



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 • www.riag.ri.gov

Peter F. Neronha
Attorney General

VIA EMAIL ONLY

August 5, 2020
PR 20-57

Ms. Lynn Farinelli

Mr. Matthew Jerzyk, Esquire
Central Falls City Solicitor

Re: **Farinelli v. City of Central Falls**

Dear Ms. Farinelli and Attorney Jerzyk:

The investigation into the Access to Public Records Act (“APRA”) complaint filed by Ms. Lynn Farinelli (“Complainant”) against the City of Central Falls (“City”) is complete. For the reasons set forth herein, we find that the City violated the APRA and request supplemental submissions regarding whether the violation was knowing and willful, or reckless.

Background

On June 21, 2020, the Complainant submitted an APRA request to the City via email requesting “the last 10 internal affairs completed reports from Central Falls Police Department.” Having received no response from the City, the Complainant filed a Complaint with this Office on July 9, 2020 alleging that the City violated the APRA by failing to timely respond to her request.

City Solicitor, Matthew Jerzyk, Esquire, provided a substantive response in affidavit form. Attorney Jerzyk attested that after receiving notice of this Office’s investigation, he “searched through [his] email SPAM folder and found [Complainant’s] email.” He further attests that the City’s IT vendor has now established a new email account for APRA request submissions “that would then forward to multiple staff in the City.” The City stated that it provided responsive documents to the Complainant on July 20, 2020 and the Complainant “received her response 27 business days after her request which is less than the 30 business day requirement that this Law

Department would typically abide by as we typically request a 20 day extension.”¹ The City also maintains that the “delay was inadvertent.”

We acknowledge Complainant’s rebuttal. Of note, Complainant does not contest that the City has now provided a substantive response to the June 21, 2020 request.

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.

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 necessary to comply. *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 Complainant made an APRA request on June 21, 2020 and the City failed to respond within ten (10) business days. *See* R.I. Gen. Laws §§ 38-2-3(e), 38-2-7. The City did not contend that Complainant failed to comply with the City’s procedures for submitting APRA requests. *See* R.I. Gen. Laws § 38-2-3(d) (requiring public bodies to establish written procedures regarding access to public records). As we recently cautioned the City in *Farinelli v. City of Central Falls*, PR 19-16, “[i]f a public body permits APRA requests to be submitted by email, it is that public body’s responsibility to implement procedures to ensure that requests sent to that email address are read and processed, which presumably requires regularly checking the SPAM and JUNK folders.” *See also Mudge v. North Kingstown School Committee*, PR 05-04 (School Committee violated the APRA when it failed to respond to Complainant’s request made via email). Accordingly, we conclude that the City violated the APRA when it failed to respond to Complainant’s request within ten (10) business days. *See* R.I. Gen. Laws § 38-2-7.

Importantly, this is the second instance in approximately one (1) year that a Complaint was filed against the City for its failure to timely respond to an APRA request where the City claimed the emailed request went to Attorney Jerzyk’s “spam” folder. *See Farinelli v. City of Central Falls*, PR 19-16. In PR 19-16, the City made substantively similar arguments to those made here, to wit: the Complainant’s APRA request went to Attorney Jerzyk’s “spam” folder and the failure to respond to the Complainant’s request was “inadvertent.” While the totality of the evidence in PR 19-16 established the City violated the APRA, we did not find evidence of a willful and knowing, or reckless violation in that instance. Nonetheless, we advised the City that “if this issue recurs and if the City does not have measures in place to prevent this reoccurrence, this finding may serve

¹ Although this issue is not before us in this Complaint, we note that the APRA only permits an additional twenty (20) business day extension for certain reasons set forth in the statute and that whether an extension is appropriate depends on the circumstances of each case. *See* R.I. Gen. Laws § 38-2-3(e).

as evidence in a similar future case to support a finding of a willful and knowing, or reckless violation.”

We are troubled by the City’s repeated violations in a relatively short period of time. We acknowledge Attorney Jerzyk’s affidavit wherein he notes that the City has now taken measures to prevent this issue from recurring.² However, the City does not explain why it did not implement these or other measures to address this issue after having committed the same violation roughly a year ago. Nor did the City identify any other measures it had in place to guard against this issue at the time when this violation occurred. Based on the record before us, this Office questions whether the City’s violation in this case was knowing and willful, or alternatively reckless. Within ten (10) business days of the issuance of this finding, the City is required to provide a supplemental submission addressing whether the City’s violation was knowing and willful, or reckless. The City should also address what, if any, measures it had in place at the time when the violation occurred to guard against providing untimely responses to APRA requests as a result of the requests going to a “spam” folder. The City’s response should also specifically address what measures it took as a result of PR 19-16, when those measures were taken, and why any such measures did not prevent the instant violation. The Complainant may provide a response to the City’s supplemental submission within five (5) business days of the City’s submission. The parties should address whether the Complainant communicated with the City about the unanswered APRA request prior to filing this Complaint, and if so, whether the City responded.

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)

Based on the undisputed evidence, the City has now provided a substantive response to Complainant’s June 21, 2020 APRA request, which included providing responsive records. Complainant has not expressed any issues with the City’s response and the substance of the City’s response, which was sent after this Complaint was filed, is not before us. We do not find injunctive relief appropriate. This Office will permit the parties to make supplemental submissions before issuing a finding regarding whether the violation was knowing and willful, or reckless.

² It is unclear to us whether setting up a new email address where emails are forwarded to multiple people will resolve the issue of emails going to a spam folder. If the City has not already done so, we encourage the City to take measures to ensure that the spam folder is checked regularly.

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

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

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