



STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400 • www.riag.ri.gov

*Peter F. Neronha*  
*Attorney General*

**VIA EMAIL ONLY**

September 28, 2020  
PR 20-63

KP

Lisette M. Gomes, Esquire  
Assistant Solicitor, City of Pawtucket

**RE: KP v. City of Pawtucket**

Dear Sir or Madam and Attorney Gomes:

The investigation into the Access to Public Records Act (“APRA”) complaint filed by an anonymous requester (“Complainant”) against the City of Pawtucket (“City”) is complete. For the reasons set forth herein, we find that the City violated the APRA.

**Background and Arguments**

The Complainant made an APRA request to the City via email correspondence on Saturday, July 11, 2020. The City extended the time to respond to the Complainant’s APRA request on July 27, 2020 by an additional ten (10) business days. *See* R.I. Gen. Laws § 38-2-3(e) (“a public body may have up to an additional twenty (20) business days to comply with the request” under certain circumstances). On August 11, 2020, the City invoked the remaining ten (10) business day extension permitted under the APRA. *See id.* The City provided its response to the Complainant’s APRA request on August 26, 2020. Following receipt of the City’s response, the Complainant filed the Complaint with this Office alleging that Complainant “did not receive [the] files within the required timeframe.”

The City submitted a substantive response through its Assistant Solicitor, Lisette M. Gomes, Esquire. The City states that the City’s Law Department received the Complainant’s APRA request on Monday, July 13, 2020 and “[o]n July 27, 2020 and August 11, 2020, the City responded to KP and invoked their right for additional time to respond to the APRA request.” The City maintains that “[o]n August 25, 2020 the City attempted to send out the APRA response. However, due to

COVID-19 \*\*\* Based on the decrease in staff as well as [Attorney Gomes'] inability to personally perform the necessary redactions of all personally identifiable information from the responsive documents, the City was unable to submit the response prior to close of business on August 25, 2020." The City "submitted all responsive documents to KP on August 26, 2020 at 11:43am." It appears that the documents were provide without cost.

We acknowledge Complainant's rebuttal, which does not dispute that the City provided Complainant with the responsive records.

Relevant Law and Findings

When we examine an APRA complaint, our authority is to determine whether a violation of the APRA has occurred. *See* R.I. Gen. Laws § 38-2-8. In doing so, we must begin with the plain language of the APRA and relevant caselaw interpreting this statute.

Pursuant to the APRA, a public body has ten (10) business days to respond in some capacity to a records request, whether by producing responsive documents, denying the request with reason(s), or extending the period necessary to comply as provided in the APRA. *See* R.I. Gen. Laws §§ 38-2-3(e), 38-2-7. If no response is sent within ten (10) business days, the lack of response will be deemed a denial. *See* R.I. Gen. Laws § 38-2-7(b). The APRA also provides that:

"a public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body." R.I. Gen. Laws § 38-2-3(e).

Furthermore, "When calculating the ten business day response time, the date of receipt does not count[.]" *See T.J. v. City of Providence*, PR 17-30. *Cf.* R.I. Super. Ct. Civ. Pro. R. 6(a) (computation of time).

Here, it is undisputed that the City did not receive Complainant's APRA request until Monday, July 13, 2020, the first business day following Complainant's Saturday, July 11, 2020 email submitting the subject request. It is also undisputed that the City invoked the twenty (20) business day extension provided under the APRA.<sup>1</sup> As such, the City was required to respond to the Complainant's APRA request within thirty (30) business days from July 13, 2020, the date the City received the Complainant's request. The thirty (30) business day deadline expired on August 25, 2020 and the City did not respond until August 26, 2020. Therefore, we find that the City violated the APRA by failing to timely respond to the Complainant's APRA request.

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<sup>1</sup> The Complainant does not take issue with the City's invocation of the twenty (20) business day extension.

Conclusion

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).

Although we are concerned that this is the City’s second similar violation in less than a year, based on the record before us, we do not find evidence of a willful and knowing, or reckless, violation. *See Lyssikatos v. City of Pawtucket*, PR 19-24 (finding that the City failed to timely respond to Complainant’s APRA request due to an error in the computation of time). Our determination is based in part on the Assistant Solicitor’s undisputed averment that the City was operating with decreased staffing due to COVID-19 and provided all documents responsive to the Complainant’s request on August 26, 2020 at 11:43am – less than twenty-four (24) hours past the thirty (30) business day deadline. Nor do we find injunctive relief appropriate given that it is undisputed that the City has already responded to the request, and indeed had completed its response before this Complaint was even filed. Nonetheless, this finding serves as notice that the conduct discussed herein violates the APRA and may serve as evidence of a willful or a knowing violation in any similar future situation.

Although this Office will not file suit in this matter, nothing within the APRA prohibits an individual from instituting an action for injunctive or declaratory relief in Superior Court. *See* R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

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