



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

June 12, 2015  
PR 15-24

Ms. Linda Lotridge Levin

Re: Access/Rhode Island v. West Warwick School Department

Dear Ms. Levin:

The investigation into your Access to Public Records Act (“APRA”) complaint filed on behalf of Access/Rhode Island against the West Warwick School Department (“School Department”) is complete. You allege that the School Department committed five (5) APRA violations:

1. when it failed to provide timely certification that it had received APRA training pursuant to R.I. Gen. Laws § 38-2-3.16;
2. when it failed to timely respond to MuckRock’s APRA request for written procedures (27 business days), see R.I. Gen. Laws § 38-2-3(e);
3. when it failed to maintain APRA procedures/failed to post APRA procedures on its website, see R.I. Gen. Laws § 38-2-3(d);
4. when it failed to timely respond to MuckRock’s APRA request for a copy of the Superintendent’s contract (26 business days), see R.I. Gen. Laws § 38-2-3(e); and
5. when it failed to timely respond to MuckRock’s APRA request for a list of layoffs (15 business days), see R.I. Gen. Laws § 38-2-3(e).

In response to your complaint, the School Department’s legal counsel, Aubrey L. Lombardo, Esquire, forwarded an affidavit from Superintendent Karen Tarasevich, as well as associated documents. The School Department “denies the allegation that it violated APRA by failing to provide certification that an employee has received APRA training” and notes that the School Department was in compliance with R.I. Gen. Laws § 38-2-3.16 “since at least January of 2014.” The School Department also “denies the allegation that it failed to maintain APRA procedures” and relates that “[a]t the time of the filing of this Complaint, the School Department had an ‘Access to Public Records Act Procedure’ that had been formally approved by the School Department.” With respect to your allegation that the School Department failed to post its APRA procedures on its

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website, the School Department “admits the allegation that it did not have its APRA Procedure posted on the District website as of the date of the filing of this Complaint,” but this “oversight” has “since been rectified.” Lastly, with respect to the allegations that the School Department failed to respond to MuckRock’s APRA requests in a timely manner (allegation nos. 2, 4, and 5), the School Department asserts that Access/Rhode Island does not have legal standing to raise these issues because MuckRock made the APRA requests at issue, not Access/Rhode Island.

On February 5, 2015, you filed a rebuttal. Additional relevant facts will be set forth below as necessary.

At the outset, we observe that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether a violation 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 School Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Here, we begin with the School Department’s claim that Access/Rhode Island does not have standing since Access/Rhode Island’s contractor, MuckRock – and not Access/Rhode Island – filed the APRA requests that form the basis of allegation nos. 2, 4, and 5. To be sure, allegation nos. 2, 4, and 5 concern APRA requests made by MuckRock to the School Department, and while Access/Rhode Island generally asserts that MuckRock was acting on its behalf and as an agent of Access/Rhode Island, it is clear that at the time that MuckRock made its APRA requests, neither MuckRock nor Access/Rhode Island provided any indication that Access/Rhode Island was the true party in interest. Indeed, the APRA requests were sent from a MuckRock email address, referenced a MuckRock (Massachusetts) mailing address, and indicated, inter alia, that “[t]he requested documents will be made available to the general public free of charge as part of the public information service of MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.” In this respect, Access/Rhode Island directs this Department to other statements made by Access/Rhode Island indicating a relationship between MuckRock and Access/Rhode Island, but all of these representations were made after MuckRock’s APRA request and there is no indication of any relationship between MuckRock and Access/Rhode Island during the pendency of the APRA requests that are the focus of this APRA complaint. We have attached the three (3) MuckRock APRA requests to this finding to support our conclusion. See Exhibit A.<sup>1</sup>

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<sup>1</sup> The APRA requests made by MuckRock in the other fourteen (14) APRA complaints are of a similar nature.

The Rhode Island Supreme Court has recognized that “[b]ecause APRA generally mirrors the Freedom of Information Act \* \* \* we find federal case law helpful in interpreting our open record law.” See Brady v. Pawtucket Teachers Alliance, 556 A.2d, 556, 558 n.3 (R.I. 1989). Consistent with this precedent, we likewise “find federal case law helpful in interpreting our open record law.” Id. After considering state and federal precedent, there is no doubt that Access/Rhode Island lacks standing to file an APRA lawsuit in Superior Court, and therefore by extension and application, lacks standing to press this complaint with this Department. We explain below.

