



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

January 8, 2016

PR 16-01

Mark McBurney, Esquire

Re: Clark v. West Glocester Fire District

Dear Mr. McBurney:

The investigation into the Access to Public Records Act (“APRA”) complaint filed on behalf of your client, Mr. Trevor Clark, is complete. According to your APRA complaint, the West Glocester Fire District (“Fire District”) violated the APRA when it:

1. Failed to provide timely APRA certification for calendar year 2013, see R.I. Gen. Laws § 38-2-3.16;
2. Failed to identify its officer or unit on its APRA form, see R.I. Gen. Laws § 38-2-3(d);
3. Failed to post its APRA procedures on its website, see R.I. Gen. Laws § 38-2-3(d);
4. Failed to provide documents responsive to Request No. 4 in your January 8, 2014 APRA Request, seeking “[a]ll documents, including segregable portions of [John Doe’s]¹ personnel file, regarding a charge of arson against, and/or his nolo contendere plea to a charge of arson[.]”
 - a. Failed to state specific reasons for denying such request, and
 - b. Failed to state that such records responsive to Request No. 4 did not exist.

In response to your complaint, this Department provided you an acknowledgment letter, which indicated that this Department would review the allegations referenced in Category No. 4, but that because your first three allegations mirrored allegations made by you in a

¹ Your APRA request names this individual. Since identification has no bearing on our finding, we decline to identify this individual. It suffices that the identity of this person is not your client.

separate complaint, the first three allegations would not be reviewed in this complaint. See February 6, 2014 Letter. Accordingly, our review is limited to the allegations in Category No. 4.

In response to your complaint, we received a correspondence from the Fire District's then-legal counsel, Daniel J. Archetto, Esquire, who forwarded an affidavit from the Fire District's Chairman, William J. Flynn. In relevant part, Mr. Flynn affirms:

“8. The District's 1-15-14 Response cited RIGL § 38-2-2(4)(J) as well as RIGL § 42-46-5 and § 42-46-7; however the citing of those sections of the statutes was made by mistake;

9. The mistake was made by the District's attorney in advising the District as to how the District should reply to the 1-7-14 APRA request as a subsequent APRA request by Mr. Clark's attorney dated 1-17-14 sought, among other documents, 'segregable portions of [John Doe's] WGFD employment application regarding arrests, pleas or convictions (both question and answer)'. * * *

10. The District, in its reply to Claimant's 1-17-14 APRA request, cited RIGL §38-2-2(4)(b) and should have cited the above same section of the statute in its reply to the Claimant's 1-7-14 APRA request since that request had sought, in part, similar documents;

11. The correct section in APRA for the District's denial of access to the 1-7-14 APRA request is RIGL § 38-2-2(4)(A)(I)(b) in that the documents requested by Mr. Clark's attorney were exempt from production as they constituted personnel and other personal individually-identifiable records in which the disclosure would constitute a clearly unwarranted invasion of personal privacy.”

You provided a rebuttal, which we have reviewed. We also received a response from the Fire District's current legal counsel, Stephen Robinson, Esquire.

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 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.

On or about January 7, 2014, you made an APRA request to the Fire District, seeking, inter alia:

“Documents, including segregable portions of his personnel file, regarding a charge of arson, and/or a nolo contendere plea to a charge of arson, involving [John Doe].”

With respect to this aspect of your request, the Fire District responded on January 15, 2014 that:

“[t]he request for copies of the requested records, if any, is hereby denied pursuant to RIGL Sections 38-2-2(4)(J) and 42-46-5 and 42-46-7 as being exempt from production. “

You complain that the Fire District failed to provide “the specific reasons for the denial” and that since the Fire District’s asserted exemptions were either incorrect and/or underinclusive, the Fire District must provide documents in John Doe’s personnel file, which include an employment application, personnel records, and Bureau of Criminal Identification (“BCI”) records.

With respect to your allegation that the Fire District violated the APRA when it failed to state that no records exist, your complaint makes clear that the Fire District’s use of the phrase “if any,” is “or should be, a per se violation of RIGL 38-2-7(c).” You have previously raised this issue in other complaints and we have previously addressed this issue in other complaints. Since your allegation is not distinguishable from our prior findings, we find no reason to re-examine this issue and adopt our prior findings. See Clark v. Department of Public Safety, PR 14-23; Susler v. Department of Public Safety, PR 14-22. We find no violation.

Next, we examine your allegation that the Fire District violated the APRA when it failed to provide the specific reasons for the denial. Rhode Island General Laws § 38-2-7(a) provides, in relevant part, that any denial of the right to inspect or copy records must be made in writing:

“giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.”

You assert that “[q]uoting law, or statute, alone, without referencing how that law applies to the facts of the case, fails to provide ‘specific reasons for the denial’ under RIGL 38-2-7(a).” You provide no legal authority for this proposition. In fact, in your rebuttal, you

claim that “[i]f the WGFD had provided the complete statutory reference (down to the clause or sub-clause) it would have satisfied the ‘specific reasons’ requirement.” While we need not resolve whether a public body must reference “the complete statutory reference (down to the clause or sub-clause),” a review of the WGFD’s denial demonstrates that it satisfied the standard you establish in your rebuttal and our review finds that the Fire District otherwise satisfied the “specific reasons” requirement. See January 15, 2014 denial (referencing R.I. Gen. Laws § 38-2-2(4)(J)). See also WPRI v. Woonsocket Police Department, PR 12-17. We find no violation.

Lastly, you complain that because the Fire District’s denial was based on incorrect and/or under inclusive provisions, that various documents in John Doe’s personnel file, such as his employment application, personnel records, and BCI checks, must be public. Notably, your APRA request did not seek these documents in their entirety, but rather you sought “[d]ocuments, including segregable portions of his personnel file, regarding a charge of arson, and/or a nolo contendere plea to a charge of arson[.]” (Emphasis added).

Here, we assume, without deciding, that the Fire District maintains documents responsive to your request, and as you allege, failed to cite the correct APRA exemption. We considered a similar issue in Clark v. West Gloucester Fire District, PR 14-28, where the same complainant – Mr. Clark – sought various documents pertaining to himself under the APRA. As we explained in Clark, PR 14-28, since Mr. Clark had “at least some privacy interest in the responsive documents; and considering that if we determined that the various documents were “public records” as a matter of law the various documents would be publicly accessible to any person, we concluded that the Fire District’s failure to reference the appropriate APRA exemption did not require the public disclosure of documents pertaining to Mr. Clark to any person upon request. We reach the same conclusion here. Similar to our conclusion in Clark, PR 14-28, in this case if we conclude that the Fire District had waived its ability to assert John Doe’s privacy interest, such a conclusion would necessarily mean that the requested records were publicly available to any person. Under the facts of this case, and consistent with Clark, PR 14-28, we conclude “good cause” has been demonstrated within the meaning of R.I. Gen. Laws § 38-2-7(a). See also Scripps News v. Department of Business Regulation, PR 14-07.²

² Such a conclusion should not be interpreted as meaning that “good cause” has been demonstrated in all cases where disclosure of seemingly exempt documents would occur as there are surely cases where “good cause” would not exist. See e.g. Anderson v. Little Compton School Department and School Committee, PR 15-56. Based upon among other factors, the nature of the instant documents, the custodian of the documents, and

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Although the Attorney General has found no violations, nothing within the APRA prohibits an individual 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 your 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,



Michael W. Field
Assistant Attorney General

Cc: Stephen Robinson, Esq.

that such a conclusion would make these documents publicly available, we simply conclude that “good cause” has been demonstrated in this case.