



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

Peter F. Neronha
Attorney General

VIA EMAIL ONLY

April 9, 2020
PR 20-26

Mr. Guillaume de Ramel

Brent Semple, Esquire
Corporate Attorney, Rhode Island Airport Corporation

RE: de Ramel v. Rhode Island Airport Corporation

Dear Mr. de Ramel and Attorney Semple:

We have completed an investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Guillaume de Ramel (“Complainant”) against the Rhode Island Airport Corporation (“RIAC”). For the reasons set forth herein, we find that the RIAC did not violate the APRA.

Background and Arguments

The Complainant requested a document containing a legal opinion from the RIAC’s outside legal counsel pertaining to a certain question of statutory interpretation. The Complainant alleges that the RIAC violated the APRA when it withheld the document pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(a), which exempts documents relating to a client/attorney relationship. The Complainant maintains that the document is not related to the attorney-client “relationship.” Instead, the Complainant contends that he is seeking “visibility to the legal opinion – albeit produced by attorneys – which goes directly to their interpretation of [a statute].” He further asserts that the RIAC relied on the legal opinion in carrying out its administrative function. The Complainant contends that the RIAC waived the attorney-client privilege because the RIAC previously disclosed to the Complainant that its position on a certain statutory issue was based on this legal opinion authored by the law firm of Hinckley Allen.

The RIAC maintains that nondisclosure was permissible under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) because the withheld legal opinion constitutes a document relating to the client/attorney relationship. The RIAC also contends that it did not waive the attorney-client privilege.

The RIAC provided a copy of the withheld document for this Office's *in camera* review.

We acknowledge the Complainant's rebuttal, filed by Complainant's counsel Girard Galvin, Esquire.¹

Relevant Law and Finding

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 provides that all records maintained by public bodies are subject to public disclosure unless the document falls within one of the twenty-seven (27) enumerated exemptions. *See* R.I. Gen. Laws § 38-2-2(4)(A)-(AA). Among other exemptions, the APRA permits nondisclosure of “[a]ll records relating to a client/attorney relationship[.]” R.I. Gen. Laws § 38-2-2(4)(A)(I)(a).

Under the attorney-client privilege, “[t]he 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). Additionally, courts have broadly recognized that documents revealing attorney work product and mental processes are entitled to protection. *See 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”).

Based on our *in camera* review of the withheld document, we conclude that the withheld legal opinion easily falls under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). Although a detailed description of the document would thwart the reason for the exemption, it suffices to state that the withheld document is a legal memorandum created by an attorney for the purpose of advising the client – the RIAC – on a legal matter. It is difficult to think of a document that more squarely fits within the exemption.

¹ The Complainant's rebuttal also takes issue with the RIAC's response to Complainant's separate request for any “supporting documentation” for the legal opinion. This issue was not raised in the initial complaint. As we explained in our acknowledgment letter, the rebuttal should not raise new issues that were not presented in the Complaint. In line with this Office's acknowledgement letters to the parties and this Office's precedent, this Office declines to review issues raised for the first time in a rebuttal since the public body has no opportunity to respond to the new allegations and this Office cannot fully investigate them. *See Mudge v. North Kingstown School Committee*, OM 12-35. Thus, to the extent that the Complainant's rebuttal raises new allegations regarding his request for “supporting documentation,” those allegations will not be addressed. The Complainant is free to file a new complaint regarding that issue.

While the Complainant demurs that he is “*not* seeking information to their relationship, but instead, visibility to the legal opinion[,]” this is a distinction without a legal difference. (Emphasis in original). To our knowledge, we have never found that R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) only exempts documents that pertain directly to the contractual relationship between attorney and client. To the contrary, the plain language of the APRA exempts “all records relating to a client/attorney relationship,” which is broader than documents protected by the common law attorney-client privilege. *See Providence Journal v. Office of the Governor*, PR 20-08. Here, the withheld legal memorandum was created by legal counsel for the purpose of advising the client. We therefore conclude that the withheld legal memorandum relates to the attorney-client relationship and that the document was permissibly exempted under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a).

One final matter warrants mention. The Complainant asserts that the RIAC waived the attorney-client privilege as to this document because an attorney at the RIAC informed him several years ago that the RIAC had received this legal opinion from Hinckley Allen providing guidance indicting that the RIAC could not take a certain action. We have not been presented with any evidence that the document in question, or any portion of it, was disclosed outside the attorney-client relationship or placed in the public domain. There is also no indication that the RIAC selectively disclosed specific information or analysis contained in the legal opinion in an attempt to gain some benefit. *See State v. von Bulow*, 475 A.2d 995, 1007 (R.I. 1984) (discussing impermissible selective use of privileged information). Rather, the evidence indicates that, at most, the RIAC generally informed Complainant that its interpretation of a certain statute was based on a legal opinion authored by Hinckley Allen as part of explaining to the Complainant how the RIAC reached its conclusion on that question. Based on the record before us, there is no indication the parties are engaged in litigation or that the Complainant would be prejudiced absent a waiver; the equitable concerns implicated by selectively disclosing limited privileged information as an offensive litigation tool are not implicated in these circumstances. *See United States v. Aronoff*, 466 F. Supp. 855, 862 (S.D.N.Y. 1979) (“[W]here, as here, the privilege-holder has made assertions about privileged communications not to a factfinder at trial, but to his adversary, before trial, and has not, by any affirmative act, placed these communications in issue, it is harder to justify revoking his privilege as to matters not disclosed”); *von Bulow*, 475 A.2d at 1007. We do not find sufficient evidence to conclude that the RIAC waived assertion of the APRA exemption contained at R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). We find no violation.

Conclusion

Although this Office has found no violations, 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.

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Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness

Special Assistant Attorney General