State of Rhode Island and Providence Plantations

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

July 16, 2014
PR 14-15

Mr. Timothy S. Murphy
Assistant Managing Editor/Public Policy
The Providence Journal
75 Fountain Street
Providence, Rhode Island 02902

Re: **The Providence Journal v. Rhode Island Office of General Treasurer**

Dear Mr. Murphy:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Office of the General Treasurer ("Office" or "Treasury") is complete. You seek unredacted Due Diligence Reports on three (3) hedge funds: (1) Third Point Partners, L.P. (dated January 2011), (2) Elliott Associates, L.P. (dated January 2011), and (3) Mason Capital L.P. (dated December 2010).[1] In order to place this matter in its proper context, it is helpful to discuss the general nature of the Due Diligence Reports.

I. What are the Due Diligence Reports?

Cliffwater, LLC, an investment advisory service consultant hired by the State of Rhode Island to research and provide investment advice, prepared the three (3) Due Diligence Reports at issue in this case. It is significant that all three (3) Due Diligence Reports contain information – Cliffwater, LLC's investment analysis – for the respective hedge funds prior to Rhode Island's investment into the respective hedge funds. For instance, the Due Diligence Report on Third Point Partners, L.P., is dated January 2011, but Rhode Island did not invest in Third Point Partners, L.P. until January 2012; the Due Diligence Report on Elliott Associates L.P. is dated January 2011, but Rhode Island did not invest in Elliott Associates, L.P. until November 2011; and the Due Diligence Report on Mason

[1] At points herein, the three (3) hedge funds will be collectively referred to as the "respective hedge funds."

Capital, L.P. is dated December 2010, but Rhode Island did not invest in Mason Capital, L.P. until January 2012. In other words, the Due Diligence Reports you seek contain no information concerning the performance or expense of Rhode Island's financial investment. Instead, the instant Due Diligence Reports concern Cliffwater, LLC's background and historical review (or due diligence) of the respective hedge funds prior to Rhode Island's financial investment. Against this landscape, we review the parties' arguments.

II. The Arguments

By letter dated November 12, 2013, you filed the instant APRA Complaint, indicating that – five (5) months earlier – on April 14, 2013 – Mr. Michael Stanton ("Stanton") sought certain records from the Office and was denied.[2] It is with some significance that at the time of Stanton's April 14, 2013 request, Stanton was employed as a reporter for The Providence Journal, but at the time of your November 12, 2013 Complaint, Stanton had left The Providence Journal. In any event, according to your Complaint:

> "Stanton sought investment and operations due diligence reports prepared by Cliffwater, LLC, for 19 hedge funds presented to the State Investment Commission (SIC); memos from Cliffwater regarding its recommendations for Phases 1 through 4 of the Hedge Fund Implementation Plan presented to the SIC; and a power point presentation by Point Judith Venture Fund II to the SIC.
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> All of the documents Stanton requested were presented in full at public meetings of the SIC and are referenced in meeting minutes and tape recordings.
>
> The General Treasurer's Office supplied some records in response to Stanton's request but redacted substantial portions of others on the grounds that they contain confidential information and trade secrets."[3]

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[2] We have great difficulty concluding that Stanton's April 24, 2013 request was an APRA request pursuant to R.I. Gen. Laws § 38-2-1 et. seq. Instead, Stanton's April 24, 2013 e-mail request, sent to the Deputy Chief of Staff for Communications of the Office, was more in the nature of a press inquiry and sought at least some documents "for tomorrow." But see R.I. Gen. Laws § 38-2-7 (providing public bodies with 10 business days to respond to an APRA request). In any event, the Treasury does not raise this issue, so (with some hesitation) this Department does not need to examine the precise nature of your request, the Office's APRA policy, or any other issues related to the manner of your request.

[3] While this point is discussed, infra, it is helpful to understand at this juncture that your Complaint contained three (3) redacted Due Diligence Reports as a "sample" of the redacted documents provided by the Office. See Timothy S. Murphy Complaint, dated

> See Timothy S. Murphy Complaint, dated November 12, 2013, p. 1. (Emphasis added).

Your Complaint continues that following the Office's response, Stanton filed an appeal with the Office on July 11, 2013, which the Office denied on July 25, 2013. Your November 12, 2013 Complaint also indicates that:

> "[i]n its denial letter, the General Treasurer's office claimed that the redacted portions of the records contained information deemed confidential, propriety and/or trade secrets.
>
> However, as Stanton noted in his letter appealing the [Office's] refusal to produce the complete records, the redactions were inconsistent, undermining the claim that confidentiality is warranted.
>
> Stanton also noted that because the records had been presented in full at public meetings of the SIC * * * [u]nder Rhode Island's Access to Public Records Law, 38-2-2(4)(K), 'any documents submitted at a public meeting of a public body shall be deemed public.'
>
> The General Treasurer's office argues that there is an exemption in that section for 'trade secrets' and 'other 'confidential information distributed at a public meeting,' However, no such exemption exists in the statute.
>
> The General Treasurer's office also argues that it is contractually obligated to keep the information The Journal is seeking confidential. We don't believe the Access to Public Records Law allows a private entity, in essence, to determine what records should be public." See Timothy S. Murphy Complaint, dated November 12, 2013, p. 1-2.

You close your Complaint by expressing that:

> "[t]he Journal and the general public have a vital interest in knowing how the pension fund investments made by the SIC are performing and what those investments cost. Without access to specific information about the

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November 12, 2013, p. 1. By letter dated November 20, 2013, this Department acknowledged your Complaint and indicated that "although your November 12, 2013 letter references several categories of documents requested, you have supplied only three (3) documents – Due Diligence Reports prepared by Cliffwater LLC dated January 2011, January 2011, and December 2010 – and these will be the only reports considered by this Department." See Michael W. Field Letter, dated November 20, 2013, p. 1. We received no correction or supplement to our acknowledgment letter. Accordingly, our finding is limited to the review of these three (3) Due Diligence Reports and no other documents have been presented for our review.

> performance and fees of hedge funds, which make up nearly 15 percent of the portfolio, neither The Journal nor the public can evaluate those investments." See Timothy S. Murphy Complaint, dated November 12, 2013, p. 2. (Emphasis added).

