



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

October 10, 2014  
PR 14-25

Ms. Nancy Howard

RE: **Howard v. Rhode Island Turnpike and Bridge Authority**

Dear Ms. Howard:

The investigation into your Access to Public Request Act (“APRA”) complaint filed against the Rhode Island Turnpike and Bridge Authority (“RITBA”) is complete. By email correspondence dated May 7, 2014, you allege the RITBA violated the APRA when it failed to fully respond to your APRA request dated March 11, 2014. More specifically, you allege the RITBA failed to provide you with copies of the “contracts/agreements, change orders, request for proposals and RITBA Agenda tracking information as it relates to the award of multimillion dollar contracts to Site Resources, LLC.”

In response to your complaint, we received an affidavit from the RITBA’s legal counsel, William E. O’Gara, Esquire. Attorney O’Gara states, in pertinent part:

“On or about April 11, 2013 my office responded to another Access to Public Records Act request from Ms. Howard. The response was timely.

I believed that my office had sent the responsive records to Ms. Howard.

I take responsibility for this oversight and will, in the future, make sure all responses are timely.”

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 RITBA violated the APRA. See R.I. Gen. Laws § 38-2-8. 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 § 38-2-7. 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. See R.I. Gen. Laws § 38-2-7.

Upon review of this matter, we find that the RITBA violated the APRA. As the evidence shows, you made an APRA request on March 11, 2014, addressed to [Mr.] Buddy Croft, Executive Director of the RITBA. In that APRA request you sought the following documentation pertaining to contract awards to Site Resources LLC:

“all contract/agreements and change orders awarded from January 2005 to present March 2014;

RITBA Meeting Minutes approving contract/agreements under Item 1 above;

RITBA Board Agenda Item Tracking System documentation;

[a]ll Request for Proposals (or Bids) posted on the RI Purchasing web site pertaining to contracts/agreements award under item 1 above”

It appears on March 27, 2014, the law firm of Pannone Lopes Devereaux & West (“PLDW”) sent you various RITBA agendas and meeting minutes, invoices and board agenda items, but did not provide “any contracts/agreements, change orders, request for proposals or RITBA Agenda tracking information.” By correspondence dated March 31, 2014, you informed Mr. Croft of the

RITBA that while some of the information was provided, it was incomplete. Mr. Croft agreed that he would provide the complete documentation the following week.<sup>1</sup> The RITBA did not fully respond to your request, however, until May 13, 2014, after you filed your APRA complaint with this Department. This Department found a similar violation in Kelly & Mancini, PC v. Town of Warren, PR 14-19, when the Town failed to timely respond to the APRA request. See R.I. Gen. Laws § 38-2-7(a). Accordingly, we find that the RITBA violated the APRA when it failed to timely respond to your request.

Upon a finding that a complaint brought pursuant to the APRA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 38-2-9(d). There are two remedies available in suits filed under the APRA: (1) the court may issue injunctive relief and declaratory relief and/or (2) the court may impose a civil fine of up to two thousand dollars (\$2,000) against a public body or any of its members found to have committed a willful or knowing violation of the APRA, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated the APRA. R.I. Gen. Laws § 38-2-8(b); § 38-2-9(d).

In terms of injunctive relief, we do not believe such a remedy is appropriate under the circumstances as it appears you are now in receipt of all records requested. We do have concerns whether the RITBA recklessly, or willfully and knowingly, violated the APRA. RITBA has not offered any evidence of why its response was untimely other than that they believed that the responsive records had been already sent. The fact that RITBA timely responded to the APRA request with some of the documents on March 27, 2014 shows that RITBA was aware of the APRA requirements. This Department provides guidance in recent findings for what type of violation may be considered reckless. See Catanzaro v. East Greenwich Police Department, PR 13-08; O'Rourke v. Bradford Fire District, PR 13-11. See also DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994); Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453 (R.I. 1986) (willful and knowing). Moreover, and respectfully, the fact that PLDW "take[s] responsibility for this oversight," does little to explain this violation and prior similar situations have resulted in civil lawsuits by this Department. See, Scripps News v. Department of Business Regulations, PR 14-07B (In finding an APRA violation, this Department was unpersuaded by the Department of Business Regulation's argument that "the failure to respond was an inadvertent mistake" that happened "because of the press of other business of an extremely busy governmental agency."); Collette v. Town of Charlestown, PR 13-20 (This Department concluded that the Town's legal counsel was "acting on behalf of and/or in place of" the Town for purposes of the APRA. R.I. Gen. Laws § 38-2-2(1)).

We shall allow the RITBA ten (10) business days within receipt of this finding to respond to our concern that the instant violation is reckless or willful and knowing in accordance with Catanzaro, O'Rourke, DiPrete, and Carmody. The RITBA's response should not be conclusory.

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<sup>1</sup> This email was copied to Mr. O'Gara.

Should you wish, you may also provide this Department a substantive response on this same issue within ten (10) business days of receipt of this finding. Thereafter, a supplemental finding will be issued concerning whether the instant violation is reckless or willful and knowing.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in cursive script that reads "Lisa Pinsonneault". The signature is written in black ink and is positioned above the typed name.

Lisa Pinsonneault

Special Assistant Attorney General

Extension 2297

LP/pl

Cc: William E. O'Gara