



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 2, 2020
PR 20-61

Mr. Josh Bickford

Mr. Scott Pickering

Marissa L. Janton, Esquire
Whelan Corrente & Flanders LLP
Counsel, Barrington School Department

RE: East Bay Media Group v. Barrington School Department

Dear Mr. Bickford, Mr. Pickering, and Attorney Janton:

We have completed an investigation into the Access to Public Records Act (“APRA”) complaint filed by Mr. Josh Bickford and Mr. Scott Pickering on behalf of the East Bay Media Group (“Complainant”) against the Barrington School Department (“Department”). As explained below, this Complaint involves a series of APRA requests, but the record indicates that in the end the Department disclosed the total hours billed by a law firm for services rendered to the Department in 2019 and the total amount this law firm charged the Department for services rendered in 2019. For the reasons set forth herein, we find that the Department did not violate the APRA.

Background and Arguments

The Complainant asserts it sent three APRA requests to the Department related to the Department’s legal counsel. The first request, sent on October 31, 2019, provided:

“This is a request for information: How much money has the Barrington School Department/Barrington School Committee spent on legal fees in the case of the former middle school student who has challenged his out-of-school suspension from 2018?”

The Department responded that its legal counsel “does not break down billables by matter, but instead cumulatively by lawyer by day by topic area[.]” It therefore maintained that “discrete bills for the student matter do not exist.”

The Complainant sent a second request on November 15, 2019. It included several paragraphs of questions to the Department and additionally sought the following records: “[a] copy of the contract, agreement or binder describing the relationship between the Barrington Public Schools and its legal representatives, inclusive of a description of fees, rates, etc.” as well as “[a] copy of all 2019 bills from the firm representing Barrington Public Schools in the middle school suspension case.”

The Department responded to the first part of the request for a copy of the “contract, agreement or binder describing the relationship between the Barrington Public Schools and its legal representatives, inclusive of a description of fees, rates, etc.” by stating that responsive records were exempt under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) as relating to a client/attorney relationship, and under R.I. Gen. Laws § 38-2-2(4)(B) as commercial information that is propriety to the law firm. The Department responded to the second part of the request by referring to their response to the Complainant’s first APRA request and noting that “[t]o the extent you have again requested bills with respect to one particular matter, [the Department] does not maintain those records.”

The Complainant sent a third request on December 5, 2019, clarifying that the November 15, 2019 request sought *all* 2019 bills from the firm, not just those related to a particular case. In making this third request, the Complainant specifically indicated that the Complainant wished to “amend the original request” and “clarify” it as seeking “all bills for all services rendered, middle school suspension case or otherwise.”

Just one day after sending the third request, the Complainant filed the instant Complaint. The Complainant alleges that the Department should have produced records responsive to the request for legal bills and that the Department improperly withheld documents related to the request for a contract describing the relationship between the Department and its legal counsel.¹

¹ This finding only pertains to the Department’s responses to the Complainant’s first two requests as the Department had not yet responded to the Complainant’s third request when this Complaint was filed, nor is there any contention that its time for responding had elapsed. As the Complaint was filed one day after the third APRA request was submitted, the Department’s time to respond had not elapsed, *see* R.I. Gen. Laws 38-2-3(e), and Complainants do not contend that the Department had denied the request as of the time when the Complaint was filed. As such, any issues regarding the third request were not ripe when the Complaint was filed. Consistent with this Office’s acknowledgement letters to the parties and this Office’s precedent, this Office declines to review issues not raised in the Complaint since the public body has no opportunity to respond and this Office cannot fully investigate them. *See Mudge v. North Kingstown School Committee*, OM 12-35. Therefore, we have no occasion to address the sufficiency of the Department’s response to the Complainant’s third request. Should the Complainant wish to file a new complaint regarding the Department’s response to that request, it may do so.

