



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

May 5, 2016  
PR 16-16

Mr. Joe Smith

Re: **Smith v. The Compass School**

Dear Mr. Smith:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against The Compass School (“School”) is complete. You allege the School violated the APRA when it failed to adequately and completely respond to your APRA request and when the School did not maintain its APRA procedures on the School’s website in violation of R.I. Gen. Laws § 38-2-3.

By letter or email dated January 13, 2015, it appears you sought the following:

“(1) A copy of [the School’s] check register for FY 2013, FY 2014, and FY 2015 (through 31 Dec 2014).

(2) A copy of any contracts [the School] ha[s] currently in effect that exceed \$5,000 in value.

(3) A copy of the minutes where those contracts were approved by [the School’s] board/approving authority and any sole-source/no bid justification documentation as appropriate for those contracts that were not put out for bid.

(4) Any correspondence between KHA [Kingston Hill Academy] and The Compass School that discusses or involves sharing of wait-list students’ names from KHA of The Compass School with the other school in order to enroll students not in the lottery of the requesting school.

\* \* \*

(5) A copy of your Health and Wellness Sub-Committee meeting minutes for FY 2013 and FY 2014. \* \* \*

(6) A copy of [the School's] independent financial audits for FY 2012, FY 2013, and FY 2014.”

In response to your complaint, we received a substantive response from the School's legal counsel, Matthew R. Plain, Esquire. Attorney Plain states, in pertinent part:

“On January 13, 2015, Mr. Smith sent an email to the Director of The Compass School, Dr. Donald Holder, and the Principal of Kingston Hill Academy, Linda Paolillo, requesting access to certain records that Mr. Smith believed to be public. It is unclear from the email exactly what records Mr. Smith was requesting access to, and to whom each request was directed. Mr. Smith stated in his email that he preferred that his request ‘be filled electronically, by e-mail attachment or by URL link if the record exists online already.’ \* \* \* The Compass School is a separate public entity from Kingston Hill Academy and does not have access to Kingston Hill's public records. Further, The Compass School is under no obligation to create documents that do not otherwise exist or to provide instructions on how a requestor might access information that is available online.

It appears from the emails that were included with Mr. Smith's complaint that Dr. Holder responded on behalf of The Compass School on January 21, 2015. Dr. Holder advised Mr. Smith that the school was in the process of gathering the requested financial audits, but the 2014 audit had not yet gone before the school council for approval. Dr. Holder also confirmed that there were no documents responsive to Mr. Smith's request for communications between The Compass School and Kingston Hill Academy about sharing wait-listed students' names. Finally, Dr. Holder invited further discussions with Mr. Smith by stating that he would be at the school during the work day and in the early evenings on Tuesdays and Thursdays, if Mr. Smith had further questions. Mr. Smith never took Dr. Holder up on that offer. At no point was Mr. Smith denied access to public records and, therefore, The Compass School did not violate the APRA.”

We acknowledge your rebuttal.

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 School 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).

In this case, the facts are not in dispute. You made an APRA request to the School on January 13, 2015 wherein you sought six (6) categories of documents. On January 21, 2015, the School acknowledged receipt of your request, noted that the audit for “14,” but had yet to go before the school council for approval and that the other audit years were complete and that “information is being gathered for you.” The School’s January 21, 2015 correspondence also noted that no documents responsive to category 4 were maintained by the School during the Director’s “short six months year.” Despite the foregoing, no documents were provided on January 21, 2015, and it was not until the following day – January 22, 2015 – that the School provided its first responsive document, the audit report for FY 2012. Although a copy of the School’s January 22, 2015 correspondence does not appear to have been provided to us, your rebuttal claims that the School noted in this correspondence that it was “gathering additional correspondence.”

Thereafter, based upon the evidence presented, more than ten (10) business days had elapsed from the date of your January 13, 2015 APRA request and the School had provided no further response. On February 4, 2015, you wrote the School reminding it of its APRA statutory obligations and – even though the APRA’s ten (10) business day statutory timeframe had expired – you offered to extend the School’s response time an additional twenty (20) business days. On February 5, 2015, you received documents responsive to category 5 of your request and, although we have not been provided a copy of the School’s February 5, 2015 response, you represent that in this response the School indicated, in relevant part, “[t]he school is trying to accommodate your request. An extension – yes, would help.” You received no further follow-up from the School and on May 12, 2015, filed this complaint.