While your correspondences chide this Department for considering a “hyper-technical standard of legal standing,” the Rhode Island Supreme Court has characterized the consideration of standing as a “fundamental preliminary question.” Watson v. Fox, 44 A.3d 130, 135 (R.I. 2012). “In a frequently cited passage, the United States Supreme Court explained that to satisfy the standing requirement, a complaining party must allege ‘such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions.’” Id. (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)). As explained by our Supreme Court, “when standing is at issue, the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff ‘whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable’ or, indeed, whether or not it should be litigated.” Id. In order to satisfy the legal standing requirement, a plaintiff must allege “that the challenged action has caused him injury in fact, economic or otherwise.” Id. “[M]ere ‘interest in a problem,’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization ‘adversely affected’ or ‘aggrieved.’” Id. at 136.

While the foregoing discussion concerns general principles of standing as set forth by the Rhode Island Supreme Court, it is also relevant that the APRA provides the standards for filing an APRA action. For instance, R.I. Gen. Laws § 38-2-7(a) provides that “[a]ny denial of the right to inspect or copy records, in whole or in part \* \* \* shall be made to the person or entity requesting the right[.]” (Emphasis added). Other APRA provisions address the issue more directly. Specifically, in the event of a denial, a “petition” may be filed with the chief administrative officer of the public body, but this appeal avenue is limited to “[a]ny person or entity denied the right to inspect a record of a public body.” See R.I. Gen. Laws § 38-2-8(a) (emphasis added). If the chief administrative officer denies the review petition, “the person or entity seeking disclosure may file a complaint with the attorney general,” and if meritorious, the Attorney General may file a lawsuit in Superior Court “on behalf of the complainant.” R.I. Gen. Laws § 38-2-8(b)(emphasis added).

These APRA provisions make clear that in order to have suffered an alleged injury, *i.e.*, in order to acquire legal standing, a complainant must have requested access to a record and been denied the right to inspect a record. See also Canavan v. City of Central Falls, PR 00-18 (lack of standing of City Council member to file an APRA complaint since the City Council, and not the member, made the APRA request); Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21 (“in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record”). The evidence is also clear that MuckRock made the instant APRA requests and at no time did MuckRock indicate that the APRA requests were being made on behalf of, or in conjunction with, Access/Rhode Island. In fact, MuckRock’s APRA request indicated that “[t]he requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.” See Exhibit A. None of these statements provide any indication of Access/Rhode Island’s involvement while the APRA requests were pending.

In Fieger v. Federal Election Commission, 690 F.Supp.2d 644 (E.D. Mich. 2010), the Federal District Court examined a lawsuit brought by Attorney Fieger alleging a violation of the Freedom of Information Act (“FOIA”). Not unlike the instant circumstances, Attorney Fieger did not make the FOIA request upon which his lawsuit was based, but rather an attorney in his law office made two (2) separate FOIA requests. Both FOIA requests were signed by the attorney on behalf of the law firm, “Fieger, Fieger, Kenney, Johnson & Giroux.” *Id.* at 647. Even though Attorney Fieger was the law firm’s principal owner, the Federal District Court determined that Attorney Fieger lacked standing to file the lawsuit. The Court explained that “a person whose name does not appear on a request for records has no standing to prosecute a lawsuit to compel disclosure of those records.” *Id.* at 648 (emphasis added). Later, the Court added that “a plaintiff who bases a FOIA lawsuit upon the request for information by another person does not satisfy the prudential requirement that he must assert a violation of his own legal rights.” *Id.* at 649. Other cases also make this point. See *e.g.*, McDonnell v. United States, 4 F.3d 1227, 1236-37 (3<sup>rd</sup> Cir. 1993)(“We think a person whose name does not appear on a request for records has not made a formal request for documents within the meaning of the statute. Such a person, regardless of his or her personal interest in disclosure of the requested documents, has no right to receive [] the documents.”); Three Forks Ranch Corp. v. Bureau of Land Management, 358 F.Supp.2d 1, 3 (D.D.C 2005)(“although the request made by Mr. Von Holt mentions Three Forks Ranch, it is not clear that the request is being made on behalf of his client”). See also Canavan v. City of Central Falls, PR 00-18 (lack of standing of City Council member to file an APRA complaint since the City Council, and not the member, made the APRA request); Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21 (“in order for this

Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record”).

