



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

July 7, 2016

PR 16-25

V. Edward Formisano, Esquire

**Re: Salvatore v. Town of South Kingstown and South Kingstown School Department**

Dear Attorney Formisano:

The investigation into your Access to Public Records Act (“APRA”) complaint filed on behalf of your client, Ms. Deborah Salvatore, against the Town of South Kingstown and the South Kingstown School Department (“Town” and “School Department”) is complete. By correspondence dated August 7, 2015, you contend that the Town and the School Department violated the APRA when the responses to your July 13, 2015 APRA request, which was made on behalf of your client, were non-responsive. You further allege the Town and School Department did not provide specific reasons for the denial, nor did they provide the appeal rights.

In response to your complaint, we received a substantive response from the Town of South Kingstown’s Solicitor, Michael A. Ursillo, Esquire, on behalf of the Town, who also provided an affidavit from the Town Clerk, Dale S. Holberton. We also received a substantive response in affidavit form from the School Department’s attorney, Sara A. Rapport, Esquire.

Attorney Ursillo states, in pertinent part:

“On July 13, 2015, Dale S. Holberton received an APRA request from Attorney V. Edward Formisano, counsel to the Complainant. The request sought the following records

‘1. All records reflecting the total amount of hours and dollars billed to the Town by the law firms of Whelan, Kinder & Siket, LLP (hereafter ‘WCKS’) for legal services rendered in connection with the employment of [Ms.] Deborah Salvatore and any litigation or administrative proceedings arising therefrom from September 1, 2012 to the present.

2. All public records constituting, referring to, or concerning appropriation of funds by the Town to pay for legal services rendered or to be rendered by law

any litigation or administrative proceeding arising therefrom from September 1, 2012 to this date.’

The following day, on July 14, 2015, Holberton responded by letter to Attorney Formisano. Holberton’s correspondence \* \* \* stated as follows:

‘I am in receipt of your communication dated July 13, 2015 in regard to Deborah Salvatore v. Town of South Kingstown, et al. Please be advised that I am not in possession of the records referred to in your communication. I do have the original claim that was referred to the School Department, Town Solicitor and the Town’s insurance carrier. I believe that we have already provided you with copies of those records, but if you would like another copy that can be arranged. \* \* \*’

\* \* \*

The Complainant alleges that the Town violated the APRA because it failed to identify a specific reason for the denial of the records request, including any exemptions. However, Holberton’s response letter clearly states that the Town did not possess the requested records. Admittedly, Holberton’s response letter falls short of the APRA’s mandate that a denial must indicate the procedures for appeal. \* \* \* However, the Town submits that this omission did not prejudice the requesting party in this case, as it might have if the Town had denied the request by claiming one or more exemptions. \* \* \* Holberton showed good faith in responding to the request only one business day after it was received and in offering her assistance to Attorney Formisano if anything else was needed.”

On behalf of the School Department, Attorney Rapport states, in pertinent part:

“On July 13, 2015, \* \* \* I received a copy of a request for public records from Mr. Formisano that he submitted on behalf of Ms. Salvatore. \* \* \*

Upon review of the Committee’s records, I concluded that the public records responsive to Mr. Formisano’s request did not exist. Mr. Formisano’s July 13<sup>th</sup> letter sought public records reflecting ‘the total amount’ of hours or dollars billed by WCKS to the Committee for services related to Ms. Salvatore. WCKS, however, does not issue invoices to the Committee that reflect the ‘total amount’ of hours or dollars billed for Salvatore-specific matters. Rather, WCKS issues cumulative monthly bills, by subject matter, for all legal services rendered by WCKS on behalf of the Committee. For example, WCKS issues separate bills on such subject matters as litigation, grievances, administrative hearings, and education. To the extent that any individual monthly invoice reflects a ‘total’ hour or dollar amount, that figure reflects the cumulative total of hours and dollars billed for all legal services provided to the Committee on that matter, during that time period, including

but by no means limited to services related to [Ms.] Deborah Salvatore. Accordingly, because Mr. Formisano's request specifically sought records reflecting the 'total amount of hours and dollars billed' for services related specifically to Ms. Salvatore, I was unable to identify or produce any responsive records.