In response to your Complaint, we received a substantive response from Deputy Treasurer/Special Counsel, Mark A. Dingley, Esquire. Mr. Dingley also provided this Department with, inter alia, copies of the un-redacted Due Diligence Reports that are the focus of this Complaint, copies of relevant State Investment Commission ("SIC") minutes, and audio recordings of the SIC meetings where you contend the three (3) Due Diligence Reports were presented and discussed.

Mr. Dingley "fully" agrees with you concerning The Providence Journal's and the public's "vital interest," but observes that:

> "[a]ll of this information, including how the investments are performing and what those investments costs are provided on Treasury's website at http://www.treasury.ri.gov/divisions/finance/pension/. Performance information is contained in the monthly State Investment Commission Reports, which can be found by clicking through on the Reports link or clicking directly at http://treasury.ri.gov/divisions/finance/sic/. Information regarding hedge fund and all investment fees can be found by clicking on the Expenses link or directly at: http://treasury.ri.gov/divisions/finance/pension/expenses. Once on this page, the expense reports are found under the Frequently Asked Questions about Investment Expenses: 'How are expenses paid?'" See Mark A. Dingley Letter, dated December 24, 2013, p. 2.

With respect to the first issue raised – your contention that the Due Diligence Reports are public records since they were "presented in full at public meetings of the SIC" – Mr. Dingley observes that R.I. Gen. Laws § 38-2-2(4)(K) exempts from public disclosure:

> "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public." (Emphasis added).

Mr. Dingley contrasts R.I. Gen. Laws § 38-2-2(4)(K) with R.I. Gen. Laws § 38-2-2(4)(B), which exempts from public disclosure:

> "[t]rade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature."

Comparing the plain language of both exemptions, Mr. Dingley argues that the General Assembly did not incorporate the above emphasized language of R.I. Gen. Laws § 38-2-2(4)(K) into R.I. Gen. Laws § 38-2-2(4)(B), and therefore, for purposes of determining the scope of R.I. Gen. Laws § 38-2-2(4)(B), "it is irrelevant whether or not privileged or confidential information may have been submitted at a public meeting." See Mark A. Dingley Letter, dated December 24, 2013, p. 8. Mr. Dingley also references Chrabaszcz v. Johnston School Department, PR 04-15, where this Department considered a similar issue. See Mark A. Dingley Letter, dated December 24, 2013, p. 10.

On December 31, 2013, you filed a rebuttal and re-emphasized that R.I. Gen. Laws § 38-2-2(4)(K) provides that "any documents submitted at a public meeting of a public body shall be deemed public." See Timothy S. Murphy Rebuttal, dated December 31, 2013, p. 2. While you contend that the General Assembly could have included exceptions within R.I. Gen. Laws § 38-2-2(4)(K) for so-called confidential information, based upon a literal reading, you conclude that the General Assembly codified no exceptions and that "the statute requires that the information The Journal is seeking be made public." See Timothy S. Murphy Rebuttal, dated December 31, 2013, p. 2. Additional points and arguments raised by you and Mr. Dingley will be set forth below as necessary.

III. The Due Diligence Reports Do Not Fall Within R.I. Gen. Laws § 38-2-2(4)(K)

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 the requested documents should be made public, 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. In this respect, we have repeatedly stated that the APRA simply represents the minimum amount of disclosure and a public body may always release documents in its discretion that are exempt from public disclosure, subject of course to non-APRA considerations. See In re New England Gas Co., 842 A.2d 545, 551 (R.I. 2004)("[T]he APRA exemptions, similar to those under the FOIA, allow public agencies to withhold documents, but do not require withholding."); In re Point Judith Venture Fund II, L.P., ADV OM 14-02. Accordingly, our statutory mandate is limited to determining whether the Office violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

We begin with The Journal's assertion that the requested Due Diligence Reports were "presented in full at public meetings of the SIC" and are therefore public records. See Timothy S. Murphy Complaint, dated November 12, 2013, p. 1. Rhode Island General Laws § 38-2-2(4)(K) exempts from public disclosure:

> "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public." (Emphasis added).

A. Attorney General Precedent – Chrabaszcz v. Johnston School Department

Approximately a decade ago, this Department considered a similar issue in Chrabaszcz, PR 04-15, where the Johnston School Department "voted upon and/or discussed" in open session a Superintendent's employment contract. Despite the plain language of then-R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), which exempted from public disclosure records identifiable to an individual employee, a complaint was filed arguing that even though the requested contract may have been exempt from disclosure pursuant to then-R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), because the contract was "voted upon and/or discussed" in open session, its disclosure was required pursuant to R.I. Gen. Laws § 38-2-2(4)(K). In substance, this argument mirrors The Providence Journal's present position.

This Department rejected the argument in Chrabaszcz and concluded that the School Department "was not compelled to disclose [the Superintendent's] employment contract even if it was 'voted upon and/or discussed and executed in public session.'" Chrabaszcz, PR 04-15. Applying the plain language of R.I. Gen. Laws § 38-2-2(4)(K), this Department observed a decade ago that "exemption (K) is limited to '[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products'" and that "[o]nly these preliminary documents, when submitted at a public meeting, become public." Id. Because the Superintendent's contract did not fall with the purview of the first clause of R.I. Gen. Laws § 38-2-2(4)(K), i.e., "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products," this Department concluded that the second clause providing for "any documents submitted at a public meeting of a public body shall be deemed public" was not applicable. Id.

In large part, your complaint raises the same issue examined in Chrabaszcz. While your rebuttal argument references and focuses upon the second clause of R.I. Gen. Laws § 38-2-2(4)(K), which provides that "any documents submitted at a public meeting of a public body shall be deemed public," similar to the argument advanced in Chrabaszcz, it is notable that your rebuttal argument ignores the first clause of R.I. Gen. Laws § 38-2-2(4)(K), which pertains to "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products." Accordingly, you urge this Department to apply the plain language of the second clause, but ignore the plain language of the first clause.

While this Department's precedent may very well represent a sufficient basis to resolve the first issue presented for our consideration, ultimately examination and consideration of Chrabaszcz is unnecessary. Our reason for this conclusion rests upon the determination that even if we agreed with your statutory interpretation argument, ultimately this argument fails for a more fundamental reason – the facts simply do not support it.