Our conclusion extends to your allegations that the School Department failed to file a timely APRA certification and failed to timely promulgate and post APRA procedures. Again, your complaint contains no allegation that Access/Rhode Island sustained any injury-in-fact from these alleged violations and instead supports the conclusion that any injury was incurred by MuckRock. For instance, with respect to the certification issue, your complaint relates that “ACCESS/RI through our contractor MuckRock requested a list from [the Department of Attorney General] of those entities \* \* \* that certified employee(s)” pursuant to R.I. Gen. Laws § 38-2-3.16. (Emphasis added). On the APRA procedures issue, your complaint is even more instructive, alleging that:

“MuckRock also sought to test compliance with the requirement in 38-2-3(d) that ‘a copy of these procedures shall be posted on the public body’s website if such a website is maintained and be made otherwise available to the public.’ A MuckRock visual review of the [School Department] websites on or before August 21, 2014 and site specific (‘site:www.westwarwickpublicschools.com’) Google search (‘APRA’ and ‘public records’) found no such procedures on any [School Department] website.” (Emphases added).

Leaving aside the issue that your complaint appears to contain no first-hand knowledge, based upon our review of the totality of the evidence it is clear that MuckRock, and not Access/Rhode Island, made the APRA requests at issue, sought the APRA certification, and inspected the School Department’s website to determine whether the School Department promulgated and posted APRA procedures. It is also clear that while MuckRock was seeking records – and in Access/Rhode Island’s words “test[ing] compliance” – neither MuckRock nor Access/Rhode Island has provided any indication of Access/Rhode Island’s involvement at the time of MuckRock’s requests. On this record, we cannot find that Access/Rhode Island has legal standing.

In support of your position that Access/Rhode Island has standing to file the instant APRA complaint, you point out that Access/Rhode Island’s complaint is administrative in nature, and not judicial. While your statement is, of course, accurate, simply labeling the instant matter as “administrative” ignores the reality of the relief you seek. Specifically, you ask this Department to file a lawsuit in Superior Court on behalf of Access/Rhode Island. See December 17, 2014 Complaint (“we ask that the Attorney General file suit pursuant to § 38-2-8(b) in the Superior Court”). Moreover, the APRA expressly provides that after reviewing an APRA complaint, if the Attorney General determines the allegations are meritorious, the Attorney General “may institute

proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court[.]” R.I. Gen. Laws § 38-2-8(b). Accordingly, although the instant matter is presently “administrative” in nature, there is no question that you ask that this Department turn this administrative proceeding into a judicial proceeding by filing a lawsuit in Superior Court on behalf of Access/Rhode Island. The notion that this Department would (or could) file a lawsuit in Superior Court on behalf of a person or entity, when that person or entity lacks independent legal standing, see supra, is at best, tenuous. For this reason, simply labeling the instant matter as “administrative” ignores the relief you seek from this Department and the resources you seek this Department to expend in support of what ultimately would be a fatally flawed lawsuit.

You briefly raise two (2) additional considerations, but Access/Rhode Island does not fully develop either legal argument and for the reasons discussed, infra, it is unnecessary that we fully consider either argument. Specifically, you observe that “APRA requires public bodies to respond to requests regardless of the identity of the requester, and even allows anonymous requests.” You continue that “restrictive notions of standing make no sense.” Even assuming that your APRA interpretation is correct, your correspondence makes no effort to relate this proposition to standing principles, see supra, and fails to recognize the “customary and constitutionally embedded presumption of openness in judicial proceedings’ [that] requires that litigants proceed under their own names unless an exceptional circumstance requires anonymity exists.” Doe v. Burkland, 808 A.2d 1090, 1096 (R.I. 2002).

