



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**

March 31, 2016

PR 16-12

Mark McBurney, Esquire

Re: **Clark v. Town of Glocester**  
**Clark v. Glocester Police Department**

Dear Attorney McBurney:

Your Access to Public Records Act (“APRA”) complaints filed on behalf of your client, Mr. Trevor Clark, against the Town of Glocester (“Town”) and the Glocester Police Department (“Police Department”) are complete. For reasons discussed below, both your complaints will be addressed in a single finding.

**Clark v. Town of Glocester**

You contend that the Town violated the APRA when it denied access to certain documents requested in an October 10, 2014 APRA request. You further allege that the Town violated the APRA when it failed to indicate the appeal procedures as required by R.I. Gen. Laws § 38-2-7(a). As related in your complaint, you filed this complaint “on behalf of my client, Trevor Clark.”

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

Before we can address the merits of your complaint, we must first address your client's legal standing. In other words, as a preliminary matter, we must decide whether your client has standing to bring this complaint.

Rhode Island General Laws § 38-2-7(a) provides that “[a]ny denial of the right to inspect or copy records, in whole or in part...shall be made to the person or entity requesting the right[.]” (Emphasis added). Other APRA provisions address the issue more directly. Specifically, in the event of a denial, a “petition” may be filed with the chief administrative officer of the public body, but this appeal avenue is limited to “[a]ny person or entity denied the right to inspect a record of a public body.” See R.I. Gen. Laws § 38-2-8(a) (emphasis added). If the chief administrative officer denies the review petition, “the person or entity seeking disclosure may file a complaint with the attorney general,” and if meritorious, the Attorney General may file a lawsuit in Superior Court “on behalf of the complainant.” R.I. Gen. Laws § 38-2-8(b)(emphasis added).

These APRA provisions make clear that in order to seek review of an alleged injury, *i.e.*, in order to acquire legal standing, a complainant must have requested access to a record and been denied the right to inspect a record. See also Canavan v. City of Central Falls, PR 00-18 (lack of standing of City Council member to file an APRA complaint since the City Council, and not the member, made the APRA request); Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21 (“in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record”).

This Department addressed this very issue in Cullen v. City of Pawtucket, PR 15-48. In Cullen, you submitted an APRA request to the City of Pawtucket on October 10, 2014. The APRA request was made by you on your law firm letterhead. In fact, at no point did Mr. Cullen's name appear on the request. On October 27, 2014, the City denied you access to certain requested documents. Thereafter, on November 7, 2014, you filed an APRA complaint with this Department “on behalf of [your] client John Cullen,” however, since Mr. Cullen neither requested nor was denied access to documents pursuant to the October 10, 2014 APRA request, this Department concluded that Mr. Cullen lacked standing to file the complaint (which you filed on his behalf).

The facts in the instant complaint are identical to the facts in Cullen and require a similar result. Specifically, the evidence demonstrates that on October 10, 2014 (the same date that you made the request in Cullen), you filed an APRA request with the Town. Your APRA request was made on your law firm's letterhead and provided, in relevant part:

“Dear Ms. Fecteau:

Please consider this an Access to Public Records Act request.

...

Thank you.

Mark McBurney”

At no point does the October 10, 2014 APRA request mention in any way – or otherwise reference – your client, Mr. Trevor Clark. On October 20, 2014, the Town responded to the above APRA request. In relevant part, the Town’s response stated:

“Dear Attorney McBurney:

This letter is in response to your record request received through email on October 10, 2014, hard copy mail received on October 14, 2014.  
....” (Emphasis added).

Like Cullen, Mr. Clark’s name does not appear on the October 10, 2014 APRA request nor does the October 10, 2014 APRA request make any suggestion that it was made by or on behalf of Mr. Clark. Even the Town’s October 20, 2014 response to the APRA request is addressed to you and identifies you as the requester and the recipient of some of the requested documents. Indeed, it is not until you filed the instant APRA complaint with this Department that Mr. Clark’s name is first introduced or associated with the October 10, 2014 APRA request. Moreover, while your complaint states that Mr. Clark filed the APRA request – an assertion that it contradicted by the plain language of the October 10, 2014 APRA request – you identify yourself as the APRA requester in your rebuttal. Specifically, you state “[m]y APRA request was intelligible on its face, explicit in its range...” and use the phrase “my APRA request” multiple times throughout your rebuttal. Our decision is consistent with our past precedent, see supra, and federal case law. See e.g., McDonnell v. United States, 4 F.3d 1227, 1236-37 (3<sup>rd</sup> Cir. 1993)(“We think a person whose name does not appear on a request for records has not made a formal request for documents within the meaning of the statute. Such a person, regardless of his or her personal interest in disclosure of the requested documents, has no right to receive [] the documents.”); Three Forks Ranch Corp. v. Bureau of Land Management, 358 F.Supp.2d 1, 3 (D.D.C 2005)(“although the request made by Mr. Von Holt mentions Three Forks Ranch, it is not clear that the request is being made on behalf of his client”). Based on the evidence presented, we find that you, and not Mr. Clark, requested and were denied access to records. As such, Mr. Clark lacks standing to file this complaint.

