



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

December 09, 2019

PR 19-21

Ms. Lynn Farinelli

Mr. Frank Milos, Esquire
City Solicitor, City of Pawtucket

Re: **Farinelli v. City of Pawtucket**

Dear Ms. Farinelli and Attorney Milos:

We have completed our investigation into the Access to Public Records Act (“APRA”) complaint filed by Ms. Lynn Farinelli (“Complainant”) against the City of Pawtucket (“City”). For the reasons set forth herein, we find that the City violated the APRA.

Background

On or about June 21, 2019, the Complainant submitted an APRA request to the City seeking, in pertinent part, “a copy of the letter Tina Goncalves ‘chief’ wrote to Sisson to have that report changed as it relates to [Mr. Doe’s] life changing Injury.”¹ The City responded to Complainant indicating that the City was “not in possession of any records that would satisfy your request.”

Thereafter, the Complainant submitted a Complaint to this Office alleging that the City violated the APRA when it denied her request. Complainant maintains that the letter she sought was “delivered to [her] anonymously” shortly after the City denied her request. The Complainant asserts that the letter she anonymously received was responsive to her request and that the City violated the APRA by not producing it in response to her request. The Complainant provided the letter for this Office’s review.

¹ We have used the pseudonym “Mr. Doe” because the identity of the third-party individual named in the APRA request is irrelevant to our finding. We note that based on the parties’ submissions and our independent research, it appears that Mr. Doe was a Pawtucket firefighter.

The City, by and through its solicitor, Attorney Frank Milos, submitted a substantive response to the Complaint. The City contends that the substance of the letter now in Complainant's possession "does not direct Fire Chief Sisson to 'change' any report regarding [Mr. Doe]" and was therefore not responsive to her request.

The Complainant did not submit 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 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).

The letter that Complainant alleges was responsive to her request is a June 7, 2019 letter from the Pawtucket Chief of Police and Acting Public Safety Director, Tina Goncalves, to the Chief of the Pawtucket Fire Department, William Sisson. The first sentence of Chief Goncalves' letter states, "I have reviewed Assistant Chief J. McLaughlin's response for an incident report, in reference to the May 15, 2019 injury to [John Doe]." The letter does not expressly direct Chief Sisson to "change" any report, but does provide explicit instructions, guidelines, and resources regarding correctly completing incident reports and the content required to be in such reports.

After reviewing the parties' submissions, this Office directed the City to provide an affidavit explaining the context of the letter, including the meaning of the first sentence of the letter. In response, the City submitted an affidavit from Chief Goncalves. In pertinent part, Chief Goncalves' affidavit states:

3. I wrote the aforementioned letter to Chief Sisson after I had reviewed what I deemed to be an inadequate investigatory report submitted by then Assistant Fire Chief John McLaughlin.
4. The first sentence of my letter to Chief Sisson means that I reviewed Assistant Fire Chief McLaughlin's investigatory report regarding a fire incident that occurred in May 15, 2019, during which [John Doe] sustained an injury.
5. The context of my letter to Chief Sisson is self-explanatory. I requested the addition of specific items, which I expected to be included in a thoroughly drafted investigatory report, but were not included in Assistant Fire Chief McLaughlin's report.
6. Prior to writing my letter, I reviewed Assistant Fire Chief McLaughlin's report and any supporting documents provided by him.

In relevant part, Complainant sought “a copy of the letter Tina Goncalves ‘chief’ wrote to Sisson to have that report changed as it relates to [Mr. Doe’s] life changing Injury!” Based on the totality of the evidence, we conclude that the letter in question was responsive to Complainant’s request. Chief Goncalves’ affidavit makes clear that she reviewed the report, believed that it was unsatisfactory, and wrote the letter in order to “request[] the addition of specific items, which I expected to be included in a thoroughly drafted investigatory report, but were not included in Assistant Fire Chief McLaughlin’s report.” As such, the letter constitutes a request “to have that report changed.” Accordingly, the letter was responsive to Complainant’s APRA request and the City violated the APRA by not providing the document.²

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).

Injunctive relief is not appropriate because the Complainant already possesses the document she requested. We next consider whether the City’s violation was willful and knowing, or reckless. Although we believe the City, through Chief Goncalves, should have known that the document was responsive, the City maintains that it believed the letter was not responsive because the letter does not expressly direct Chief Sisson to “change” a report. We note that there are no recent findings of similar violations against the City. On balance, we determine that there is insufficient evidence to support a willful and knowing, or reckless, violation. Nonetheless, the City is on notice that the conduct described herein violates the APRA and this finding may serve as evidence in a similar future case to support a finding of a willful and knowing, or reckless, violation.

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 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.

² The City did not assert any APRA exemption to withhold the letter. Accordingly, we do not examine whether one or more exemptions might have been applicable here. The City opted instead to withhold the letter on the grounds that it was not “responsive,” and thus our finding is limited to this basis.

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Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Kayla E. O'Rourke

Kayla E. O'Rourke

Special Assistant Attorney General