Read liberally, your complaint may also suggest that MuckRock and Access/Rhode Island have developed an agency relationship, but Access/Rhode Island has neither presented a factual or a legal basis for us to reach this conclusion (or the conclusion that it may have standing through its agent) and it is worth noting – though not dispositive – that Access/Rhode Island refers to MuckRock as its “contractor.” See e.g., Powers v. Coccia, 2004 WL 253538 (R.I. Super. 2004)(Gibney, J.) (“The extent of the relationship was not ascertained, whether it was an agency relationship or as an independent contractor.”). As we have already noted, because these arguments have not been fully developed, and because the following discussion and conclusion makes resolution of these issues unnecessary, we find Access/Rhode Island lacks standing to raise the issues presented in this complaint.”<sup>2</sup> See Blackstone Valley Chamber of Commerce v. Public

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<sup>2</sup> Consistent with our past practice, when this complaint was originally filed in December 2014, this Department reviewed your complaint. As we have done on many prior occasions when a factual or legal issue comes to our attention through our initial review of the filed complaint, this Department raised that issue in its acknowledgment/investigatory demand letters so that both parties have the opportunity to address such an issue and present factual and/or legal arguments to support their

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Utilities Commission, 452 A.2d 931, 934 (R.I. 1982)(a party seeking judicial review has the burden of establishing that he is aggrieved by showing actual or threatened legal injury); Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215, 222 (R.I. 2002)(“The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice.”).

While Access/Rhode Island lacks legal standing, a question remains whether this Department should exercise its independent statutory authority, as Access/Rhode Island suggests in the event that it lacks standing. In many respects, this Department has never expressly examined this issue in the context of a finding, and therefore, it represents an issue of first impression. Past cases have been brought to our attention where this Department either did not examine or did not invoke its independent statutory authority, see e.g., Canavan, PR 00-18; Schmidt, PR 99-21, but to be fair many – but not all of these findings – predate the inclusion of this Department’s independent statutory authority into the APRA. See P.L. 2006, ch. 378, § 1; 2006, ch. 472, § 1. Presently, R.I. Gen. Laws § 38-2-8(d) provides that nothing with the APRA “prohibit[s] the attorney general from initiating a complaint on behalf of the public interest.” In the absence of Access/Rhode Island’s standing, you ask that this Department invoke its independent statutory authority. We must consider a variety of factors.

Among the factors to consider is that examining this APRA complaint, particularly when combined with your other fourteen (14) related APRA complaints, requires the dedication and expenditure of significant resources. Since resources are always limited, the expenditure of resources to examine Access/Rhode Island’s fifteen (15) APRA complaints necessarily means that these same limited resources cannot simultaneously be dedicated to other pending open government matters. This is not an insignificant consideration.

We understand and appreciate Access/Rhode Island’s motivation in having MuckRock file APRA requests, examine APRA certification, and inspect public bodies’ websites to – in your words “test compliance” – and this consideration is not lost upon this Department as it considers whether to assert its independent statutory authority. Having recognized this interest, however, it is impossible to ignore the reality that while this Department examines Access/Rhode Island’s fifteen (15) APRA complaints aimed at “test[ing] compliance,” the APRA (and Open Meetings Act) complaints filed by Rhode Island citizens who actually seek access to documents and meetings must await our review. As we noted earlier, the prospect that citizens’ complaints that present actual controversies and that have actual independent legal standing will be delayed, while this Department reviews what Access/Rhode Island has described as a test of government

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respective positions. It was in this manner, and for this reason, that this Department raised the standing issue in our acknowledgment/investigatory demand letters.

compliance is a significant consideration. It also is not lost upon this Department that even though Access/Rhode Island argues that the public interest requires this Department to review the instant allegations pursuant to this Department's independent statutory authority, MuckRock's APRA requests were made in April 2014 and June 2014, yet the instant APRA complaint was not filed with this Department by Access/Rhode Island until December 2014. It seems to us that the passage of six to eight months between the alleged violation and the filing of your APRA complaint belies some of the urgency and legitimacy of the public interest you assert.

