in Block v. Prudence Island Volunteer Fire Department, PR 15-46. In both Block Island Volunteer Fire

Department and Prudence Island Volunteer Fire Department, this Department examined a substantively identical cover letter and Fire Survey and concluded that your Fire Survey was not a proper APRA request. In this case, you articulate the same arguments as the prior two cases and we hereby adopt and incorporate those conclusions into the present finding. Therefore, we find no APRA violation and no further discussion on this issue is warranted.

With respect to your OMA complaint, you allege that:

“[T]he Ashaway Fire District has not filed meeting minutes for any of their publicly posted meetings, in violation of Rhode Island’s Open Meetings laws...the Ashaway Fire District has not posted meeting minutes for meetings held on 1/20/15, 12/17 or 12/16/14, 11/18/14, 10/21/14, 9/16/14, 8/19/14.”

In response, the Fire District states, in pertinent part:

“Complainant is correct in his assertion that the Ashaway Fire District has not posted meeting minutes on the Secretary of State’s website from August 2014 through January 2015. The District Clerk states that she was unaware of the requirements of RIGL 42-46-7(b)(2) and will take action to comply with this requirement forthwith.”

The OMA requires that “[a]ll public bodies shall keep written minutes of all their meetings.” R.I. Gen. Laws § 42-46-7(a). “The minutes shall include, but need not be limited to: (1) The date, time, and place of the meeting; (2) The members of the public body recorded as either present or absent; (3) A record by individual members of any vote taken; and (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.” *Id.* Rhode Island General Laws § 42-46-7(b)(2), which became effective on July 15, 2013, states that “all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website.” R.I. Gen. Laws § 42-46-7(b)(2). The OMA also requires the same fire-related entities to post official and/or approved minutes to the Secretary of State’s website “within thirty-five (35) days of the meeting.” R.I. Gen. Laws § 42-46-7(d).

Here, the Fire District concedes that it failed to timely post meeting minutes on the Secretary of State’s website for meetings held between August 2014 through January 2015. Indeed, the evidence demonstrates that minutes for January 20, 2015, December 17, 2014, November 18, 2014, October 21, 2014, September 16, 2014, and August 19, 2014 were posted on the Secretary

of State's website on March 31, 2015, after the statutorily prescribed timeframe.<sup>2</sup> Accordingly, we find the Fire District violated the OMA.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) "[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];" or (2) "the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA]." R.I. Gen. Laws § 42-46-8.

In this instance, we find no evidence that the Fire District knowingly or willfully violated the OMA. In Novak v. Western Coventry Fire District, OM 14-24, we similarly found that the Fire District violated the OMA when it failed to timely file minutes on the Secretary of State's website for seven (7) of its meeting. While there was no evidence that the violations were willful or knowing, we cautioned the Fire District that the violations were unlawful and could serve as evidence of a willful or knowing violation in the future. Indeed, a little over a year after our finding in Novak, OM 14-24, the Fire District again failed to timely post its meeting minutes on the Secretary of State's website. Consequently, since our decision in Novak, OM 14-24 made clear that the Fire District's actions were unlawful, this Department determined that the Fire District willfully or knowingly violated the OMA when it subsequently failed to timely post its meeting minutes and filed suit in Superior Court. See Novak v. Western Coventry Fire District, OM 15-03 and Novak v. Western Coventry Fire District, OM 15-03B.

Here, while this finding should in no way be read as condoning non-compliance with the OMA if a public body is "unaware of the requirements," we find no evidence (and none has been presented) that the Fire District willfully or knowingly violated the OMA. Injunctive relief is also not appropriate since the minutes for the meetings at issue have all been posted on the Secretary of State's website. Nevertheless, we extend the same guidance to the Fire District that we tendered to the Western Coventry Fire District in OM 14-24, *i.e.*, this finding shall serve as notice to the Fire District that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation. Although the Attorney General will not file suit in this matter, nothing in the APRA or the OMA precludes an

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<sup>2</sup> A review of the Secretary of State's website shows that the Fire District posted agendas for meetings on December 16 and December 17, however, it appears that only one meeting took place. Specifically, the agenda filed on the Secretary of State's website for the December 16 meeting indicates that the meeting will take place on Tuesday December 16. Similarly, the posted agenda for the December 17 meeting indicates that the meeting will take place on Tuesday December 17. December 16 fell on a Tuesday, and with the exception of the January 20, 2015 meeting, the November 18, October 21, September 16, and August 19, 2014 meetings were also held on Tuesdays. In addition, while the meeting minutes are posted under the December 17, 2014 heading, they pertain to the December 16, 2014 meeting. Therefore, it appears that no meeting was held on December 17, 2014, and instead, a meeting was held on December 16, 2014.

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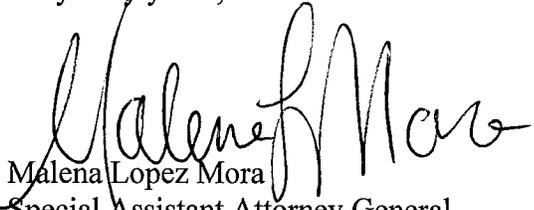
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individual from pursuing a complaint in the Superior Court. The complainant may file an OMA lawsuit within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Malena Lopez Mora". The signature is fluid and cursive, with the first name being the most prominent.

Malena Lopez Mora  
Special Assistant Attorney General  
Extension 2307

Cc: Vincent Naccarato, Esquire