



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

April 13, 2016
PR 16-14

Ms. Barbara Ravetti

Re: Ravetti v. Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals

Dear Ms. Ravetti:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (“BHDDH”) is complete. By correspondence dated April 28, 2015, you allege BHDDH violated the APRA when it failed to respond to your APRA requests, which you contend were made on January 30, 2015 and March 18, 2015. Your APRA request sought records concerning two (2) of your cousins, who you believe, based upon the 1920 and 1930 United States Federal Census records, resided for a period of time at the Ladd School.

In response to your complaint, we received a substantive response from BHDDH’s legal counsel, Daniel Ballirano, Esquire. Attorney Ballirano states, in pertinent part:

“The Department received a request for medical records from Ms. Ravetti relative to two specifically identifiable individuals that were formerly in the care and custody of the Ladd School. The request was presented by Ms. Ravetti indicating she was a cousin of the deceased individuals for whom she was seeking the information. I am without information and not familiar with whether Ms. Ravetti is first cousins or how far removed the family relationship is. Ms. Ravetti’s request was not and is not a public records request but rather a general request for medical records invoking HIPPA, the Rhode Island Health Care Communications and Information Act and State Mental Health Laws.

Ms. Ravetti has not secured a court order allowing her access to this information and has not been appointed by any Court to act in a fiduciary capacity either as Administratrix or Executrix of an estate for the deceased.

Ms. Ravetti acknowledges the issues with respect to HIPPA laws relative to her request however, Ms. Ravetti asserts that recent amendments to HIPPA laws would permit disclosure of protected health care information where the request is made for medical records 50 years past death. While I would agree with Ms. Ravetti's interpretation of the recent changes to HIPPA, disclosure under HIPPA in this circumstance is permissive and not mandatory.

More importantly however, Rhode Island has enacted Health Care Confidentiality laws which must also be complied with and which are stricter than HIPPA. There is no exception in the Rhode Island Health Care Confidentiality statutes wherein confidentiality would expire 50 years after death. The Rhode Island statutes relevant to Ms. Ravetti's request are RIGL 40.1-5-26; RIGL 40.1-2-6; RIGL 40.1-24-12* * *

To the extent Ms. Ravetti now seeks this information pursuant to an APRA request, such information is not subject to disclosure under the provisions of RIGL 38-2-4(A)(I)(a) & (b)."

We acknowledge your reply.

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

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 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. A public body has ten (10) business days to respond in some capacity to a records request, whether by producing responsive documents, denying the request with reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within ten (10) business days to the person or entity making the request. See R.I. Gen. Laws § 38-2-7(a). If no response is sent within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). "Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body." R.I. Gen. Laws § 38-2-7(a).

Additionally, the APRA states that each public body shall establish written procedures regarding access to public records. See R.I. Gen. Laws § 38-2-3(d). The BHDDH does have written procedures regarding access to its public records.

See <http://www.bhddh.ri.gov/misc/PublicRecordsRequest.php>.

The BHDDH's policy states, in pertinent part:

1. The Office of Legal Counsel is the designated public records unit for BHDDH.
2. All requests for records, documentation, and other information under the care, control, and custody of BHDDH should be submitted to the Office of Legal Counsel, 14 Harrington Road, Barry Hall First Floor, Cranston, RI 02920.

It appears there were at least twelve (12) email exchanges between you and the BHDDH's Director of Communications and Media Relations, Mr. Dave Layman between January 30, 2015 and February 25, 2015 concerning your request for records. None of these communications mentioned – in any way – the APRA and none of these communications were made consistent with the BHDDH's APRA policy, i.e., making the APRA request to the Office of Legal Counsel. As such, and consistent with the plain language of the APRA and our prior findings, we find that since these requests were not made pursuant to the APRA or the BHDDH's APRA policy, the BHDDH did not violate the APRA when it failed to respond within ten (10) business days. See e.g., Access/Rhode Island v. New Shoreham Police Department, PR 15-26.

Thereafter, on March 18, 2015, you directed another (separate) written inquiry seeking the same documents. This document was addressed to BHDDH's Chief Legal Counsel (and labeled "DRAFT"), but based upon the evidence presented, was apparently sent by you to Mr. Layman. Regardless, on March 23, 2015, you again forwarded the virtually identical correspondence seeking the same documents, but this correspondence appears to have been addressed and sent to the Chief Legal Counsel. This correspondence contained language at the bottom of page two (2) indicating that the request was in accordance with the APRA. You indicate that the "Access to Public Records Act allows a public body **ten (10) business days to respond, which can be extended an additional twenty (20) business days** for 'good cause.'" (Emphasis in original). You indicated you would "appreciate a response to this request at the earliest possible time, no later than **April 7.**" (Emphasis in original). You received no response.