We need not continue to identify all the various considerations. Rhode Island General Laws § 38-2-8(d) clearly provides that this Department may invoke its independent statutory authority "on behalf of the public interest," and we conclude that the determination to invoke this authority must be made on a case-by-case basis after considering the totality of circumstances. Here, Access/Rhode Island has determined that in its opinion various governmental entities have violated the APRA. To be sure, some of these allegations are meritorious; but in other cases Access/Rhode Island is, respectfully, incorrect. While we leave our analysis and explanation to each individual finding, as one example, Access/Rhode Island alleges that various Police Departments failed to provide arrest log information within the forty-eight (48) hour time frame required by R.I. Gen. Laws § 38-2-3.2, yet MuckRock's APRA request expressly asked that the requested arrest log information be provided within ten (10) business days, thus constituting a waiver. See e.g., Access/Rhode Island v. Warren Police Department, PR 15-37; Access/Rhode Island v. West Greenwich Police Department, PR 15-25; Access/Rhode Island v. New Shoreham Police Department, PR 15-26. In yet another instance, Access/Rhode Island appears to charge that the Cumberland Police Department violated the APRA, yet Access/Rhode Island failed to identify any particular APRA violation, see Access/Rhode Island v. Cumberland Police Department, PR 15-32; and in other instance Access/Rhode Island alleged that the Providence Police Department violated the APRA, yet upon receiving the Providence Police Department's response, Access/Rhode Island withdrew its complaint. See Access/Rhode Island v. Providence Police Department, PR 15-33. While we continue to maintain the concerns previously expressed, including the passage of time between the alleged violations and the filing of a complaint, after much consideration, we conclude that the public interest is served by examining these complaints pursuant to this Department's independent statutory authority. In doing so, we decline to identify a bright-line set of rules concerning whether and when this Department will invoke its independent statutory authority, other than to repeat what we have already stated – this determination will be made on a case-by-case determination after considering the totality of the circumstances. This decision should not be viewed as precedent and as already expressed, our conclusion involved the consideration of numerous factors. We proceed to the merits.

First, you allege that the School Department violated the APRA when it failed to submit its APRA certification form to this Department pursuant to R.I. Gen. Laws § 38-2-3.16. The School Department denies this allegation and states that “the School Department’s former Business Manager attended orientation and training on APRA at the Legal Institute in January of 2014,” and that the Superintendent “participated in the Access to Public Records Training that was offered on August 1, 2014 by the Attorney General’s Office.” The School Department submits a copy of the Superintendent’s APRA certification dated August 1, 2014.

Rhode Island General Laws § 38-2-3.16 provides that:

“[n]ot later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access to records under this chapter have been provided orientation and training regarding this chapter.”

Here, although evidence has been submitted that a School Department employee received APRA training in January 2014, no evidence has been presented that the School Department provided certification “in writing to the attorney general” as required. Accordingly, we conclude that the School Department violated the APRA.

Next we address the allegation that the School Department failed to maintain APRA procedures and failed to maintain such procedures on its website. The School Department denies the allegation that it failed to maintain APRA procedures since “[a]t the time of the filing of this Complaint, the School Department had an ‘Access to Public Records Act Procedure’ that had been formally approved by the School Department.” The School Department’s response makes clear that these APRA procedures were approved at an August 12, 2014 School Committee meeting. The School Department “admits the allegation that it did not have its APRA Procedure posted on the District website as of the date of the filing of this Complaint.”

The APRA provides that “[e]ach public body shall establish written procedures regarding access to public records[.]” R.I. Gen. Laws § 38-2-3(d). Effective September 2012, “a copy of these procedures shall be posted on the public body’s website if such a website is maintained and be made otherwise readily available to the public.” Id.

While the School Department argues that it maintained written procedures in accordance with the APRA, the evidence establishes that the School Department did not maintain these written procedures prior to August 12, 2014. The failure to maintain written procedures prior to this date violated the APRA. Id. Moreover, the School Department

admits that it failed to maintain these APRA procedures on its website and this also violated the APRA. Id.

Lastly, we examine allegation nos. 2, 4, and 5, i.e., that the School Department failed to respond to MuckRock's APRA requests in a timely manner. The School Department does not address the merits of these allegations, but instead relies upon its standing argument. Having already addressed the standing argument, we proceed to the merits.

The APRA provides that:

“[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the 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). See also R.I. Gen. Laws § 38-2-7.

You contend that the School Department failed to respond in a timely manner to three (3) MuckRock APRA requests.

The first MuckRock APRA request was made on April 27, 2014 and sought “[w]ritten procedures for access to the agency’s public records, including any records request forms required or suggested by the agency.” While your complaint alleges that the School Department “took 27 business days to respond,” the evidence submitted by you reveals that the School Department responded on May 5, 2014 – seven (7) business days after the APRA request. In relevant part, the Superintendent related via e-mail that:

“[i]t is the practice of the [School Department] to accommodate any requests for records in accordance with the Rhode Island Access to Public Records Act. Upon receipt of such a request, the information is sent within the required 1-0 [sic] day period. There is no form that needs to be filled out or submitted. The requests are submitted in writing to the superintendent’s office and requested records forward[ed].”

