



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

September 22, 2014  
PR 14-24

Mr. John Baccari

**Re: International Association of Fire Fighters v. Nasonville Fire Department/District**

Dear Mr. Baccari:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Nasonville Fire Department/District (“Department/District”) is complete. By correspondence dated April 14, 2014, you allege the Department/District violated the APRA when it failed to respond to your APRA request dated January 15, 2014.

In response to your complaint, we received a substantive response from the Department/District’s legal counsel, Jeffrey W. Kastle, Esquire, who also provided an affidavit from the Chairwoman of the Nasonville Fire District Board of Commissioners, Ms. Janet Raymond. Attorney Kastle states, in pertinent part:

“it is true that the District, through its Fire Chief, received a request, on or about January 15, 2014, for tapes and minutes of certain District meetings between October 2013 through January 2014. It is further my understanding that the Fire Chief put the records request in the mailbox of the District Chairwoman, [Ms.] Janet Raymond, and approximately a week later Chairwoman Raymond picked up the request. Upon reviewing the request Chairwoman Raymond collected the tapes from the meetings on the requested dates to have them copied. She also told the District’s clerk she needed the minutes of the meetings. Unfortunately, it is at this point that there was a significant breakdown in the District’s procedure. \* \* \*

[T]he District accepts responsibility for its actions which have resulted in the instant complaint. The above recitation of facts is not an excuse for the District's inadvertent and wholly unintended failure to respond to the written request for information, but, instead, is an explanation of how this situation occurred. \* \* \* The District should have more closely supervised the clerk to make sure that these important duties were being performed in an appropriate and timely manner.

[T]he tapes and meeting minutes requested have been fully transcribed and have already been provided to [the] Complainant."

Chairwoman Raymond states, in pertinent part:

"During the third or fourth week of January 2014 I received a written request for tapes and meeting minutes in my mailbox at the District Fire Station. I immediately collected the tapes of the requested meetings (October 2013 through January 2014) for purposes of copying. I also told the District clerk I needed copies of the meeting minutes for those same months.

\* \* \*

As Chairwoman of the District Board, the Board accepts full responsibility for the District's unintended error in not responding to the request for records made on or about January 15, 2014. I have made sure that as of the signing of this Affidavit, the requested records have been delivered to the appropriate entity."

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 Department/District 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 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. A public body has ten (10) business days to respond in some capacity to a records request, whether by producing responsive documents, denying the request with reason(s), or extending the time period necessary to comply. 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 is sent within ten (10) business days, the lack of 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 those ten (10) business days, then the public body may extend the period an addition twenty (20) business days, for a total of thirty (30) business days. See R.I. Gen. Laws § 38-2-3(e).

Here, you made an APRA request to the Department/District on January 15, 2014. It is undisputed that you did not receive a timely response. Rather, you received a response only after you filed a complaint with this Department. Pursuant to R.I. Gen. Laws § 38-2-3(e), the Department/District likely could have extended the time to respond an additional twenty (20) business days. There is no evidence that the Department/District extended the time to respond. We find that the Department/District failed to respond to your APRA request within the requisite ten (10) business day period in violation of Rhode Island General Laws § 38-2-7.<sup>1</sup>

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).

In terms of injunctive relief, we do not believe such a remedy is appropriate under the circumstances as it appears the Department/District has provided to you documents responsive to your January 15, 2014 APRA request. Because the Department/District failed to timely respond to your APRA request, we do have concerns whether the Department/District willfully and knowingly, or recklessly violated the APRA. The time frame within which a public body has to respond to an APRA request has been consistent for many years. We have trouble understanding, and the Department/District does not provide guidance, as to why it was not complying with the time frame set forth in the APRA. In particular, while the Department/District indicates that its response was delayed due to issues surrounding its clerk, no explanation has been made concerning why the Department/District still failed to timely

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<sup>1</sup> We pause to address a point in the Department/District’s response, namely that you did not first petition the chief administrative officer of the Department/District. Under R.I. Gen. Laws § 38-2-8(a) “[a]ny person . . . denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body . . .” R.I. Gen. Laws § 38-2-8(a) (Emphasis added). The plain language of R.I. Gen. Laws § 38-2-8 does not require that a complainant exhaust his or her administrative remedies prior to filing an APRA complaint with this Department. See Downey v. Carcieri, 996 A.2d 1144, 1150-51 (R.I. 2010) (holding that under the plain language of R.I. Gen. Laws § 38-2-8 a complainant is not required to exhaust all administrative remedies prior to filing a complaint in Superior Court. To the contrary, and as evidenced by the use of the word “may” in the statute, a complainant has the option to petition the chief administrative officer, but is not required to do so prior to filing a complaint with this Department.

respond to your APRA request within ten (10) business days. Such a response could very well have included extending the time to respond pursuant to R.I. Gen. Laws § 38-2-3(e), but the evidence is undisputed that no timely response—of any kind—occurred. The Department/District’s complete failure to respond in the time frame mandated by the APRA violated the APRA and, in our opinion, is not satisfactorily explained at this juncture. Other cases with similar facts have resulted in this Department filing a lawsuit in Superior Court. Kelly & Mancini v. Town of Warren, PR 14-19B. 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)(willful and knowing).

We shall allow the Department/District 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 precedent. The Department/District’s response should not be conclusory. 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,



Lisa Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: Jeffrey W. Kasle, Esquire