B. The Due Diligence Reports were Not "Submitted at a Public Meeting"

As explained, supra, Mr. Dingley provided this Department with the SIC minutes and audio recordings of the meetings where you contend the Due Diligence Reports were

"submitted" at a public meeting of the SIC. See R.I. Gen. Laws § 38-2-2(4)(K). In support of your argument, this Department thoroughly reviewed the submitted minutes and twice reviewed the audio recordings of the three (3) SIC meetings where you contend the Due Diligence Reports were "presented" in their entirety.[4] While the minutes and audio recordings evince that the SIC discussed the hedge funds examined in the Due Diligence Reports – Elliott Associates, L.P., Mason Capital, L.P., and Third Point Partners, L.P. – this Department discovered no evidence that could be fairly characterized as leading to the conclusion that the Due Diligence Reports were "submitted" at an SIC meeting.

Because our independent review of the evidence conflicted with your assertion that the Due Diligence Reports were "presented in full at public meetings of the SIC," see Timothy S. Murphy Complaint, dated November 12, 2013, p. 1, in order to resolve this discrepancy we provided The Providence Journal with the opportunity to "direct this Department to any evidence (or the audio recordings) where the due diligence reports were 'presented in full at public meetings' or otherwise 'submitted' at the State Investment Commission." See Michael W. Field email, dated May 19, 2014. You replied that you were "hindered somewhat in responding to [this Department's] request because the reporter who initiated the APRA request, Mike Stanton, no longer works [at The Providence Journal]."[5] See Timothy S. Murphy email, dated May 21, 2014. A subsequent email, also dated May 21, 2014, forwarded to this Department the three (3) SIC minutes where you contend the three (3) hedge funds were discussed.[6] Your e-mail continued that:

> "[t]he minutes, while lacking specific detail, clearly show that there were detailed public discussions of the proposed investments, drawing from Cliffwater's due diligence reports. I presume the full, un-redacted due diligence reports on each of these proposed investments were presented to the commission members and would have been available to anyone

[4] The three (3) meetings cumulatively lasted about six (6) hours, and this Department twice reviewed the entirety of these meetings for evidence to support your position that the Due Diligence Reports were "submitted" at an SIC meeting.

[5] This e-mail also indicated that the Office did not dispute your contention that the documents were "presented in full at open meetings." Certainly, the Office presented legal arguments concerning the applicability of R.I. Gen. Laws § 38-2-2(4)(K). Moreover, we are aware of no authority that would require this Department to resolve a factual situation in favor of a particular party when this Department's review of the submitted evidence does not support the factual argument advanced. In our opinion, doing so would be an abdication of this Department's independent role.

[6] These are the same three (3) minutes that Mr. Dingley forwarded to this Department by letter dated December 24, 2013.

> attending the meeting." See Timothy S. Murphy email, dated May 21, 2014.

Your May 21, 2014 email also indicated that you had spoken to Mr. Stanton (since he left The Providence Journal) and that he is searching for the tapes of the meetings that might have more specific detail. See Timothy S. Murphy email, dated May 21, 2014. Subsequently, by email dated May 23, 2014, you again replied, stating:

> "I did not attend any SIC meetings.
>
> Mike Stanton attended several meetings, although not the meetings in which the documents in question were presented.
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> However, at other meetings, the SIC gave [Mr. Stanton] copies of similar documents, in full. The most relevant is a June 2011 Cliffwater due diligence report on Oaktree European Principal Fund III, L.P.
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> The report, which [Mr. Stanton] received in full, contains the same detailed information that was heavily redacted from the documents in question." See Timothy S. Murphy email, dated May 23, 2014. (Emphases added).

Again, while this Department has great respect for you and The Providence Journal, the foregoing does not support your initial assertion that the Due Diligence Reports were "presented in full at public meetings of the SIC," see Timothy S. Murphy Complaint, dated November 12, 2013, p. 1, and instead supports this Department's independent review of the SIC audio recordings. In brief, there is simply no evidence to support the factual conclusion that the Due Diligence Reports were "submitted at a public meeting of a public body," see R.I. Gen. Laws § 38-2-2(4)(K), and your emails make quite clear that neither you nor Mr. Stanton were present at the SIC meetings in question. Notably, you direct this Department to no evidence, including but not limited to the audio recordings, where the Due Diligence Reports were "submitted at a public meeting of a public body." Id. (Emphasis added). See also Timothy S. Murphy email, dated May 21, 2014 ("The minutes, while lacking specific detail, clearly show that there were detailed public discussions of the proposed investments, drawing from Cliffwater's due diligence reports. I presume the full, un-redacted due diligence reports on each of these proposed investments were presented to the commission members and would have been available to anyone attending the meeting.")(Emphases added).[7]

Notwithstanding the foregoing conclusion, several related matters warrant brief discussion. First, our review of the audio recordings suggests that at least some SIC members had possession of a binder during the SIC meeting, which contained various

[7] There is no evidence that the respective Due Diligence Reports were publicly available to "anyone attending the meeting." The evidence is to the contrary.

documents. Based upon the audio recording, it is unclear whether any or all of the requested Due Diligence Reports were contained within this binder, but even if we assume this to be true, our conclusion (and analysis) would remain constant. Our reason is based upon the plain language and meaning of the word "submitted."

"Submitted" is defined to mean "to present for the approval, consideration, or decision of another or others." See dictionary.com. See also The New Lexicon Webster's Dictionary, (1988 Edition), p. 986 ("to offer for consideration, examination, a decision etc"). Applying the plain meaning, we have little trouble concluding that a member of a public body who is provided documents to review prior to a meeting, and then brings such documents to a meeting, does not (without additional factors) come within the ambit of R.I. Gen. Laws § 38-2-2(4)(K). Implicitly your correspondences support our statutory interpretation since your November 12, 2013 Complaint argued that the Due Diligence Reports were "presented in full at public meetings of the SIC," see Timothy S. Murphy Complaint, dated November 12, 2013, p. 1 (emphasis added), and that you "presume the full, un-redacted due diligence reports on each of these proposed investments were presented to the commission members and would have been available to anyone attending the meeting." See Timothy S. Murphy email, dated May 21, 2014. (Emphases added). If it was The Providence Journal's position that documents provided to members prior to a meeting, and then brought to the meeting by a member, would implicate R.I. Gen. Laws § 38-2-2(4)(K), we would not have expected the General Assembly to reference "submitted" within R.I. Gen. Laws § 38-2-2(4)(K), and we would not have expected The Providence Journal to make an argument that establishes a higher bar for disclosure.

