



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 25, 2014
PR 14-14

Mr. Josh Fenton

Re: Go Local Prov. v. City of Providence

Dear Mr. Fenton:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the City of Providence (“City”) is complete. By email correspondence dated May 21, 2014, you allege the City violated the APRA when it failed to timely respond to your March 30, 2014 APRA request.¹

In response to your complaint, we received a substantive response in affidavit form from the City’s Assistant Solicitor, Katherine M. Sabatini, Esquire, who also provided an affidavit from the City’s Director of Communications and Media Relations, Mr. David Ortiz. Solicitor Sabatini states, in pertinent part:

“On May 20, 2014, shortly after 5:00 pm, I received a phone call from [Mr.] David Ortiz, in which he inquired as to whether or not I was familiar with [a] GoLocal public records request * * * pertaining to Spike Down Volleyball.

Mr. Ortiz relayed to me that he had just spoken with [Mr.] Josh Fenton at GoLocal and that Mr. Fenton had informed him that the City was out of time, pursuant to APRA * * *

Mr. Ortiz forwarded the * * * request[] to me by email for my reference.

¹ Your complaint indicates your request was made on March 2, 2014, but the evidence (a copy of your email request) makes clear the request was made on March 30, 2014.

I conducted a search of my records and determined that the Public Records Unit had no record, previous to Mr. Ortiz's May 20 emails, of the two requests.

* * *

Because I was not personally familiar with Spike Down Volleyball, and because the request referenced the City of Providence (as a whole), the Recreation Department, and the School Department, I forwarded it to the Public Property, Purchasing, Parks and Recreation Departments, and the School Department.

I received communications from public property, purchasing, and the school department, indicating that they were not familiar with Spike Down Volleyball and did not have responsive documents.

It became clear that responsive documents would be maintained by the Recreation Department.

* * *

By the end of the day on May 21, I was informed that the only records responsive to the request are copies of checks from Spike Down Volleyball to the Vincent Brown Recreation Center.

I asked that these documents be forwarded for my review.

I received the documents on May 22. I reviewed and redacted them in accordance with the Access to Public Records Act, redacting personal bank account numbers and street addresses.

* * *

I estimate that it took at least three (3) to four (4) hours of my time to review and redact the checks and to review the potentially responsive emails.

In accordance with R.I. Gen. Laws § 38-2-7(b), search and retrieval fees were waived because the City failed to respond in a timely manner.

I provided a response to GoLocal on May 22."

Mr. Ortiz states, in pertinent part:

"I am the Director of Communications and Media Relations for the City of Providence.

On May 20, 2014 at approximately 5 p.m., I received a call from [Mr.] Josh Fenton, the co-founder and CEO of GoLocal, in which Mr. Fenton informed me that GoLocal had not received [a] timely response * * * to the request[] for public records that w[as] emailed to me.

* * *

I then went through my emails and determined that I had not previously forwarded to the Public Records Unit the email[] containing the * * * records request[].

* * *

I told Mr. Fenton I honestly did not recall receiving the[] email[], and surmised that I may have assumed the Public Records Unit had received the request[] because GoLocal often includes both me and the Public Records Unit on the same email when requesting public records.”²

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

Under the APRA, a public body has ten (10) business days to respond to a request for documents. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within those ten (10) business days to the person or entity making the request. See R.I. Gen. Laws § 38-2-7(a). If no response

² We pause to note the APRA states that each public body shall establish written procedures regarding access to public records. See R.I. Gen. Laws § 38-2-3(d). The City does have written procedures regarding access to its public records. See <http://www.providenceri.com/law/apra-request/>. The City’s APRA policy states, in pertinent part:

1. A request to inspect and/or copy public records of the City of Providence may be presented orally or in writing to the Public Records Unit at 444 Westminster Street, Suite 220, Providence, RI 02903 during normal business hours (8:30 a.m. to 4:30 p.m. Monday through Friday) or (401) 680-5333. (Emphasis added).

The fact that the City’s APRA policy indicates that APRA requests “may” be presented to the Public Records Unit means that your request to Mr. Ortiz complied with the City’s APRA policy. In other words, the City’s APRA policy does not require an APRA request to be made in any particular format or to any particular person. We wonder whether a more specific policy identifying a particular person(s) or Unit where an APRA request must be made would have alleviated the circumstances leading to this complaint.

is sent within ten (10) business days, the lack of a response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). If, for good cause, the public body cannot comply with a records request within ten (10) business days, the public body may extend the period an additional twenty (20) business days, for a total of thirty (30) business days. See id.; see also R.I. Gen. Laws § 38-2-3(e).

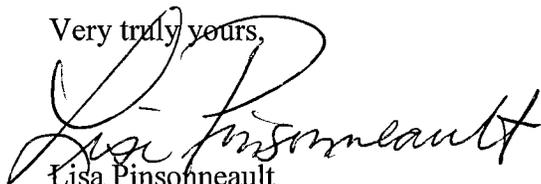
Here, it is undisputed that you made an APRA request dated March 30, 2014 via email. It is further undisputed that you received no response until on or about May 22, 2014. This untimely response came only after you called Mr. Ortiz on May 20, 2014 to inquire as to the status of your APRA request. Thus, the City violated the APRA when it failed to respond within ten (10) business days to your March 30, 2014 APRA request. See R.I. Gen. Laws § 38-2-7.

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).

Here, we find neither remedy appropriate. Specifically, the City has already provided to you documents responsive to your March 30, 2014 request at no charge. Accordingly, injunctive relief is not appropriate. We also conclude, based upon the evidence presented, that insufficient evidence exists for a willful and knowing, or reckless, violation. Indeed, while certainly not dispositive, your complaint does not allege a willful and knowing, or reckless, violation. This finding serves as notice to the City that its omission violated the APRA and may serve as evidence in a future similar situation of a willful and knowing, or reckless, violation.

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 2297

LP/pl

Cc: Jeffrey Padwa, Esquire