



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

April 20, 2020
PR 20-33

Jon M. Restivo, Esquire

Kenny Alston, Esquire
Chief Legal Counsel, Rhode Island Department of Health

RE: Restivo v. Rhode Island Department of Health

Dear Attorneys Restivo and Alston:

We have completed the investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Jon M. Restivo, Esquire (“Complainant”) against the Rhode Island Department of Health (“RIDOH”). For the reasons set forth herein, we find that RIDOH did not violate the APRA.

Background

The Complainant made a multi-part APRA request to RIDOH on June 24, 2019, seeking copies of all site plans, approval letters, and denial letters between December 10, 2012 and October 31, 2018 related to a specific new public water system. On June 28, 2019, RIDOH responded to the request seeking prepayment for an estimated sixteen (16) hours (less the first free hour allotted under the APRA) for RIDOH to search and retrieve potentially responsive documents. RIDOH also extended the time to respond to Complainant’s request an additional twenty (20) business days “because of the voluminous nature of the request.”

The Complainant subsequently filed a complaint with this Office alleging that RIDOH stated, “without any detail or explanation, that because the request was ‘voluminous’ they would require an additional twenty (20) business days to comply.” Complainant contends that RIDOH’s “rote recitation of one of the possible reasons why such additional time might be granted, without any context or specificity whatsoever” was “wholly inadequate under state law.” Complainant likewise disputes that the request was voluminous and argues that RIDOH lacked good cause for an extension.

RIDOH provided a substantive response in affidavit form through its Chief Legal Counsel, Joseph K. Alston, Esquire. Attorney Alston maintained that RIDOH's extension complied with R.I. Gen. Laws § 38-2-3(e) because "[t]hat there may be other ways to explain the need for extra time does not undermine the validity of RIDOH's description of the request as voluminous in nature." Attorney Alston also outlined the efforts used to search and retrieve potentially responsive documents, including searching its electronic data systems, pulling data from hard copy sources and then "review[ing] and compar[ing] the results of the pulled files by hand."

We acknowledge the Complainant's rebuttal wherein he recognized that RIDOH provided documents responsive to his request on July 16, 2019.

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 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. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with specific reason(s), or, for "good cause," extending the time period necessary to comply. *See* R.I. Gen. Laws § 38-2-3(e). The public body may extend the time to respond by an additional twenty (20) business days if it can "demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records is such that additional time is necessary to avoid imposing an undue burden on the public body." *Id.* "Any such explanation must be particularized to the specific request made." *Id.*

Here, we conclude that considering the totality of RIDOH's response to Complainant, it did not violate the APRA. To be sure, RIDOH asserted that an extension was necessary "because of the voluminous nature of the request." This sentence borrows some language from the statute and, standing alone, may not have been particularized to the specific request. However, RIDOH's extension language must be read in the context of the rest of its response. Prior to invoking an extension, RIDOH's response recited the specific items Complainant was requesting and provided an estimate seeking prepayment that was particular to the request. Namely, RIDOH advised that it estimated that fulfilling Complainant's APRA request would take approximately 16 hours. RIDOH's time estimate for completing Complainant's request was particular to the request and demonstrated the voluminous nature of the request. Additionally, the affidavit submitted by RIDOH describes the search and retrieval process necessary to complete Complainant's request and evidences that there was a good cause basis to invoke an extension. As such, RIDOH's response, taken as a whole, was particularized to Complainant's request and the evidence supports RIDOH's characterization of the request as voluminous. *See Bath v. Rhode Island Office of Health and Human Services*, PR 15-16 (noting that letter extending the time to respond could have

explained the extensions in a more “particularized” manner, but finding no violation where correspondence did reference the subject-matter of the requests, and indicated additional time was required to allow staff to complete its search, retrieval, and production).

While Complainant contends that RIDOH’s use of the term “voluminous” is inconsistent with its admonition that it did “not even know whether [the requested documents] exist[],” RIDOH’s advisement was more narrow, advising only that “payment does not guarantee that the records you have requested constitute public records (in whole or in part, i.e., redacted) but only authorizes this Department to conduct its search and retrieval to determine if responsive records exist, and if so, whether they are public records.” “Voluminous” can be defined as “lengthy or full.” Regardless of whether RIDOH maintained responsive documents – they apparently did so – the prepayment estimate provided by RIDOH (along with its affidavit describing its search process) evidences that the request required a lengthy search and retrieval process. This supports RIDOH’s characterization of the request as voluminous. Reading the RIDOH’s response in its totality, we find no violation.

Conclusion

Although the Attorney General will not file suit in this matter, nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of 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/ Kayla E. O’Rourke
Kayla E. O’Rourke
Special Assistant Attorney General