In an effort to clarify the BHDDH's prior response to this Department, we contacted legal counsel and requested a supplemental response concerning its lack of a response to your March 23, 2015 request. By email dated October 5, 2015, Attorney Ballirano stated, in pertinent part:

"There was no mention in the letter dated March 18, 2015 of a request under APRA. This letter is of the same content and same format as the March 23, 2015 letter with the exception of the date and an end paragraph being added citing APRA.

This may have been an oversight (sic) on my part. Had I noted the change in the letter I would have responded to Ms. Ravetti in accordance with the time frame established in the [APRA]”

Having reviewed the March 18, 2015 and March 23, 2015 letters, we can appreciate Mr. Ballirano’s position. There is no evidence that the March 18, 2015 request was sent to Legal Counsel in accordance with BHDDH’s APRA policy. Accordingly, for the reasons previously described, we find no violation. With respect to the March 23, 2015 request, a cursory review would lead the recipient of such a letter with the impression that both the March 18, 2015 and the March 23, 2015 letters were identical, and that the March 18, 2015 letter contained no mention of the APRA. Nonetheless, but not without some hesitation, do we conclude that the BHDDH violated the APRA when it failed to respond in a timely manner to the March 23, 2015 request. As noted earlier, the March 23, 2015 request did expressly invoke the APRA, albeit not until the end of the correspondence.

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).

Based upon the specific facts of this case, we conclude that the evidence does not establish a willful and knowing, or reckless, violation. Our reasoning is primarily detailed above, but in brief we acknowledge Attorney Ballirano’s representation that he interpreted your March 23, 2015 correspondence to be identical to your March 18, 2015 correspondence.

We also do not believe injunctive relief is appropriate in this case. While R.I. Gen. Laws § 38-2-7(a) provides that “[e]xcept for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body,” in this case we conclude that good cause has been demonstrated. Specifically, we have already noted the nature of your March 23, 2015 request, and consistent with our precedent, because the documents you seek are confidential by law, disclosure pursuant to the foregoing provision is not appropriate. See Scripps v. Department of Business Regulation, PR 14-07 (documents deemed confidential by law exempt despite failure to respond timely).

Here, your May 27, 2015 reply to this Department all but acknowledges that the requested documents are not public records, but instead acknowledges that “the records I requested come under the aegis of Title 5(40.1).” While Title 40.1 provides various provisions that may allow certain information to be disclosed under certain conditions, the existence of these statutes – by themselves – indicate that the information you have requested is not a public record. To be clear, the Rhode Island Supreme Court has described the APRA as “open[ing] public records to inspection by the general public, § 38-2-3(a), regardless of ‘the purposes for which the records are sought.’” Bernard v. Vose, 730 A.2d 30, 31-32 (R.I. 1999). For this reason, your suggestion

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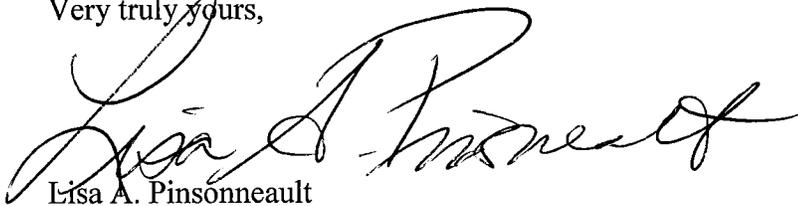
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that you should be entitled to access pursuant to Title 40.1 is of no moment because if this Department determines that the requested information is a public record pursuant to the APRA, it must necessarily be made publicly available to any person, “regardless of ‘the purposes for which the records are sought.’” Id. Whether BHDDH can or should provide access to you pursuant to Title 40.1 is not within the purview of this finding or the APRA. For this reason, injunctive relief is not appropriate. This finding does serve as notice to the BHDDH that the actions discussed herein violated the APRA and may serve as evidence of a willful and knowing, or reckless, violation in a similar future situation.

Although the Attorney General will not file suit in this matter, at this time, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting 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,



Lisa A. Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Daniel Ballirano, Esquire