



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

March 17, 2016  
PR 16-09

Mr. Michael M. Scalzi III  
Michaelscalzi3rd@gmail.com

**Re: Scalzi v. Town of North Smithfield**

Dear Mr. Scalzi:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of North Smithfield (“Town”) is complete. By email correspondence dated August 3, 2015, you contend that the Town violated the APRA when it failed to properly respond to your APRA request dated March 30, 2015.<sup>1</sup> More specifically, you allege you requested the original building plans of your condominium unit. You state that according to information you received from the Rhode Island Building Code Commission, you “feel as though RI General Law 23-27.3-113.5 Plans and Specifications requires \* \* \* that the application for a permit shall be accompanied by no less [than] (3) copies of specifications and plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The Town repeatedly claims that it has nothing in its files.”

In response to your complaint, we received a response from the Town’s solicitor, David V. Igliazzi, Esquire, who also provided an affidavit from the Town’s Building Official, Mr. James P. Cambio. Mr. Cambio states, in pertinent part:

“I am the Building Official for the Town \* \* \* and have held this position since February 1, 2015.

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<sup>1</sup> We pause to note that the APRA request and the relevant subsequent communications came in the form of emails from your wife, Ms. Donna Scalzi. Yet it was you, not your wife, who filed the APRA complaint with this Department. The Town does not raise your standing to file this complaint as a defense and our resolution makes this determination unnecessary. For ease of clarity and for purposes of this finding, we will refer to the APRA request as your APRA request.

That on March 30, 2015, an e-mail request for public records from [Ms.] Donna Scalzi was forwarded to me from the Town Clerk.

During the period between March 30, 2015 and April 7, 2015, I spent approximately four hours conducting a search of each individual file (approximately 110 files) which contained the paperwork (permit applications and site plans) associated with the Laurel Woods Condominium Project located on Plat 005 Lot 430 to locate the documents requested by [Ms.] Donna Scalzi.

That on April 7, 2015 at 2:35 PM, I notified [Ms.] Donna Scalzi via e-mail that my response to her request for public records was available to be picked up at her convenience. I included a cover sheet by Plat, Lot, and Unit Number, itemizing each document requested and my response indicating that the document requested was included or that no record was found. \* \* \*

That on April 16, 2015 at 10:57 AM, I received an e-mail from [Ms.] Donna Scalzi and sent a response by e-mail on April 16, 2015 at 4:36 PM. \* \* \*

That on April 16, 2014 at 5:23 PM, I received an e-mail from [Ms.] Donna Scalzi and sent a response by e-mail on April 22, 2015 at 3:06 PM \* \* \*

That on April 22, 2015 at 3:58 PM I received an e-mail from [Ms.] Donna Scalzi.  
\* \* \*

That in response to the e-mail from [Ms.] Donna Scalzi at 3:58 PM, I made copies of the only floor plans I could locate \* \* \* and instructed [Ms.] Susan Lecuire, the Building Inspection Clerk to contact [Ms.] Donna Scalzi to pick up the floor plans and to tell [Ms.] Donna Scalzi that these floor plans were the only floor plans that could be located. Although I was out of the office on April 23, 2015, I was told by [Ms.] Susan Lecuire on April 23, 2015 that these floor plans were picked up from our office on that day.

Approximately three months after the Scalzi records request, I was discussing with the Town Administrator the possibility of having the Building Inspection Department move to the Main Town Hall and occupy what is currently used as a meeting room. During this conversation, I learned that the Building Inspection Department was, in fact, originally in that location and that there were still some old building plans in the Main Town Hall basement that were left behind after being damaged and/or contaminated in a flood. During the preparation of this affidavit, I made this information known to the Town Solicitor who instructed me to search the Main Town Hall basement in an effort to locate any building plans associated with the Laurelwood Condominium Development. This search was unsuccessful.

