



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

January 8, 2015
PR 15-01

Mark McBurney, Esquire

Re: **Clark v. West Glocester Fire District**
(February 3, 2014)

Dear Mr. McBurney:

The investigation into your Access to Public Records Act (“APRA”) complaint filed on behalf of your client, Mr. Trevor Clark, is complete. By email dated February 3, 2014, you contend that the West Glocester Fire District (“Fire District”): (1) improperly denied your January 3, 2014 APRA request for certain Fire District executive session minutes since the executive session minutes were not properly sealed, (2) failed to provide specific reasons for denying the APRA request, and (3) withheld documents based upon the reason the records were sought. See R.I. Gen. Laws § 38-2-3(j). In response to your complaint, we received a written response from the Fire District, denying it violated the APRA, as well as your rebuttal.¹

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 regarding

¹ Your rebuttal raises issues not set forth in your complaint, among these issues is the allegation that the Fire District violated the Open Meetings Act (“OMA”) on various occasions during each of the three meetings at issue in your APRA request. We do not view your February 3, 2014 complaint as raising OMA issues and this Department’s acknowledgment/confirmation letter contained no OMA allegation. Our acknowledgment letter also related that if our understanding of your allegations was incorrect to notify this Department within five (5) business days of receipt of our acknowledgment letter. We received no correction. For this reason, and because the OMA allegations set forth in your rebuttal were the subject of a separate OMA complaint filed by you on behalf of Mr. Clark – and because these OMA allegations were addressed in a separate finding issued by this Department – the OMA allegations raised in your rebuttal will not be addressed herein. See Clark v. West Glocester Fire District, OM 14-40.

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

The crux of your APRA complaint is that the Fire District improperly denied your January 3, 2014 APRA request, which sought the executive (or closed) session minutes for the Fire District's meetings dated July 23, 2013, November 5, 2013, and November 19, 2013. By letter dated January 9, 2014, the Fire District responded to your APRA request, denying "[t]he request for copies of those records * * * pursuant to RIGL Sections 38-2-2(4)(J) and 42-46-5 and 42-46-5 as being exempt from production."

In support of your allegation, you claim that the Fire District never sealed its executive session minutes and that the Fire District violated the OMA when it convened into executive session for the meetings at issue. In both cases, you assert that the result is that the requested executive session minutes are public records and should have been provided in response to your APRA request.

The APRA mandates that unless otherwise exempt, all documents maintained by a public body shall constitute public records. See R.I. Gen. Laws § 38-2-2(4). Among the exemptions is R.I. Gen. Laws § 38-2-2(4)(J), which exempts from public disclosure "[a]ny minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42." According to the OMA, "[t]he minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5." R.I. Gen. Laws § 42-46-7(c).

As the plain language of R.I. Gen. Laws § 42-46-7(c) provides, the critical question for our consideration is whether a majority of the Fire District "vote[d] to keep the minutes closed." Id. Having reviewed the three (3) executive session minutes requested in your January 3, 2014 APRA request, we find that the Fire District did not seal its July 23, 2013 executive session minutes, but that the Fire District did seal its November 5, 2013 and November 19, 2013 executive session minutes. With respect to the July 23, 2013 executive session minutes, this Department previously observed that the minutes to this executive session were unsealed, and in fact, posted to the Secretary of State's website. See Clark, OM 14-40. Because the July 23, 2013 executive session minutes were not sealed, we conclude the Fire District violated the APRA when it denied your January 3, 2014 APRA request for these minutes.

The remaining two (2) executive session minutes have been sealed. Indeed, our review of the November 5, 2013 and November 19, 2013 executive session minutes finds references in both executive session minutes that the Fire District voted unanimously to seal the executive session minutes. Moreover, while this Department found in a previous complaint filed by you that the Fire District violated the OMA when it failed to articulate and properly record its open call to convene into the November 5, 2013 and November 19, 2013 executive session minutes, see id.,

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you cite no authority (and we are aware of no authority) that a public body that provides an improper open call to convene into executive session may not seal its executive session minutes. On this point, our precedent has provided only that a public body that convenes into executive session for a reason not set forth in R.I. Gen. Laws § 42-46-5 may not seal its executive session minutes and this conclusion is consistent with the plain language identified above. See R.I. Gen. Laws § 42-46-7(c) (“[t]he minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5”)(emphasis added). No allegation has been made that the subject matter of the November 5, 2013 executive session meeting or the November 19, 2013 executive session meeting was inappropriate for executive session. Accordingly, the Fire District did not violate the APRA when it denied your request for the sealed executive session minutes for its November 5, 2013 and November 19, 2013 executive session minutes.

Lastly, you claim that the Fire District failed to articulate the specific reason for its January 9, 2014 denial and that the Fire District withheld the requested minutes based upon the purpose sought. With respect to the former allegation, the APRA requires a public body denying access to records provide, among other things, the “specific reasons for the denial.” R.I. Gen. Laws § 38-2-7(a). Here, the Fire District cited, among other provisions, R.I. Gen. Laws § 38-2-2(4)(J), and in doing so, satisfied R.I. Gen. Laws § 38-2-7(a). We also find no evidence to support your latter claim that the Fire District denied the APRA request based upon the reason the records were sought. Indeed, with respect to the November 2013 executive session minutes, as discussed supra, the Fire District’s denial complied with the APRA. Moreover, while the denial of the July 23, 2013 executive session minutes was inappropriate – because the executive session minutes were never sealed – we simply find insufficient evidence to conclude that the Fire District’s denial was based upon the purpose the records were sought. Our conclusion is reinforced by the fact that the July 23, 2013 executive session minutes have been posted on the Secretary of State’s website since September 19, 2013, well before your January 3, 2014 APRA request.

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). 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).

For the reasons already articulated we find no evidence of a willful and knowing, or reckless, violation. Additionally, although the July 23, 2013 executive session minutes are publicly available on the Secretary of State’s website, we nonetheless conclude that the Fire District should provide you a copy of the unsealed July 23, 2013 executive session minutes within ten (10) business days of this finding. The Fire District may not access a charge for this document. See R.I. Gen. Laws § 38-2-7(b).

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). The Fire District should be advised that the actions discussed herein violate the

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APRA and this finding may serve as evidence of a willful and knowing, or reckless, violation in similar future circumstances. 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,

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

Michael W. Field

Assistant Attorney General

Cc: Daniel J. Archetto, Esq.
Vicki Bejma, Esq.