

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

LEGAL INSURRECTION FOUNDATION,

PLAINTIFF,

v.

C.A. No

BARRINGTON PUBLIC SCHOOLS,

DEFENDANT.

COMPLAINT

I. INTRODUCTION

1. This matter arises from defendant Barrington Public Schools (“BPS”) refusal to produce records requested by plaintiff Legal Insurrection Foundation (“LIF”) under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq. (“APRA”) on August 7, 2021 (the “APRA Request”). The APRA Request seeks records of interactions between BPS and the Rhode Island School Superintendents Association (“RISSA”), including a RISSA June 28, 2021, Zoom meeting, regarding strategies for responding to APRA requests. BPS acknowledges that it has not produced all responsive records. BPS asserts it has withheld responsive records based on attorney-client privilege, but refuses to identify in any manner the withheld records, the number of records, or even the identity of the attorney involved. BPS’ concealment of records in violation of APRA necessitates this lawsuit. LIF requests an order compelling BPS to produce all records responsive to the APRA Request without cost to plaintiff, imposing statutory fines on BPS, and awarding LIF reasonable attorney’s fees and costs as provided under APRA.

II. PARTIES

2. Plaintiff LIF is a Barrington, Rhode Island, tax-exempt entity within the meaning of Section 501(c)(3) of the Internal Revenue Code. Among other things, LIF publishes a news website, legalinsurrection.com, which has reported on disputes in Rhode Island regarding APRA requests to Rhode Island school districts, and the role of RISSA. E.g., *RI School Superintendents Group*: “We all know many of our citizens live in a separate news reality with Fox, Newsmax and their ilk” (<https://legalinsurrection.com/2021/06/ri-school-superintendents-group-we-all-know-many-of-our-citizens-live-in-a-separate-news-reality-with-fox-newsmax-and-their-ilk/>) and *CRT Battlefront: Rhode Island School Superintendents’ Plan To Limit Public Records Requests Runs Into Possible ACLU Roadblock* (<https://legalinsurrection.com/2021/06/crt-battlefront-rhode-island-school-superintendents-plan-to-limit-public-records-requests-runs-into-possible-aclu-roadblock/>).

3. Defendant BPS is a “public body” as defined by Rhode Island General Laws §38-2-2-2(1) and is subject to the APRA. *See* R.I. Gen. Laws §38-2-1, *et seq.*

III. JURISDICTION

4. The Rhode Island Superior Court is vested with jurisdiction in this matter pursuant to R.I. Gen. Laws §38-2-9.

IV. FACTS

5. APRA provides that “[t]he public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records.” *See* R.I. Gen. Laws §38-2-1.

6. APRA states that all records maintained by a public body are public records and must be produced unless the records fall within one of the enumerated exemptions. *See* R.I. Gen. Laws §§ 38-2-2(4)(A)–(AA). In actions under APRA, “the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection...” R.I. Gen. Laws §§ 38-2-10.

7. On August 7, 2021, LIF served the APRA Request for the following records:

“All public records, as defined in §38-2-2 (4) of the APRA, of the Superintendent, Assistant Superintendent, and their department and staff, regarding or referencing the following from April 1, 2021, to the present:

1. The Rhode Island Superintendents Association (RISSA) PD Session via zoom scheduled by Thomas DiPaola (tdipaolarissa@gmail.com) and/or others at RISSA, for June 28, 2021 at 10:30 am. (“June 28 RISSA Zoom Meeting”).
2. Zoom, teleconference, chat, and other meetings and communications involving RISSA (in addition to the June 28 RISSA Zoom Meeting) regarding or referencing strategies for responding to APRA requests (“RISSA Strategy Meetings”), including but not limited to communications involving Thomas DiPaola, Timothy Ryan, and Kathy Crowley, and James Erinakes.
3. Audio and video recordings, notes, memoranda, and/or other material regardless of physical form made or received or in connection with or regarding the June 28 RISSA Zoom Meeting and RISSA Strategy Meetings.”

See Exhibit A.