In addition, on August 26, 2015 at approximately 9:45 AM, I spoke with the Tax Assessor ([Mr.] David Dolce) and asked if he had any building plans regarding the Laurelwood Condominium Development. Mr. Dolce indicated that he did not have any building plans but did have condominium advertisement renderings. Although these condominium advertisement renderings were not previously provided to the Complainant[ ], they are not building plans and were not requested by the Complainant[ ]. In addition, these condominium advertisement renderings include the specific note that the rendering and floor plan are for illustration purposes only and are subject to change without notice. \* \* \*

As a result of: (i) my search for the Town Hall Annex and the Main Town Hall basement; and (ii) my discussions with the Town Administrator, Tax Assessor, and Town Planner; I have concluded that I cannot locate the records requested by the Complainant[ ] and I do not know of any other location to search for the records requested \* \* \* that have not been provided.”

We acknowledge your rebuttal dated September 4, 2015.

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.

The issue for our consideration is whether the Town’s search and retrieval relating to your 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.

As an initial matter, we observe that the Town’s search and retrieval was the result of an APRA request that sought records to several categories. More specifically, by email dated March 30, 2015, you requested copies of:

“Building Plans for the following Plat/Lot numbers:

005-430-49  
005-430-50

005-430-107  
005-430-108

005-430-41

005-430-42

Also, \* \* \* copies of the following for Plat/Lot numbers: 005-430-49 AND 005-430-50:

All Electrical Inspection Reports

All Plumbing Inspection Reports

All Mechanical Inspection Reports (heat and air-conditioning)

Municipal Sewer Connection Permit

Copy of Permit and Inspection report issued in 2014 for excavation and installation of drainage pipes to divert water away from residences

Copies of any and all notices and orders issued pertaining to 005-430-49 AND 005-430-50

Certificate of Occupancy for 005-430-49

[I]nspection report that verifies the mandated, appropriate 'Firewall' between these two units is in place, was installed properly, and was approved by the Town."

On April 7, 2015, Mr. Cambio emailed you indicating that the records you requested had been copied and were ready to be retrieved from the Building Inspection Office and the charge for the copies was \$18.90. On April 16, 2015, you emailed Mr. Cambio, indicated that after your review of the records you thought some records may be missing, and you posed several questions.

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). (Emphasis added). Accordingly, our inquiry concerns not whether the Town has provided you all requested documents, but rather whether the Town has conducted an adequate and appropriate search to determine whether the Town maintains the requested records. In fact, the linchpin of our inquiry concerns the reasonableness of the Town's search. See e.g., Ives v. Town of New Shoreham, et. al., PR 11-16; Duxbury v. Town of Coventry, PR 13-16.

In pursuit of our review, evidence demonstrates that Mr. Cambio spent approximately four (4) hours conducting a search of 110 files and produced records responsive to your APRA request. Indeed, after learning that some old building plans were located in a meeting room in the Town Hall, after being damaged by a flood, Mr. Cambio searched those documents (albeit after this complaint was filed) for responsive records, but found none. Mr. Cambio states that he searched the Town Hall Annex and the main Town Hall basements searching for responsive records. He

also spoke with the Town Administrator, the Tax Assessor and the Town Planner. Based upon the evidence presented, we find that the Town has conducted a reasonable search to locate responsive records and has been unable to discover additional records. Respectfully, you present no evidence to support the conclusion that the Town's search was inadequate – other than the unsuccessful result – and May 3, 2015 email from Ms. Scalzi highlights the Town's cooperation and efforts. Specifically, this e-mail notes that:

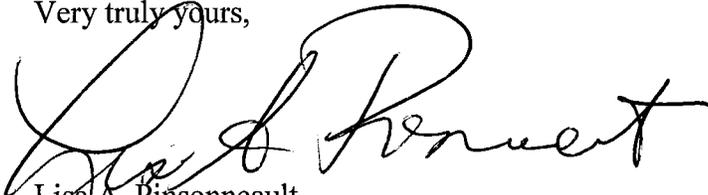
“Mr. Cambio was readily willing to help out with everything I requested. However, when I received only some of the records, he stated he could not locate the others.”

There is no evidence that the Town's search was inadequate. Accordingly, we cannot find that the Town violated the APRA.

Finally, we pause to address your claim that Rhode Island Law requires that the Town maintain (or an applicant submit) the documents at issue in this finding. While for the sake of argument, we accept your argument as accurate, this Department's inquiry is limited to the APRA and the reasonableness of the Town's search of documents it maintains in order to locate responsive documents. On this inquiry, for the reasons already explained, we find no violation.

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,



Lisa A. Pinsonneault  
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