



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

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VIA EMAIL ONLY

May 14, 2020
PR 20-47

Mr. Lawrence Fitzmorris

Dennis E. Hoyle, CPA
Auditor General

Re: Fitzmorris v. Office of Auditor General

Dear Mr. Fitzmorris and Mr. Hoyle:

We have completed the investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Lawrence Fitzmorris (“Complainant”) against the Office of Auditor General (“Auditor General”). For the reasons set forth herein, we find that the Office of Auditor General violated the APRA by failing to provide updated and accurate APRA procedures on its website.

Background

The Complainant attempted to submit an APRA request to the Auditor General seeking “(1) all audit reports submitted by the Town of Portsmouth, RI or its auditor for the fiscal year 2018 – 2019,” and “(2) all communications between the Town of Portsmouth and [the Auditor General’s Office] regarding the fiscal year 2018-2019, specifically any notice that the audit for this fiscal year would be late in submission.” On January 10, 2020, the Complainant mailed this request to “86 Weybosset Street, Providence, RI 02903,” which was the address listed on the APRA request form on the Auditor General’s webpage. This request was returned to the Complainant as undeliverable on January 26, 2020. The Complainant then reached out to the Auditor General via telephone and requested an email address and point of contact to submit his request. He attempted to send his request via email on January 28, 2020 and, as of the time of filing his APRA Complaint (February 15, 2020), the Complainant had not received a response.

The Complainant subsequently filed a complaint with this Office, alleging that the Auditor General violated the APRA by failing to respond to his request. Auditor General, Dennis E. Hoyle, CPA, submitted a response. Mr. Hoyle avers that the failure to respond to Complainant’s request was not attributable to any “intentional mishandling of the APRA request,” but was rather due to

“confusion in communication” with the Complainant and a “staff oversight” regarding updating the website. Mr. Hoyle noted that the Auditor General “relocated the Office (to 33 Broad Street, Suite 201, Providence, RI 02903) in October 2016” but that the address on the APRA form posted on the Auditor General’s website was not updated with the new address. The Auditor General further states it never received an email request from the Complainant and first learned of the Complainant’s unfulfilled request when this Office notified the Auditor General about this APRA complaint. The Auditor General asserts that once it became aware of Complainant’s APRA request, it promptly fulfilled the request by providing all responsive documents, of which the Complainant acknowledged receipt. The Auditor General also represents that its APRA procedures form on its website has now been updated with the correct address.

We acknowledge Complainant’s rebuttal. The Complainant does not dispute the Auditor General’s assertion that Complainant’s APRA request has now been fulfilled.

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).

Although the undisputed evidence indicates the Auditor General never received Complainant’s first request sent via mail (and the Auditor General contends that it never received the second request sent via email¹), the evidence establishes that Complainant’s first request by mail was not received because of the Auditor General’s failure to update its website and APRA procedures with the proper/current mailing address. A public body is required to “establish written procedures regarding access to public records ... These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, *and where a public record request should be made*, and a copy of these procedures shall be posted on the public body’s website if such a website is maintained and be made otherwise readily available to the public.” *See* R.I. Gen. Laws § 38-2-3(d) (emphasis added).

¹ The Auditor General provided this Office with a copy of the documents it provided Complainant in response to his APRA request once the Auditor General became aware of the request. Some of those documents were email exchanges involving the same individual to whom Complainant emailed his APRA request. Based on those records, it appears the email address to which the APRA request was submitted differed slightly from the email address listed in that individual’s signature block, which may explain why the Auditor General contends it did not receive the email.

Here, the undisputed evidence reveals that the Auditor General's written APRA procedures did not provide current and accurate information regarding "where a public record request should be made." We also note that the incorrect address was apparently listed on the APRA form for over three years. As a result of this error, Complainant's APRA request was not received by the Auditor General and Complainant did not receive a response to his APRA request until more than ten (10) business days after the request should have been received. Accordingly, we conclude that the Auditor General violated the APRA when it failed to properly update the APRA form on its website with accurate written procedures regarding where to submit an APRA request. *See* R.I. Gen. Laws § 38-2-3(d).

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).

The Complainant does not dispute the Auditor General's contention that it has now responded to the APRA request. As such, injunctive relief is not appropriate.

While we are concerned that the Auditor General did not update its APRA procedures following its October 2016 move, we have not found any prior similar violations by the Auditor General, nor has any evidence been presented or discovered to suggest that the failure to update its procedures was meant to obfuscate the APRA. Based upon the evidence presented in this case, we do not find the instant violation constituted a willful and knowing or reckless violation. We additionally take into consideration the Auditor General's prompt correction of the APRA form on its website and prompt response to the APRA request once these issues came to its attention. Nonetheless, this finding may serve as evidence in a similar future case to support a finding of a willful and knowing, or reckless violation.

Although this Office has determined that it will not file suit in this matter, nothing within the APRA prohibits an individual from filing an action in Superior Court seeking injunctive or declaratory relief as provided in the APRA. *See* R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this finding.

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Adam D. Roach
Adam D. Roach
Special Assistant Attorney General