



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 2, 2015

PR 15-22

Ms. Tara Flaherty

Re: Flaherty v. Rhode Island Department of Transportation

Dear Ms. Flaherty:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Department of Transportation (“RIDOT”) is complete. By email correspondence dated March 31, 2015, you allege the RIDOT violated the APRA when it improperly denied your APRA request dated March 19, 2015. More specifically, you were seeking documents regarding the “Draft Feasibility Study for Phase 4 Canonchet Farm Bike Path.” The RIDOT denied your request pursuant to R.I. Gen Laws § 38-2-2(4)(K) as a “draft,” but you allege because this document was submitted at a public meeting, namely the March 16, 2015 Narragansett Town Council meeting, it is a public document.

In response to your complaint, we received a substantive response in affidavit form from the RIDOT’s legal counsel, Siobhan Stephens-Catala, Esquire. Attorney Stephens-Catala states, in pertinent part:

“Complainant filed an Access to Public Records Act (‘APRA’) request on March 19, 2015 and asked for a ‘Draft Feasibility Study for Phase 4 Cononchet Farm Bike Path’ * * *

The request was denied pursuant to R.I. General Laws § 38-2-2(4)(K) as a ‘draft.’ * * *

Complainant then sent correspondence to RIDOT Office of Legal Counsel seeking an explanation as to why the request was denied.

At the time of the denial, RIDOT did not make a copy of the Draft available to the public thereby preserving the document’s draft status.

At the time of the denial, information was not willful or knowingly exempted to prevent the dissemination of public information.

At the time of denial, information was not exempted in a reckless manner to prevent the dissemination of public information.

Since Respondent followed statutory procedure according to Rhode Island General Law § 38-2-2, Respondent RIDOT requests that this complaint be dismissed without findings of any wrongdoing.”

You did not file a rebuttal.

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

We note that the APRA mandates that all records maintained by a public body shall be public records, unless otherwise exempt. See R.I. Gen. Laws § 38-2-2(4). Among the twenty-seven (27) exceptions is R.I. Gen. Laws § 38-2-2(4)(K), which exempts from public disclosure, “[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any document submitted at a public meeting of a public body shall be deemed public.”

Here, you contend that the “Draft Feasibility Study for Phase 4 Cononchet Farm Bike Path” is subject to disclosure under the APRA because it was submitted at a public meeting, namely a Narragansett Town Council meeting. We pause to note, however, that you did not submit your APRA request to the Narragansett Town Council, but rather to the RIDOT. In support of your allegation, you rely on the March 16, 2015 Town Council agenda, which states, inter alia, “Update Bike Path Feasibility Study Results, Updated by Town Manager.” Respectfully, the fact that the Town Manager was going to give an “update” on the bike path feasibility study results in no way demonstrates sufficient evidence for this Department to conclude that the draft feasibility study document was “submitted” at this meeting. Indeed, no evidence has been submitted that this draft was submitted at a public meeting.¹

¹ You did provide this Department with a June 1, 2015 email and the minutes to the Town Council’s March 16, 2015 meeting. Respectfully, this submission was not in accordance with this Department’s procedures, which prohibit additional correspondences being submitted to this Department from either party after the expiration of the rebuttal time frame (5 business days after the DOT’s response). For this reason, your submission is improper. Even if we were to consider this correspondence, however, our review finds no support for your argument, i.e., that the draft document was “submitted” at the March 16, 2015 Town Council meeting. For instance, you note

“Submitted” is defined to mean “to present for the approval, consideration, or decision of another of others.” See dictionary.com. See also The New Lexicon Webster’s Dictionary, (1988 Edition), p. 986 (“to offer for consideration, examination, a decision etc”). Applying the plain meaning, we have little trouble concluding that no evidence has been submitted that the “Draft Feasibility Study for Phase 4 Canonchet Farm Bike Path” document was submitted at a public meeting. See The Providence Journal v. Rhode Island Office of General Treasurer, PR 14-15 (“R.I. Gen. Laws § 38-2-2(4)(K)’s mandate that documents submitted at a public meeting is not implicated when a public body ‘discusses’ a particular subject matter. See R.I. Gen. Laws § 38-2-2(4)(K)”) (Emphases in original). Based upon the evidence presented, we find no violation.

Although the Attorney General has found no violation 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,



Lisa A. Pinsonneault
Special Assistant Attorney General
Extension 2297
LP/pl

Cc: John J. Igliazzi, Esq.

that the draft document was “submitted to the Town of Narragansett Planning Department,” but R.I. Gen. Laws § 38-2-2(4)(K) requires submission “at a public meeting.” You also note that the March 16, 2015 minutes evince that a Town Council member offered to provide his copy of the draft report to a citizen and that copies of the draft report would be available in the Clerk’s office. We have been provided no evidence that the draft report was made available to the citizen or at the Clerk’s office – and question if the draft report was made available at the Clerk’s office why you would not have obtained a copy at that location – but in any event again neither fact demonstrates that the draft report was submitted “at a public meeting.” See R.I. Gen. Laws § 38-2-2(4)(K). Our reasoning is further explained within the text.