Nevertheless, as [a] professional courtesy to Mr. Formisano, I directed my administrative assistant \* \* \* to review every WCKS invoice sent to the Committee since September 2012, and to identify each individual entry reflecting legal services specific to Ms. Salvatore. The resulting information showed the total amount of hours and dollars billed by WCKS 'for legal services rendered in connection with the employment of Deborah Salvatore and any litigation or administrative proceeding arising therefrom.' \* \* \*

By letter dated July 24, 2015, I provided Mr. Formisano with the above-referenced data – precisely the information he sought in his July 13<sup>th</sup> records request – even though the Committee did not maintain responsive records. \* \* \*

In that same letter, I provided Mr. Formisano with a document reflecting the Committee's legal budget for fiscal years 2013-2016. The Committee does not maintain any documents that constitute, refer to, or concern the appropriation of funds to pay for Salvatore-specific legal services.

\* \* \*

I did not inform Attorney Formisano, however, that § 38-2-7(c) of [the] Act provided the basis for denying access to non-existent records, or his appeal rights in accordance with § 38-2-7(a). \* \* \*

Despite receiving the information he requested and knowing I was prepared to provide redacted billing sheets upon request, \* \* \* Mr. Formisano has chosen to escalate this matter via the current complaint.”

In examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to determine whether this Department believes that an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Town and/or the School Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

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). Among the purposes of the APRA is to “facilitate public access to public records.” R.I. Gen. Laws § 38-2-1. Lastly, although R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) exempts from public disclosure “all records relating to a client/attorney relationship[.]” 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).

We initially analyze the Town’s response. Frankly, it appears that the focus of your APRA complaint is against the School Department and not the Town. The Town responded to your APRA request on July 14, 2015, and indicated that it was “not in possession of the records referred to in your communication.” While the Town did not cite the applicable statutory provision supporting its response – R.I. Gen. Laws § 38-2-3(h) – the Town’s response was clearly responsive, timely, and provided the “specific reasons for the denial.” R.I. Gen. Laws § 38-2-7(a). Moreover, no evidence has been presented that demonstrates that the Town is in possession of responsive records. The Town admits, however, that its response did not include the rights for appeal. As such, the Town violated the APRA when it failed to provide you with your rights of appeal pursuant to R.I. Gen. Laws § 38-2-7(a).

We now focus our analysis on whether the School Department’s response was sufficient under the APRA. As stated supra, you requested, inter alia, “all records reflecting the total amount of hours and dollars billed to the Town by WCKS for legal services rendered in connection with the employment of Ms. Salvatore and any litigation or administrative proceeding arising therefrom.” The School Department has submitted its legal bills to this Department for an in camera review and proffers that no records exist that are responsive to your request.

Specifically, Ms. Rapport relates in her affidavit that her law firm:

“does not issue invoices to the Committee that reflect the ‘total amount’ of hours or dollars billed for Salvatore-specific matters. Rather, WCKS issues cumulative monthly bills, by subject matter, for all legal services rendered by WCKS on behalf of the Committee.\* \* \* [T]o the extent that any individual monthly invoice reflects a ‘total’ hour or dollar amount, that figure reflects the cumulative total of hours and dollars billed for all legal services provided to the Committee on that matter, during that time period, including but by no means limited to services related to Deborah Salvatore.”

Although we appreciate the School Department’s response that it issues separate bills with such general subject matters as litigation, grievances, administrative hearings, and education, and that within these general subject matters a number of different cases may have been referenced including but not limited to the Salvatore matter, our in camera review finds that the School Department does possess some legal bills that concerned only the Salvatore matter. 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 Deborah Salvatore.” Accordingly, in these cases, the School Department need not provide documents that it does not maintain. See R.I. Gen. Laws § 38-2-3(h). But our review does find that at least some legal bills do exist that pertain only to “legal services rendered in connection with the employment of Deborah Salvatore,” and in these cases, the School Department does maintain a record “reflecting the total amount of hours and dollars

billed.” Documents within this category are responsive to your APRA request and must be provided. While these latter legal bills that are responsive to your APRA request will not provide a complete picture on the legal services rendered by the School Department (in hours or dollars) relating to all Salvatore matters, we nonetheless conclude that these individual bills are responsive to your request for “[a]ll records reflecting the total amount of hours and dollars billed by the Town \* \* \* for legal services rendered in connection with the employment of Deborah Salvatore.”<sup>1</sup>

Moreover, the School Department’s response – reviewing its records and providing a narrative answer rather than providing documents (even if redacted) – is inconsistent with the APRA. We addressed a similar issue in Chase v. Department of Corrections, PR 11-05 where we explained that Inmate Chase:

“complain[ed] that the Department of Corrections never provided [him] with ‘true copies’ of these records. Instead, the evidence reveals that the Department of Corrections provided [him] written responses to the information [he] sought. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. Here, the Department of Corrections failed to do so. Instead, the Department of Corrections only provided [him] with written answers to [his] records requests. Although [the Department of Corrections] attests that [it] provided [him] with all three pieces of information that [he] requested, the evidence supports (as admitted by the Department of Corrections) that [he] requested documents and those documents were not provided to [him]. Accordingly, this Department finds that the Department of Corrections violated the APRA when it failed to provide [Inmate Chase] with documents responsive to [his] ‘request.’”

