



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

VIA EMAIL ONLY

September 2, 2020
PR 20-60

James Cullen, Esquire
Legal Counsel, Mr. Christopher Lamendola

Aubrey Lombardo, Esquire
Legal Counsel, East Greenwich School Department

Re: Lamendola v. East Greenwich School Department

Dear Attorneys Cullen and Lombardo:

The investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Christopher Lamendola (“Complainant”)¹ against the East Greenwich School Department (“School Department”) is complete. For the reasons set forth herein, we find that the School Department did not violate the APRA.

Background

The Complainant submitted an APRA request to the School Department seeking “[a] copy [sic] East Greenwich School Committee executive sessions [sic] minutes of April 9, 2019 in regards to ‘Discussion: Requested staff investigation.’” The School Department denied the request, asserting that the responsive document was exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(J)², which exempts “[a]ny minutes of a meeting of a public body which are not required to be

¹ Complainant initially filed his Complaint with this Office *pro se* and subsequently retained counsel who submitted a rebuttal on his behalf.

² The School Department’s response cited “R.I. Gen. Laws §38-2-2(4)(A)(II)(J),” which is not a valid citation to any provision of the APRA. However, the School Department’s response also described the cited exemption as pertaining to “executive session minutes that have been sealed by vote of a public body.” The Complainant did not take issue with the School Department’s

disclosed pursuant to chapter 46 of title 42,” and § 38-2-2(4)(A)(I)(a), which exempts all records relating to a client/attorney relationship.

The Complainant subsequently filed a Complaint with this Office, generally alleging that the document should be a public record.

The School Department submitted a substantive response through its legal counsel, Aubrey Lombardo, Esquire, which included a copy of the April 9, 2019 executive session minutes for this Office’s *in camera* review, affidavits from all School Committee members who were present at the April 9, 2019 executive session, and an affidavit from Administrative Assistant to the Superintendent, Christine DiMeglio, who was “charged with taking notes during the April 9, 2019 School Committee meeting.” The affidavit of School Committee Chairperson Carolyn Mark states, in pertinent part:

“After executive session of the School Committee meeting closed at 6:42 PM, as is the practice of the School Committee, a motion was made and seconded to seal the minutes of the April 9, 2019 executive session.

The School Committee voted 7-0 to seal the minutes of the April 9, 2019 executive session.”

These statements are echoed in the affidavits of Committee members Lori McEwen, Eugene Quinn, Anne Musella, Jeff Dronzek, Alyson Powell³ and Matthew Plain. Ms. DiMeglio additionally attests that “[a]lthough the vote to seal the minutes was taken in open session, [she] inadvertently included the vote in the executive session minutes.”

We acknowledge Complainant’s rebuttal.⁴

citation and we interpret the School Department’s response as clearly intending to reference Exemption J, which is found at R.I. Gen. Laws § 38-2-2(4)(J).

³ The affidavit of School Committee member Powell was not notarized, but was signed and submitted as a statement “under oath.”

⁴ On rebuttal, the Complainant alleges that the East Greenwich School Committee did not comply with the Open Meetings Act (“OMA”) at the April 9, 2019 meeting by failing to report the vote to seal the executive session minutes in the open session or record the vote in the open session meeting minutes. This new allegation is outside the scope of the Complaint in this matter, which only alleged that the School Department violated the APRA by denying Complainant’s request for the April 9, 2019 School Committee executive session minutes. Our acknowledgement letter opening this investigation notified the Complainant that the “rebuttal should be limited to the matters addressed in the School Department’s response and should not raise new issues that were not presented in your complaint or addressed in the School Department’s response.” This Office has declined to review issues which are raised for the first time in a rebuttal since the public body has no opportunity to respond to the new allegations and this Office cannot fully investigate them.

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, unless the document falls within one of the twenty-seven (27) enumerated exemptions. *See* R.I. Gen. Laws § 38-2-2(4)(A)-(AA). Among other exemptions, the APRA permits nondisclosure of “minutes of a meeting of a public body that are not required to be disclosed pursuant to chapter 46 of title 42.” R.I. Gen. Laws § 38-2-2(4)(J). Chapter 46 of title 42 refers to the Open Meetings Act (“OMA”), which permits a public body to vote to keep the minutes of a closed session meeting sealed. *See* R.I. Gen. Laws § 42-46-7(c).

The requested record consists of minutes from an April 9, 2019 executive/closed session meeting.⁵ The School Department provided undisputed evidence that the School Committee voted to seal the April 9, 2019 executive session minutes during the April 9 meeting. Additionally, our *in camera* review of the April 9, 2019 executive session minutes confirms Ms. DiMeglio’s assertion that the School Committee’s vote to seal the executive session minutes was recorded in the executive session minutes.⁶ As such, the evidence establishes that under the OMA, “the majority of the body vote[d] to keep the minutes closed.” R.I. Gen. Laws § 42-46-7(c). Exemption (J) of the APRA exempts from disclosure minutes that have been sealed under the OMA. Since the minutes were sealed pursuant to R.I. Gen. Laws § 42-46-7(c), they were permissibly exempt from

See Mudge v. North Kingstown School Committee, OM 12-35. Accordingly, the new allegation raised for the first time in Complainant’s rebuttal is not properly before us, but the Complainant is free to file a new OMA complaint to the extent it is within the statute of limitations. *See* R.I. Gen. Laws § 42-46-8(b).

⁵ The record indicates that the School Committee entered executive session on April 9, 2019 to discuss a “Requested Staff Investigation” pursuant to R.I. Gen. Laws § 42-46-5(a)(4), which permits a public body to enter executive session to discuss “[a]ny investigative proceedings[.]” The Complaint did not challenge the propriety of the School Committee entering the executive session in question under the OMA.

⁶ For purposes of this APRA Complaint, it is sufficient that the minutes were sealed under the OMA. As noted in footnote 4, the Complainant did not file an OMA Complaint in this matter and, as such, the issue of whether the School Committee adhered to the OMA’s requirements for recording and/or reporting out the vote to seal the executive session minutes is outside the scope of the Complaint submitted in this matter.

disclosure under R.I. Gen. Laws § 38-2-2(4)(J). Accordingly, the School Department did not violate the APRA by denying the request for the minutes pursuant to Exemption (J).⁷

Conclusion

Although this Office has found no violation, 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.

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

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

⁷ Because we determine that the document is exempt under R.I. Gen. Laws § 38-2-2(4)(J), we need not determine whether the other cited exemption also applies.