



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

October 14, 2016

PR 16-43

Mr. Michael Farinelli

RE: Farinelli v. Town of Foster

Dear Mr. Farinelli:

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

On February 12, 2016, you made an APRA request by email correspondence to the Town:

“I would like to receive the ‘Last 10 Internal Affairs Investigations’ that were conducted after a complaint against your Police Department. (Office or Officer(s))
[.]”

The Town timely responded to your February 12, 2016 APRA request on February 23, 2016. In its response, the Town noted:

“Mike, we do not have those records here at town hall. I have spoken to the police chief, William Ziehl, and forwarded your request to him via email. His email is: [deleted] if you wish to email him directly.”

By email correspondence dated March 3, 2016, you filed the instant APRA complaint. You allege that the Town violated the APRA when it failed to respond to your APRA request.

In response to your complaint, this Department received a substantive response from Renee M. Bevilacqua, Esquire, Town Solicitor. Attorney Bevilacqua states, in relevant part:

“On February 23, 2016, the TOWN’S compliance Officer [sic], Jane Christopher, sent you, by email (your preferred method of communication,) [sic] a notification clearly stating that ‘ . . . we do not have those records here . . . ’

[] The records requested are clearly 'Internal Affairs Investigations' documents created and kept by the Police Department and regarding its 'office or Officer(s).'

[] The Foster Police Department has a web page with a detailed ACCESS TO PUBLIC RECORDS ACT Section reiterating the Rhode Island General Law [§] 38-2-1[,] et seq. Further, Foster Police Department gives detailed 'Internal Procedure' for the handling of such requests and names its 'Public Records Officer, Chief William Ziehl;' gives the telephone contact information; the business hours and that of the 'Records Department, i.e., 9:00 a.m. to 3:00 pm [sic]' and even what one should do if a request need be made during non-business hours. ***

Additionally, in the TOWN'S response of February 23, 2016, you were given the direct email of the Chief of Police and Compliance Officer, Chief William Ziehl.

[] No APRA request was made to the Police Department for the Police Department records referenced in your February 12th email to the Town clerk.

In consideration of the above facts, there is no legal basis for your complaint. The email from Town Clerk Jane Christopher, dated February 23, 2016, was well within the statutory ten (10) business days and its first sentence functions succinctly as the 'written response' required by law which may be read fairly as a denial. Any courtesy extended to you (i.e., the information on the proper direction and forwarding of your request to the appropriate public entity,) is a crime that goes unpunished by the APRA, since there is no requirement for a request received in error to be addressed any further."

You submitted a rebuttal by email correspondence on April 28, 2016. In your rebuttal you stated:

"Any reasonable mind would conclude that the [Town's February 23, 2016 response] indicated that the request was accepted and not only discussed with but also forwarded to Chief Ziehl.

I was not directed to email William Ziehl nor was I told at that point my APRA [request] was denied. As stated above, if I wish[ed] to email him, I could but the email clearly indicates that this was handled by Jane Christopher via email and when she spoke with the Police Chief. Nowhere does it indicate that I needed to send the request to him as it CLEARLY states it was [f]orwarded and [d]iscussed."

At the outset, we note 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 Town 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, based on the undisputed evidence, we conclude that the Town did not violate the APRA. On February 23, 2016, the Town timely responded to your February 12, 2016 APRA request by denying your request and indicating that “we do not have those records here at town hall.” By “stat[ing] that it does not have or maintain the requested records[,]” the Town complied with the APRA, and it did so within ten (10) business days of your APRA request. R.I. Gen. Laws § 38-2-7(c); see also Smith v. Warwick Public School Department, PR 15-13. Thus, we find no violation.

While your APRA complaint is focused on the Town, you nonetheless suggest that the Foster Police Department violated the APRA when it failed to respond in a timely manner to your APRA request. Although we have previously noted that forwarding an APRA request is likely insufficient to constitute an APRA request in itself, see e.g., Piskunov v. Town of North Providence, PR 16-38, even if we were to assume that the forwarding of the APRA request was a proper APRA request to the Foster Police Department, your March 3, 2016 complaint is not ripe for review. As suggested earlier, the APRA provides that “[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request.” R.I. Gen. Laws § 38-2-3(e). This time period may be extended an additional twenty (20) business days for “good cause.” R.I. Gen. Laws § 38-2-7(b). Here, assuming that the February 23, 2016 forwarding by the Town Clerk to the Police Department constituted a valid APRA request on your behalf – a proposition we have rejected in the past – there is no dispute that the Police Department did not receive “your APRA request” until February 23, 2016 and you filed the instant APRA complaint only seven (7) business days later on March 3, 2016. Because your March 3, 2016 complaint was filed prior to the expiration of the Foster Police Department’s time to respond, assuming it had to reply, the instant complaint against the Police Department is not ripe. See Melo v. Department of Public Safety, PR 15-49. Accordingly, we find no violation.

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.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sean Lyness".

Sean Lyness
Special Assistant Attorney General

SL/kr

Cc: Renee Bevilacqua, Esq.