The Department maintains that its responses were permissible. It first notes that the Complainant's requests were largely in the form of questions seeking narrative answers, not documents. It next maintains that to the extent the requests sought legal bills pertaining to a particular matter, the Department did not maintain them because it does not maintain legal billing by legal matter. The Department also avers that in response to the third request, it was providing Complainant with redacted copies of all the requested 2019 bills, which reveal the total hours and amount billed to the Department by the firm. Notably, this Office's precedent makes clear that the total amount billed to and paid by a public body is a public record that must be disclosed. *See Chiaradio v. Town of Westerly*, PR 17-17, *Graziano v. Rhode Island Lottery Commission*, PR 98-19. With regard to the request for documents describing the relationship between the Department and counsel, the Department contends that nondisclosure was permissible under R.I. Gen. Laws §§ 38-2-2(4)(A)(I)(a), (B). The Department provided an affidavit from legal counsel Sara A. Rapport corroborating its contentions. The Department also provided unredacted legal billing invoices from 2018–2019 and a single correspondence between the Department and its legal counsel regarding the provision of legal services for our *in camera* review. The Department has confirmed that the withheld correspondence is the only document responsive to the Complainant's request for documents "describing the relationship between the Barrington Public Schools and its legal representatives[.]"

We acknowledge the Complainant's rebuttal.

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.

1. Whether the Department Maintained Responsive Records to Request for Legal Bills

The Complainant alleges that the Department improperly stated in response to the first two requests for legal bills that it did not maintain responsive records. It is undisputed that the Department construed both of these requests as seeking legal bills related to a particular matter. The undisputed evidence, including Attorney Rapport's affidavit, indicates that the Department receives invoices from its legal counsel on a monthly basis. These invoices do not break down the billing by case-specific matters, but rather bill based on broad topic areas such as "Education." Based on our *in camera* review of these invoices, and consistent with the averments of Attorney Rapport, we note that the narrative descriptions in the invoices detail the work of various attorneys but do not identify the case-specific matter. Based on our review, it cannot be readily gleaned which work pertains to which specific matters and it appears that some single block billing entries include work related to multiple matters and only provide one total amount of time spent on all the items listed in the block entry.

Thus, when the Complainant asked in the October 31, 2019 request for how much the Department had spent in legal fees on a particular matter, the Department did not maintain or keep on file invoices specifying this information. *See* R.I. Gen. Laws § 38-2-3(a) ("[A]ll records maintained or

kept on file by any public body *** shall be public records and every person or entity shall have the right to inspect and/or copy those records.”). The APRA does not require a public body to “reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.” *See* R.I. Gen. Laws § 38-2-3(h).

Accordingly, based on the undisputed evidence before us, we conclude that the Department did not violate the APRA by not providing documents it did not maintain in response to the October 31, 2019 request. *See Lopez v. City of Providence*, PR 20-03 (“Because the APRA does not require a public body to disclose records that do not exist or that are not within its custody or control, we find no violation[.]”); *see also* R.I. Gen. Laws § 38-2-7(c); *Salvatore v. Town of South Kingstown and South Kingstown School Department*, PR 16-25 (“To be clear, many legal bills support the School Department’s position, *i.e.*, that legal bills contain references to more than one matter, and in these cases the School Department does not maintain a record ‘reflecting the total amount of hours and dollars billed * * * for legal services rendered in connection with the employment of [a particular employee].’ Accordingly, in these cases, the School Department need not provide documents that it does not maintain.”).

With respect to the November 15, 2019 request for legal bills, we decline to consider the allegations because the Complainant expressly clarified and amended this request in the third request on December 5, 2019. Therefore, the operative request is the December 5, 2019 request. Because this complaint was filed on December 6, 2019 – before the Department had the opportunity to respond to the third request – the December 5, 2019 request and the Department’s subsequent response are not properly before us. We note that the Department asserted that it was providing Complainant with documents in response to that third request and Complainant’s rebuttal did not contest that documents had been provided. As such, the record indicates that Complainant is now in possession of redacted copies of the Department’s legal bills that were responsive to the third request, and that reveal the total hours billed, the total amount charged, and the firm to which the balance was owed. If the Complainant is dissatisfied with the Department’s response, the Complainant is free to submit a new complaint.