8. In response to the APRA Request, BPS sent an email on August 24, 2021, stating that it would need an additional business 20 days to respond to the APRA request, for a total of 30 business days. BPS also required payment of a \$135 fee before it provided access to the requested records. *See* Exhibit B.

9. LIF submitted the \$135 fee via check to BPS, which was received by BPS on August 30, 2021. *See* Exhibit C.

10. BPS produced certain records to LIF via email on September 28, 2021. In its cover letter, BPS stated that it “withheld certain responsive records in their entirety because they constituted attorney-client privileged records and no portion of the records contained reasonably segregable information that is releasable.” *See* Exhibit C.

11. On September 28, 2021, LIF requested that BPS provide information sufficient for LIF, the Attorney General, or a Court to evaluate whether the documents withheld by BPS were privileged:

“Your cover letter states that certain records were withheld on the basis of attorney client privilege, but you do not identify the documents such that we, the Attorney General's Office, or a court could evaluate the claim of privilege. For each document withheld, please identify the date/author/sender(s)/recipient(s) and type of document (e.g. email, memo, etc.), plus a description sufficient to establish the privilege (e.g. the purpose of the document and whether the attorney in question represented Barrington Public Schools).

We are confident that a court would require such a listing. APRA mirrors the federal Freedom of Information Act (FOIA), and accordingly, the Rhode Island Supreme Court has instructed that “we look to federal case law interpreting FOIA to assist in our interpretation of the APRA.” *Providence Journal Co. v. Rhode Island Dept. of Public Safety*, 136 A.3d 1168, 1174 (2016). In furthering the goals of open government as provided for in both the APRA and FOIA, courts often instruct an agency seeking to withhold documents to supply the opposing party with a so-called Vaughn index, “which includes a general description of each document sought by the FOIA requester and explains the agency's justification for nondisclosure of each individual document or portion of a document.” *Church of Scientology Intern. v. U.S. Dept. of Justice*, 30 F.3d 224, 228 (1st Cir. 1994). The Vaughn index is considered “necessary to protect the adversary process in a FOIA case, in which only the party opposing disclosure will have access to all the facts.” *Id.*

Please provide this index of withheld documents by a week from today, unless the volume is so large that you need more time, in which case please advise us as to the volume and time you need.”

See Exhibit D.

12. On October 7, 2021, BPS denied LIF's request for identification of the allegedly privileged records withheld, stating:

“We are not aware of any provision of the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq. (“APRA”), or of any state court or administrative decision interpreting the same, that would require the Barrington Public Schools to prepare and provide a privilege log in response to a public records request. In light of the extraordinary demands upon the time and resources of the district at this time, we respectfully decline your request to go beyond the requirements of the statute. As indicated in our response letter, you have the right to appeal the denial of access to records by following the procedure set forth in R.I. Gen. Laws § 38-2-8.”

See Exhibit E.

13. BPS has not produced to LIF all public records responsive to the APRA Request.

14. BPS has not identified to LIF in any manner the records responsive to the APRA Request that BPS has withheld on a claim of attorney-client privilege.

15. BPS takes the position that it can withhold responsive records that otherwise would have to be produced by asserting attorney-client privilege and also refuse to identify in any manner those supposedly privileged records thereby forcing the public, in this case LIF, to file a lawsuit or seek Attorney General intervention just to find out what was withheld. BPS’s unreasonable and obstructive conduct violates the terms and legislative purpose of APRA, and undermines the public’s right to access public records.

**COUNT ONE
VIOLATION OF APRA**

16. LIF hereby incorporates Paragraphs 1-15 herein as if fully set forth herein.

17. BPS violated RIGL §38 2-3(a) of APRA by failing to produce all public records responsive to the APRA Request.

18. BPS violated RIGL §38 2-3(b) by failing to identify in any manner “the document or record” withheld.

19. BPS’ failure to produce public records responsive to the APRA Request or to identify the records withheld was “knowing and willful” or “reckless” under RIGL §38-2-9(d)

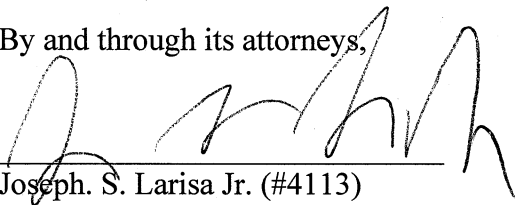
20. LIF requests an order pursuant to RIGL §38-2-9(d) requiring BPS to produce to LIF all records responsive to the APRA Request without cost to LIF, imposing statutory fines on BPS, and awarding LIF reasonable attorney's fees and costs.

