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Attorney General

VIA EMAIL ONLY

September 25, 2020
PR 20-57B

Ms. Lynn Farinelli

Mr. Matthew Jerzyk, Esquire
Central Falls City Solicitor

Re: **Farinelli v. City of Central Falls**

Dear Ms. Farinelli and Attorney Jerzyk:

We have reviewed the supplemental submission filed by the City of Central Falls (“City”) in connection with the above-referenced Access to Public Records Act (“APRA”) Complaint.

In our prior finding, PR 20-57, we determined that the City violated the APRA when it failed to respond to Complainant’s APRA request within ten (10) business days. *See* R.I. Gen. Laws § 38-2-7. The City conceded that it did not respond to the Complainant’s request within ten (10) business days because the Complainant’s emailed APRA request went to Attorney Jerzyk’s “spam” folder. We directed the City to file a supplemental submission addressing whether the City’s violation was knowing and willful, or reckless, particularly in light of the previous, similar violation found against the City in *Farinelli v. City of Central Falls*, PR 19-16.¹ We also directed the City to address what, if any, measures it had in place at the time when the violation occurred to guard against providing untimely responses to APRA requests as a result of the requests going to a “spam” folder.

The City provided its supplemental submission, which included affidavits from Attorney Jerzyk, Assistant City Solicitor Robert Weber, City Legal Clerk Lisa Dias, and City Clerk Sonia Grace. The City

¹ In PR 19-16, the Complainant alleged that the City failed to timely respond to her APRA request and the City conceded that it did not timely respond because Complainant’s APRA request went to Attorney Jerzyk’s “spam” folder. We did not find evidence of a willful and knowing, or reckless violation, but advised the City that “if this issue recurs and if the City does not have measures in place to prevent this reoccurrence, this finding may serve as evidence in a similar future case to support a finding of a willful and knowing, or reckless violation.”

attests that of the many APRA requests it has received in the last five years, “[t]he City has met the deadline in all of these cases, except two matters involving Ms. Farinelli’s AOL.com email address going to the Solicitor’s SPAM box.” Attorney Jerzyk states that, in response to this Office’s findings in PR 19-16, he terminated an email account that he thought was primarily responsible for sending emails to “spam” and established a routine of regularly checking his email “spam” folder, but “[b]etween June 22, 2020 and July 10, 2020, [he] failed to check [his] SPAM folder and locate Ms. Farinelli’s email.” Attorney Jerzyk contends that this failure was an “inadvertent error” and neither willful and knowing, nor reckless, because “there was a small window when [the “spam”] folder was not checked, due to an unexpected burst of legal work[.]” Attorney Jerzyk takes responsibility for the issue and indicates that he has realized the need to expand the number of individuals responsible for reviewing “spam” folders and APRA requests for the City.

The City maintains that, in light of the violations found in PR 19-16 and PR 20-57, “the City has developed an 8-point response plan to battle the SPAM folder issue and to ensure that there are no future APRA violations:

- 1) In consultation with the City Clerk, a new email address, APRA@CentralFallsRI.us, has been created.
- 2) The city's APRA submission form now includes this new email address.
- 3) The city’s website has been updated to reflect this new form and process: <http://www.centralfallsri.us/apra>.
- 4) In consultation with the City Clerk, this new email address has been setup with a new ‘rule’ to forward each email to three email accounts: the Solicitor, Assistant City Solicitor, Robert Weber, and Legal Clerk, Lisa Dias. All three will be regularly checking the SPAM folder to ensure that no email falls through the cracks. The system has been tested and found to be working.
- 5) The Solicitor learned how to “white list” certain email addresses so that they will no longer go to a Spam folder and has added Ms. Farinelli to this “white list.”
- 6) In consultation with the City Clerk, Civilian Complaints against the Central Falls Police Department have been added to two different parts of the city website so that individuals can find these documents without having to make an APRA request: our Open Data portal here - <http://www.centralfallsri.us/opendata> – and Central Falls Police here - <http://www.centralfallsri.us/police>.
- 7) The Solicitor has contacted the Central Falls Police Captain who is responsible for administrative records management and has asked him to promptly forward any future, completed civilian complaint reports so that they can be promptly redacted and added to the city’s website.
- 8) The Solicitor contacted Ms. Farinelli and provided her with my personal cell phone number along with the names, phone numbers and email addresses for our new APRA team so that this team can concierge any future requests that she has.” [Citations omitted].

The Complainant was provided an opportunity to submit a response but did not provide a supplemental submission.

Although we are concerned with the repeated nature of this violation, based on the evidence provided by the City, we do not find a knowing and willful, or alternatively reckless, violation. The record

establishes that the City did take measures after its prior violation to avoid a similar, future violation. For instance, the record indicates that as a result of the City's prior violation, the City was making efforts to regularly monitor the "spam" folder and that the violation in this case occurred because of a temporary lapse due to the workload of the responsible attorney.

We also acknowledge the new measures the City represents it has established to avoid future similar violations. Although we are troubled that the City committed the same violation twice within a relatively short period of time, we believe the affidavits submitted by City personnel evince a good faith effort to respond to this Office's directives and comply with the law.

We also note that if this Office were to find a willful and knowing, or reckless violation, it could discourage the City (and other public bodies) from accepting APRA request submissions via email for fear that they may be faced with a similar situation. We are reluctant to reach a conclusion that might lead the City (and other public bodies) to consider an option that limits accessibility to public bodies. Additionally, based on the evidence presented to us, it does not appear that the Complainant communicated with the City about the unanswered APRA request prior to filing this Complaint. We take this opportunity to emphasize the importance of maintaining open communications when submitting and responding to an APRA request. Oftentimes, engaging in communications between the requestor and the public body can avoid APRA complaints (or at least narrow the issues). Had the Complainant engaged in such communication and the City still not responded, we would have looked at this situation much differently.

Nevertheless, the City is on notice that the conduct discussed in *Farinelli v. City of Central Falls*, PR 19-16 and *Farinelli v. City of Central Falls*, PR 20-57, violates the APRA. Should this issue repeat again, this past record may provide strong evidence of a willful and knowing, or alternatively, reckless violation in any similar future situation.² But again, any future determination would also take into account whether the City received actual notice of a pending APRA request prior to the filing of a Complaint.

Although 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 our file as of the date of this letter.

² In PR 20-57, we did not find a need for injunctive relief because it was undisputed that the City substantively responded to Complainant's request and provided responsive documents, and the record indicates the City did so without assessing any costs. The substance of the City's response, including its interpretation of the request and any redactions to the documents it provided, are not before us as those issues are outside the scope of the Complaint, which solely pertained to the City's failure to timely respond to the APRA request. If the Complainant takes issue with the substance of the response, the Complainant is free to file a new Complaint about that issue.

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

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Kayla E. O'Rourke
Kayla E. O'Rourke
Special Assistant Attorney General