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

April 10, 2014
PR 14-08

Ms. Heather DiBenedetto

Re: <u>DiBenedetto v. Town of Foster</u>

Dear Ms. DiBenedetto:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Town of Foster ("Town") is complete. By correspondence dated February 10, 2014, you allege the Town violated the APRA when it denied your two (2) APRA requests, one dated February 3, 2014 for a transcript of a vicious dog hearing involving yourself and one dated February 10, 2014 for a voice recording involving the same vicious dog hearing.

In response to your complaint, we received a substantive response from the Town's Solicitor, Renee M. Bevilacqua, Esquire, along with sworn affidavits from the Foster Town Clerk, Ms. Carol Lyons Sholly and the Foster Deputy Town Clerk, Ms. Jane Christopher. Attorney Bevilacqua states, in pertinent part:

> "As Town Solicitor, I was contacted by the Town Clerk regarding the initial APRA request. * * * At that time, I had no knowledge of who was making the APRA request, therefore, I did instruct the clerk to redact any name or birthdate of a minor child (in this case a 12 year old girl who was attacked by the DiBenedettos' dog and another loose dog in the neighborhood). Subsequently, I was informed that the Requestor was a party to the incident. I then instructed the Clerk that she could release the audio file without the need for omitting the minor child's information. This exchange took only hours. Simultaneously, I spoke to [Ms. DiBenedetto's] husband, directly by telephone as he was with her repeatedly in the Town Clerk's Office. I explained they would be given the audio recording, but that they should not disseminate this information to anyone not involved in the incident, since the victim was a minor child. * * *

> In the matter of the February 3, 2014 request, the clerk responded immediately, in fact, well beyond what is required by RIGL Sect. 38-2-3(a) and based upon RIGL Sect. 38-2-3(h), explained **we do not maintain or create any 'Transcript' of the subject proceeding**. * * * (Emphasis in original).
>
> As for the February 10, 2014 request: again, the clerks responded **immediately**, informing the DiBenedettos that they would copy the audio tape of the Hearing onto a CD and estimating the allowable cost in writing. The Deputy Town Clerk went so far as to contact Ms. DiBenedetto **not once but twice** within the ten (10) day period to be certain the Requestor received the material and again, timely recorded this information by way of a notation on the actual APRA request. (Emphases in original)."

Clerk Carol Lyons Sholly states, in pertinent part:

> "It is my responsibility to record the proceedings of a Vicious Dog Hearing.
>
> The sound recordings of Vicious Dog Hearings are not transcribed but are stored in case of further inquiries or appeals.
>
> Upon my return to the Town Hall after the hearing, I created a document summarizing what transpired during the hearing * * * These are records we keep to be able to quickly review the proceedings at a future date.
>
> On February 3, 2014, [Ms.] Heather DiBenedetto completed a Request for Public Record form asking for a transcript of the hearing. * * *
>
> I checked with my Town Solicitor to see what the proper procedure was and was told that there might be a problem because the complainant was a minor.
>
> As a result I redacted the name of the minor child from the only document I had regarding the hearing which is the summary. * * * I gave this to [Ms.] Heather DiBenedetto on February 4, 2014.
>
> [Ms.] Heather DiBenedetto became angry and stated that the child never said any of the things on the document. I replied that it was not a transcript, that we do not do transcripts for dog hearings, and there was no other document I could give her.
>
> She took the document and left."[1]

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[1] Attached to Ms. Carol Lyons Sholly's affidavit was a copy of a redacted summary of the January 23, 2014 vicious dog hearing.

Deputy Town Clerk Jane Christopher states, in pertinent part:

> "On February 3, 2014 at 10:11 a.m. Ms. Heather DiBenedetto submitted a public records request form for Transcripts of a Vicious Dog Hearing held January 23, 2014. This request was referred to [Ms.] Carol Sholly, the Town Clerk, as she had attended that hearing and had prepared the hearing notes. Ms. Sholly was not able to provide a word-for-word transcript as we do not employ a stenographer for Vicious Dog Hearings, but was able to provide her typed notes detailing the hearing. These were provided to Ms. DiBenedetto on February 4, 2014.
>
> At 12:06 p.m. on February 10, 2014, I received a second public records request from [Ms.] Heather DiBenedetto asking for a copy of the audio files from the same Vicious Dog Hearing held on January 23, 2014.
>
> * * *
>
> On February 11, 2014, at approximately 11:17 a.m. I called [Ms.] Heather DiBenedetto at the contact number written on the request form. Ms. DiBenedetto answered the telephone, and I told her the CD was completed and ready to be picked up. She stated she would come in that afternoon to pick up the CD. She never appeared.
>
> On February 18, 2014, I left a message on Ms. DiBenedetto's answering machine asking if she was still interested in having the file and repeated that we had the CD waiting for her."

On February 19, 2014, Ms. DiBenedetto retrieved the audio recording.

At the outset, we note 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 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 § 38-2-7. In other words, we do not write on a blank slate.

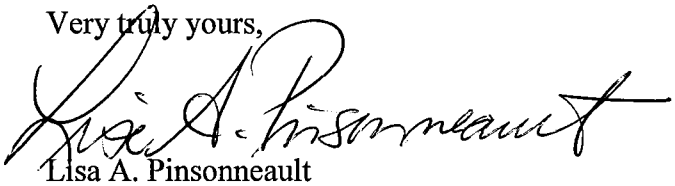
The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time 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.

It appears that on February 3, 2014, you made an APRA request for the "transcript" of the January 23, 2014 vicious dog hearing. In response to that request, you received a "summary" of what transpired at the vicious dog hearing. Although you indicate that you needed the "transcript," respectfully, it does not appear, based upon the evidence presented, that a "transcript" of the hearing ever existed. Although you did not request a document summarizing what transpired at the hearing, which is what you received, no evidence has been presented that a transcript ever existed and that you were improperly denied it. Since a transcript does not exist, the APRA does not require "a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made[.]" R.I. Gen. Laws § 38-2-3(h). It also appears that on February 10, 2014, you made an APRA request for the voice recording of the January 23, 2014 vicious dog hearing. It appears, based upon the evidence presented, that you received this voice recording on February 19, 2014.[2] Respectfully, you have provided no evidence to refute the Town's response. As such, we do not find that the Town violated the APRA with respect to these allegations.

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,



Lisa A. Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Renee Bevilacqua, Esquire

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[2] We question whether you had standing to raise this issue in your February 10, 2014 complaint, but our conclusion makes discussion of this point unnecessary.