WHEREFORE, pursuant to R.I. Gen. Laws §38-2-8 and §38-2-9, LIF respectfully requests the Court (a) order BPS to produce to LIF all records responsive to LIF's APRA Request without cost to LIF, (b) impose statutory fines on BPS, (c) award LIF reasonable attorney's fees and costs, and (d) award such further relief as the Court deems just and equitable.

Dated: October 25, 2021

Legal Insurrection Foundation,

By and through its attorneys,



Joseph S. Larisa Jr. (#4113)

Larisa Law

50 South Main Street, Suite 311

Providence, RI 02903

(401) 743-4700

(401) 633-6296 (fax)

joe@larisalaw.com

EXHIBIT A

August 7, 2021

Pursuant to the Rhode Island Access to Public Records Act ("APRA"), the Legal Insurrection Foundation ("LIF") requests the following:

All public records, as defined in §38-2-2 (4) of the APRA, of the Superintendent, Assistant Superintendent, and their department and staff, regarding or referencing the following, from April 1, 2021, to present:

1. The Rhode Island School Superintendents Association (RISSA) PD Session via zoom scheduled by Thomas DiPaola (tdipaolarissa@gmail.com) and/or others at RISSA, for June 28, 2021 at 10:30 am. ("June 28 RISSA Zoom Meeting")

2. Zoom, teleconference, chat, and other meetings and communications involving RISSA (in addition to the June 28 RISSA Zoom Meeting) regarding or referencing strategies for responding to APRA requests ("RISSA Strategy Meetings"), including but not limited to communications involving Thomas DiPaola, Timothy Ryan, and Kathy Crowley, and James Erinakes.

3. Audio and video recordings, notes, memoranda, and/or other material regardless of physical form made or received or in connection with or regarding the June 28 RISSA Zoom Meeting and RISSA Strategy Meetings.

Please note that this request does not seek records already produced pursuant to our prior request for public records.

Production of responsive records in electronic format is requested. If the estimated cost of production, to the extent permitted under the APRA, exceeds \$100, please contact us in advance for approval of costs.

Respectfully submitted,

Ilana M. Cutler, Esq.
Investigations Counsel
Legal Insurrection Foundation
18 Maple Ave #280
Barrington, RI 02806
Emails for responses: ilana@legalinsurrection.com and contact@legalinsurrection.com

EXHIBIT B



BARRINGTON PUBLIC SCHOOLS

283 County Road, P.O. Box 95 Barrington, Rhode Island 02806

www.barringtonschools.org

Tel: 401-245-5000 Fax: 401-245-5003

Michael B. Messore, III
Superintendent

Douglas E. Fiore
Director of Administration & Finance

David J. Burrows
Director of Technology

Paula A. Dillon
Assistant Superintendent for Curriculum & Instruction

Kristen C. Matthes
Director of Pupil Personnel Services

August 24, 2021

Via E-Mail

Ilana Cutler, Investigations Counsel
Legal Insurrection Foundation
ilana@legalinsurrection.com
contact@legalinsurrection.com

RE: APRA Request

Dear Ms. Cutler:

The Barrington Public Schools ("BPS") is in receipt of your request dated August 7, 2021 seeking records under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

BPS will need an additional twenty (20) business days, for a total of thirty (30) business days, to prepare its response. *See* R.I. Gen. Laws § 38-2-3(e). The need for additional time is based on the voluminous nature of the request, the number of records requests currently pending in the District, and the time it will take BPS to review any responsive documents for information that BPS is required by law to keep confidential (*e.g.*, information meeting the definition of a student "education record" under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g or the Rhode Island Educational Records Bill of Rights, R.I. Gen. Laws § 16-71-1 *et seq.*), or information that is otherwise non-public under R.I. Gen. Laws § 38-2-2. BPS received your request on August 10, 2021. As such, BPS will provide its response on or before September 22, 2021 (thirty (30) business days from August 10, 2021).

