



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 3, 2016

PR 16-22

Mr. Thomas Ryan & Mrs. Mary Ryan

Re: Ryan v. Town of Burrillville

Dear Mr. & Mrs. Ryan:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of Burrillville (“Town”) is complete. By correspondence dated March 5, 2015, you allege that the Town is “in violation of the Access to Public Records Act.” As best as we can determine, after reviewing all the documents presented, including more than 50 exhibits submitted by you, it appears you allege that the Town violated the APRA when it did not provide all documents responsive to your February 20, 2014 APRA request. According to your complaint and “Appendix,” there are three (3) main categories of documents you contend have not been provided or were “incomplete.” The three (3) main categories of documents are: 1) account summary; 2) notices for 2008 and 2009 tax sales; and 3) 2007, 2010, and 2013 tax sale documents.

At the outset, we note that in examining whether an APRA violation 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 § 38-2-7. In other words, we do not write on a blank slate.

As a preliminary matter, we note the challenges encountered while trying to resolve this complaint. To begin, the allegations pertaining to your February 20, 2014 APRA request are vague and ill-defined and provide little guidance as to what documents you allege were not produced. Frankly, many if not all of your allegations, as we understand them, fail to specify what conduct violated the APRA. For example, in your complaint you indicate that “the documents provided by the town had a number of discrepancies [and] appeared to be incomplete.” Even your rebuttal indicates that “the Town has only provided partial and

incomplete responses in a piecemeal fashion...to date, the Town has not provided us with ‘all’ of the documents that we have requested in our letter of February 20, 2014.” This Department has consistently held that in order for us to find a violation of the APRA, our attention must be directed to specific conduct that is contrary to the APRA and the general allegation that “the documents provided by the town had a number of discrepancies” and “appeared to be incomplete” is insufficient. See MacDougall v. Quonochontaug Central Beach Fire District, OM 13-24/PR 13-17/ADV OM 13-04. Indeed, under the APRA, a public body need only provide documents that it maintains at the time of the APRA request. See R.I. Gen. Laws § 38-2-3(h).

Also, several of your allegations do not implicate the APRA. For example, in your appendix you state that the account summaries “do not reflect actual payments which were, in fact, received by [the Town].” Respectfully, while an inaccurate record may implicate other laws or regulations – to which we make no determination – providing documents responsive to an APRA request that may not be factually accurate does not violate the APRA. Moreover, the Town submits that “to the best of [the finance department’s] knowledge, the records reflect all account activity” and that “the finance department has taken this concern seriously and has offered to correct any proven errors.”

You also argue that “[t]he Town has not provided any follow-up information regarding the discrepancies.” This argument also does not rise to the level of an APRA violation because the APRA does not require a public body to respond to interrogatories or questions, but instead requires a public body to produce responsive public documents. See Setera v. City of Providence, PR 95-20. In addition, some arguments you make are inconsistent or contradict each other. For instance, included as Exhibit C, you provided this Department with the records the Town produced in response to your APRA request, which relate to the 2008 tax sale. Nevertheless, in your appendix you argue that the Town disclosed documents “pertaining only to a 2009 tax sale...town records reveal that a tax sale occurred in 2008.” (Emphases in original). As such, it is unclear why you allege these records were not disclosed since the evidence clearly shows that you were provided with records relevant to your request regarding the 2008 tax sale.

For its part, the Town initially did little to shed light on your unspecified complaint. Indeed, on April 20, 2015, the Town submitted an equally vague and ill-defined response to your complaint indicating that:

“As the Town’s solicitor, I have made inquiries whether the documents responsive to the request have been withheld, and whether all documents responsive to the requests within the Town’s possession has been provided. Please be informed that the Town has provided Mr. and Mrs. Ryan with all documents in its’ possession, and that there have been no documents withheld.”

It was only after this Department notified the Town that its initial response did not sufficiently address the relevant issues that the Town provided affidavits from the Town Clerk and from the Town Council President addressing the issues. After reviewing all the documents provided, including over 50 attached exhibits, it is clear that the Town conducted an adequate and diligent

search to provide you with all documents responsive to your request. In this vein 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. The rationale for this rule is that [the Freedom of Information Act] was not intended to reduce government agencies to fulltime investigators on behalf of requesters. Therefore, agencies are not required to maintain their records or perform searches[,] which are not compatible with their own document retrieval systems. ‘The linchpin inquiry is whether the agency is able to determine ‘precisely what records [are] being requested.’” Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217 (D.D.C. 1989). (Emphasis added).