MuckRock responded by e-mail dated May 5, 2014, seeking confirmation concerning whether the School Department had a written APRA procedure, and if so, to “please

provide a copy pursuant to my original request.” Having received no additional response, MuckRock sent follow-up e-mails dated May 20, 2014 and June 4, 2014, whereupon the School Department responded by e-mail dated June 4, 2014, indicating that the School Department did not maintain written APRA procedures.

Consistent with R.I. Gen. Laws § 38-2-7, this Department has consistently stated that “[u]pon 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 e.g., Miller v. City of East Providence, PR 11-18. While based upon the evidence presented we cannot fairly conclude that the School Department “took 27 business days to respond,” we do conclude that the School Department did not provide a proper APRA response in a timely manner. Specifically, in response to MuckRock’s April 27, 2014 APRA request, the School Department failed to provide the requested documents, deny access to the requested documents, or extend the time for “good cause.” Id. As such, the School Department violated the APRA.

Your remaining two (2) allegations meet with a similar fate. By e-mail dated June 12, 2014, MuckRock sent another APRA request seeking, the “[c]urrent contract for the district superintendent.” After not having received a response within ten (10) business days, MuckRock sent a follow-up e-mail on June 27, 2014, which the Superintendent responded to on June 30, 2014, indicating in pertinent part, that the School Department “does not currently have a written policy on requests for public records.” While the School Department ultimately provided the requested contract by e-mail dated July 20, 2014, there is no doubt that this response was untimely as set forth in R.I. Gen. Laws § 38-2-7.

MuckRock’s last APRA request occurred on June 27, 2014, wherein it sought “[a] full list of the teachers who have received layoff letters for the 2014-2015 school year, as well as the full list of teachers’ names submitted to the Rhode Island Department of Education for possible layoff for the 2014-2015 school year.” After reviewing a follow-up email from MuckRock on July 10, 2014, the School Department responded to the APRA request on July 21, 2014, indicating that it maintained no responsive documents. See R.I. Gen. Laws § 38-2-3(h). Again, this sequence was untimely and violated the APRA. R.I. Gen. Laws § 38-2-7.

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). In this case, for the reasons discussed herein, we have reviewed this matter pursuant to the Attorney General’s independent statutory authority, and accordingly, any complaint or other action must be initiated on behalf of the public interest and not the Complainant. 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, injunctive relief is not appropriate. The School Department has promulgated APRA procedures and posted these procedures on its website, and the School Department has submitted an APRA certification to this Department. Additionally, the School Department has either provided MuckRock with the requested documents, or indicated that the requested documents are not maintained. Even your rebuttal acknowledges that this type of “after-the-fact compliance may be a factor to consider in determining appropriate remedies.” While you assert that the foregoing violations are willful and knowing, or alternatively reckless, you provide no support or evidence for this conclusion. Instead, the evidence demonstrates that a School Department employee received APRA training in January 2014, yet did not submit a certification form to this Department, and that the School Department’s website was under construction in August 2014, at or about the time of MuckRock’s inspection. Nonetheless, our main concern relates to the School Department’s failure to provide a timely response to three (3) APRA requests. Such a failure has led this Department to seek civil fines on numerous past occasions. See e.g., DesMarais v. Manville Fire Department, PR 15-08; Scripps News v. Department of Business Regulations, PR 14-07; Kelly and Mancini v. Town of Warren, PR 14-19; International Assoc. of Firefighters v. Nasonville Fire Department, PR 14-24; Boss v. Woonsocket Superintendent’s Office, PR 13-19. Moreover, although we admit some passage of time, our records reveal that this Department had previously found the School Department failed to provide a timely response in accordance with the APRA and this factor may also be considered. See Licciardi v. West Warwick School Department, PR 09-32.

