



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

February 9, 2015
PR 15-05

Mr. Roger Durand

Re: Durand v. Warwick Board of Canvassers

Dear Mr. Durand:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Warwick Board of Canvassers (“Board”) is complete. By email correspondence dated August 28, 2014, you allege that the Board violated the APRA when you made an oral request for a site map on August 22, 2014 and the Board required you to complete a form. After submitting a written request you were provided the requested site map.

In response to your complaint, we received a substantive response from the Board’s legal counsel, Peter D. Ruggiero, Esquire, who also provided an affidavit from the Director of the Board, Ms. Donna McDonald. Attorney Ruggiero states, in pertinent part:

“The City of Warwick (‘Warwick’) adopted a records request policy (‘Policy’) in accordance with the relevant provisions of the APRA. * * * In relevant part, the Policy provides that all records requests be submitted using the records request form provided. * * * The submission form is simple, does not ask the reason for the request and is merely intended to document the request and evidence the response.”

Ms. McDonald states, in pertinent part:

“A Board counter clerk received a request for records in person orally from [Mr.] Roger Durand on [August] 22, 2014, for a map of Ward 1.

* * *

The City has an Access to Public Records Act policy which requires requestors to complete a simple form to insure [sic] accuracy and completeness in any response. * * *

When Mr. Durand made his request in person on [August] 22, 2014, he was instructed to fill out the records request form. Mr. Durand filled out the form and provided it to the Board’s counter clerk on duty. * * *

The Board's counter clerk fulfilled Mr. Durand's request immediately in full compliance with the sought after map of Ward 1. No fee or cost to produce the Ward 1 map was charged by the Board."

We note that you did not file a rebuttal.

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

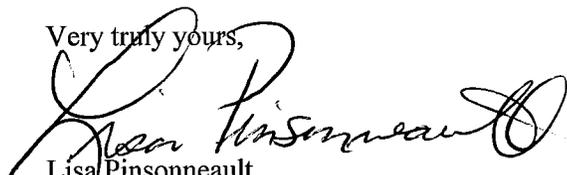
At the outset, we note that the APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or copy such records. See R.I. Gen. Laws § 38-2-3(a). The APRA provides that each public body shall establish written procedures regarding access to public records, but shall not require written requests for public information available pursuant to R.I. Gen. Laws § 42-35-2, or for other documents prepared for or readily available to the public. A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records. See R.I. Gen. Laws § 38-2-3(d).

It appears, based upon the evidence presented, that on August 22, 2014 you made an oral request to the Board, seeking a copy of the site map of Ward 1. The fact that the Board requested that you put your request in writing did not violate the APRA since no evidence has been presented that the Ward 1 site map was "prepared for or readily available to the public." See supra. If the Board had required you to fill out its APRA form to the exclusion of other forms of writing, or if you had refused to complete the APRA form, yet put your request in writing such that it was "otherwise readily identifiable as a request for public records" see R.I. Gen. Laws § 38-2-3(d), we may very well have a different view of this matter. Because no evidence has been submitted to substantiate this version of events, we find no violation.

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 Pinsonneault
Special Assistant Attorney General
Extension 2296

Cc: Peter Ruggiero, Esq.