



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

February 17, 2015
PR 15-07

Ms. Pamelee M. Murphy

Re: Murphy v. City of Providence

Dear Ms. Murphy:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the City of Providence (“City”) is complete. By correspondence dated July 10, 2014, you allege the City violated the APRA when it did not provide you any records responsive to your APRA request dated June 21, 2014.

In response to your complaint, we received a substantive response from Assistant City Solicitor for the City and member of the Public Records Unit, Tolulope Olasanoye, Esquire, who also provided an affidavit from the Director of the Records Bureau, Detective Anthony Roberson. Solicitor Olasanoye states, in pertinent part:

“On Saturday June 21, 2014, Ms. Murphy completed an online Request to Inspect and/or Copy Public Records Form in which she requested ‘all records of the complaints, investigations, and any documents which explain the police departments [sic] refusal to send an officer to quell the public disturbance’ and ‘plans, if any, to remedy the violations and any policy considerations documented which reflect a concern for taxpayers who have made an investment in residential real estate in the City of Providence who are unable to enjoy their homes due to city police department’s failure to respond and enforce all ordinances enacted by the city.’ Additionally, she requested a copy of the City’s ‘personnel policy regarding bullying of taxpayers who seek to enforce ordinances by desk officers.’

* * *

On Monday June 23, 2014, I forwarded the request to [Ms.] Serena Conley, License Administrator for the Board of Licenses, and Detective Anthony Roberson of the Providence Police Department, and inquired as to whether they maintained any responsive documents and asked that any such documents be forwarded for Public Records Unit review.

On the same day I received an email from Ms. Conley informing me that the Board of Licenses did not maintain any documents responsive to Ms. Murphy's request. She also indicated that I should inquire with the police department. * * *

On Thursday July 3, 2014, I called Detective Roberson and asked him to determine whether the Police Department maintained any documents responsive to Ms. Murphy's request. He indicated that he had searched the computer system for police reports and did not find anything responsive. He also indicated that he was unaware of any police policies regarding bullying of taxpayers.

On July 8, 2014, having conducted a reasonable search for documents, the Public Records Unit provided a response to Ms. Murphy via email at the email address provided. * * *

Upon receipt of the July 24, 2014 Complaint, I called Detective Roberson and asked that he confirm again that there were no police records responsive to Ms. Murphy's original request. He advised me during that conversation that there were not.

To the best of my knowledge, the City does not maintain records responsive to Ms. Murphy's June 21 request for records."

Detective Roberson states, in pertinent part:

"I am currently a Juvenile Detective for the Providence Police Department and am, inter alia, the Director of the Records Bureau. As Record Bureau Director, I am responsible for the maintenance and storage of all police incident and accident reports. Additionally, I provide responses to certain requests for records made pursuant to the Access to Public Records Act ('APRA').

On Monday June 23, 2014, I received an email * * * from [Mr.] Tolulope Olasanoye inquiring as to whether the Police Department maintained documents that were responsive to a June 21, 2014 request for records from [Ms.] Pamelee Murphy.

After reviewing Ms. Murphy's request, I conducted a search utilizing our records database for the police reports described in the request and did not find anything responsive.

On July 3, 2014, I spoke with [Mr.] Tolulope Olasanoye regarding Ms. Murphy's request and informed him that I had conducted a search for police reports and had not found anything responsive to her June 21, 2014 request. I also indicated that the Police Department does not have a policy against bullying residents.

On Wednesday July 30, 2014, [Mr.] Tolulope Olasanoye called me and asked me to confirm that there were no police records responsive to Ms. Murphy's request, since she had filed a complaint with the Department of Attorney General. During that conversation, I verified that the Records Bureau did not maintain any copies of policies regarding bullying of taxpayers who seek to enforce ordinances or police reports that were responsive to the request.

To the best of my knowledge, the Providence Police Department does not maintain records responsive to Ms. Murphy's June 21 request for records."