Second, your correspondences submit that the SIC minutes reveal "there were detailed public discussions of the proposed investments, drawing from Cliffwater's due diligence reports."[8] See Timothy S. Murphy email, dated May 21, 2014. On this point, we observe that our two-time review of the SIC audio recordings revealed no discernable discussion about the redacted content of the Due Diligence Reports, as opposed to a general discussion of hedge funds where Rhode Island might invest, including but not limited to Third Point Partners, L.P., Elliott Associates, L.P., and Mason Capital L.P. Read carefully, your May 21, 2014 email acknowledges the distinction between discussing investments in possible hedge funds and "submitting" the Due Diligence Reports. See id. ("there were detailed public discussions of the proposed investments"). Even placing this distinction to the side, for the reasons stated above, R.I. Gen. Laws § 38-2-2(4)(K)'s mandate that "documents submitted at a public meeting" is not implicated when a public body "discusses" a particular subject matter. See R.I. Gen. Laws § 38-2-2(4)(K)(emphasis added).

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[8] While we take some issue with your description of the open session minutes, there can be little doubt that the better reference for what happened during the SIC meeting are the audio recordings of the meetings and not the open session minutes. See R.I. Gen. Laws § 42-46-7(a)(listing minute requirements).

Third, your assertion that the SIC had previously provided Mr. Stanton with an unredacted Due Diligence Report pertaining to another hedge fund has no influence on R.I. Gen. Laws § 38-2-2(4)(K). Indeed, while you submit that the Oaktree European Principal Fund III Due Diligence Report contained the "same detailed information that was heavily redacted from the documents in question," see Timothy S. Murphy email, dated May 23, 2014, considering that the Oaktree European Principal Fund III Due Diligence Report concerned a different hedge fund than the three (3) Due Diligence Reports at issue in this finding, a more accurate characterization would be that the Oaktree European Principal Fund III Due Diligence Report contains the same general type of information – but different specific information – than the Due Diligence Reports in this finding. In a different context, then-Superior Court Justice Gilbert Indeglia determined that even though a state agency had previously disclosed a document containing the home addresses of certain individuals in response to an APRA request, nothing within the APRA prohibited the same agency from exempting the same type of information in response to a subsequent APRA request. See Fuka v. Department of Environmental Management, PC 07-1050 (R.I. Superior, April 17, 2007), p. 9 ("Simply because the DEM had previously released this information does not strip the licensees of the privacy protections normally afforded to such information."). Accordingly, even if the SIC had previously disclosed to Mr. Stanton an unredacted copy of the Oaktree European Principal Fund III Due Diligence Report, we discern nothing within R.I. Gen. Laws § 38-2-2(4)(K) that would require the SIC, ipso facto, to also disclose the Third Point Partners, L.P., Elliott Associates, L.P., and Mason Capital L.P. Due Diligence Reports in full. See generally R.I. Gen. Laws § 38-2-2(4)(K)("any documents submitted at a public meeting of a public body shall be deemed public")(emphasis added). For all these reasons, we conclude that the Due Diligence Reports are not public records pursuant to R.I. Gen. Laws § 38-2-2(4)(K).

IV. The Redacted Portions of the Due Diligence Reports are Exempt From Public Disclosure Pursuant to R.I. Gen. Laws § 38-2-2(4)(B)

In your November 12, 2013 Complaint, you note that the Office claimed in its denial letter "the redacted portions of the records contained information deemed confidential, proprietary and/or trade secrets." See Timothy S. Murphy Complaint, dated November 12, 2013, p. 1. According to your Complaint, "the redactions were inconsistent, [thus] undermining the claim that confidentiality is warranted," id. at p. 1., and that the Office "argues that it is contractually obligated to keep the information The Journal is seeking confidential." Id. at p. 2. As to this latter argument, you submit that the APRA does not allow "a private entity, in essence, to determine what records should be public." Id. at p. 2.

In the Office's response, Mr. Dingley explains that:

> "Cliffwater performs an essential role for the SIC by providing in-depth investment research and operational due diligence on potential alternative investment funds (private equity and hedge funds). As a result of

> Cliffwater's recognized industry expertise, and because it is bound by confidentiality obligations with each alternative investment fund it analyzes, Cliffwater gains access to each fund's confidential and proprietary information so that it can advise potential investors, such as the SIC, and provide them a full picture of the fund's portfolio characteristics, investment history, management structure, industry specialization and investment strategies. Without its obligation of confidentiality to each fund, Cliffwater would not be provided access to this proprietary information, and would not be able to provide the SIC with the information required to fulfill its fiduciary duty. In turn, to preserve the confidentiality of this information, Cliffwater requires its clients, such as the Rhode Island SIC, to maintain the confidentiality of the investment information and analysis provided by Cliffwater. If the SIC did not agree to treat this information as confidential, the SIC would not be able to retain a consultant such as Cliffwater to fully investigate potential alternative investment funds and the SIC would be deprived of the ability to perform its essential functions.
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> * * *
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> The due diligence reports provided by Cliffwater also represent Cliffwater's work product and constitute the foundation of Cliffwater's consulting business. Cliffwater considers its work product to be confidential and has advised Treasury that public access to the confidential information in the Cliffwater reports, including access to this information by Cliffwater's competitors, would substantially damage Cliffwater's business.
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> Given the agreed-to confidentiality provisions, potential harm to the SIC's and Cliffwater's ability to discharge their duties, and the conflict with the SIC's fiduciary duty to act solely in the interest of the plan beneficiaries, Treasury could reasonably have taken the position that the entire requested documents were covered under the confidentiality requirements, based on the exclusion from the definition of public records provided by RIGL § 38-2-2(4)(B). See Mark A. Dingley Response, dated December 24, 2013, pp. 4-5.

