



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

August 20, 2014
PR 14-20

Mr. Ernest F. Pitochelli, Sr.

Re: Pitochelli v. Town of Johnston

Dear Mr. Pitochelli:

Your Access to Public Records Act ("APRA") complaint filed against the Town of Johnston ("Town") is complete. By correspondence dated April 5, 2014, you alleged the Town violated the APRA when it estimated an unreasonable amount of time searching and retrieving records responsive to your January 29, 2014 APRA request. Specifically, you take issue with the five (5) hour time span the Town estimated it would take to retrieve documents responsive to your request. Subsequently on May 2, 2014, you requested that we amend your complaint to include your allegation that the documents produced were not responsive to your request. Specifically you stated, "[a]ll I received was page upon page of time sheets regarding Mr. Conley's monthly billings and nothing on what he was paid for let alone any other attorney who performed services on behalf of the town. I specifically asked for that in question #4 of my original complaint."

In response to your complaint, we received an Affidavit from Mr. Vincent P. Baccari, Jr., Town Clerk for the Town of Johnston. Mr. Baccari states, in pertinent part:

4) [Mr. Pitochelli's APRA request] made a number of comments and raised questions, which the Town is not statutorily obligated to address under APRA***.

6) On or about February 12, 2014, I sent a letter to Mr. Pitochelli advising him that the estimated cost for document search and collection totaled 5 hours for a cost of \$60.00 (\$15.00 per hour after the first hour), as permitted under R.I. Gen.

Laws § 38-2-4(c). I also advised that the prices for copies of said documents totaled \$56.25, which included 375 pages at \$.15 per page. Therefore, the total estimated cost was \$116.25.

8) On April 25, 2014, I sent Mr. Pitochelli a response advising as follows:

***The list of included documents is as follows:

1. Account Detail Report-Hourly billings of the Legal Department; FY 2012-2013
2. Transaction Detail Report for Joseph R. Ballirano, Rodio & Ursillo, Stefanie DiMaio Larivee and Saccoccio Law Office; FY 2012-2013
3. Fiscal 2013 Contingency Account Summary by Vendor
4. Memo from Human Resources to the Payroll Clerk dated 2/15/07
5. Monthly billing statements by the Town Solicitor- July 2012 to June 2013

9) ***Mr. Pitochelli specifically requested documentation concerning hourly billing and the names of the attorneys and/or firms who were paid monies related to the legal department's budget.

10) The Town expended the time and resources of personnel of the Finance Department, Legal Department and Clerk's Office to compile, review and produce said documentation in accordance with the APRA statute. ***

12) It is important to note that Mr. Pitochelli requested hourly billing for multiple Town attorneys for approximately one (1) year in addition to other account reports and documentation. This request required coordination with the applicable Town department, the Town employee's time for search and retrieval of same in order to produce the requested documents.

13) The Town's Finance Director spent time searching and retrieving for the requested documents and therefore the five (5) hours estimate includes his time and time for any members of his department.

15) It is important to note that the Town produced 375 pages of documents to Mr. Pitochelli, therefore, in accordance with R.I. Gen. Laws § 38-2-4(a), the Town charged \$0.15 per page for copying of same.

17) In his Complaint, Mr. Pitochelli alleges that ‘[a]ll I received was page upon page of time sheets regarding Mr. Conley’s monthly billings and nothing on what he was paid for let alone any other attorney who performed services on behalf of the town.’

18) Mr. Pitochelli’s Complaint fails to recognize that the billing provided was specifically requested by him and there were hundreds of pages of same because his January 29, 2014 request specifically asked for ‘a copy of each of the monthly billings by Johnston’s Town Solicitor or his law firm from the month of July 2012 to an [sic] including June 30, 2013.’

***”

We acknowledge your May 22, 2014 rebuttal.

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.

We begin our finding by addressing your claim that the search and retrieval time was unreasonable. The APRA provides that “[a] reasonable charge may be made for the search or retrieval of documents,” which shall not exceed fifteen (\$15.00) per hour, with the first hour free. See R.I. Gen. Laws § 38-2-4(b). A public body may also assess a charge “per copied page of written documents provided,” but “shall not exceed fifteen (\$.15) per page for documents copyable on common business or legal size paper.” See R.I. Gen. Laws § 38-2-4(a). The Rhode Island Supreme Court has also explained that other costs not expressly mentioned within the APRA may be assessed, specifically, the “costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested documents.” See DARE v. Gannon, 819 A.2d 651, 661 (R.I. 2003).

In your April 5, 2014 complaint you state, in pertinent part, “I ask why would it take five hours to retrieve documents which should be readily available regarding one department? *** .15 cents a page I readily understand and will willingly pay for but the five hours is much.” The evidence shows that the Town “expended the time and resources of personnel and of the Finance Department, Legal Department and Clerk’s Office to compile, review and produce” the

documents responsive to your request. Additionally, your request sought documents dating from 2012 through 2013 and a total of three hundred and seventy-five (375) pages of documents were retrieved. Based on the totality of the circumstances – the one (1) year time period, the fact that the Town expended resources from three (3) departments, and that the search revealed three hundred and seventy-five (375) pages of documents – we find the \$116.25 charge was not unreasonable. Respectfully, other than asserting that the requested documents should have been readily available, you provide no evidence that the Town’s charge violated the APRA. Thus, we find no violation.