On October 2, 2014, this Department contacted Assistant City Solicitor Olasanoye who apparently inadvertently failed to respond to your request for records reflecting the City's:

"plans, if any, to remedy the violations and any policy considerations documented which reflect a concern for taxpayers who have made an investment in residential real estate in the City of Providence who are unable to enjoy their homes due to the city police department's failure to respond and enforce all ordinances enacted by the city."

Solicitor Olasanoye states, in pertinent part:

"On Saturday June 21, 2014, Ms. Murphy * * * requested a copy of the City's 'personnel policy regarding bullying of taxpayers who seek to enforce ordinances by desk officers.' * * *

On July 8, 2014, having conducted a reasonable search for documents, the Public Records Unit provided a response to Ms. Murphy via email at the email address provided. * * *

Upon receipt of the July 24, 2014 Complaint, I called Detective Roberson and asked that he confirm again that there were no police records responsive to Ms. Murphy's original request.

* * *

To the best of my knowledge, the City does not maintain records responsive to Ms. Murphy's June 21 request for records."

We acknowledge your replies dated August 12, 2014 and November 6, 2014.

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.

At the outset, we note that the APRA states that, unless exempt, all records maintained by the public body shall be public records and every person shall have the right to inspect and/or copy such record. See R.I. Gen. Laws § 38-2-3(a). The APRA requires “[a]ll records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.” R.I. Gen. Laws § 38-2-3(a). The APRA also provides, in relevant part, that nothing within the APRA “shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made.” R.I. Gen. Laws § 38-2-3(f).

While your APRA complaint raises various issues concerning the Providence Police Department complaint process and its response, as noted above, the main issue for our consideration is whether the City’s search and retrieval relating to your June 21, 2014 APRA request was reasonable. It has been observed that “it is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested.” See Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217 (D.D.C. 1989). See also McLaughlin v. Rhode Island Family Court, PR 11-34.

Here, the evidence demonstrates that the City’s Public Records Unit forwarded your APRA request to the City’s License Administrator for the Board of Licenses and to the Director of the Providence Police Department Records Bureau seeking any responsive documents. It appears, based upon the evidence presented, that the Board of Licenses did not maintain any documents responsive to your APRA request. According to Detective Roberson’s affidavit, he conducted a search utilizing the records database and could not locate any records responsive to your request, and after you filed the instant complaint, Detective Roberson conducted a second search to confirm his finding. It is also notable that your complaint relates that the desk officer “hung up during the complaint process.” While we certainly do not condone such a response, if true, such a response would explain the lack of responsive documents to your APRA request. Lastly, we observe your representation that on prior occasions the City has provided you documents responsive to similar APRA requests. If the City maintained documents responsive to the instant APRA request, the City’s past history suggests it would have responded in a similar manner.

Based upon the foregoing, there is simply no evidence to demonstrate that the City’s search for the requested records was unreasonable or that the Police Department maintains the requested records. Specifically, we have been presented no evidence to establish that the City has responsive documents that it refuses to provide you. This Department has previously held that the failure of a public body to produce records that do not exist does not violate the APRA. See, e.g., O’Rourke v. Bradford Fire District, PR 13-11; Hazelwood v. Town of West Greenwich, OM 13-09; Tetreault v. Lincoln School Committee and Superintendent of Schools, PR 99-14. See also R.I. Gen. Laws § 38-2-3(h). Accordingly, for all these reasons, we find no violation.

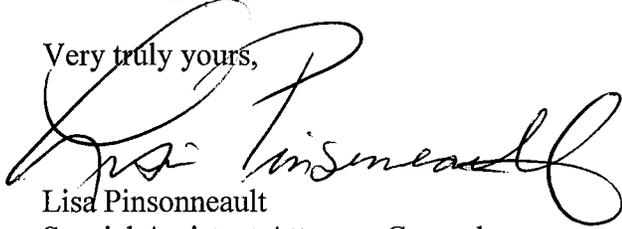
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Although the Attorney General will not file suit in this matter, nothing in the APRA prohibits an individual from obtaining legal counsel for the purposes of instituting injunctive or declaratory relief within the Superior Court. Please be advised that we are closing your file as of the date of this correspondence.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault", written in a cursive style.

Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Kathryn Sabatini