



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

May 26, 2016
PR 16-20

Mr. Josh Fenton

Re: GoLocal 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 February 18, 2016, you allege the City violated the APRA when it improperly denied your APRA request dated January 6, 2016. Specifically, you state that you filed the following APRA request through the City’s online portal:

Please provide a list of all cost and expenses incurred relating to the development of the grant application, studies, research, materials, websites, and any contracts executed relating to the city of Providence’s Streetcar/Trolley program. Please provide a breakdown of all costs and budgets. This should include, but no [sic] be limited to staff time and associated costs, consultants, legal, and all third party contractors/vendors.

We received a response to your APRA complaint from City Solicitor Samuel Budway, Esquire, who states in pertinent part:

Because the City does not maintain documents responsive to Complainant’s request, it is the City’s contention that it responded to the request in accordance with the Act. To the extent that the Attorney General reaches a different conclusion and determines that there was a violation of the Act, the City respectfully submits that any such violation was not knowing, willful, or reckless.

The City also provides two affidavits. The first affidavit is by Ms. Martina L. Haggerty, Associate Director of Special Projects with the Department of Planning and Development. In her affidavit, Ms. Haggerty states, in pertinent part:

6. I reviewed Complainant’s request and subsequently responded to the Public Records Unit that no such lists exist showing “all cost and expenses incurred.” In

addition, I explained to the Public Records Unit that the [Department of Planning and Development] DPD never signed a contract with HDR, Inc.

7. Additionally, I informed Samuel A. Budway that the DPD maintained a copy of a contract with Parsons Brinckerhoff, Inc. but that the DPD did not maintain a list of costs or expenses incurred relative to said contract.

8. After extensive search and retrieval both within the DPD's records as well as within the broader City's records, I, in conjunction with Samuel A. Budway, determined that no documents responsive to the request of the Complainant dated January 6, 2016 existed.

I remain of the view that no such documents exist, and that this determination was made in good faith, was made in an effort to comply with the law, and was in no way knowing, willful, or reckless.

The second affidavit is by Samuel A. Budway, Assistant City Solicitor, who states in pertinent part:

5. I reviewed Complainant's request and reached out to the Department of Planning and Development ("DPD") as a potential source of documents responsive to the request.

6. I was informed that Martina Haggerty, Associate Director of Special Projects, would be responsible for maintaining, and determining whether or not the City and/or the DPD had, documents responsive to the request.

7. On or before January 20, 2016, I made a determination that, due to the number of requests for records pending and in order to properly search and potentially retrieve any and all documents responsive to the Complainant's request, the City had to extend the time to respond by an additional twenty (20) business days, in accordance with the Act.

8. On or about February 18, 2016, after speaking with Martina L. Haggerty, we collectively determined that the City did not maintain 'a list of all cost and expenses incurred relating to the development of the grant application, studies, research, materials, websites, and any contracts executed relating to the city of Providence's Streetcar/Trolley program' or 'a breakdown of all costs and all budgets,' whether or not they included 'staff time and associated costs, consultants, legal, and all third party contractors/vendors.'

We received no reply to the City's response.

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

Your APRA request asks for "a list of all cost and expenses incurred relating to the development of the grant application, studies, research, materials, websites, and any contracts executed relating to the city of Providence's Streetcar/Trolley program." You further request "a breakdown of all costs and budgets. This should include, but no [sic] be limited to staff time and associated costs, consultants, legal, and all third party contractors/vendors." It is clear from a review of the City's response that the City interpreted your APRA request as seeking "a list" and "a breakdown" of certain information, not for documents that may or may not contain the information that you seek. For example, your complaint references evidence that the City received federal funding or executed a contract, which you claim supports your assertion that responsive documents exist, but were not provided. The City, on the other hand, does not directly dispute that documents responsive to these categories may exist, but instead, contends that you requested "a list" and "a breakdown" and that no "list" or "breakdown" exists.

After reviewing, parsing, and studying on numerous occasions the APRA request as recited by you in your APRA Complaint, this Office determines that the City's interpretation of your APRA request was not unreasonable. To be sure, your APRA request did contain the language that you sought a "list of all cost and expenses" and this language did modify the substantive categories that your complaint contends you never received. As noted earlier, our review is limited to determining whether the City violated the APRA and, at the very least, it is apparent that your APRA request could be subject to different interpretations by the objective reader. As such, the City's interpretation of the plain language of your APRA request was not unreasonable and did not violate the APRA. See Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217, 219 (D.D.C. 1989)("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").

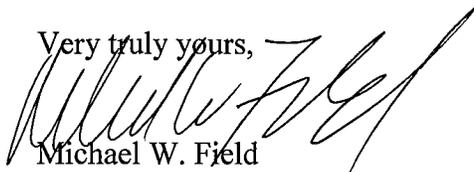
Moreover, there is no evidence presented that the City, at the time of your APRA request, maintained "a list" or "a breakdown" of the costs, expenses, and other information that you seek. The APRA does not require a public body "to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data." See R.I. Gen. Laws § 38-2-3(h). Under circumstances similar to those presented here, the Rhode Island Supreme Court concluded that the City also did not violate the APRA and had no duty to create lists of information that did

not already exist at the time of the request. See Direct Action for Rights & Equality v. Gannon, 713 A.2d 218, 225 (R.I. 1998)(the city of Providence was “under no obligation to provide DARE with a listing of any findings from its internal affairs investigation”). Based upon the facts of this case, and in accordance with the applicable APRA provision and our Supreme Court’s precedent, we find that the City did not violate the APRA when it denied your APRA request dated January 6, 2016. Of course, nothing prohibits you from tendering another APRA request to the City.

Nothing within the APRA prohibits an individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

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

Very truly yours,



Michael W. Field
Assistant Attorney General

MWF/kr

Cc: Samuel A. Budway, Esquire