



STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL

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*Peter F. Neronha*  
*Attorney General*

**VIA EMAIL ONLY**

July 30, 2020  
PR 20-56

Mr. Rahim Caldwell

Jeffrey S. Michaelson, Esquire  
Legal Counsel, Rhode Island College

**RE: Caldwell v. Rhode Island College**

Dear Mr. Caldwell and Attorney Michaelson,

The investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Rahim Caldwell (“Complainant”) against Rhode Island College (“RIC”) is complete.

*Background and Arguments*

The Complainant alleges that RIC violated the APRA when it did not provide all documents responsive to his April 29, 2019 request<sup>1</sup> for “any and all safety and emergency response committee emails notifying safety and emergency response committee members of meetings taking place \*\*\* April 2018[.]”<sup>2</sup>

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<sup>1</sup> It appears that Complainant submitted multiple requests to RIC for substantively similar documents — once on April 29, 2019 and once on April 30, 2019. The only request referenced in the Complaint, and thus the only request properly before this Office for consideration, is the one from April 29, 2019. As such, this finding will consider that request alone.

<sup>2</sup> Complainant’s request sought Safety and Emergency Response Committee (“SERC”) emails regarding meetings for the months of April, May, and June 2018; however, the instant Complaint only concerns the Complainant’s request for emails regarding meetings for April 2018. As such, this finding will only address the Complainant’s request for “safety and emergency response committee emails notifying safety and emergency response committee members of meetings taking place \*\*\* April 2018.”

RIC responded to the request by providing “a copy of the email notifying the Safety and Emergency Response Committee members of a meeting taking place on April 23, 2018.” RIC stated that there were no other documents or meetings responsive to the request.

Complainant then filed an appeal with Dr. Frank D. Sanchez, President of Rhode Island College, on May 13, 2019, stating that “[t]he email [was] devoid of the email recipients[.]” Dr. Sanchez responded to the Complainant’s appeal regarding the April 2019 request on May 24, 2019, in pertinent part:

“[T]he document that you received along with the explanations and other information provided was responsive to your request. The document that was produced was believed to be the email that was sent out and identifies the individual recipients. \*\*\* It appears that what you received was a ‘calendar invite’ and not an email. The calendar invite was likely sent by way of email and it was further determined that an email containing the identical language in the document you were provided was sent on April 2, 2018 to the following individuals (email addresses included).”

RIC’s response to the appeal then goes on to list the names and email addresses of the individual recipients of the April 2, 2018 email.

Dissatisfied with RIC’s response, the Complainant filed the instant Complaint alleging that he was not provided all documents responsive to his April 2019 APRA request. Specifically, Complainant alleges that he received a “copy and paste document \*\*\* appear[ing] to be an unmailed [sic] document prepared by the organizer . . . The document provided ha[d] no email recipients.”

RIC submitted a substantive response through its legal counsel, Jeffrey S. Michaelson, Esquire, which included an affidavit from Mr. Stephen J. Nedder, Jr., RIC’s APRA coordinator. RIC maintains that the response originally provided by RIC, in conjunction with supplemental information in President Sanchez’s response to Complainant’s appeal, “complies with both the letter and spirit of APRA in that a document was produced which responds fully to the substance of the request.” In its response to the instant Complaint, RIC also “enclosed the actual email that the President referred to, dated April 2, 2018, notifying SERC members of the April 23, 2018 meeting. The Complainant was copied on RIC’s substantive response and thus received, and does not dispute that he received, a copy of this “actual email.” Nor does he dispute that this “actual email” satisfies his request.

We acknowledge Complainant’s rebuttal.<sup>3</sup>

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<sup>3</sup> Complainant’s rebuttal maintains that “[t]here is at least one email missing. Serc member Robert Pearlmutter email is non attached [sic]. The meeting was addressed to all serc members. Respondents must provide the email sent to serc member Roberta [sic] Pearlmutter.” The Complainant did not submit, nor did this Office find, evidence to support Complainant’s contention that a Robert or Roberta Pearlmutter is a SERC member or was otherwise included on the April 2, 2018 email notification regarding the April 23, 2018 meeting.

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). This Office has previously determined it unnecessary for us to consider whether a public body violated the APRA where a complainant receives the subject documents after filing an APRA complaint and where there is no evidence of a willful and knowing or reckless violation. *See Lamendola v. East Greenwich School Committee*, PR 20-11; *Piskunov v. Town of North Providence*, PR 16-38. The reason for this conclusion is because, even assuming a violation occurred, the APRA only provides for two types of remedies: injunctive relief and civil fines for a willful and knowing or reckless violation. *See* R.I. Gen. Laws § 38-2-9(d).

Here, the undisputed evidence demonstrates that RIC has now provided Complainant with the “actual email” notifying SERC members of the April 23, 2018 meeting, as he requested. RIC has represented that no other responsive records exist and Complainant has not provided evidence that there are any additional responsive records. Accordingly, any request for injunctive relief is moot. Additionally, we were provided with no evidence that RIC’s initial response, even assuming it was improper, would have constituted a willful and knowing, or reckless, violation that would warrant civil penalties. *See* R.I. Gen. Laws § 38-2-9(d). The record indicates that RIC’s initial response to Complainant’s request provided a document containing the substance of the “actual email” he was subsequently provided. We also note RIC’s representation that it has responded to over 200 APRA requests from Complainant since July 2, 2018, and that despite the burden imposed by this extraordinary number of requests, it has continuously strived to respond in conformity with the APRA. Moreover, Complainant does not allege that RIC’s initial response constituted a willful and knowing, or reckless, violation and we find no record of any findings of previous similar violations against RIC. As such, this Office does not find any evidence of a willful and knowing, or reckless, violation and accordingly concludes that a lawsuit seeking civil penalties is not appropriate.

Conclusion

Although the Attorney General will not file a lawsuit, 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.

Caldwell v. Rhode Island College

PR 20-56

Page 2

Sincerely,

PETER F. NERONHA  
ATTORNEY GENERAL

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