Based upon the foregoing, we have little trouble concluding that the School violated the APRA when it failed to timely and completely respond to your January 13, 2015 APRA request. Most notably, the School provided absolutely no response to categories 1, 2, or 3, provided no response to portions of category 6 (the FY 13 and FY 14) audits, and provided the documents to category 5, but did so in an untimely manner. These actions clearly violated the APRA.

Additionally, you allege the School violated the APRA because a copy of its APRA procedures was not on the School’s website. The School’s legal counsel confirmed that the School was in the process of finalizing its APRA procedures and provided you and this Department with a copy of the proposed draft APRA procedures. Although the APRA procedures were not contained on the School’s website at the time you made your APRA request to the School or when you filed your APRA complaint with this Department, a review of the School’s website, as of the date of this finding, reveals that its APRA procedures are currently posted on the School’s website. Since a copy of its APRA procedures were not timely posted on the School’s website, and were

only posted after the School received a copy of your APRA complaint filed with this Department, the School violated the APRA with respect to this allegation. See R.I. Gen. Laws § 38-2-3(d) (“a copy of [the APRA] procedures shall be posted on the public body’s website”).

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter\*\*\*.” See R.I. Gen. Laws § 38-2-9(d).

Based upon the specific facts of this case, it appears that all responsive documents have been provided to you and, as stated supra, a copy of the School’s APRA procedures are posted on the School’s website, so injunctive relief would not be appropriate. After reviewing all the evidence presented, we have grave concerns regarding the School’s untimely response and whether such omission should be considered knowing and willful, or alternatively, reckless.<sup>1</sup>

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<sup>1</sup> The Rhode Island Supreme Court examined the “knowing and willful” standard in Carmody v. Rhode Island Conflict of Interest Comm’n, 509 A.2d 453 (R.I. 1986). In Carmody, the Court determined that:

“the requirement that an act be ‘knowingly and willfully’ committed refers only to the concept that there be ‘specific intent’ to perform the act itself, that is, that the act or omission constituting a violation of law must have been deliberate, as contrasted with an act that is the result of mistake, inadvertence, or accident. This definition makes clear that, even in the criminal context, acts not involving moral turpitude or acts that are not inherently wrong need not be motivated by a wrongful or evil purpose in order to satisfy the ‘knowing and willful’ requirement.” See id. at 459.

In a later case, DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994), the Court expounded on Carmody and held:

“that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute \* \* \* Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.’” (internal citations omitted). Id. at 1164. (Emphasis added).

This Department has previously examined the issue of public bodies failing to provide timely responses to APRA requests. In Boss v. Woonsocket Superintendent's Office, PR 13-19 and PR 13-19B, Law Office of Michael Kelly v. City of Woonsocket, PR 13-13 and PR 13-13B, and Kelly & Mancini v. Town of Warren, PR 14-19 and 14-19B, this Department found knowing and willful violations of the APRA, which resulted in lawsuits. Additionally, in Scripps News v. Rhode Island Department of Business Regulation, PR 14-07 and PR 14-07B, we found that the Rhode Island Department of Business Regulation committed a reckless violation of the APRA and a lawsuit was filed.

Therefore, consistent with this Department's practice, the School shall have ten (10) business days from receipt of this finding to provide us with a supplemental explanation as to why its untimely response should not be considered knowing and willful, or reckless, in light of its recognition of the APRA requirements and this Department's precedent. A copy of any and all responses by the School should be presented to you. If you wish, you may also present evidence or arguments addressing the civil fine issue within the same timeframe, which must also be forwarded to legal counsel for the School. At the end of this time period, we will issue our supplemental finding on this matter and determine whether civil fines are appropriate.

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

Very truly yours,



Lisa A. Pinsonneault  
Special Assistant Attorney General

LP/pl

Cc: Matthew R. Plain Esq.