



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

March 26, 2020

PR 20-18

Michael Marcello, Esquire

David D'Agostino, Esquire
Legal Counsel, Scituate School Department

RE: Marcello v. Scituate School Department

Dear Attorneys Marcello and D'Agostino:

We have completed an investigation into the Access to Public Records Act ("APRA") complaint filed by Attorney Michael Marcello ("Complainant") against the Scituate School Department ("School Department"). For the reasons set forth herein, we find that the School Department did not violate the APRA.

Background and Arguments

The Complainant made an APRA request to the School Department via regular mail on August 2, 2019. The Complainant filed the instant Complaint because he asserts he did not receive a response to his request.

The School Department disputes the Complainant's contentions. The evidence indicates the School Department received – and date-stamped – the Complainant's APRA request on August 6, 2019. On August 14, 2019, the School Department responded to the request via email correspondence by providing a number of requested documents and noting that "at this time, we do not have any meeting minutes. When they are prepared, we can email you a copy." The School Department then provided the requested meeting minutes on August 22, 2019.

In his rebuttal, the Complainant explained that the School Department's emails had been sent to his spam email folder and that he was thus unaware of them. The Complainant further takes issue with the substance of the School Department's response.

Relevant Law and Finding

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.

Pursuant to the APRA, 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 period to comply as provided in the APRA. *See* R.I. Gen. Laws §§ 38-2-3(e), 38-2-7. 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).

Here, it is undisputed that the School Department received the August 2, 2019 request on August 6, 2019 and responded on August 14, 2019, which was within ten (10) business days. Accordingly, the undisputed evidence contradicts the only allegation raised in the complaint, which was that the School Department failed to respond to the Complainant's request. We accordingly find that the School Department did not violate the APRA by failing to respond to the request.

Conclusion

We understand from the Complainant's rebuttal to this Office that he may have some concerns about the School Department's substantive response to his request, however the sufficiency of the School Department's response is outside the scope of this complaint and was not briefed by the parties. *See Mulanaphy v. South Kingstown School Committee*, OM 19-24. We encourage the parties to try to resolve any outstanding issues. If the Complainant wishes to file another complaint with this Office, he may do so by specifically articulating what about the School Department's substantive response he believes violates the APRA.

Although this Office will not file suit in this matter, nothing within the APRA prohibits an individual from instituting an action for 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.

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness

Special Assistant Attorney General