



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

March 24, 2016

PR 16-10

Mr. Giustino Cambio  
Finance Director  
Town of North Providence  
2000 Smith Street  
North Providence, Rhode Island 02911  
[finance@northprovidenceri.gov](mailto:finance@northprovidenceri.gov)

**Re: The Town of North Providence v. Salvatore Mancini Resource and Activity Center**

Dear Mr. Cambio:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Salvatore Mancini Resource and Activity Center (“SMRAC” or “Center”) is complete. By correspondence dated June 2, 2015, you alleged the SMRAC violated the APRA when it failed to respond to your APRA request dated May 15, 2015. Some explanation of the travel of this matter is in order to appreciate the precise issue before this Department.

By letter dated May 15, 2015, you, in your capacity as the Town of North Providence Finance Director, sent a letter to the Chairman of the Board of Directors for the SMRAC. The May 15, 2015 letter sought various documents relating to the SMRAC and your letter expressly invoked the APRA. According to your complaint, the SMRAC did not respond to your May 15, 2015 APRA request within the statutory timeframe and by letter dated June 2, 2015, you filed the instant APRA request. In your complaint, you relate that pursuant to R.I. Gen. Laws § 38-2-2(1), “it is quite evident that the Center constitutes a ‘private agency’ acting on behalf of the Town to provide services to the Town of North Providence’s senior citizens.” As such, you contend that the SMRAC falls within the ambit of the APRA and violated the APRA when it failed to respond to your May 15, 2015 APRA request. R.I. Gen. Laws § 38-2-7.

In due course, the SMRAC responded to your complaint, submitted various documents; and thereafter, the Town filed a rebuttal, which also was supported through the submission of various documents. While our finding makes it unnecessary to detail these correspondences – or the arguments made therein – it suffices that: (1) The Town and SMRAC had been engaged in what may be described as a mutually beneficial relationship for an unspecified number of years, although the precise nature of this relationship is disputed; (2) the Town had proposed to budget

to the SMRAC for Fiscal Year 2015-2016, \$ 489,485.00; and (3) at the time the instant APRA complaint was filed, approximately 70% of the SMRAC's annual funding was derived from the Town.

During the pendency of this matter, on or about August 26, 2015, the SMRAC filed a Petition for a Writ of Mandamus in the Rhode Island Superior Court against the Town. In its Petition, SMRAC prayed that the Superior Court direct the Town to "disperse the amount of \$89,914.16 for the July and August 2015 operations appropriations to [SMRAC], and that the Town of North Providence continue thereafter to disperse monthly appropriations in the amount of \$44,957.08."

The Town answered the Petition and filed a Counterclaim. Among the averments set forth in the Town's Counterclaim is that "[a] dispute has arisen between the Town and the Center as to whether the Center is a private agency acting on behalf of and/or in place of the Town of North Providence in providing services to the senior citizens of the Town, within the meaning of R.I.G.L. § 38-2-1 and 38-2-2, et. seq.," the APRA. See Salvatore Mancini Resource and Activity Center, Inc. v. Cambio, No. 2015-3733, Defendant's Counterclaim, ¶ 12. In its Prayer for Relief, the Town asks the Superior Court for a Declaratory Judgment, inter alia:

"1. That this Court determine that the Plaintiff Center, Defendant in Counterclaim, is an agency acting on behalf of and/or in place of the Town of North Providence in providing services to the senior citizens of the Town, within the meaning of R.I.G.L. § 38-2-1, and therefore subject to the provisions of R.I.G.L. §38-2-2, et. seq., and required to respond to the Finance Director's request for information; or alternatively that

2. That this Court determine that the Plaintiff Center, Defendant in Counterclaim, is a de facto agency of the Town and therefore subject to all applicable provisions of the Town Charter; and

3. That this Court determine that the Defendant Finance Director, Plaintiff in Counterclaim, is entitled under the terms of the Town Charter to request and receive information from the Plaintiff Center, Defendant in Counterclaim, which he reasonably believes is necessary to the execution of his office pursuant to the Town Charter." (Emphasis added).