Despite the Office's position that the Due Diligence Reports could be withheld in its entirety, Mr. Dingley relates that consistent with R.I. Gen. Laws § 38-2-3(b), "the Treasurer's Office worked with Cliffwater and the various alternative investment funds to identify those portions of the reports that constituted confidential information." Mr. Dingley continues that:

> "[i]nvestment funds may differ in the type of information they consider to be confidential, trade secret, and/or proprietary. As a result, every

> contract must be individually reviewed and partnerships may need to be contacted to determine what is deemed confidential. The existence of varying interpretations of what is considered confidential does not negate the disclosure protection afforded to the information by Rhode Island law." Id. at p. 5.

Referencing R.I. Gen. Laws § 38-2-2(4)(B), Mr. Dingley offers "[b]road explanations supporting confidentiality of the redactions that recur throughout the Cliffwater documents," which include:

- Names of mid-level investment personnel – Cliffwater and the funds want to keep this information private to limit the ability of competitors to poach their people and avoid the disruption that could follow.

- Investment examples – These investments, or very similar positions, may be in funds' portfolios. Investments will often capitalize on a proprietary data source or market anomaly. Once such information is broadly known, the relevant information gets incorporated into security prices, making it impossible for the fund that discovered the anomaly or data source to continue to benefit from it. Obscure government data or small survey firms can provide data on activity that helps predict a company's sales, valuable information when seeking to determine whether a company is under- or overvalued. An old, and therefore no longer valuable, example was an e-commerce company that kept a customer count on its web site. By regularly visiting the site, a savvy investor could determine whether sales were accelerating or decelerating.

- Portfolio characteristics – Knowledge of a portfolio's characteristics can help sophisticated market participants determine positions held by a fund, and seek to profit by trading against such positions. For instance, rapid purchases of a stock can cause its price to rise, instigating a short squeeze that might require a fund to liquidate its position at a disadvantageous price.

- Compensation and percentage ownership – Fund managers keep this information confidential to help preserve the productivity of their staff and to minimize attention around their own compensation. Such attention led to the kidnapping of prominent hedge fund manager Eddie Lampert in 2003."

In support of the Office's position, Mr. Dingley references The Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I. 2011), as well as Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992),

which is cited with approval by the Rhode Island Supreme Court in Convention Center Authority. In response, you explain that:

> "[t]he General Treasurer's office has essentially ceded discretion to identify what is 'confidential proprietary, and/or trade secret' to its investment analyst, Cliffwater, and to the individual hedge fund managers. This contradicts the letter and the spirit of Rhode Island's Access to Public Records Law and would set a dangerous precedent that threatens the public's right to know how its government agencies operate." See Timothy S. Murphy Rebuttal, dated December 31, 2013.

It is notable that in none of your correspondences do you address Critical Mass or The Providence Journal v. Convention Center Authority, nor do you reference or discuss any case law supporting your position. Instead, The Providence Journal's position can fairly be summarized by the above quotation. See id.

A. The Case Law

In Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992), the plaintiff sought the release of certain safety reports that had been provided to the Nuclear Regulatory Commission by the Institute of Nuclear Power Operations "on the understanding that the documents would be treated as confidential." Id. at 872. The Court of Appeals for the District of Columbia reviewed Exemption 4 to the Freedom of Information Act ("FOIA"), which in all material respects mirrors R.I. Gen. Laws § 38-2-2(4)(B). Specifically, FOIA's Exemption 4 exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Id. at 872 (citing 5 U.S.C. 552(b)(4)). Cf R.I. Gen. Laws § 38-2-2(4)(B)(exempting "[t]rade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature").

The Court of Appeals examined the legislative history of Exemption 4 and this legislative history is particularly helpful in placing the present matter in its proper context. Specifically, the Court of Appeals noted that when Exemption 4 was considered, a Senate Committee report explained that:

> "[t]his exemption is necessary to protect the confidentiality of information which is obtained by the Government through questionnaires or other inquiries, but which would customarily not be released to the public by the person from whom it was obtained." Id. at 872-73.

The Critical Mass Court continued that:

> "[t]he 'financial information' exemption recognizes the need of government policymakers to have access to commercial and financial data. Unless persons having necessary information can be assured that it will

> remain confidential, they may decline to cooperate with officials and the ability of the Government to make intelligent, well informed decisions will be impaired.
>
> Apart from encouraging cooperation with the Government by persons having information useful to officials, [Exemption 4] serves another distinct but equally important purpose. It protects persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication." Id. at 877.

The Court of Appeals further examined the above two purposes served by the FOIA (or in this case the APRA) exemption – efficient Government operations and maintaining the confidentiality of persons supplying the information. Id. at 873. As to the governmental interest, the Court elucidated that "[u]nless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials[,] and the ability of the Government to make intelligent, well informed decisions will be impaired." Id. The Court continued that "[t]his exemption is intended to encourage individuals to provide certain kinds of confidential information to the Government." Id. Turning to the private interests, the Court added that Exemption 4 "protects persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication." Id. Thereafter, the Court concluded that the legislative history "firmly supports the inference that [Exemption 4] is intended for the benefit of persons who supply information as well as the agencies which gather it." Id.

While prior cases considered the legal test for disclosing financial or commercial information required to be provided to the Government, Critical Mass – like the instant matter – considered the legal test for disclosing financial or commercial information voluntarily provided to the Government. The purpose served by the exemption of such documents voluntarily provided, the Court explained, was to "encourag[e] cooperation with the Government by persons having information useful to officials." Id. at 878. Moreover, the Court noted that:

> "[u]nless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials[,] and the ability of the Government to make intelligent, well-informed decisions will be impaired." Id. at 877.

The Court of Appeals further added that "when t[he] information is volunteered, the Government's interest is in ensuring its continued availability." Id. In this type of situation, the Court related that:

> "the presumption is that [the public's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation. In those cases, the private

> interest served by Exemption 4 is the protection of information that, for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained.'" Id. at 878.