### **Clark v. Gloucester Police Department**

By correspondence dated March 6, 2015, you allege that the Police Department violated the APRA when the Police Department’s February 13, 2015 denial letter failed to adequately specify the reason for the denial and when it failed to disclose any “reasonably segregable portion of the public record” or, alternatively, when it failed to indicate that “no portion of the document or record contains reasonably segregable information that is releasable.” See R.I. Gen. Laws §§ 38-2-7(a) and 38-2-3(b). As explained above, in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public

body, and second, the complainant must have been denied access to the requested record. Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21. For the reasons explained below, we find that Mr. Clark lacks standing to file this complaint.

Specifically, on February 3, 2015, the Police Department received an APRA request via email from "Glocester, RI – Corruption Watch." In relevant part, the APRA request provided:

"Pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq., We are requesting Access to records, which I believe are public documents. Specifically, I am requesting records that show

1. On October 25, 2014 Glocester Police responded to a 'Trailer Explosion' on Hemlock Drive in Glocester, RI a vacant trailer. We are interested in obtaining the police report that corresponds to this incident including times the police were dispatched and arrived on scene...
2. On October 25, 2014 the police log that indicates calls for service to to [sic] ANY address on Hemlock Drive in Glocester, RI at anytime...

Please respond by emailing results back to this email address:  
[admin@glocesterri.net](mailto:admin@glocesterri.net)

Respectfully – Glocester, RI – Corruption Watch (<http://glocesterri.net>)."

On February 13, 2015, the Police Department responded to the above request. The response was emailed to [admin@glocesterri.net](mailto:admin@glocesterri.net) and indicates, in pertinent part:

"Glocester, RI – Corruption Watch (<http://glocesterri.net>)

To whom it may concern,

This letter is in response to your emailed Access to Public Records Act request dated 02/03/2015...

After reviewing your request, please see the attached police log call for service being released pursuant to RI General Laws 38-2-1 et seq...

The requested police report you requested is not being released. If you feel that you are denied access to public records, you have the right to appeal to Police Chief Joseph S. DelPrete. If you are still not satisfied, you may file a complaint with the Department of Attorney General..."

On March 6, 2015, you filed the instant APRA complaint. Your correspondence specifies that you are filing the complaint "on behalf of Mr[.] Clark" and that the complaint is "against the

Clark v. Town of Gloucester  
Clark v. Gloucester Police Department  
PR 16-12  
Pg. 5

Glocester Police Department for its 2/13/15 response to Trevor Clark's 2/3/15 APRA request." Again, the situation presented in this case is identical to the circumstances discussed above.

Here, after reviewing all the evidence presented, we find that Mr. Clark lacks standing to challenge the Police Department's response to the February 3, 2015 APRA request. Specifically, the evidence reveals that the February 3, 2015 APRA request was made by a group or organization called "Glocester, RI – Corruption Watch." At no point in the APRA request or in the Police Department's response to the request, is there any evidence or suggestion that the request was made, in whole or in part, by Mr. Clark. Indeed, similar to the above discussion, the APRA request provides no indication that it was from Mr. Clark, yet your March 6, 2015 complaint makes clear that you are "filing this complaint on behalf of Mr. Clark." See e.g., McDonnell v. United States, 4 F.3d 1227, 1236-37 (3<sup>rd</sup> Cir. 1993)("We think a person whose name does not appear on a request for records has not made a formal request for documents within the meaning of the statute. Such a person, regardless of his or her personal interest in disclosure of the requested documents, has no right to receive [] the documents."); Three Forks Ranch Corp. v. Bureau of Land Management, 358 F.Supp.2d 1, 3 (D.D.C 2005)("although the request made by Mr. Von Holt mentions Three Forks Ranch, it is not clear that the request is being made on behalf of his client"). For this reason, Mr. Clark lacks standing to file the instant complaint.

Notwithstanding the foregoing, even if Mr. Clark is associated with "Glocester, RI – Corruption Watch," because "Glocester, RI – Corruption Watch" requested and was denied access to documents, only "Glocester, RI – Corruption Watch" has standing to challenge the denial. Frankly, these circumstances differ little from Canavan. See Canavan v. City of Central Falls, PR 00-18 (lack of standing of City Council member to file an APRA complaint since the City Council, and not the member, made the APRA request).

Although the Attorney General has found no violations 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,

  
Malena Lopez Mora  
Special Assistant Attorney General  
Ext. 2307

Cc: Timothy Kane, Esquire  
William L. Bernstein, Esquire