We next address your claim that the documents you received were not responsive to your January 29, 2014 request. In your complaint you state that, “[a]ll that [you] received was page upon page of time sheets regarding Mr. Conley’s monthly billings and nothing on what he was paid for let alone any other attorney who performed services on behalf of the town. I specifically asked for that in question #4 on my original complaint.” We respectfully reject your argument.

Your January 29, 2014 request listed seven (7) categories, of which all but one – category number seven (7) – were questions relating to the Town’s budget and were not requests for documents.¹ This Department has stated on numerous occasions, both to you and in our findings, that the APRA governs the public’s right to access public documents, but does not mandate or require that public bodies answer questions. See Gagnon v. City of East Providence, PR 12-23. As such, with the exception of category number seven (7), the Town was under no statutory obligation to respond to your questions.² Nevertheless, based on the evidence before us, it appears that the Town made an attempt to provide you with documents that could answer your questions. Specifically, the evidence shows that you received the following documents:

1. Account Detail Report- Hourly billings of the Legal Department; FY 2012-2013
2. Transaction Detail Report from Joseph R. Ballirano, Rodio & Ursillo, Stephanie DiMaio Larivee and Saccocio Law Office; FY 2012-2013
3. Fiscal 2013 Contingency Account Summary by Vendor

¹ On March 16, 2013, this Department received an APRA complaint you filed against the Town of Johnston and on March 21, 2013, we explained that your February 13 and 15, 2013 requests to the Town sought answers to questions and did not seek access to documents. As such, your requests were not governed under the APRA.

² In our April 17, 2014 letter to you, we informed you of this Department’s policy that after the expiration of the five (5) business day period from receipt of that letter, no further correspondences would be accepted by this Department without permission until your rebuttal. We further explained that once you received the Town’s response, you would have five (5) business days to provide a rebuttal and that after that opportunity, neither party would be allowed additional response without permission or inquiry from this Department. Per our policy, the May 18, June 8, July 14, and August 2, 2014 letters you submitted to this Department were not incorporated into our investigation since their submission was inconsistent with this Department’s policy and practice.

4. Memo from Human Resources to the Payroll Clerk dated 2/15/07
5. Monthly billing statements by the Town Solicitor-July 2012-to June 2013.

The APRA mandates that unless otherwise exempt, all documents maintained by a public body shall constitute public records. See R.I. Gen. Laws § 38-2-2(4). Among the exemptions is R.I. Gen. Laws § 38-2-2(4)(A)(I)(a), which exempts from public disclosure “all records relating to a client/attorney relationship***.” In previous decisions, this Department has found that the total hours billed and the total amount of legal fees paid were public records, but that the narratives contained within the legal bills relating to the attorney/client relationship were exempt from public disclosure. See Pitochelli v. Johnston Town Council and Town of Johnston, PR 06-28.³

Here, our investigation is somewhat hindered by the fact that we were not provided with all the documents you received from the Town. On July 21, 2014, you contacted this office and requested to meet in person to discuss the documents that were provided to you. The undersigned explained to you that it was not this Department’s practice to meet in person to discuss evidence, but rather any and all evidence you would like us to review may be submitted and certified to legal counsel for the public body so that counsel could also have an opportunity to respond, if necessary. Although you were invited to submit any or all of the 375 pages of documents for our review, only ten (10) documents were provided to this Department,⁴ which we presume were part of the 375 pages you received from the Town.⁵ The nature and/or redactions of the other documents not provided to this Department is unclear. Based on the evidence presented, it appears that there are two (2) possible scenarios on hand. One, that you received the documents in an unredacted form but that you feel the information did not answer your questions or two, that you received documents with the description of the legal services redacted, leaving only the name of the attorney, the total hours billed, and the amount of compensation received. Since the APRA only provides you access to the total number of hours billed, the total amount of monies paid along with the identity of the attorney/firm to whom the fees were paid, the Town could have lawfully redacted the description of work done. See Pitochelli, PR 06-28. Alternatively, if you were provided unredacted documents that simply do not contain the information you seek, such a scenario would also comply with the APRA, since the APRA does not require a public body to reorganize, consolidate, or create documents that do not exist. See R.I. Gen. Laws § 38-2-3(h). In both cases, we would find no violation, and we add, that no

³ At the time this finding was issued, the applicable APRA provision was R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

⁴ An additional document was provided to this Department, yet it appears to be a document you composed. Specifically, the document states “[j]ust an example as I stated above. Who are these attorneys? What were they paid to do? Mr. Conley’s time sheets tells me nothing except the time and cost. Ernest F. Pitochelli, Sr.” Since it does not appear to be one of the 375 documents received from the Town, this document was not incorporated into our investigation.

⁵ Even though, as explained in footnote two (2), we did not consider the May 18, June 8, July 14, and August 2, 2014 letters while conducting our investigation, we reviewed the submission of the ten (10) documents in the interest of completeness.

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evidence has been presented to suggest that responsive documents have been withheld from you. Accordingly, we find no violation.

Although the Attorney General will not file suit in this matter at this time, nothing in the APRA 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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Malena Lopez Mora". The signature is written in a cursive style with a large initial "M".

Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: William J. Conley, Jr.