



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 15-46

Mr. Ken Block

Re: Block v. Prudence Island Volunteer Fire Department

Dear Mr. Block:

Your Access to Public Records Act (“APRA”) complaint filed against the Prudence Island Volunteer Fire Department (“Fire Department”) is complete. By email correspondence dated February 24, 2015, you alleged that the Fire Department violated the APRA when it improperly responded to your Fire Survey. In relevant part you state:

“In summary, we (members of the non-profit group WatchDogRI) have sent via registered mail an APRA request to the Fire Chief’s attention...The Department did reply to our data request with an email on 1/2/2015...

The survey that we sent to the Prudence Island Volunteer Fire Department was one of almost 70 fire surveys that we sent to fire organizations around the state. Prudence Island is the only department that failed to respond to our APRA request ‘for cause’ – that cause being that somehow volunteer fire departments are exempt from APRA. We believe that the Department is subject to APRA and therefore is in violation of Rhode Island’s APRA law by failing to respond to our request.

...

The nature of the questions we asked in our fire survey drive towards the operational capabilities of the department...”

You ask that this Department compel the Fire Department to “respond to the fire survey.”

Mr. Ralph Kinder, Esquire, provided a response to your complaint on behalf of the Fire Department. In relevant part, the Fire Department states:

“PIVFD has a pending request for an advisory opinion before [the Department of Attorney General] with respect to its status as a public body under the Rhode Island Open Meetings law []. That request is hereby expanded to cover APRA, and the arguments set forth therein are hereby incorporated into this response.

We further submit the attached affidavit of Brian Worcester of the PIVD...”

Mr. Worcester attests, in pertinent part:

“[Mr.] Block has alleged that the Department failed to answer a 49 question survey, allegedly in violation of APRA.

The Department sent [Mr.] Block the response noted in the Complaint based on the Department’s belief that it is not a public entity subject to the provisions of APRA; that Mr. Block’s request was more suitable to be addressed to the Portsmouth Fire Department, a municipal fire department having ultimate authority over emergency fire services on Prudence Island; and that the request by Mr. Block was beyond the scope of APRA in that APRA does not contemplate answering survey questions.

...

Mr. Block’s survey is an improper request under APRA in that it attempts to place the burden of interpreting data upon the Department rather than requesting data from Mr. Block to interpret himself as contemplated by APRA. This, of course, results in [an] unfair burden upon an entity that relies on volunteers to perform administrative functions.

In addition, what might be the only proper request under APRA for call logs (Question #49) improperly requests attendant notes which are excepted from production under APRA Section 38-2-2(4)(K).”

You also submitted a rebuttal, which shall be discussed herein.

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

There are three (3) issues presently before us: 1) whether your Fire Survey is a proper APRA request, 2) whether the Fire Department is a public body subject to the requirements of the

APRA, and 3) whether the Fire Department violated the APRA by failing to respond to your Fire Survey.

The first issue – whether your Fire Survey is a proper APRA request – was first addressed in Block v. Block Island Volunteer Fire Department, PR 15-45. In Block 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 and we hereby adopt and incorporate our conclusion in Block Island Volunteer Fire Department into the present finding. Indeed, consistent with our prior finding, it is notable that your complaint does not ask that this Department compel the Fire Department to provide you responsive documents, but instead, your complaint requests that this Department compel the Fire Department to “respond to the fire survey.” Therefore, we find no violation and, with the exception of one argument you raise in your rebuttal to the present finding, no further discussion on this issue is warranted.

In your rebuttal you indicate that:

“The Attorney General’s office has made several statements in direct communication to me to the effect that it questions the appropriateness of my APRA request^[1] – and has taken what I believe is the extraordinary step of gratuitously instructing entities against which I have filed APRA complaints for the ‘Fire Survey’ to specifically challenge the appropriateness of the APRA request. I note that PIVFD did not challenge the appropriateness of my APRA complaint in their letter to me declining to respond to my request. I question whether the APRA complaint process can be effectively and properly adjudicated when the arbiter of the process stops playing the role of judge and instead acts as coach for one of the sides.”

Consistent with our practice, when this complaint was originally filed in February 2015, this Department reviewed your complaint. As we have done on prior occasions when a factual or legal issue comes to our attention through our initial review of the filed complaint, this Department raised that issue in its acknowledgment/investigatory demand letters so that both parties have the opportunity to address such an issue and present factual and/or legal arguments to support their respective positions. See e.g., Access/Rhode Island v. West Warwick School Department, PR 15-24. It was in this manner, and for this reason, that this Department raised the

¹ It is this Department’s recollection that you telephoned this Department prior to filing the instant complaint. During this telephone conversation you mentioned that the Fire Department failed to respond to your “survey.” This Department advised that although it had not seen your “survey,” and therefore could not opine upon it, your reference to a “survey” suggested something other than an APRA request. You advised that this was the basis of your telephone call and queried whether you could seek an advisory opinion concerning whether the “survey” was a valid APRA request. This Department advised you that the advisory opinion route was not available in this circumstance, but that you could file a complaint wherein this Department would review the issue raised, i.e., the APRA validity of your Fire Survey.

issue of whether your Fire Survey was a proper APRA request in our acknowledgment/investigatory demand letters.

Moreover, our role in reviewing complaints is to determine whether a violation has occurred and whether court action is appropriate. See R.I. Gen. Laws § 38-2-8(b) (“The attorney general shall investigate the complaint and 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 on behalf of the complainant in the superior court of the county where the record is maintained.”). The suggestion in your rebuttal that this Department should investigate and perhaps file a civil lawsuit in an APRA matter when this Department has reason to believe that the APRA request is fatally defective is inconsistent with the role of this office and court rules. See e.g., R.I. Supreme Court R. art. V, Rule 3.3 (candor to the tribunal). In addition, bringing the issue to your attention at the outset of our investigation, provided you the opportunity to consider this issue and, if you deemed appropriate, to address this issue in a variety of ways, such as providing legal authority to support your position or re-forming your Fire Survey into a proper APRA request. Frankly, it is hard to understand how raising an issue that may have been (and was) dispositive at the earliest juncture possible, is contrary to the proper adjudication of open government matters or legal matters in general.

Finally, having concluded that your Fire Survey was not a proper APRA request and, therefore, the Fire Department did not violate the APRA by not responding to the survey, it is not necessary to address whether the Fire Department is a public body subject to the APRA in this finding. Instead, this Department will issue an advisory opinion addressing this matter at a later date.

Although the Attorney General will not file suit in this matter, nothing in the APRA precludes an individual from pursuing a complaint in the Superior Court. 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,


Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: Ralph Kinder, Esquire