



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

May 5, 2016  
PR 16-17

Ms. Donna M. Chiaradio

**Re: Chiaradio v. Town of Westerly**

Dear Ms. Chiaradio:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of Westerly (“Town”) is complete. By email correspondence dated September 28, 2015, you contend that the Town violated the APRA when it improperly denied part of your APRA request dated August 18, 2015. Specifically, you requested a copy of “all itemized invoices from Whelan, Corrente, Kinder & Siket LLP along with a copy of the engagement letter between the Town of Westerly, a governmental entity, and Whelan, Corrente, Kinder & Siket LLP.” You also sought a copy of “all itemized invoices from Schectman, Halperin & Savage along with a copy of the engagement letter between the Town of Westerly and Schectman, Halperin & Savage.”

In response to your complaint, we received a substantive response in affidavit form from the Town’s solicitor, Matthew T. Oliverio, Esquire. Attorney Oliverio states, in pertinent part:

“Since my retention in July 2015, I have consistently advised the Town Council that publicizing itemized legal invoices necessarily discloses attorney/client privileged information as it reveals the Town’s legal strategy for pending litigation matters. Consistent with that advice, the Town no longer publicizes itemized legal invoices, but does approve such invoices through a resolution process and publicizes redacted invoices which reflect the dates, hours, rates and total fees and costs for each legal invoice. \* \* \*

In reviewing [Attorney General APRA findings], specifically, *MacDougall v. Quonochontaug [sic] Central Beach Fire District*, PR 13-17; *DiLorenzo v. Cranston School Department*, PR 06-03; *Palazzo v. West Warwick Pension*

*Board*, PR 02-13; *Graziano v. Rhode Island Lottery Commission*, PR 98-19; *Stolgitis v. DEM*, PR 94-21; *Langevin v. Secretary of State*, PR 94-20, it became abundantly clear that a public body may withhold itemized descriptions prepared by the attorneys as they are exempt from disclosure under the provisions of R.I. Gen. Laws § 38-2-2(4)(A)(I)(a), as such information relates to the attorney/client relationship between the Town and the law firm, and specifically legal strategy and privileged communications. The Town further believes that these detailed invoices are exempt under R.I. Gen. Laws § 38-2-2(4) \* \* \*(E), as such information would reveal attorney work product and thus would not be available by law or rule of court to an opposing party in litigation; provided; however, that the public body must provide information regarding the number of hours billed and total fees billed, which the Town has done in this case.

\* \* \*

Prior to assuming the role of solicitor, the invoices were sent directly to the then solicitor, reviewed, and, if approved, thereafter forwarded to the solicitor's confidential secretary [Ms.] Donna LaPlante. Ms. LaPlante then came to the Clerk's Office with a resolution for payment. When I assumed the solicitor's office, I directed that the invoices be redacted to protect attorney/client privileged information, work product of the attorneys and to prevent disclosure of the Town's legal strategy in ongoing litigation. Indeed, in one instance, I was advised by opposing counsel in a pending case that he had obtained an advantage in a legal position by reviewing invoices and ascertaining from those invoices certain strategies. \* \* \* The invoices are sent directly to my office, and I forward said invoices to the Clerk's office (redacted and unredacted) for a resolution and on to the Council agenda for payment.

Consistent with the legal authority and exemptions cited above, the Town of Westerly maintains that it is not obligated to provide the itemized invoices of attorneys as the same are considered protected from disclosure under the attorney/client privilege and work product doctrine."<sup>1</sup>

We acknowledge your rebuttal.

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 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.

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<sup>1</sup> The Town provided a copy of the unredacted invoices for this Department's in camera review.

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 focus our analysis on whether the Town’s response was sufficient under the APRA. Specifically, the sole issue presented for our consideration is whether the attorney narratives contained within the legal bills could have been redacted consistent with the APRA. Previously, this Department had the opportunity to review similar requests for access to attorney/client legal bills. In Graziano v. Rhode Island Lottery Commission, PR 98-19, the complainant sought not only the amount of hours billed and the total amount of monies paid to a law firm on behalf of the Lottery Commission, but also a description of the services rendered, the dates on which the services were rendered, and the amount billed for each activity. This Department 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 pursuant to R.I. Gen. Laws § 38-2-2(5)(i)(A)(I).<sup>2</sup> See also DiLorenzo v. Cranston School Department, PR 06-03 (“we believe this Department’s prior findings do require the total amount billed on a per case basis be disclosed”).

Similarly, in Langevin v. Secretary of State, PR 94-20, then-Representative Langevin requested access to all legal bills submitted by private law firms for legal services rendered to the Secretary of State. This Department concluded that the narratives contained within the legal bills related to the attorney/client relationship, and therefore, were exempt from public disclosure. See also Providence Journal v. Bristol County Water Authority, PR 02-09 (“only the total number of hours billed and the total amount of monies paid, and presumably, the identity of the attorney/firm to whom fees were paid, represent public records”); Palazzo v. West Warwick Pension Board, PR 02-13 (“we observe that pursuant to the APRA and this Department’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”).

Upon this Department’s in camera review of the legal invoices, and for the reasons discussed, we conclude the redacted narratives contain information related to the client/attorney relationship and that these portions are not reasonably segregable. Indeed, the Town has already provided the reasonably segregable portions of the legal bills with the attorney narratives redacted. Moreover, although you suggest that other Town employees and officials may have seen the unredacted invoices, and thus you contend that the attorney/client privilege has been waived, no evidence has been presented that the unredacted invoices were seen by non-Town employees or officials. On this point, the evidence presented suggests that any Town official or employee who saw the unredacted invoices did so in their capacity of approving the invoices (such as the Town Council), in their capacity of making the invoices available to the Town Council on a secured website (such as the IT officials), or in their capacity of paying the invoices (such as the Finance

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<sup>2</sup> This section is currently codified as R.I. Gen. Laws § 38-2-2(4)(A)(I)(a).

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Department). We conclude that the Town did not violate the APRA when it provided requested legal bills, in redacted form.

Although the Attorney General will not file suit in this matter, nothing in the APRA prohibits an individual from obtaining legal counsel for the purposes of instituting injunctive or declaratory relief within the Superior Court. Please be advised that we are closing your file as of the date of this correspondence.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa A. Pinsonneault". The signature is fluid and cursive, with a large initial "L" and "P".

Lisa A. Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: Matthew Oliverio