



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

May 7, 2014

OM 14-18

Mr. James Pierson

RE: Pierson v. Coventry School Committee

Dear Mr. Pierson:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Coventry School Committee (“School Committee”) is complete. By email correspondence dated February 3, 2014, you allege the School Committee violated the OMA with respect to the following meetings:

- 1) September 10, 2013
- 2) September 24, 2013
- 3) October 8, 2013
- 4) October 22, 2013
- 5) November 12, 2013
- 6) November 26, 2013
- 7) December 9, 2013
- 8) December 10, 2013
- 9) January 14, 2014
- 10) January 28, 2014

For each meeting, you allege the School Committee: 1) failed to post its minutes online; 2) failed to make its minutes available, to the public at the office of the public body, within 35 days of the meeting or at the next regularly scheduled meeting, whichever is earlier; and 3) failed to make available a record of all votes taken, listing how each member voted on each issue, within two weeks of the date of the vote. See R.I. Gen. Laws § 42-46-7(b). As explained to you in the

February 7, 2014 acknowledgment letter, this Department will only review your second and third allegations for all meetings, except for the January 28, 2014 meeting. Since you filed your complaint with this Department on February 3, 2014, only six (6) days after the January 28, 2014 meeting and before the convening of a subsequent regularly scheduled meeting, your allegations that a record of votes were not available within the two (2) weeks of the meeting and that the open session minutes were not available within the thirty-five (35) days of the meeting, or at the next regularly scheduled meeting, is not timely.

With respect to your first allegation, the OMA does not require a municipal entity, such as the School Committee, to file its minutes with the Secretary of State online. Thus, we will not review this allegation.

In your complaint you communicated, in pertinent part:

“On February 3, 2014 (today) I called the Secretary of the School Committee, [], to request copies of the School Committee meeting minutes.

The Secretary to the School Committee informed me that she has been dealing with a family illness and subsequent death, and that: 1) the meeting minutes from November 2013 to present have not been prepared yet, and 2) the minutes from September 2013 to present need to be approved by the School Committee before she can let me see or provide me with a copy.

[The Secretary] informed me that the School Committee is planning to approve the minutes during a meeting scheduled for February 11, 2014.

On February 3, 2014***I filled out an Access to Public Records Request for copies of all the Coventry School Committee meeting minutes since August, and delivered the request in person to the school department.

While delivering the records request***I again asked both the Secretary of the School Committee and the Superintendent, Dr. Michael Almeida, if it was possible to obtain copies of the unofficial meeting minutes today, rather than wait until February 11, 2014. I was told that it is not possible because the School Committee needs to review and approve the minutes before members of the public can read them.

I then asked both the Secretary to the School Committee and the Superintendent if they could provide copies of the records showing how each School Committee member voted on issues during the meetings. *** I was told that the vote record is contained within the meeting minutes and they could not provide me with copies until the minutes were approved by the School Committee.”

This Department received a substantive response from Katherine Duncanson, Attorney for the School Committee. Ms. Duncanson states, in pertinent part:

“On February 3, 2014, Mr. Pierson requested records from Coventry Public Schools. ***Specifically, he requested the minutes from the meetings on the following dates:

[see above list of meeting dates]

On February 12, 2014, all minutes were forwarded to Mr. Pierson pursuant to his access to public records request. *** Coventry Public Schools admits that the recording secretary [did not submit the minutes to the School Committee for approval]. The recording secretary was advised that this needed to be fixed as soon as possible. She then experienced a death in her family that delayed the completion further. This employee was subsequently non-renewed from her position due to her repeated failure to complete her tasks on a regular basis, including but not limited to the timely completion of the school committee minutes. The School Committee has remedied this problematic situation and as of today, the minutes of the School Committee remain current and approved up to date.

[Mr. Pierson] was not aggrieved by the delay as he received all the information he requested within the time allotment by the Rhode Island Access to Public Records Act. The Coventry School Committee admits that the minutes were not approved in the time allotment as set out by the RI Open Meetings Act^[1] but we assert that the error was not intentional and it was remedied and remains fixed as of today's date.

***[T]he record of votes was provided to Mr. Pierson within the ten business days that the School Department is allowed to take to respond to such a request under the RI APRA.”

This Department acknowledges your March 14, 2014 rebuttal.

At the outset, we note that in examining whether a violation of the OMA 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 OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

¹ As explained in this finding, the OMA does not require the School Committee to approve its minutes. Instead, the OMA requires that unofficial minutes and a record of votes be available to the public within a certain timeframe.

The School Committee argues that you were “not aggrieved by the delay as [you] received all the information [you] requested within the time allotted by the Rhode Island Access to Public Records Act.” Rhode Island General Laws § 42-46-8(a) provides that “[a]ny citizen or entity of the State who is aggrieved as a result of violations of the provisions of the [OMA] may file a complaint with the attorney general.” See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). This Department disagrees with the School Committee’s assertion. You are aggrieved based on the fact that you requested copies of the minutes and for a record of votes taken at a time when these documents should have been available. See infra.

The Committee further argues that “[t]here has been no violation here as the information sought by Mr. Pierson has been provided.” While that argument might carry some weight when deciding on an appropriate remedy, the fact that Mr. Pierson received the minutes pursuant to his APRA request is of no moment.

The OMA requires that:

“A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting, or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.” See R.I. Gen. Laws § 42-46-7(b). (Emphasis added).

Here, the School Committee acknowledges that the unofficial minutes, including the record of all votes taken, were not made available within the time allotment.² Therefore, based upon the evidence present, this Department finds the School Committee violated the OMA.

Upon a finding of an OMA violation, the Attorney General “may file a complaint on behalf of the complainant in the superior court against the public body.” R.I. Gen. Laws § 42-46-8(a). “The court may issue injunctive relief” and/or “may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members” for a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d). In the instant case, this Department finds neither

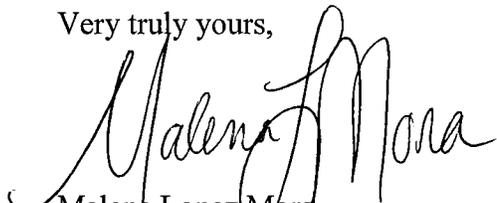
² It should be noted that in Ms. Duncanson’s response she states, “the minutes were not completed to be submitted for approval by the School Committee.” Only public bodies within the executive branch of state government and state public and quasi-public boards, agencies, and corporations are required to file “official and/or approved” minutes. See R.I. Gen. Laws § 42-46-7(d). Since the School Committee is a municipal entity, the meeting minutes do not need to be approved prior to making them available to the public. In fact, as discussed herein, the OMA requires that unofficial minutes be made available in accordance with R.I. Gen. Laws § 42-46-7(b).

remedy to be appropriate. Specifically, the evidence suggests that the untimely availability of the minutes was the result of, at least in part, a family illness. Furthermore, you have been provided the minutes for all the meetings requested and this Department relies on the School Committee's representations that they have remedied the situation. Accordingly, injunctive relief is not appropriate. This finding does serve as notice to the School Committee that a record of all votes taken at all meetings, listing how each member voted on each issue, must be made available to the public within two (2) weeks of the vote and that unofficial minutes must be made available within the earlier of thirty-five (35) days or the next regularly scheduled meeting. See R.I. Gen. Laws § 42-46-7(b).

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter.

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

Very truly yours,



Malena Lopez Mora
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