The Court of Appeals concluded by explaining that it is "a matter of common sense that the disclosure of information the Government has secured from voluntary sources on a confidential basis will both jeopardize its continuing ability to secure such data on a cooperative basis and injure the provider's interest in preventing its unauthorized release." Id. at 879. As a result, the Court established the so-called Critical Mass test and determined that "financial or commercial information provided to the Government on a voluntarily basis is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public from whom it was obtained." Id. at 879. On this basis, the Court determined that the requested safety reports voluntarily provided to the Nuclear Regulatory Commission were exempt from disclosure since, in the Court's opinion, disclosure would threaten continuing access. Id.

Critical Mass is significant to our analysis for several reasons. First, it provides the legislative history and rationale supporting Exemption 4. Second, as noted above, the plain language of Exemption 4 and the plain language of R.I. Gen. Laws § 38-2-2(4)(B) are in all material respects identical. Third, the Rhode Island Supreme Court has observed that "[b]ecause APRA generally mirrors the Freedom of Information Act * * * we find federal case law helpful in interpreting our open record law." Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 558 n.3 (R.I. 1989). Fourth, and most importantly, the Rhode Island Supreme Court has expressly adopted the Critical Mass test. See The Providence Journal v. Convention Center Authority, 774 A.2d 40, 47 (R.I. 2001)("We agree with the holding in Critical Mass and its progeny and adopt the test set forth therein, including the protection afforded to commercial and financial information that the provider would not customarily release to the public."). As such, this Department must apply the Critical Mass test.

In the case that adopted the Critical Mass test, The Providence Journal v. Convention Center Authority, the Rhode Island Supreme Court considered several documents requested by Mr. Stanton pertaining to a Celebrity Golf Invitational Tournament hosted by the Westin Hotel and the Verrazano Day Banquet held at the Convention Center Authority. Mr. Stanton was denied various documents comprising the final contracts as well as documents that reflected the negotiations that led to the final agreements. Convention Center Authority, 774 A.2d at 43. After a lawsuit was filed by The Providence Journal, the Convention Center Authority presented an argument that is similar to the Office's argument in this case:

> "[t]he affiants [submitted by the Convention Center Authority] collectively detailed what they believed to be the anticompetitive effects of publicly disclosing the information sought by the Journal. Each affiant separately reached the conclusion that the information requested by the

> Journal contained confidential commercial and financial information of a sort that is not typically shared with the public." Id. at 43-44.

On appeal, the Rhode Island Supreme Court examined R.I. Gen. Laws § 38-2-2(4)(B) and noted that FOIA contained "a similar exemption." Id. at 46. Following this observation, the Court continued and, as noted supra, adopted the test set forth in Critical Mass. Id. at 47. In particular, the Supreme Court explained that with respect to financial or commercial information provided to the Government on a voluntary basis, such information was exempt from disclosure "if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." Id.

Based upon the foregoing, the Court concluded that with the exception of the final contracts, the remaining documents reflecting the negotiation process "must, of necessity, include confidential financial information that would not customarily be disclosed and cannot be redacted." Id. at 48. Accordingly, this information was deemed exempt from disclosure. Id. at 48 ("It was established, through affidavit that 'customers who contract with the [Authority] do not expect that the documents and financial information they provide will be disclosed to the public * * * [I]t is commonly understood during negotiations that the information shared by the customers * * * will remain confidential.").

B. Applying the Case Law

The Providence Journal argues that this Department should reject the argument that the Office is "contractually obligated to keep the" Due Diligence Reports confidential. In large part, we agree with The Providence Journal that a contractual obligation to maintain the confidentiality of documents cannot, by itself, supercede the APRA.

While we agree that a contractual exemption is not dispositive, for the reasons explained infra, when evaluating a claimed exemption pursuant to R.I. Gen. Laws § 38-2-2(4)(B), the existence of a contractual prohibition cannot be ignored. See id. The reason for our conclusion is the Rhode Island Supreme Court's holding requires this Department to review the totality of the circumstances and conclude that the redacted "financial or commercial information provided to the Government on a voluntary basis is 'confidential'" if it "of a kind that would customarily not be released to the public by the person from whom it was obtained." Id.

Here, no evidence or argument has been made by The Providence Journal that the Due Diligence Reports do not represent "financial or commercial information" or that the Due Diligence Reports are "required" to be provided to the Government. For this reason, the appropriate test to apply in this situation is, in the words of the Supreme Court, to determine whether the redacted "financial or commercial information" is "of a kind that would customarily not be released to the public by the person from whom it was obtained." Convention Center Authority, 774 A.2d at 47.

Respectfully, The Providence Journal provides very little evidence or argument to support its position that the redacted information is of a kind that "would customarily" be released to the public by the person from whom it was obtained. Id. In fact, you never expressly make the argument that the redacted information would customarily be released to the public by the person, firm, or corporation, i.e., Cliffwater, LLC, from whom it was obtained. More importantly, having reviewed the totality of the evidence submitted, as well as case law, we conclude that the redacted material is "of a kind that would customarily not be released to the public by the person from whom it was obtained." Id.

First, it cannot be ignored that the Office is contractually prohibited from disclosing "all investment advice furnished by the consultant," which would include the redacted portions of the Due Diligence Reports. See Investment Consulting Services Agreement, § V.H. While such a contractual prohibition is not dispositive, the existence of a contractual prohibition and the measures taken by Cliffwater, LLC to maintain confidentiality, is a relevant consideration to determine whether the redacted portions of the Due Diligence Reports are "of a kind that would customarily not be released to the public by the person from whom it was obtained." Convention Center Authority, 774 A.2d at 47. Here, the Rhode Island Supreme Court's non-disclosure holding in Convention Center Authority is once again relevant and applies in this case with equal force: "It was established * * * that 'customers who contract with the [Authority] do not expect that the documents and financial information they provide will be disclosed to the public." Id. at 48.

