



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

October 6, 2016
PR 16-41

Mr. Mike Piskunov

Re: Piskunov v. City of Cranston

Dear Mr. Piskunov:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the City of Cranston (“City”) is complete.

On February 13, 2016, you made an APRA request by email to the City requesting:

“records related to the Cranston Police Internal Affairs department. In particular, I am requesting the last 10 completed Internal Affairs reports.”

The City timely responded to your APRA request on February 26, 2016, and stated “[t]he City needs 20 additional days under the statute to respond to your request due to its voluminous nature.”

On March 3, 2016, the City substantively responded to your APRA request. In its response, the City declined to provide the requested records, stating, in its entirety, that:

“[t]he City of Cranston submits that the records you requested via email are private and confidential personnel and investigative materials.”

You filed the instant APRA complaint via email correspondence on March 7, 2016. You allege that the City violated the APRA when it denied your APRA request “without [giving] the specific reasons for the denial” and when it failed to inform you of the appeal procedures pursuant to R.I. Gen. Laws § 38-2-7. On March 14, 2016, the City provided you redacted documents responsive to your APRA request and you do not appear to take issue with the substance of the City’s response or its redactions.

In response to your complaint, this Department received a substantive response from City Solicitor Christopher Rawson, Esquire. Attorney Rawson noted that the City would be providing the

requested internal affairs reports to you in a redacted manner. Additionally, attached to the City's response was an affidavit of Attorney Rawson. The affidavit stated, in pertinent part:

“On March 14, 2016, the City of Cranston forwarded to Mr. Piskunov . . . the last 10 Cranston Police Department Professional Standards (the term used by the [police department] for its ‘internal affairs’ department reports) in redacted form. ***

As a matter of record, the City of Cranston is currently defending a subpoena served upon it asking for Professional Standards documents in the Providence County Superior Court case of Henry v. Media General Operations, Inc., et. al., C.A. No. PC-2014-2837. Plaintiff in this defamation case served a production subpoena upon the City of Cranston for documents related to its Professional Standards investigative file of a certain Cranston police officer. Cranston has filed a protective order and a motion to quash which is pending before Judge Richard Licht. Judge Licht heard brief oral arguments from all parties at the initial motion hearing, but has asked all parties to brief the subject and come back for a longer oral argument. In the meantime, Judge Licht will be performing an in camera review of the Professional Standards file.”

We acknowledge your rebuttal dated March 21, 2016.

At the outset, we observe that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction 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 City violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

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 to copy such records. See R.I. Gen. Laws § 38-2-7. To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws §§ 38-2-7, 38-2-3(e).

Here, since you do not dispute that you are now in possession of the requested documents, we need not determine whether the City violated the APRA¹ by initially withholding the requested documents—and thus seek injunctive relief—but rather we need only determine whether your allegation represents a knowing and willful, or reckless, violation of the APRA that would subject

¹ It is unclear whether you even raise the withholding of records as an issue. As explained above, and as our acknowledgement letter confirmed, the only two issues you expressly raise were that the City's denial did not articulate the specific reason(s) and that the City's denial failed to articulate the avenue for appeal. In the exercise of caution, we briefly address the initial denial of access to the requested records.

the City to civil penalties. See R.I. Gen. Laws § 38-2-8. This decision is consistent with our finding in Farinelli v. City of Pawtucket, PR 16-27, where our rationale is more fully explained.

On this narrow issue, after reviewing all the evidence presented, we find no evidence of a willful and knowing, or reckless, violation. We observe that the City initially declined to release the documents, at least in part, out of concern for its impact on pending litigation and because a similar issue was pending before the Superior Court that may have related to some of the documents you sought in this case. Indeed, in our review of this case we have endeavored to determine the outcome of the Superior Court's ruling. We have not been presented with any evidence that the City's initial nondisclosure was willfully and knowingly, or recklessly, in violation of the APRA, and to this point, we also observe that the City provided you the redacted reports on March 14, 2016, within the extended thirty (30) business day time period.

With respect to your allegation that the City declined to provide "specific reasons for the denial," and therefore violated the APRA, we disagree. Rhode Island General Laws § 38-2-7(a) provides, in pertinent part:

"Any denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request" (Emphasis added).

This Department has previously found that general denials of access and statements that the requested records are "not public information" are insufficient to comply with the APRA's mandate. See Constantino v. Smithfield School Committee, PR 13-24. However, nothing in the APRA requires a denial to specifically state the APRA exemption it is referencing. See Clark v. West Gloucester Fire District, PR 16-01. Here, the City denied access to the requested records by stating that the records were "private and confidential personnel and investigative materials." This loosely tracks the APRA exemption found at R.I. Gen. Laws § 38-2-2(4)(A)(I)(b), which exempts:

"[p]ersonnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552, et. seq."

Although we encourage public bodies to cite and explain the specific APRA exemption(s) with as much detail as possible, and although we consider this issue to be a close call, we find that the City's response utilizing the language of R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) does not violate the APRA. See R.I. Gen. Laws § 38-2-7(a). As such we find no violation.

Lastly, we do find a violation with respect to your allegation that the City never informed you of the procedures for appealing the denial. Rhode Island General Laws § 38-2-7(a) provides, in pertinent part:

"Any denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of

the request and indicating the procedures for appealing the denial." (Emphasis added).

Here, the evidence reveals that the City's response did not indicate any procedures for appealing the denial. Accordingly, the City violated the APRA by failing to inform you of your appellate remedies.

Upon a finding that a complaint brought pursuant to the APRA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 38-2-9(d). There are two remedies available in suits filed under the APRA: (1) the court may issue injunctive relief and declaratory relief and/or (2) the court may impose a civil fine of up to two thousand dollars (\$2,000) against a public body or any of its members found to have committed a willful and knowing violation of the APRA, or a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated the APRA. R.I. Gen. Laws §§ 38-2-8(b), 38-2-9(d).

In this case, we find that neither remedy is appropriate. Injunctive relief is inappropriate where, as here, the requested documents have already been provided. Nor do we find any evidence that this violation of the APRA was willful and knowing, or reckless. There also appears to be no prejudice to you in this case since you filed a complaint with this Department within days of the City's denial and you filed numerous other complaints with this Department on or before the date you filed the instant complaint. See, e.g., Piskunov v. Town of Coventry, PR 16-36. Nonetheless, this finding serves as notice to the City that its omission violated the APRA and may serve as notice of a willful and knowing, or reckless, violation for any future similar cases.

Although the Attorney General 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). We are closing this file as of the date of this correspondence.

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

Very truly yours,



Sean Lyness
Special Assistant Attorney General

SL/kr

Cc: Christopher M. Rawson, Esquire