BPS estimates that it will take approximately 10 hours to review and, if necessary, to redact records responsive to your requests in their current form.¹ The fee estimate associated with preparing its response to your request is therefore \$135.00 (\$15.00 per hour multiplied by nine (9) hours). *See* R.I. Gen. Laws § 38-2-4(b) ("Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval."); *see also* *Direct Action for Rights & Equality v. Gannon*, 819 A.2d 651, 661 (R.I. 2003) ("[T]he costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested documents.")

¹ Due to the likelihood that records containing one or more of these terms may include information that BPS is required by law to keep confidential or information that is otherwise non-public under R.I. Gen. Laws § 38-2-2, BPS will need to review each record for confidential information and redact any such information as required by applicable law. *See* R.I. Gen. Laws § 38-2-1(4)(A)(I)(b), (M), (S), (Z).

In accordance with R.I. Gen. Laws §§ 38-2-3(e) and 38-2-7(b), BPS requires receipt of payment of the \$135.00 fee before it provides access to the requested records. You may submit payment by check payable to Barrington Public Schools, mailed to PO Box 95, 283 County Road, Barrington, RI 02806. BPS will provide access to any responsive public records upon receipt of payment of the fee. Should the actual cost of searching for, retrieving, reviewing, and redacting the records be less than our estimate, the balance will be refunded to you. If, however, the cost exceeds the estimate, WPS reserves the option to request payment for the additional cost.

Sincerely,



Douglas Fiore
Director of Administration and Finance
Public Records Officer

Barrington Public Schools does not discriminate on the basis of race, color, creed, national or ethnic origin, gender, religion, disability, age, sexual orientation, gender identity or expression, citizenship, or status as a disabled veteran, or past or present honorable military service, or any other protected category with respect to access to, the provision of, or employment in its educational services, programs and activities, including admissions, athletics and other BPS program as required by Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI and VII of the Civil Rights Act of 1965, the Age Discrimination Act of 1975, and other federal and state laws that prohibit discrimination. The following person has been designated to handle inquiries regarding the non-discrimination policies: Equity Officer, Assistant Superintendent; 401-245-5000 x 2. You may also direct inquiries directly to the Office for Civil Rights (Boston Office), U.S. Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109-3921, Telephone: (617) 289-0111; Facsimile: (617) 289-0150; Email: OCR.Boston@ed.gov. If you require accommodation to attend a meeting or program at a school, call the Equal Employment Officer at least two business days in advance of the meeting or program. If you require an accommodation to attend a District meeting or program, call the Equity Officer at least two business days in advance of the meeting or program, or the school principal to attend a building-based event.

EXHIBIT C



BARRINGTON PUBLIC SCHOOLS

www.barringtonschools.org

283 County Road, P.O. Box 95 Barrington, Rhode Island 02806 Tel: 401-245-5000 Fax: 401-245-5003

Michael B. Messore, III
Superintendent

Paula A. Dillon
Assistant Superintendent for Curriculum &

Douglas E. Fiore
Director of Administration & Finance
Instruction

Kristen C. Matthes
Director of Pupil Personnel Services

David J. Burrows
Director of Technology

September 28, 2021

Via E-Mail

Ilana Cutler, Investigations Counsel
Legal Insurrection Foundation
ilana@legalinsurrection.com
contact@legalinsurrection.com

RE: APRA Request

Dear Ms. Cutler:

This letter responds to your fax dated August 7, 2021 seeking records under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*, which the Barrington Public Schools ("BPS") received on August 10, 2021. BPS responded on August 24, 2021 that it would need an additional twenty (20) business days (for a total of thirty (30) business days) to respond and that there would be a fee estimate of \$135.00 associated with preparing its response. BPS received your payment on August 30, 2021.

