



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

December 8, 2014
PR 14-34

Mr. Michael C. Arnold

Re: IBPO Local 302 v. Town of Portsmouth

Dear Mr. Arnold:

Your Access to Public Records Act (“APRA”) complaint, filed on behalf of IBPO Local 302, against the Town of Portsmouth (“Town”) is complete. By email correspondence dated September 29, 2014, you alleged that the Town violated the APRA when it failed to provide the IBPO Local 302 with source documents responsive to the request. In pertinent part, you stated:

“our treasurer had requested all documents relating to payment of attorney fees and other expenses incurred due to an interest arbitration hearing between the Town of Portsmouth and IBPO Local 302. *** I received a sole email from Mr. Lathrop indicating the amount spent on the interest arbitration; however, [our treasurer] did not receive any supporting documentation to substantiate such claim.”

The Town provided a substantive response on October 7, 2014. The Town states, in pertinent part:

“The complaint letter dated September 26, 2014 from IBPO Local 302 President, Michael C. Arnold, to Lisa Pinsonneault of your Department, does not accurately reflect the actual request that was submitted by Local 302’s Treasurer, Jack Clark. Mr. Clark requested ‘all debts paid and owed due to negotiations with the Portsmouth Police Union to include legal fees, witnesses, actuary costs, etc. from dates January 1st 2013 thru July 1st 2014.’ James Lathrop, Director of Finance and Human Resources, reasonably interpreted this to be a request for information – not records – ***. While APRA does not require a public agency to answer questions or compile information and create records in response to a request, Mr.

Lathrop nevertheless conducted the necessary research to determine the amount of the Town's expenditures, and he furnished that information to Local 302. ***"

We acknowledge your October 28, 2014 and November 7, 2014 rebuttals and the Town's November 5, 2014 response to your 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 Town violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

As an initial matter, we begin by addressing the Town's argument that the September 3, 2014 request was a "request for information – not records." In doing so, we are mindful that this Department has "never required an APRA request to contain talismanic language in order to be considered an APRA request," but that the APRA, and requests made pursuant to the APRA, must be construed in a manner that advances the purpose of the APRA. See Campbell v. Coastal Resources Management Council, PR 08-33. See also Gagnon v. City of East Providence, PR 12-23.

Here, the evidence shows that the Union submitted a written APRA request on the Town's designated "Public Records Request Form," and that on the space provided after the heading "Requested Records," the Union indicated they were seeking "all debts paid and owed due to negotiations with the Portsmouth Police Union to include legal fees, witnesses, actuary costs, etc." Also, according to your complaint, you "had spoken to the Town of Portsmouth at length about obtaining these documents only to be advised that either the documents were being prepared or not available due to a meeting that needed to be scheduled between the Town Administrator Mr. John Klimm and the Personnel/Finance Director Mr. James Lathrop," a statement that the Town, at no moment, refutes or addresses. Here, the Town makes no argument that the request is not susceptible to document production. Indeed, the Town admits that Mr. Lathrop "conducted the necessary research to determine the amount of the Town's expenditures." Based on the totality of the circumstances, we reject the Town's argument that the Union's September 3, 2014 APRA request was a "request for information." Respectfully, any conclusion to the contrary in these circumstances would be contrary to the APRA.

Having determined that the September 3, 2014 request was a proper APRA request, the remaining issue to be decided is whether the Town violated the APRA when it failed to provide you with documents responsive to the request.

Previously, this Department had the opportunity to address a similar issue. In Campbell v. Town of Tiverton PR 12-13, the Complainant sought “all written materials and records concerning legal fees and expenses.” Instead of providing Complainant with the requested records, the Town responded as follows:

“Ursillo Teitz & Ritch, Ltd (mostly Andrew M. Teitz) billed 63.6 hours, and a total of \$9,340. Ruggiero Brochu (solely Peter Ruggiero) billed 72.1 hours, and a total of \$7,210. Please note that these figures are through January 31, 2012 and do not include time from February as it has not yet been billed.”

I hope that this provides you with sufficient information.”

In Campbell, we concluded that the Town violated the APRA by not allowing the Complainant to “inspect and/or to copy” the actual records. See R.I. Gen. Laws § 38-2-3(a). We further indicated that, although the Town may have provided Complainant with the information sought, the Town’s response did not comply with the APRA’s procedural requirements, i.e., the “right to inspect and/or to copy” records. Id. (Emphasis added). See also Azar v. Lincoln School Department, PR 08-36 (The School Department violated the APRA by only providing numerical information instead of providing an actual copy of the requested billing statements for legal fees).

Here, like in Campbell and Azar, we find that the Town’s response was not sufficient to comply with the APRA’s requirements. 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 § 38-2-3(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. 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. If a public body needs additional time to respond to an APRA request, the APRA provides that a public body, “for good cause,” may extend the response time an additional twenty (20) business days to a total of thirty (30) business days. See R.I. Gen. Laws § 38-2-7(b). Also, the “[f]ailure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial.” Id.

Here, instead of granting or denying you access to the records sought, the Town provided you with numerical information and/or a narrative response. Specifically, in an email dated September 25, 2014, the Town wrote:

“The Town of Portsmouth occurred [sic] cost [sic] of \$87,313 on police arbitration.”

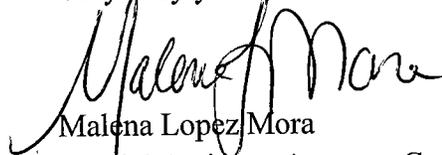
While it appears that the Town provided you with information that may be responsive, at least in part to your request, the evidence makes clear that you were not allowed to “inspect and/or to copy” the actual records. See R.I. Gen. Laws § 38-2-3(a). Lastly, in the Town’s November 5, 2014 correspondence, the Town indicates that if the Union “wanted to receive certain actual documents, [the Union] could and should have stated what records [it] wanted Mr. Lathrop to provide.” Respectfully, for the reasons already cited, we simply disagree with this conclusion. Therefore, based upon this evidence, we find that the Town violated the APRA by failing to provide you with the source documents responsive to your request.

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 conclude that insufficient evidence exists at this time to find a “knowing and willful” or “reckless” violation. Notwithstanding, we direct the Town to provide you with documents responsive to your request within ten (10) business days of this finding, or otherwise demonstrate good cause as to why the documents should not be disclosed.¹ If the Town does not provide you with documents responsive to your request, you should contact this Department so that we may review the Town’s actions.

This finding serves as notice to the Town that its actions violated the APRA and may serve as evidence of a willful and knowing or reckless violation in any future similar case. We respectfully request that legal counsel ensure the Town is aware of this finding and the requirements of the APRA.

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

Very truly yours,



Malena Lopez Mora

Special Assistant Attorney General

Ext: 2307

Cc: Kevin P. Gavin

¹ Because the Town effectively denied your request by not providing you the requested documents, these records should be provided to you at no cost. See R.I. Gen. Laws § 38-2-9(d).