Therefore, pursuant to R.I. Gen. Laws § 38-2-8(d) and consistent with this Department’s practice, the School Department shall have ten (10) business days from receipt of this finding to provide us with a supplemental explanation as to why its untimely responses should not be considered knowing and willful violations, or reckless, in light of the APRA, Supreme Court case law,<sup>3</sup> and this Department’s precedent. Such a determination

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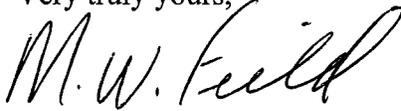
<sup>3</sup> The Rhode Island Supreme Court examined the “knowing and willful” standard in Carmody v. Rhode Island Conflict of Interest Comm’n, 509 A.2d 453 (R.I. 1986). In Carmody, the Court determined that:

“the requirement that an act be ‘knowingly and willfully’ committed refers only to the concept that there be ‘specific intent’ to perform the act itself, that is, that the act or omission constituting a violation of law must have been deliberate, as contrasted with an act that is the result of mistake,

by this Department would subject the School Department to civil fines. At the end of this time period, we will issue our supplemental finding on this matter and determine whether civil fines are appropriate. Because of this Department's determination concerning Access/Rhode Island's lack of standing, and our determination that the Attorney General is pursuing this matter based upon our independent statutory authority set forth in R.I. Gen. Laws § 38-2-8(d), we are closing this file with respect to Access/Rhode Island, but this file remains open with respect to the Attorney General's independent statutory review as discussed, supra.

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

Very truly yours,



Michael W. Field  
Assistant Attorney General

Cc: Aubrey L. Lombardo, Esq.

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“that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute \* \* \* Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.’ (internal citations omitted). Id. at 1164. (Emphasis added).

# Exhibit A



Diagnostic Tim &lt;diagnostics@muckrock.com&gt;

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**Freedom of Information Request: APRA procedures (West Warwick Public Schools)**

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**Shawn Musgrave** <11450-99726457@requests.muckrock.com>  
To: ktarasevich@westwarwickpublicschools.com

Sun, Apr 27, 2014 at 3:16 PM

April 27, 2014  
West Warwick Public Schools  
10 Harris Avenue  
West Warwick, RI 02893

To Whom It May Concern:

Pursuant to the Rhode Island Access to Public Records Act ("APRA"), I hereby request the following records:

Written procedures for access to the agency's public records, including any records request forms required or suggested by the agency.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Shawn Musgrave

Filed via MuckRock.com  
E-mail (Preferred): 11450-99726457@requests.muckrock.com

For mailed responses, please address (see note):  
MuckRock News  
DEPT MR 11450  
PO Box 55819  
Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.



Diagnostic Tim &lt;diagnostics@muckrock.com&gt;

**Freedom of Information Request: Superintendent contract (West Warwick Public Schools)**

Shawn Musgrave <12133-38141480@requests.muckrock.com>  
To: ktarasevich@westwarwickpublicschools.com

Thu, Jun 12, 2014 at 7:47 AM

June 12, 2014  
West Warwick Public Schools  
10 Harris Avenue  
West Warwick, RI 02893

To Whom It May Concern:

Pursuant to the Rhode Island Access to Public Records Act ("APRA"), I hereby request the following records:

Current contract for the district superintendent.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filed electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Shawn Musgrave

Filed via MuckRock.com  
E-mail (Preferred): 12133-38141480@requests.muckrock.com

For mailed responses, please address (see note):  
MuckRock News  
DEPT MR 12133  
PO Box 55819  
Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.



Diagnostic Tim &lt;diagnostics@muckrock.com&gt;

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**RE: Freedom of Information Request: Superintendent contract (West Warwick Public Schools)**

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Shawn Musgrave <12133-38141480@requests.muckrock.com>  
To: ktarasevich@westwarwickpublicschools.com

Fri, Jun 27, 2014 at 5:00 AM

June 27, 2014  
West Warwick Public Schools  
10 Harris Avenue  
West Warwick, RI 02893

This is a follow up to a previous request:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on June 12, 2014. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thank you for your help.

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On June 12, 2014:

To Whom It May Concern:

Pursuant to the Rhode Island Access to Public Records Act ("APRA"), I hereby request the following records:

Current contract for the district superintendent.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Shawn Musgrave

Filed via MuckRock.com  
E-mail (Preferred): 12133-38141480@requests.muckrock.com

For mailed responses, please address (see note):  
MuckRock News

11/4/2014

Muckrock Mail - RE: Freedom of Information Request: Superintendent contract (West Warwick Public Schools)

DEPT MR 12133  
PO Box 55819  
Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.