Enclosed please find records responsive to your request. Please be advised that BPS has withheld certain responsive records in their entirety because they constituted attorney-client privileged records and no portion of the records contained reasonably segregable information that is releasable. *See* R.I. Gen. Laws § 38-2-2(4)(A)(I)(a); R.I. Gen. Laws § 38-2-3(b).

You have a right to appeal this response to Michael B. Messore, III, Superintendent of Schools, pursuant to R.I. Gen. Laws § 38-2-8(a).

Sincerely,

Douglas Fiore
Director of Administration & Finance

DF:ng

Case Number: PC-2021-06609

Filed in Providence/Bristol County Superior Court

Submitted: 10/25/2021 4:47 PM

Envelope: 3341465

Reviewer: Jaden H.

the Equal Employment Officer at least two business days in advance of the meeting or program. If you require an accommodation to attend a District meeting or program, call the Equity Officer, at least two business days in advance of the meeting or program, or the school principal to attend a building-based event.

EXHIBIT D



APRA Request

Legal Insurrection <contact@legalinsurrection.com>

Tue, Sep 28, 2021 at 6:14 PM

To: "Gladney, Nancy" <gladneyn@barringtonschools.org>

Cc: Ilana Cutler <ilana@legalinsurrection.com>, Douglas Fiore <fioired@barringtonschools.org>, Michael Messore <messorem@barringtonschools.org>, Caroline Thibeault <cthibeault@whelancorrente.com>, "Sara A. Rapport" <srapport@whelancorrente.com>

Dear Mr. Fiore,

Ms. Cutler is away this week, so I am responding in her place.

Your cover letter states that certain records were withheld on the basis of attorney client privilege, but you do not identify the documents such that we, the Attorney General's Office, or a court could evaluate the claim of privilege. For each document withheld, please identify the date/author/sender(s)/recipient(s) and type of document (e.g. email, memo, etc.), plus a description sufficient to establish the privilege (e.g. the purpose of the document and whether the attorney in question represented Barrington Public Schools).

We are confident that a court would require such a listing. APRA mirrors the federal Freedom of Information Act (FOIA), and accordingly, the Rhode Island Supreme Court has instructed that "we look to federal case law interpreting FOIA to assist in our interpretation of the APRA." *Providence Journal Co. v. Rhode Island Dept. of Public Safety*, 136 A.3d 1168, 1174 (2016). In furthering the goals of open government as provided for in both the APRA and FOIA, courts often instruct an agency seeking to withhold documents to supply the opposing party with a so-called Vaughn index, "which includes a general description of each document sought by the FOIA requester and explains the agency's justification for nondisclosure of each individual document or portion of a document." *Church of Scientology Intern. v. U.S. Dept. of Justice*, 30 F.3d 224, 228 (1st Cir. 1994). The Vaughn index is considered "necessary to protect the adversary process in a FOIA case, in which only the party opposing disclosure will have access to all the facts." *Id.*

Please provide this index of withheld documents by a week from today, unless the volume is so large that you need more time, in which case please advise us as to the volume and time you need.

Very truly yours,

William A. Jacobson

EXHIBIT E



APRA Request

Fiore, Douglas <fiored@barringtonschools.org>

Thu, Oct 7, 2021 at 11:50 AM

To: Legal Insurrection <contact@legalinsurrection.com>

Cc: Ilana Cutler <ilana@legalinsurrection.com>, Michael Messore <messorem@barringtonschools.org>

Dear Mr. Jacobson:

We are not aware of any provision of the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq. ("APRA"), or of any state court or administrative decision interpreting the same, that would require the Barrington Public Schools to prepare and provide a privilege log in response to a public records request. In light of the extraordinary demands upon the time and resources of the district at this time, we respectfully decline your request to go beyond the requirements of the statute. As indicated in our response letter, you have the right to appeal the denial of access to records by following the procedure set forth in R.I. Gen. Laws § 38-2-8.

Sincerely,
Doug Fiore