



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

April 1, 2016

PR 16-11

Mr. Stephen Vowels

Re: Vowels v. RISE/Mayoral Academy

Dear Mr. Vowels:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against RISE/Mayoral Academy (“Academy”) is complete. By email correspondence dated February 9, 2015, you allege the Academy violated the APRA when it failed to respond to your APRA request.

In response to your complaint, we received a substantive response from the Academy’s legal counsel, Daniel C. Waugh, Esquire,¹ who also provided affidavits from the Chair of the Board of Directors of the Academy as well as from the Head of School of RISE Prep Mayoral Academy, Ms. Rosalind Murphy.

The Board of Directors Chair states, in pertinent part:

“In connection with the Board’s January 20, 2015 meeting, I was asked to whom public record requests should be addressed. I volunteered to accept such requests.

During January 2015, I received five requests for public records relating to RISE Prep. One of those requests, received by me on January 22, 2015, was the request from Mr. Vowels that is the subject of his complaint.

¹ Attorney Waugh does not affirmatively admit that the Academy is a “public body” as that term is defined by the APRA. Whether the Academy is subject to the APRA is not presently before this Department and we need not, at this juncture, conduct an analysis of that issue. We assume, without deciding, that the Academy is subject to the APRA and nothing within this finding bars the Academy from raising this issue at a future point.

None of the documents requested were within the possession of me or my office. Accordingly, I forwarded Mr. Vowels' request to Rosalind Murphy, the Head of School of RISE Prep and currently its only employee."

Ms. Murphy states, in pertinent part:

"During January 2015, five APRA requests were sent to me either as a forwarded email from [the Chair] or by the original requestor, and I provided the respectively requested documents to four requestors. * * *

On or about January 22, 2015 [the Chair] forwarded to me the e-mail to which Mr. Vowels' request was attached. * * * Prepended to [the] e-mail were a few short sentences which I interpreted as being related to the ongoing conversation referred to in Paragraph 5. The prepend material did not explicitly state that the purpose of the e-mail was to forward another APRA request. Furthermore, unlike the other APRA requests [the Chair] forwarded to me, the title of the e-mail ('thanks for coming') did not alert me that there was an APRA request included in the e-mail. Consequently, I did not notice Mr. Vowels' request within the e-mail.

On February 17, 2015, I received a notice from the [Department of Attorney General] covering Mr. Vowels' complaint, which included a copy of his request. I supplied the requested documents to Mr. Vowels by e-mail on February 23, 2015."

We acknowledge your rebuttal.

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 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 Academy 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 § 38-2-3(a). 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. If a public body needs additional time to respond to an APRA request, the APRA provides that a public body, "for good cause," may extend the response time an additional twenty (20) business days to a total of thirty (30) business days. R.I. Gen. Laws § 38-2-7(b).

Here, the Academy does not contest that it failed to respond to you within ten (10) business days of your request. As such, we find that it violated the APRA.

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).

We believe neither remedy is appropriate. Specifically, the evidence demonstrates that you are now in receipt of the requested material, and accordingly, injunctive relief is not appropriate. Moreover, based upon the specific facts of this case, we simply conclude that the evidence does not establish a willful and knowing, or reckless, violation. In particular, we acknowledge Ms. Murphy's representation that she interpreted the e-mail forwarded to her by the Chair "as being related to [an] ongoing conversation," and not an APRA request. This is supported by the subject-matter of the e-mail, which was entitled "thanks for coming," and was apparently part of an on-going e-mail chain/conversation. While not dispositive, we also observe that no evidence has been presented to contract the Academy's representation that it had responded to other APRA requests in an appropriate manner. This finding does serve as notice to the Academy that the actions discussed herein violated the APRA and may serve as evidence of a willful and knowing, or reckless, violation in a similar future situation.

While the Attorney General will not file suit in this matter, nothing within the APRA prohibits an individual 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 your 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,



Lisa A. Pinsonneault
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LP/pl

Cc: Daniel C. Waugh, Esq.