



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 20, 2016
PR 16-24

Mr. Joshua N. Fenton

Re: GoLocal Prov v. Rhode Island Commerce Corporation

Dear Mr. Fenton:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Rhode Island Commerce Corporation (“the Corporation”) is complete.

By email correspondence dated April 10, 2016, you allege that the Corporation violated the APRA when it failed to respond to GoLocalProv.com’s (“GoLocal”) APRA request in a timely manner. In this correspondence you state:

“On March 24, 2016 GoLocalProv.com, a digital news organization covering Rhode Island, filed a public document request with the Commerce Corporation of RI requesting the following information[.]”

Your complaint continues by including an image of the APRA request wherein you requested:

“[C]opies of all communication between the [sic] any of the three following entities Governor’s office, Commerce RI, and General Electric and the companies[’] agents from January 1, 2015 to present.”

You allege that “GoLocalProv has received no response to the documents and the agency is in violation of state law.”

In response to your complaint, this Department received a correspondence from the Corporation, through the law firm Sheckman Halperin Savage, LLC (“the Firm”), which serves as general counsel for the Corporation. The correspondence, from John H. McCann, Esquire, related:

“[o]n April 7, 2016, within ten business days, the Corporation sent correspondence to GoLocal extending the time-frame for responding for good cause. Accordingly, not including any time the Corporation’s response may be tolled pending payment of estimated allowed costs, the response is not due until May 7, 2016.”

GoLocal Prov v. Rhode Island Commerce Corporation

PR 16-24

Page 2

Mr. McCann included an affidavit from Thomas E. Carlotto, Esquire, which included a true and accurate copy of the above-referenced April 7, 2016 letter. In relevant part, the April 7, 2016 letter states:

“[t]he Commerce Corporation hereby extends for ‘good cause’ the time period to respond to your request for an additional twenty (20) business days. Good cause exists because the Commerce Corporation has 11 other requests for public records pending simultaneously, including two others from your organization; and an extension is needed to avoid an undue burden on the Commerce Corporation.”

You did not provide a rebuttal.

At the outset, we observe that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether a violation has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Rhode Island Commerce Corporation violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA provides, in relevant part, that:

“[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific case made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.”

R.I. Gen. Laws § 38-2-3(e)(emphasis added). Moreover, “[f]ailure to comply with a request to inspect or copy the public record within ten (10) business days of the request * * * shall be deemed to be a denial.”

Here, we find no violation. Specifically, you allege that GoLocalProv “has received no response” to its March 24, 2016 APRA request, but there is no dispute that the Corporation did respond within the ten (10) business days required by the APRA. As explained above, and as uncontested by you, by letter dated April 7, 2016, the Corporation responded to your APRA request and extended the time for “good cause.” The Corporation’s correspondence occurred on the tenth business day following your March 24, 2016 APRA request since the day you sent your APRA request (March 24, 2016) does not count as the first business day. See Burke v. Rhode Island College, 671 A.2d 803 (R.I. 1996); Young v. Town of Hopkinton, PR 05-10; and

GoLocal Prov v. Rhode Island Commerce Corporation

PR 16-24

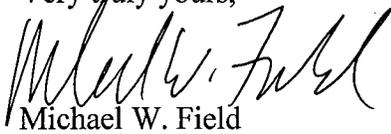
Page 3

Rhode Island Superior Court Rules of Civil Procedure 6(a). Therefore, we conclude that the Corporation did not violate the APRA and did respond to your March 24, 2016 request in a timely manner.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity 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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Field". The signature is written in a cursive, flowing style.

Michael W. Field

Assistant Attorney General

Cc: John H. McCann III, Esq.