As such, only the allegations that implicate the APRA will be addressed in this finding.

A. FACTS

On February 20, 2014, you submitted an APRA request that sought, in relevant part:

“[w]ould you kindly provide us with an accounting statement regarding our Real Estate Taxes for the period of 2007-to the present time? Could you provide in that accounting the Real Estate tax amount, the billing date for that year and the dates and amount of payments made and any penalties and/or fees incurred. Also, if there were any tax sales, who was notified and when.”

The Town responded to your request and disclosed responsive documents on February 21 and February 27, 2014. Specifically, by email dated February 21, 2014, the Town produced an account summary for your property from 1999-2013 and copies of 40-day and 90-day tax sale notices, relating to a 2009 tax sale, with corresponding certified mail cards, *i.e.*, “green cards.” On February 27, 2014, the Town produced copies of 40-day and 90-day tax sale notices, relating to a 2008 tax sale, with corresponding certified mail cards, and a “Collector’s Deed” signed in 2009. After receiving the documents, you conferred with the Town regarding documents you perceived were requested yet not disclosed. Although not clear, it appears that all conversations regarding your APRA request ceased until January of 2015. Specifically, in a January 8, 2015 email to the Town you wrote:

“As a follow up, I never received copies of Return receipt Green Cards for 2009 40 day notice and 90 day notices. Its [sic] been since March of last year. I have never received the information...”

On January 23, 2015, the Town provided you with all the documents previously disclosed in February 2014, including an additional document that did not exist at the time of your request. See R.I. Gen. Laws § 38-2-3(h). You notified the Town that certain documents were still missing, to which the Town replied that it was “happy to expand the search” and asked that you

file a formal request through the Town Clerk. On February 3, 2015, you attached a copy of your February 20, 2014 APRA request and specified that your request was “not an expansion, but a follow up.” The Town explained that “the subject of your request is unclear” and requested that you provide a list specifying the documents you were seeking, which had not already been disclosed. In a letter dated February 10, 2015, after having been provided with no list, the Town wrote, in pertinent part:

“It appears that all documents requested have been provided on more than one occasion...We have not been able to identify any document you have requested that has not been provided. If you disagree, please submit a detailed, specific list of the document you require...”

Despite the Town’s second request for a list, you instead contacted the Town Council President, Mr. Pacheco, for assistance in obtaining the documents you alleged had yet to be disclosed. Mr. Pacheco acquiesced to your request and provided you documents. After receipt thereof, you complained that with three (3) exceptions “all of the copies were nothing more than emails with multiple duplicate copies of documents which had previously been provided by [the Town].” Mr. Pacheco requested that you provide him with a list of the documents missing. According to your complaint:

“[i]n consideration of our long history with the town and their continued resistance to provide information, we [did] not believe that it would be prudent [to make a list] and that to do so would likely be an effort in futility.”

Instead, you filed the instant complaint.

B. Account Summary

As stated above, your February 20, 2014 APRA sought, in part, “an accounting statement regarding our Real Estate Taxes for the period of 2007 – to present time...provide in that accounting the Real Estate Tax amount, the billing date for that year and the dates and amount of payments made and any penalties and/or fees incurred.” According to your complaint and appendix, you contend that “[t]he account summaries do not have any billing dates for the principal amounts that were billed nor do they reflect penalties and/or fees incurred, though they do reflect penalty **payments.**” (Emphasis in original).

The APRA provides that “all 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.” See R.I. Gen. Laws § 38-2-3(a). In addition, the APRA also specifies that “[n]othing in this chapter 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 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).

Here, the evidence demonstrates that, while you requested that the billing dates be included in the account summary, the account summary did not contain that information and the Town advised you as such. Specifically, by email dated February 21, 2014, the Town explained to you that “the only thing missing in the Opal payment history/information is the billing/due dates...the quarterly due dates are August 1st, November 1st, February 1st, May 1st[.]” No evidence has been presented to suggest that the account summary format could be “reorganize[d], consolidate[d], or compile[d],” in a way that would not unduly burden the Town. See R.I. Gen. Laws § 38-2-3(h). Because the APRA provides, in relevant part, that “[n]othing in this section 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,” the Town did not violate the APRA. See R.I. Gen. Laws § 38-2-3(h). Indeed, the record shows that the Town explained to you that the billing dates were not included in the account summary, and, though not required under the APRA, the Town informed you that the billing dates were August, November, February, and May first for each calendar year. See Setera v. City of Providence, PR 95-20 (the APRA does not require a public body to respond to interrogatories or questions, but instead requires a public body to produce responsive public documents). Moreover, with respect to your complaint that the account summary did not reflect the “penalties and/or fees incurred,” our review of the account summary appears to contain this information, but in any event, there is no evidence that the Town withheld any information from the account summary requested. To the contrary, this document was provided, albeit the requested document may not have contained all the delineated categories you sought.

