State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

August 20, 2014
PR 14-21

Mr. Matthew J. Calouro

Re: Calouro v. Town of Bristol

Dear Mr. Calouro:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Town of Bristol ("Town") is complete. By email correspondence dated July 13, 2014, you allege the Town violated the APRA when it failed to respond to your June 20, 2014 APRA request.

In response to your complaint, we received a substantive response from the Town's legal counsel, Michael A. Ursillo, Esquire, who also provided an affidavit from the Town Administrator Antonio A. Teixeira. Attorney Ursillo states, in pertinent part:

> "On Friday, June 20, 2014, Mr. Calouro sent a message via electronic mail to Antonio A. Teixeira, Town Administrator for the Town of Bristol. The message was also sent to Mr. Teixeira's administrative assistant, Cheryl A. Iiams and Louis P. Cirillo, Town Clerk. * * * The request states as follows:
>
> 'I am respectfully requesting information on the date of hire as well as the date the Bristol Town Council and or Town Administrator authorized the hiring of Jennifer Alves for full-time office position in the Bristol Harbormaster's Office.
>
> Also, please include the number of days and their specific dates that the position was advertised and the location(s) in which they were posted including any newspapers or websites.'

On Tuesday, June 24, 2014 – two business days after Mr. Calouro sent his request – the Town forwarded a response by first-class mail. * * * The response states as follows:

'Jennifer Alves was appointed to the position of Office Assistant at the Town Council meeting of June 6, 2012. This position was advertised to the best of our knowledge on May 3rd and 10,th 2012, in the Bristol Phoenix classified ads.

She was made full time by the adoption of the 2013 budget, approved by the Town Council on May 15, 2013.'

The Town's response included a portion of the Town Council minutes from June 6, 2012. The minutes confirm that the Council appointed [Ms.] Jennifer Alves to the position of part-time office assistant in the Harbormaster's Office. As Acting Harbormaster at the time, Mr. Calouro was aware that Ms. Alves' promotion from part-time to full-time (at his request) did not require posting.

* * *

Mr. Calouro's complaint is meritless, as the Town responded to his request for information. In fact, the Town's response was sent to Mr. Calouro on Tuesday, June 24, 2014, a mere two business days after the request was received on Friday, June 20, 2014. * * *

The Town notes that Mr. Calouro's complaint does not specifically allege the grounds on which it was filed. The complaint never states that the Town failed to respond to his request. Rather, Mr. Calouro stated simply that '[i]t has been over ten days and wish [sic] to file a complaint.' The Town questions whether Mr. Calouro filed a complaint because he did not receive the response or because he deemed the response unsatisfactory.

The Town also notes that Mr. Calouro's request was not strictly framed as a request for documents, but rather, was stated as a request for information. As this Department has previously stated, Rhode Island's Access to Public Records Act ('APRA') does not require public bodies to respond to questions. See Gagnon v. East Providence School Committee, PR 12-12. In responding to Mr. Calouro's request for information, the Town exceeded its obligation under APRA."[1]

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[1] Town Administrator Teixeira's affidavit relays substantially the same facts. Attached to the Town's response was a copy of Town Administrator Teixeira's June 19, 2014 response to you,

We note that you did not file any reply.

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

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). Moreover, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. If a public body needs additional time to respond to an APRA request, the APRA provides that a public body, "for good cause," may extend the response time an additional twenty (20) business days to a total of thirty (30) business days. R.I. Gen. Laws § 38-2-7(b). Also, the "[f]ailure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial." Id.

In the instant complaint it appears you made a request on Friday, June 20, 2014[2] via email to the Town Administrator, the Town Administrator's Administrative Assistant and the Town Clerk. In your email, you sought "information on the date of hire as well as the date the Bristol Town Council and or Town Administrator authorized the hiring of Jennifer Alves for full-time office position in the Bristol Harbormaster's Office." You also requested "the number of days and their specific dates that the position was advertised and the location(s) in which they were posted including any newspapers or website." The Town contends that it responded to that request on Tuesday, June 24, 2014 by mailing you a response along with a copy of the meeting minutes from the June 6, 2012 Town Council meeting. In its response to your complaint, the Town provided both you and this Department with a copy of an unsigned letter dated June 24, 2014 from Town Administrator Teixeira addressed to you. Notwithstanding that contention, you proffer by your July 13, 2014 complaint that "[i]t has been over ten days and wish[ed] to file a complaint."

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along with a copy of the June 6, 2012 Town Council meeting minutes wherein Ms. Alves was appointed to the position of part-time office assistant in the Harbormaster's Office.

[2] It is unclear whether your email complied with the Town's public records policy. In fact, we have great difficulty concluding that your email correspondence constituted an APRA request. As the Town did not raise the issue that your request did not comply with the Town's policy, or the APRA, we need not address that issue in this finding.

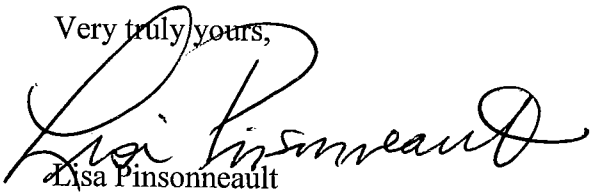
Based upon the evidence in this case, this Department concludes that the Town did not violate the APRA as it appears a response was mailed to you on June 24, 2014. You provide no evidence or argument to contradict the Town's position. Based upon the evidence presented, we cannot conclude the Town failed to respond to your June 20, 2014 request.[3]

Additionally, as was raised in the Town's response, we note that the APRA requires public bodies to provide access to public documents, not respond to interrogatories. See Schmidt v. Ashaway Volunteer Fire Association and Ashaway Fire District, PR 97-23; Gagnon v. East Providence School Committee, PR 12-12. The APRA affords every person the right to inspect and/or copy public records. Respectfully, a public body's APRA obligation does not extend to answering citizens' questions.

Although the Attorney General has found no violation and 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). Please be advised that we are closing this 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,



Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Michael A. Ursillo, Esquire

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[3] The Town raises the speculation that you may have received the Town's response, yet deemed the response unsatisfactory. That possibility was not made clear to us in your July 13, 2014 APRA complaint addressed to this Department. In fact, in our acknowledgment letter to you dated July 21, 2014, we indicate that you allege the Town violated the APRA "when it failed to respond to your June 20, 2014 APRA request." (Emphasis added). We also state in that letter that "if this acknowledgment letter does not accurately reflect your complaint, please contact [this Department] in writing within five (5) business days." You did not contact this Department. As such, the fact that the Town's response may have been "unsatisfactory" to comply with the mandate of the APRA is not addressed in this finding.