Second, the nature (and source) of the information redacted from the Due Diligence Reports is a relevant consideration. In this respect, we find the nature of the "[b]road explanations" set forth by Mr. Dingley, see supra, to accurately reflect the nature of the information redacted from the Due Diligence Reports. Notably, this information concerns the names of key personnel and management structure of each hedge fund; the percentage of clients investing in each hedge fund (the nature of clients investing in each hedge fund was not redacted); the manner of compensation to employees of hedge funds (the amount of compensation was not included within the Due Diligence Reports); the historical strategies of each hedge fund concerning the percentage invested in various equity categories (the nature of the various equity categories was not redacted); specific investments made by each hedge fund; portfolio characteristics indicating where each hedge fund has invested and diversified; performance analysis of each hedge fund at various intervals; and risk characteristics. All of this information was created and gathered by Cliffwater, LLC, compiled into a Due Diligence Report by Cliffwater, LLC, and shared with potential investors (such as the Office) pursuant to an Investment Consulting Services Agreement, which included the confidentiality provision. In whole, the redacted material reveals the structure of the respective hedge funds and does not shed any light on "how the pension fund investments made by the SIC are performing and what these investments cost." See Timothy S. Murphy Complaint, dated November 12, 2013, p. 2. Other cases have determined that when information was prepared by a private party and shared with a governmental entity – like this case – such information was generally a consideration in favor of non-disclosure. See Gulf & Western Industries,

Inc. v. United States, 615 F.2d 527, 529-30 (D.C. Cir. 1979)(documents were not disclosed because release of information would disclose data supplied to government from a person outside the government); Judicial Watch, Inc. v. Export-Import Bank, 108 F.Supp.2d 19, 28 (D.D.C. 2000)("documents prepared by the federal government may be covered by Exemption 4 if they contain summaries or reformulations of information supplied by a source outside of the government").[9]

Third, we consider Mr. Dingley's substantive response, which represents, among other things, that:

> "[a]s a result of Cliffwater's recognized industry expertise, and because it is bound by confidentiality obligations with each alternative investment fund it analyzes, Cliffwater gains access to each fund's confidential and proprietary information so that it can advise potential investors, such as the SIC, and provide them a full picture of the fund's portfolio characteristics, investment history, management structure, industry specialization and investment strategies. Without its obligation of confidentiality to each fund, Cliffwater would not be provided access to this proprietary information, and would not be able to provide the SIC with the information required to fulfill its fiduciary duty. In turn, to preserve the confidentiality of this information, Cliffwater requires its clients, such as Rhode Island SIC to maintain the confidentiality of the investment information and analysis provided by Cliffwater. If the SIC did not agree to treat this information as confidential, the SIC would not be able to retain a consultant such as Cliffwater to fully investigate potential alternative investment funds and the SIC would be deprived of the ability to perform its essential functions." See Mark A. Dingley Response, dated December 24, 2013, p. 4. (Emphasis added).[10]

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[9] Both Gulf & Western Industries and Judicial Watch were cited with approval by the Rhode Island Supreme Court in Convention Center Authority. See Convention Center Authority, 774 A.2d at 48.

[10] We do not view Mr. Dingley's representation as mere rhetoric. Indeed, in Communications Workers of America, AFL-CIO v. Rousseau, 9 A.3d 1064 (N.J. App. Div. 2010), the New Jersey Appellate Division observed three instances where courts had ordered disclosure of private equity fund agreements. In each of these cases, the New Jersey Appellate Division noted that "[a]fter courts in the states ordered disclosure of the agreements, private equity funds refused to enter other partnerships with those states." Id. at 1078. The court also observed that "[i]n each instance, the state legislatures responded by amended the state right-to-know statute to provide confidentiality to these agreements." Id. at 1078 n. 4. Mr. Dingley's representation is also consistent with the confidentiality provision of the Investment Consulting Services Agreement.

Later, Mr. Dingley represents that "the redacted information was obtained from Cliffwater and investment funds, neither of which would have customarily released the redacted information to the public." Id. at p. 8. None of these representations or characterizations of the redacted material have been contested by The Providence Journal.

All of the above lead to the conclusion that the redacted information is "of a kind that would customarily not be released to the public by the person from whom it was obtained." Convention Center Authority, 774 A.2d at 47. Indeed, Mr. Dingley's representation that "[i]f the SIC did not agree to treat this information as confidential, the SIC would not be able to retain a consultant such as Cliffwater to fully investigate potential alternative investment funds and the SIC would be deprived of the ability to perform its essential functions," is uncontroverted. Moreover, such reasoning – that disclosure would hinder the government's ability to obtain similar information in the future – was precisely the basis of the Court of Appeals' decision in Critical Mass. See Critical Mass, 975 F.2d at 877 ("[u]nless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials[,] and the ability of the Government to make intelligent, well-informed decisions will be impaired").

We are also aware that a case from the New Jersey Appellate Division provides further support. In Communications Workers of America, AFL-CIO v. Rousseau, 9 A.3d 1064 (N.J. App. Div. 2010), the court considered whether to allow inspection (pursuant to New Jersey's public records law) of various agreements made by the Division of Investment with private equity funds where state employee pension funds where invested. The trial judge held that the agreements were confidential in their entirety and on appeal, this determination was affirmed.

The Agreements in Rousseau contained much of the same type of information redacted from the Due Diligence Reports in this case. Among the information contained within the various Agreements were investment strategies; provisions concerning asset valuation, profit, and loss allocation; computation of management fees; investment structure, authority, and limitations; allocation of profits and losses; and fees and expenses. Id. at 1069-70. Significantly, the evidence also demonstrated that it was standard practice in the financial industry to maintain the confidentiality of private equity fund agreements, and the evidence also revealed (like this case) that the "private equity fund managers informed [the Director of the Division of Investment] that they would not accept the State as a limited partner if the terms of the agreement were subject to public disclosure." Id. at 1070.

In affirming the trial court's decision, the court concluded that the Agreements – and the information contained therein – represented confidential financial and commercial information and that:

> "the Director and the [private equity funds] have proved that the documents sought by plaintiffs are indeed confidential. Each [private equity fund] certified that disclosure of the documents would impair the ability of this State to participate in private equity funds, that the substance of the documents are available to its own employees only on a need-to-know basis, and disclosure of the nature and terms of specific investments would cause substantial harm to the competitive position of the fund. The fact that [the private equity funds] consider and treat the documents as confidential, even within their own organization, is central to any confidentiality determination. Id. at 1074-75.

