



August 7, 2013

General Treasurer Gina Raimondo
State House, Room 102
Providence, RI 02903

Dear Treasurer Raimondo:

We are writing in response to the Sunday, August 4th article in the *Providence Journal* titled, "In hedge fund world, transparency takes a hit." As advocates for open government, we would like to express our concerns and share our views. We are particularly troubled by the response of your office to the public records request submitted by the newspaper for the "due diligence" reports prepared by the state's hedge fund advisor Cliffwater.

The reports that were released to the *Providence Journal* were heavily redacted, including entire pages. Given that the reports are paid for with public funds and detail how the state is investing the public's money, we feel they should be made public in their entirety.

According to the article, Cliffwater presented those due diligence reports at meetings of the Rhode Island State Investment Commission, which you chair. Because the documents were discussed and presented to a public body as part of an open meeting, we believe that the state's Access to Public Records Act (APRA) is even clearer that you are required to release the reports. Specifically we rely upon § 38-2-2(4)(K) that exempts from disclosure, "Preliminary 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."

According to the *Providence Journal* article, you have claimed that provision does not apply because the records were being withheld pursuant to another exemption, dealing with financial information "of a privileged or confidential nature." But we find this response just as problematic. It appears that the decisions as to what information would be disclosed or redacted were made by the hedge funds, not by your office. As a result, certain information, such as hedge funds' expenses, were made public for some funds but not for others. This is extremely troubling.

We are aware of nothing in the Access to Public Records Act that authorizes an agency to delegate to private entities the decision as to what records are available to the public under the Act. That is a decision that must be made by you as the representative of the public agency maintaining

the records. APRA would be seriously undermined if any record submitted by a private party to a government agency were subject to withholding based on the third party's interpretation of the open records law and its view of what should be disclosed to the public. Responsibility for those determinations lies on you as the public record-keeper.

Just as troubling is a comment attributed to your general counsel that, in investing in hedge funds, your office was contractually bound from disclosing confidential information. First, this does not address the issue, noted above, of who determines what constitutes confidential information. More importantly, we firmly reject the view that a public body has the authority to contractually waive the statutory rights that the General Assembly has provided the public under APRA. Allowing agencies to do so would open a gaping hole in the Act and frustrate its core purpose. If certain records are exempt from disclosure, it is because APRA, not a contract, makes them so.

In sum, APRA contains numerous exemptions in order to protect from disclosure information where countervailing privacy considerations prevail. Some of the information that was redacted in response to the newspaper's APRA request may qualify under one or more of those exemptions. But those determinations are for the public body to make, not the private party providing the records. Nor may an agency rely on a contract to withhold records if they are otherwise not exempt from disclosure under APRA. Finally, it is difficult to accept claims of confidentiality for documents that were reviewed and considered at public meetings.

The article acknowledges that Rhode Island is "one of the first government retirement systems in the country to publicly break down the fees [for hedge funds]," a fact that pleases our groups. We firmly believe that your office should continue to lead by disclosing as much as possible through a full release of the due diligence reports, which are of enormous public interest and significance. We further request that you clarify your office's position on the role of contracts and third parties in determining what records are and are not available under APRA. If we have misconstrued your office's position in any way, we welcome being corrected.

Thank you for your consideration of these important issues. We look forward to your response.

Sincerely,

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