C. Notices for 2008 and 2009 Tax Sales

Based on our review of the documents submitted in your exhibits, it appears that you allege that not all of the notices and “green cards” were provided to you, however, this allegation is not made clear in your complaint. For instance, on February 25, 2014, you emailed the Town and indicated, “I’m looking specifically for the 90 day notices and the 40 day notices for 2008 and 2009.” See Exhibit D. The following day you emailed the Town again and indicated “I need copies of the signature and dates of the green return receipt cards (both front and back) for the 90 day notices and 40 day notices, as well as the face for all of the individuals/entities, (including us) in 2008 and 2009.” Id. Our review of the evidence reveals that on February 21, 2014, the Town disclosed the following documents:

- Tax sale notice dated 3/03/2009 showing that a tax sale would take place in June 2009, i.e. 90-day notice
- Tax sale notices dated May 11, 2009, sent to you and four (4) other entities or persons showing that a tax sale would take place on June 25, 2009, i.e. 40-day notices.
- Certified Mail Receipts sent to the above identified parties.

On February 27, 2014, the Town produced the following documents:

- A Tax sale notice dated 1/31/2008 showing that a tax sale would take place on June 12, 2008, i.e., 90-day notice.
- Tax sale notices dated April 21, 2008, sent to you and three (3) other entities or persons showing that a tax sale would take place on June 12, 2008, i.e., 40-day notices.
- Certified Mail Receipts sent to the above identified parties and two additional entities.
- A Collector's Deed, regarding your property signed on July 16, 2009.

It appears that six (6) persons or entities received 40-day notice letters in 2008 but only four (4) letters were actually provided to you. It is unclear why the two (2) "other" letters were not provided and we have not been able to find any response from the Town that addresses why only four (4) of six (6) 2008 tax sale letters were disclosed to you. In the Town's response to your complaint, Legal Counsel for the Town, Mr. Oleg Nikolyszyn, Esquire, asserts that:

"I have made inquiries whether any documents responsive to the request have been withheld, and whether all documents responsive to the request within the Town's possession has been provided.

Please be informed that the Town has provided Mr. and Mrs. Ryan with all documents in its possession, and that there have been no documents withheld."

We find no violation. In particular, in this portion of your APRA request, you sought documents pertaining to "if there were any tax sales, who was notified and when." Frankly, the six certified mail receipts are responsive to your request since all indicate who was notified and all but one contains the date the notice was sent. With respect to this one (date) exception, you were supplied other records that made clear when this certified mail receipt was mailed. For this reason, although you may have only been supplied four letters for six certified mail receipts, the Town complied with your request concerning "if there were any tax sales, who was notified and when."

To be clear, there is no evidence that the Town has withheld these two letters and based upon the evidence presented it is not entirely apparent why the two letters were not in the Town's possession at the time of your request. Had you sought "all" documents concerning "who was notified and when" or had the evidence demonstrated that the Town's search was inadequate or incomplete, our finding may have been different, but on the basis of this record, we find no violation.

D. Notices Relating to 2007, 2010, and 2013 Tax Sales

Finally, you argue that the Town only provided you with documents pertaining to 2008 and 2009 tax sales and failed to disclose information relating to tax sales held in 2007, 2010, and 2013. In support of your argument, you direct our attention to a handwritten note and to three (3) Collector's Deeds recorded in the Town's Land Evidence Records. In your rebuttal, you argue that the handwritten note – which was authored by Rhode Island Housing and Mortgage –

appears to list information relating to tax sales in 2007, 2008, 2009 and 2010 – along with three (3) Collector's Deeds showing that there were tax sales held in 2008 and 2010, contrary to the Town's February 20, 2015 letter. You also direct us to Exhibit O-1, which contains tax sale notices and certified mail cards for years 2010 and 2013.

