



State of Rhode Island and Providence Plantations

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VIA EMAIL AND FIRST-CLASS MAIL

March 09, 2020
PR 20-12

Mr. Felix Boria

Cranston, Rhode Island 02920

Mr. Daniel Osler

Cranston, Rhode Island 02920

Kathleen M. Kelly, Esquire
Executive Legal Counsel, Department of Corrections

Re: Boria and Osler v. Rhode Island Department of Corrections

Dear Messrs. Boria and Osler and Attorney Kelly:

We have completed our investigation into the Access to Public Records Act (“APRA”) complaints filed by Mr. Felix Boria and Mr. Daniel Osler (“Complainants”) against the Department of Corrections (“Department”). Since both complaints were submitted against the same entity and contain substantively similar allegations, this Office will address both complaints in a single finding. For the reasons set forth herein, we find that the Department violated the APRA.

Background and Arguments

The Complainants filed their APRA requests as inmates at the Department. They allege that the Department violated the APRA when it denied their requests for information related to inmate meals. Mr. Osler’s request sought “a copy of the menu that was served to inmates at the ACI on all days between May 26, 2019 and June 1, 2019.” Mr. Boria’s request sought “a copy of the documents/menu that identify the twenty-one meals that were served to the R.I. DOC inmate population for the seven days period between June 16, 2019 and June 22, 2019.” Mr. Boria specified that he was not seeking any preliminary and/or future modified drafts of the menu. The Department denied the requests pursuant to R.I. Gen. Laws §§ 38-2-2(4)(F) and (K).

Executive Legal Counsel, Kathleen M. Kelly, Esquire, provided a substantive response on behalf of the Department, which included copies of the Complainants' initial APRA requests, the Department's denials, an affidavit from Attorney Kelly, and copies of the meal menus for this Office's *in camera* review. The Department maintains that there are "safety and security concerns" when inmates are provided advanced knowledge of the food service menus because "knowing the menu in advance creates an expectation [and] when substitution occurs, which often does, this has the potential for increased tension, disruption and unrest in the facility." In support of withholding the documents under exemption "(K)," the Department contends that the menus "repeat[] themselves every few weeks" and are "always subject to change."

Neither Complainant submitted a rebuttal.

Relevant Law and Findings

When we examine an APRA complaint, our authority is to determine whether a violation of the APRA has occurred. *See* R.I. Gen. Laws § 38-2-8. In doing so, we must begin with the plain language of the APRA and relevant caselaw interpreting this statute.

The APRA exempts from the definition of public records "the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security." R.I. Gen. Laws § 38-2-2(4)(F). In support of withholding the responsive documents under exemption (F), the Department states that since the menus are repeated throughout the summer months, providing the Complainants with the requested menus would inherently also disclose information about future menus that are subject to modification and substitution. The Department notes that both the United States Supreme Court and the Rhode Island Supreme Court have recognized the importance of ensuring institutional prison safety and deferring to prison administrators in matters that pertain to preserving order and security. *See Bell v. Wolfish*, 441 U.S. 520 (1979); *Laurie v. Senecal*, 666 A.2d 806 (1995).

Although this Office recognizes the importance of ensuring institutional prison safety and the deference given to prison administrators when security issues arise, we have been presented with no evidence that the requested menus constitute "security plans" of the Department or otherwise fall within the purview of exemption (F). Additionally, it is undisputed that the inmates already have knowledge regarding what meals they were served in the past. As such, we find exemption (F) inapplicable here. Although not relevant to the question of whether nondisclosure was proper at the time, we also note that the Department's stated security concerns are now moot since the Department alleged the menus repeated throughout the summer, which is now passed.

The Department also maintains that the requested menus are exempt under R.I. Gen. Laws § 38-2-2(4)(K), which exempts "[p]reliminary drafts, notes, impressions, memoranda, working papers and work products." The Department states that the menus are subject to change and "that since the start of the May 19, 2019 Spring/Summer menu at least two dozen revisions have been made." Additionally, the Department asserts that inmates know what is being served during a particular week because "the menus are posted on a weekly basis on a chalk board or white board" in the

facilities and the Complainants agree that the menus are posted on “very large erasable white boards inside the dining rooms.”

It is undisputed that these menus are subject to change and often do change. However, in response to our inquiry, the Department confirmed that certain menus provided to us for *in camera* review and not marked “REVISED” reflect the meals actually served during the weeks that were the subject of these APRA requests. As such, based on the record before us, we determine that the unrevised menus reflecting what was served between May 26, 2019 and June 1, 2019 and between June 16, 2019 and June 22, 2019, are not “preliminary drafts” within the ambit of exemption (K). Therefore, we find that the Department violated the APRA by withholding these specific, unrevised menus.

Conclusion

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).

Although injunctive relief may be appropriate in this case, we will allow the Department ten (10) business days to provide the Complainants with the requested menus, subject to the “good cause” time extension set forth in R.I. Gen. Laws § 38-2-3(e). The Department may not assess any charge for the production of these documents. *See* R.I. Gen. Laws § 38-2-7(b) (“All copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner[.]”). If the Complainants are not satisfied with the Department’s response, they should inform this Office within ten (10) business days of receiving the Department’s response.

We have not been presented with evidence of a willful and knowing or reckless violation. However, this finding serves as notice to the Department that its conduct violated the APRA and may serve as evidence in a future similar situation of a willful and knowing, or alternatively reckless, violation.

Although the Attorney General will not file suit in this matter at this time, nothing within the APRA prohibits an individual 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 but reserve the right to re-open the file should circumstances warrant.

We thank you for your interest in keeping government open and accountable to the public.

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Kayla E. O'Rourke
Kayla E. O'Rourke
Special Assistant Attorney General