As of this date, the Superior Court matter remains pending.

Rhode Island General Laws § 38-2-8 provides that "[a]ny person or entity denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations." This section continues:

"[i]f the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general

shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.” *Id.* (Emphases added).

These provisions, read together, make clear that a plaintiff need not exhaust their administrative remedies prior to filing a civil complaint in the Superior Court. See Downey v. Carcieri, 996 A.2d 1144 (R.I. 2010).

We understand and appreciate the positions of the Town and the Center, and observe that various issues surround the precise issue pending before this Department, *i.e.*, whether the SMRAC violated the APRA when it refused to respond to the Town’s May 15, 2015 APRA request. But the Town’s Counterclaim pending in Superior Court makes clear that among the relief it seeks from the Superior Court is a declaration that “the Plaintiff Center, Defendant in Counterclaim, is an agency acting on behalf of and/or in place of the Town of North Providence in providing services to the senior citizens of the Town [within the meaning of the APRA], and [is] required to respond to the Finance Director’s request for information.”

This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegation that is raised in a complaint with this Department, this Department’s investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court’s jurisdiction. See Graziano v. Personnel Appeals Board, OM 97-21; Blais v. Revens, PR 01-01; Ursillo v. North Providence School Committee, OM 04-18; Swann v. Chariho Regional School Committee, OM 09-04; Narragansett Improvement Company, et al. v. Town of North Smithfield, OM 09-11. In Graziano v. Personnel Appeals Board, OM 97-21, this Department was presented with a similar situation wherein an Open Meetings Act (“OMA”) complaint was filed with this Department, as well as an OMA lawsuit with the Superior Court. Because both the complaint and the lawsuit concerned the same action and the same issue, we concluded that it is “not only a consistent interpretation of the [OMA] but a prudent use of public resources not to continue our investigation while the lawsuit is pending.” *Id.* at 3. Our rationale was based upon our conclusion that the intent of the OMA – as well as in this case the APRA – was “to permit citizens access to courts through the attorney general” or to allow “suit through private counsel.” *Id.* at 2. We added that the OMA, or in this case the APRA:

“does not contemplate or endorse a process by which both remedies are pursued simultaneously. In addition, this Department will defer to the jurisdiction of the Superior Court with respect to an open meetings matter pending before it.... Since a complaint alleging an Open Meetings Act violation has been filed in superior court which involves the same action and issue, we will not pursue this matter. Put simply, if after our investigation, research and writing we agreed that a

violation had occurred the recourse would be the very claim that has already been brought.” (Emphases in original). Id. at 2-3.

Based upon the foregoing, we conclude that this Department should yield to the Superior Court’s jurisdiction. See e.g., Blais v. Revens, PR 01-01 (noting that this Department has taken a consistent position since 1994 regarding open government matters, the subject of which are connected to pending litigation). As stated above, our rationale concerns the fact that the same APRA allegations are present in two forums, namely the Town’s APRA complaint and Counterclaim that SMRAC is subject to the APRA and must respond to the Finance Director’s May 15, 2015 APRA request. Even if we were to reach the merits in this case, agree with the Town, and file a lawsuit on the Town’s behalf, such action would only duplicate the efforts already taken by the Town that are currently pending before the Superior Court. Although we stress that this Department stands ready and willing to enforce its statutory mandate, doing so in this case can only lead to duplicative efforts and, possibly, inconsistent results. While we, of course, do not mean to suggest that the Superior Court must resolve this APRA issue, since the Town has placed the APRA issue before the Superior Court, for the reasons already explained, it is prudent that this Department take no action on this matter and yield to the Superior Court.

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,



Michael W. Field  
Assistant Attorney General

Cc: Mark P. Welch, Esq.  
Anthony M. Gallone, Jr., Esq.