

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

PATRICIA MORGAN,
Plaintiff,

vs.

PETER F. KILMARTIN,
In his official capacity as Attorney General
Of the State of Rhode Island,
Defendant.

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C.A. No. KC-2018-0473

DEFENDANT’S RESPONSE TO PLAINTIFF’S OBJECTION TO PROPOSED ORDER

Plaintiff Morgan objects to the proposed order submitted by the Attorney General as inaccurate and not consistent with this Court’s October 15, 2018 Bench Decision. Rather, Plaintiff suggests that this Court’s order should have mirrored her amended request. Notably, Plaintiff provides no transcript to support her position and even Amicus takes no position on the accuracy of the submitted order, instead simply suggesting that this Court should review its Bench Decision prior to entering the Proposed Order.

Among the reasons for the delay in submitting the Proposed Order was because the undersigned ordered the October 15, 2018 transcript to ensure the Proposed Order – as well as its actions – where consistent with this Court’s Order. The Attorney General has no objection to this Court reviewing the transcript and attaches it for the Court’s review. Review of this transcript confirms the accuracy of the Submitted Order and demonstrates Plaintiff is mistaken in arguing that this Court required the Attorney General to provide “related correspondences” for each category requested.

Specifically, this Court waived:

“the fees for search and retrieval of the following documents, to the extent that they have not yet been searched for or retrieved: all RFP and contracts funded by Google

settlement funds, all needs assessments for purchases made with Google settlement funds, and all correspondence with the United States Department of Justice concerning the Google settlement funds. Exhibit A, p. 8; lines 10-17.

This Court used similar language towards the end of its Bench Decision. See Exhibit A, p. 12; lines 9-14. Thereafter, this Court noted – and Amicus acknowledges – that the Court was making no determination whether the documents subject to its order were “public records.” Exhibit A, p. 12, lines 15-16.

Moreover, neither Plaintiff nor Amicus provide any basis for its request for reconsideration, nor does a motion for reconsideration even exist in Rhode Island. See, e.g., Armand’s Eng’g, Inc. v. Town & Country Club, Inc., 113 R.I. 515, 518, 324 A.2d 334, 337 (1974). Both Plaintiff and Amicus suggest that this Office withheld the “memorandum” because it contained “sensitive” or “privileged” information and that the subsequent disclosure of the “memorandum” raises doubt as to the undersigned’s representations concerning the sensitivity of this “memorandum,” and by extension, other documents. But this Office never argued that the “memorandum” contained “sensitive,” “privileged,” or “confidential” information, but rather argued that the “memorandum” was exempt pursuant to the plain language of R.I. Gen. Laws § 38-2-2(4)(K), which exempts from disclosure “[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products[.]” See Exhibit B, p. 7 (emphasis added). This Court agreed and determined that all prior withholdings and redactions stood. Exhibit A, p. 12, lines 15-16. The fact that the Attorney General responded to a later – and much more narrowly focused APRA request (the request sought only the memorandum and related invoices) – does nothing to call into question the representations made by the undersigned or this Court’s decision. Additionally, it is clear that Plaintiff has obtained an unredacted copy of this “memorandum.” See In re New England Gas Co., 842 A.2d 545, 551 (R.I. 2004) (“the APRA exemptions, similar to

those under the FOIA, allow public agencies to withhold documents, but do not require withholding”).

Lastly, the submission of the Proposed Judgment is consistent with this Court’s directive. Specifically, at the end of the October 15, 2018 Bench Decision, this Court responded to Plaintiff’s inquiry, advising that “today disposes of the things that you have raised with this Court....So today is the end point of your Declaratory Judgment petition.” Exhibit A, p. 14, lines 2-10. Thereafter, this Court declared that “Judgment may also enter.” Exhibit A, p. 14, line 22. Amicus’ references to a Rule 54(b) judgment are unavailing since, as this Court noted, this matter was concluded in full.

Respectfully, the Proposed Order and Judgment are consistent with this Court’s October 15, 2018 Bench Decision and should enter.

Respectfully submitted,

Defendant,

THE STATE OF RHODE ISLAND

By its Attorney,

PETER F. NERONHA
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I filed the within document through the ECF filing system on this 4th day of January, 2019 and that it is available for viewing and downloading. I further certify that a copy has been sent via first-class mail, postage prepaid and e-mailed to the following:

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/s/Karen M. Ragosta