



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

March 27, 2020

PR 20-20

Mr. Christopher Lamendola

Aubrey L. Lombardo Esquire
Legal Counsel, East Greenwich School Department

Re: **Lamendola v. East Greenwich School Department [2-25-2020 Complaint]**

Dear Mr. Lamendola and Attorney Lombardo:

We have completed an investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Christopher Lamendola (“Complainant”) against the East Greenwich School Department (“Department”). For the reasons set forth herein, we find that the Department did not violate the APRA.

Background

The Complainant alleges the Department violated the APRA when it denied his request for unredacted “legal bills and invoices paid to Henneous Carroll Lombardo LLC by the East Greenwich School Department/School Committee.” The Department provided four (4) pages of responsive invoices but made limited redactions to three (3) entries asserting that “[c]ertain portions of the legal invoices are redacted as those entries reflect the rendering of legal advice from attorney to client, which is exempt from disclosure under R.I. Gen. Laws § 38-2-2(4)(A)(II)(E) and (K).”¹

¹ The Department’s citation to “R.I. Gen. Laws § 38-2-2(4)(A)(II)(E)” seems to be a typographical error and it appears the Department intended to cite R.I. Gen. Laws § 38-2-2(4)(E), as there is no statutory codification as “R.I. Gen. Laws § 38-2-2(4)(A)(II)(E).” Although the Department continued to cite “R.I. Gen. Laws § 38-2-2(4)(A)(II)(E)” in its response to this complaint, it quoted the language from R.I. Gen. Laws § 38-2-2(4)(E), which further indicates that the Department is invoking Exemption (E).

The Complainant argues that “[t]he redacted portions of the billing records appear to be informative and factual and not for the purpose of facilitating the rendition of professional legal advice.” The Complainant claims he is entitled to these unredacted invoices because “[t]here is no reason the public doesn’t have a right to see public documents taxpayers pay for.”

Attorney Aubrey Lombardo submitted a substantive response on behalf of the Department, which included an affidavit from herself and East Greenwich School Committee Chairwoman Carolyn Mark. The Department maintains that its redaction of these three (3) limited entries was appropriate under R.I. Gen. Laws § 38-2-2(4)(E) and (K). The Department also provided a copy of the unredacted invoices for this Office’s *in camera* review.

We acknowledge Complainant’s rebuttal.

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.

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). Rhode Island General Law § 38-2-2(4)(E) exempts from public disclosure “any records which would not be available by law or rule of court to an opposing party in litigation.” Under the APRA, “any reasonably segregable portion of a public record excluded by this section shall be available for public inspection after the deletion of the information which is the basis of the exclusion.” *See* R.I. Gen. Laws § 38-2-3(b).

Exemption (E) encompasses common law legal privileges, including the attorney-client privilege and work product privilege. *See Hydron Labs., Inc. v. Dep’t of Atty. Gen. for State*, 492 A.2d 135, 139 (R.I. 1985) (“It was never the Legislature’s intent to give litigants a greater right of access to documents through APRA than those very same litigants would have under the rules of civil procedure. Therefore, exemption [E] of APRA was enacted to limit production under APRA to the scope of production allowed in pending litigation.”). “The general rule is that communications made by a client to his attorney for the purposes of seeking professional advice, as well as the responses by the attorney to such inquiries, are privileged communications not subject to disclosure.” *State v. Von Bulow*, 475 A.2d 995, 1004 (R.I. 1984); *see also Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947) (“In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.”). Additionally, courts have broadly recognized that documents revealing attorney work product and mental processes are entitled to protection. *See Upjohn Co. v. United States*, 449 U.S. 383, 398 (1981) (“Rule 26 accords special protection to work product revealing the attorney’s mental processes.”); *Crowe Countryside Realty Associates Co. LLC v. Novare Engineers, Inc.*, 891 A.2d 838, 842 (R.I. 2006) (noting that attorney opinions and mental processes are generally afforded “near absolute protection against disclosure”). In his rebuttal, the Complainant also

acknowledged that “[l]egal advice, strategy, or other confidential communications are undeniably protected under the attorney client privilege.”

The sole issue presented for our consideration is whether it was permissible for the Department to redact the three (3) attorney narratives contained within the legal bills provided to Complainant. This Office has previously reviewed similar requests for access to attorney-client legal bills. In *Chiaradio v. Town of Westerly*, PR 16-17, the complainant sought the amount of hours billed, the total amount of monies paid, and a description of the legal services rendered by a law firm hired by the Town in connection with a specific matter. The Town redacted the narrative descriptions of legal services but provided complainant with the hours billed, monies paid, and identity of the person/firm to whom said fees were paid. This Office concluded that the total hours billed, and the total amount of legal bills paid were public records, but the remaining information was exempt from public disclosure as related to the client-attorney relationship, within the ambit of R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). *See also Palazzo v. West Warwick Pension Board*, PR 02-13 (“we observe that pursuant to the APRA and this [Office’s] prior findings, only the total number of hours billed, the total amount of monies paid, and the identity of the attorney/firm to whom fees were paid, represent public records”).

Although this Office’s precedent addressed the issue of legal invoice narratives within the context of R.I. Gen. Laws § 38-2-2(4)(A)(I)(a), documents protected by the attorney-client privilege and work product privilege may fall under the ambit of both Exemption (A)(I)(a) and Exemption (E). Thus, at least in this context, our precedent is equally applicable to Exemption (E) cited by the Department in this case.

Based on this Office’s *in camera* review of the invoices, and for the reasons discussed, we conclude the redacted narratives contain information encompassed within the attorney-client and/or work product privileges incorporated within Exemption (E). The redacted information reveals information about attorney impressions, work product, and/or privileged information about the nature of the attorney’s communications to the client and the work being done by the attorney as part of the attorney-client relationship. *See Kiepler v. Nyman*, No. 98-CV-272, 1999 WL 33453075, at *2 (D.R.I. Mar. 8, 1999) (“anything in the records which indicates the nature of the services provided or requested is privileged. The court further finds that any information in the records which would assist in or contribute to identifying the nature of the legal services provided or requested is also privileged.”) Accordingly, we conclude that the Department did not violate the APRA when it provided the requested invoices, in redacted form.² We also note that the Department made only minimal redactions to the billing narratives and disclosed the majority of the narratives.

Conclusion

Although this Office will not file suit in this matter, nothing within the APRA prohibits the Complainant from filing an action in Superior Court seeking injunctive or declaratory relief. *See*

² Because we find that Exemption (E) applies to the redacted information, we need not address whether this information was also exempt under (K).

R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing our file as of the date of this finding.

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