2. *Whether the Requested Document Describing the Relationship with Legal Representatives Was Properly Withheld*

We turn next to the Complainant’s contention that the Department violated the APRA when it exempted documents responsive to its request for “[a] copy of the contract, agreement or binder describing the relationship between the Barrington Public Schools and its legal representatives, inclusive of a description of fees, rates, etc.” Upon inquiry from this Office, the Department represented that the only responsive document is a correspondence between the Department and its legal counsel. The Department provided the correspondence for our *in camera* review.

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). We have previously noted that the plain language of the exemption 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 request very nearly tracks the language of the exemption; the request sought documents “describing the relationship between the Barrington Public Schools and its legal representatives” and the exemption permits nondisclosure of “[a]ll records relating to a client/attorney relationship[.]” R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). Based on our *in camera* review of the withheld correspondence, we are hard pressed to find that this record does not relate to “a client/attorney relationship[.]” *Id.* Although the *in camera* nature of our review limits our ability to provide a more detailed description, we note that the one-page correspondence contains communications to the Department from its legal counsel, details attorneys’ hourly billing rates and the firm’s billing rates. Regardless of whether this information is protected by the attorney-client privilege, communications regarding billing rates and practices do implicate information related to the attorney-client relationship. *See E & J Gallo Winery v. Proximo Spirits, Inc.*, No. 1:10-CV-00411 LJO, 2012 WL 1635190, at *1 (E.D. Cal. May 8, 2012) (“attorney billing rates which are not publicly known and are ‘competitively sensitive’ has been determined to warrant sealing”); *Admiral Ins. Co. v. Wieland*, No. A-15-CV-77-RP-ML, 2016 WL 8224270, at *2, n.1 (W.D. Tex. Oct. 6, 2016) (noting that “sealed affidavits include confidential information about the firms’ billing rates. Accordingly, the court does not state the billing rates, though the court recognizes that the effective billing rate may be deduced from this order and the unsealed affidavits.”); *cf. Hesse v. SunGard Sys. Int’l*, No. 12 CIV. 1990 CM JLC, 2013 WL 174403, at *2 (S.D.N.Y. Jan. 14, 2013) (permitting sealing of emails that “include sensitive client information and proprietary business information, including inter alia, the company’s billing rates and project pricing”). Additionally, the Department represented that the law firm does not make this billing rate information publicly available and that disclosure could harm the law firm’s competitive position and potentially make it less likely for the Department to be able to obtain beneficial negotiated rates in the future. The Complainant did not contest these representations.

Based on this record and case law, we find that this correspondence, which details the attorneys’ billing rates and the firm’s billing rates, “relat[es] to a client/attorney relationship[.]” R.I. Gen. Laws § 38-2-2(4)(A)(I)(a).² We also do not find that any portion of the correspondence is reasonably segregable. *See* R.I. Gen. Laws § 38-2-3(b). In doing so, we observe that while the attorneys’ and firm’s hourly billing rate may be exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(a), our precedent requires that the total amount billed to and paid by a public body is a public record that must be disclosed. *See Chiaradio v. Town of Westerly*, PR 17-17, *Graziano v. Rhode Island Lottery Commission*, PR 98-19. While we express no opinion on the billing records provided by the Department pursuant to the Complainant’s third APRA request, we do note the Department’s representation that the records provided to Complainants reveal “the total hours

² Because we find that the Department permissibly withheld the document under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a), we need not address whether the document could have been withheld under R.I. Gen. Laws § 38-2-2(4)(B).

billed, the total amount of legal bills paid, and the firm to whom the payment was made.” We find that the Department did not violate the APRA by withholding the one page correspondence.

Conclusion

Although the Attorney General has not found a violation and will not file suit in this matter, nothing within the APRA prohibits an individual from instituting 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