Based upon the foregoing, the Rousseau court held that:

> "[t]he investment agreements sought by plaintiffs fall within the definition of proprietary information. Defendants' expectation of confidentiality is manifest. Each agreement contains extensive provisions on the need for confidentiality. Recognizing the need for some investors to report periodically on the investment, each agreement explicitly states what information may be disclosed. Each agreement also limits and expressly delineates those persons associated with the investor who may have additional information about the investment and on what terms.
>
> Moreover, the information sought by plaintiffs is not the type of information intended for wide dissemination. The express purpose of the investment agreements sought by plaintiffs is to outline the rights, obligations, and responsibilities of the relationship between the general partner and limited partners. Each agreement contains specific information about the capitalization of the partnership, its commencement and termination date, and other information pertinent to the operational fortunes of the partnership." Id. at 1075.

Accordingly, Rousseau also stands as authority that the redacted material in this case is "of a kind that would customarily not be released to the public by the person from whom it was obtained." Convention Center Authority, 774 A.2d at 47.

Before leaving this matter, two (2) additional points merit discussion. First, in your November 12, 2013 Complaint, you indicate that the Office's "redactions were inconsistent, undermining the claim that confidentiality is warranted." Despite this averment, you do not direct this Department to any specific inconsistencies and our review finds that as a whole, the Due Diligence Reports were redacted in a consistent manner. At the very least, in many of the situations we referenced earlier, all three (3) Due Diligence Reports redacted the same material, supporting our conclusion that the redacted material was "of a kind that would customarily not be released to the public by the person from whom it was obtained." Convention Center Authority, 774 A.2d at 74. The only "inconsistency" that we discovered was in the Elliott Due Diligence Report

where the "fund expense" is redacted, while in the other two (2) Due Diligence Reports the "fund expense" is not redacted. This instance does not alter our conclusion, and in doing so, it is important to note that the redacted "fund expense" is expressed in "basis points" and not in dollars paid by the State of Rhode Island. In fact, as expressed earlier, at the time of the Elliott Associates L.P. Due Diligence Report, Rhode Island had yet to pay any expenses because it had not yet invested with Elliott Associates.

You also indicate that at another SIC meeting, Mr. Stanton was provided, in full, a copy of Cliffwater LLC's Due Diligence Report on Oaktree European Principal Fund III, L.P. While the circumstances of this disclosure are not precisely known to us, Mr. Dingley advises that the Due Diligence Report was provided to Mr. Stanton "in error." See Mark A. Dingley email, dated May 30, 2014. In any event, for the reasons discussed throughout this finding, and based upon the totality of the evidence and arguments, this factor does not change our conclusion that the redacted material in the Due Diligence Reports is "of a kind that would customarily not be released to the public by the person from whom it was obtained." Id. See e.g., See Fuka v. Department of Environmental Management, PC 07-1050 (R.I. Superior, April 17, 2007), p. 9 ("Simply because the DEM had previously released this information does not strip the licensees of the privacy protections normally afforded to such information.").

Lastly, we end this finding where it began and observe that your Complaint argues that:

> "[t]he Journal and the general public have a vital interest in knowing how the pension fund investments made by the SIC are performing and what those investments cost. Without access to specific information about the performance and fees of hedge funds, which make up nearly 15 percent of the portfolio, neither The Journal nor the public can evaluate those investments." See Timothy S. Murphy Complaint, dated November 12, 2013, p. 2. (Emphasis added).

The Office agrees with your averment, and this Department has no objection to the general proposition offered. The problem with your assertion, i.e., that there is "a vital interest in knowing how the pension fund investments made by the SIC are performing and what those investments costs," id., is that the redacted portions of the Due Diligence Reports do not provide this information. In fact, we again observe that the instant Due Diligence Reports were provided to the Office prior to the SIC investment in the respective hedge funds. Since these reports were provided to the Office prior to the SIC's investment, it is axiomatic that the instant Due Diligence Reports provide no information concerning how "the pension fund investments made by the SIC are performing and what those investments cost."

Although your correspondences argue that it is vital to the public interest to know "how the pension fund investments made by the SIC are performing and what those investments costs," and despite your argument that without this information, "neither The Journal nor the public can evaluate those investments," this Department is well aware that

The Providence Journal has published the precise information that it claims is being withheld and is "vital" to the public interest. For instance, in one article, The Providence Journal observes that "[t]he state has $198 million invested with Elliott, Mason and Third Point, paying a collective $2.6 million in fees last year." See Mike Stanton, R.I. Treasurer Raimondo Releases Data About Pension Hedge Funds, The Providence Journal, May 23, 2013. Another article notes that "[f]or the 2012-'13 fiscal year ending June 30, Rhode Island's hedge fund portfolio earned 11.22 percent" and that "[t]he state's overall $7.5 billion pension fund gained 11.07 percent in 2012-'13." See Mike Stanton, Will Rhode Island's Big Bet on Hedge Funds Pay Off?, The Providence Journal, August 3, 2013. The same article observes that "fees totaled an estimated $45 million on hedge fund gains of about $140 million for 2012-'13, according to a Providence Journal analysis of hedge fund data provided by the treasurer's office and confirmed by the state's private hedge fund consultant." Id. Still the same article indicates that Third Point Partners, L.P. represents "the state's highest-performing hedge fund with 29.46 percent return in 2012-'13." Id.

All of the above emphasizes that while we agree that Rhode Island citizens have an interest in knowing "how the pension fund investments made by the SIC are performing and what those investments cost," it is readily apparent (through the aforementioned articles) that this information is already in the public domain. Equally apparent from our in camera review is that the Due Diligence Reports, which were provided to the Office prior to the State's investment in the respective hedge funds, contains none of the information that you describe as "vital" to the public interest. Instead, for the reasons explained at length, and consistent with The Providence Journal v. Convention Center Authority, the redacted portions of the Due Diligence Reports are "of a kind that would customarily not be released to the public by the person from whom it was obtained." Convention Center Authority, 774 A.2d at 47. Accordingly, we find no violation.

Although the Attorney General has found no violations, 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). 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.

Very truly yours,

Michael W. Field
Assistant Attorney General

Cc: Mark A. Dingley, Esquire