For these reasons, we find that the School Department violated the APRA when it failed to provide these individual billing cycle redacted legal bills that were responsive, *i.e.*, related solely to a Salvatore matter.

With respect to your second request, namely records “concerning appropriation of funds by the Town to pay for legal services rendered or to be rendered by [the] law firm of WCKS in

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<sup>1</sup> As we read the School Department’s response, the School Department maintains that it did not possess the requested documents for the reasons discussed above. The School Department does not appear to interpret your request for documents as seeking responsive records on a total represented basis as opposed to seeking responsive records during a particular billing cycle. Indeed, the School Department appears to have interpreted your request consistent with this latter interpretation by arguing that “[t]o the extent that any individual monthly invoice reflects a ‘total’ hour or dollar amount, that figure reflects the cumulative total of hours and dollars billed for all legal services provided to the Committee on that matter, during that time period, including but by no means limited to services related to Deborah Salvatore.” We interpret the APRA request in a similar manner, *i.e.*, seeking responsive records during any particular billing cycle.

connection with the employment of Deborah Salvatore, and any litigation or administrative proceeding arising therefrom,” based upon the evidence presented, the School Department provided you with a copy of the School Department’s legal budget for fiscal years 2013-2016 and no evidence has been presented that that the School Department maintains additional documents that were not provided. While the School Department, arguably, could have interpreted your APRA request as seeking documents concerning an appropriation for legal services relating only to the Salvatore matter – to the exclusion of other matters – the School Department interpreted your APRA request as concerning an appropriation for legal services for the Salvatore matter, but not to the exclusion of other matters. We do not find this interpretation unreasonable, and because no evidence has been presented that other documents exist regarding an appropriation for the Salvatore matter, we find no violation. See GoLocalProv v. City of Providence, PR 16-20.

Lastly, you contend that the School Department violated the APRA when it failed to specify the reasons for its denial and when it failed to articulate the appellate avenues. Here, we find that the School Department’s July 24, 2015 response failed to provide the “specific reasons for the denial.” R.I. Gen. Laws § 38-2-7(a). To be fair, the School Department may have been under the impression that its July 24, 2015 response was not a “denial,” and therefore, incorrectly believed it need not provide the “specific reasons for the denial.” Nonetheless, while this issue is somewhat interwoven with the substantive issue discussed, supra, the School Department’s failure to provide the specific reasons for the denial, as well as its failure to articulate the appellate avenues, violated the APRA. See R.I. Gen. Laws § 38-2-7(a).

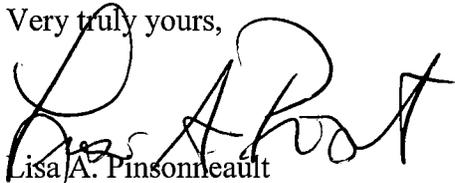
Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). Also, a court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a 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).

Here, we find no evidence that the Town or the School Department committed a willful, knowing, or reckless violation. We do conclude, however, that disclosure of the responsive legal invoices during the requested time frame is appropriate and the School Department shall have ten (10) business days to provide you access to these responsive invoices, in a redacted manner, consistent with this finding. To be clear, your APRA request sought “[a]ll records reflecting the total amount of hours and dollars billed \* \* \* for legal services rendered in connection with the employment of Deborah Salvatore and any litigation or administrative proceeding arising therefrom from September 1, 2012 to the present.” If you do not receive these invoices within this timeframe, please feel free to contact this Department so that we may review the School Department’s response. For this reason, although injunctive relief may be appropriate, we believe it prudent to allow the School Department the opportunity to remedy this matter on its own. These documents must be provided with no charge. See R.I. Gen. Laws § 38-2-7(b) (“[a]ll copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner”).

Although the Attorney General will not file suit in this matter at this time, nothing within the APRA prohibits an individual or entity 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). This finding does serve as notice to the Town and the School Department that its omissions violated the APRA and may serve as evidence in a future similar situation of a willful and knowing, or reckless violation. We are closing this file as of the date of this correspondence, although we reserve the right to reopen this matter should the circumstances require.

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

Very truly yours,



Lisa A. Pinsonneault  
Special Assistant Attorney General

Cc: Daniel K. Kinder, Esquire

Michael Ursillo, Esquire