With respect to your allegation that the Town held a tax sale in 2007, the evidence presented suggests otherwise. Specifically, the handwritten note authored by Rhode Island Housing and Mortgage indicates that while Rhode Island Housing and Mortgage attempted to purchase your property in 2007, their check was "sent back" and, while not entirely clear, it appears that the check was sent back because the loan was ultimately paid. Indeed, according to the Town's February 20, 2015 letter to you, the Town relates that "[t]he only actual tax sale for your property associated with the Town occurred on June 25, 2009 and you were provided with those records." Furthermore, our independent review of the Town's land evidence records reveals no Collector's Deed for 2007. Here, your APRA request clearly seeks documents relating to "who was notified and when" of "any tax sales," and based upon our review, there is insufficient evidence to conclude that a 2007 tax sale actually occurred and that the Town withheld requested 2007 tax sale notices from you. Therefore, we find no violation.

In regards to 2008 and 2009, the evidence shows that the Town provided you with responsive documents on multiple occasions and, as indicated supra, we have been presented with no evidence that the Town withheld any responsive documents. Therefore, the question becomes whether the Town withheld responsive documents regarding any Town tax sales held in 2010 and 2013.

Here, the evidence illustrates that a tax sale was held in 2010, however, the sale was conducted by the Oakland/Mapleville Fire District for taxes owed to the Fire District and not the Town. See Book 737 pg. 252 of the Town of Burrillville Land Evidence Records. The Town attests that:

"the tax sales referenced in the handwritten note do not refer only to Town of Burrillville Tax Sales but also to some Oakland/Mapleville Fire District Tax Sales.

Documents related to Oakland/Mapleville Fire District Tax Sales were not provided to Thomas and Mary Ryan when requested because they are not in the Town's possession. The Town of Burrillville has no authority over the independent Oakland/Mapleville Fire District."

Since no evidence contradicts the Town's assertion that they do not maintain records related to the Fire District's tax sale, the Town was under no APRA obligation to provide you with any documents related to the 2010 Fire District's tax sale. The evidence further reveals that no tax sales, for the Town, were scheduled in 2010 and 2013. See R.I. Gen. Laws § 38-2-3(h). Specifically, notices related to the 2010 and 2013 scheduled tax sales were mailed out, however, there is no evidence that these tax sales actually occurred. To the contrary, in the Town's February 20, 2015 letter to you, the Town wrote "[a]s you are aware, your property did not go to

tax sale in 2010 or 2013, but we provided the records we do have for those time periods on February 19.”

You then argue that since the Town had 2010 and 2013 tax sale notices in its file, see Exhibit O-1, these documents should have been provided to you pursuant to your APRA request. The documents at issue are:

- 90-day notice dated January 27, 2010 addressed to Rhode Island Housing for a tax sale scheduled for June 2010.
- “Green cards” addressed to you and Rhode Island Housing dated March of 2013.
- “Official 90 Day Notice” dated March 7, 2013 for a tax sale scheduled for June 13, 2013.
- “Green cards” addressed to the Department of Elderly Affairs dated May 2013.
- “Green cards” addressed to Rhode Island Housing dated sometime in 2013.
- “Official Notice” dated April 15, 2013 addressed to Rhode Island Housing and you.

Here, the Town counters that the above described documents were “records in [the Town’s] files that were not specifically requested.” We agree. Your request specifically indicated that “if there were any tax sales” to provide you with “who was notified and when.” (Emphasis added). Stated differently, only notices relating to tax sales that actually occurred would be responsive to your request. In fact, even you acknowledge in your complaint that you requested “specific information as to whether there had been any tax sales...if so, whom had received notification of such and when.” (Emphasis added). Since only documents relating to tax sales that actually occurred are responsive to your APRA request, the Town did not violate the APRA when it did not provide you the notices for the 2010 and 2013 tax sales, which based upon the evidence presented, were scheduled but never took place. Indeed, after reviewing all the documents presented, we have been unable to find any additional documents responsive to your request in the Town’s possession that were not disclosed to you. We find no violations.

Although the Attorney General will not file suit in this matter, nothing precludes an individual from pursuing a complaint in the Superior Court. Please be advised that we are closing our 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,



Malena Lopez Mora
Special Assistant Attorney General

MLM/kr

Cc: Mr. Oleg Nikolyszyn, Esquire