

October 6, 2015

BY FAX AND MAIL

The Hon. Gina Raimondo
Governor
State House
Providence, RI 02903

Dear Governor Raimondo:

In the course of the past month, our organizations have witnessed a series of troubling responses from your Administration to Access to Public Records (APRA) requests filed by journalists, public interest organizations, and individuals on extremely important matters of public concern. We find deeply alarming this seeming pattern of disinterest among state executive agencies in promoting the public's right to know.

As a result, we are calling upon your office to issue clear and strong guidance to the executive departments under your command about the need to promote transparency in responding to APRA requests. In that regard, we would urge that you consider, among other things, the issuance of an executive order emphasizing the need for expeditious responses to APRA requests and calling upon executive agencies to adopt a strong presumption in favor of disclosure in addressing requests for public information.

We briefly summarize below three publicized incidents of questionable APRA responses that have come to our attention in the past month. From our perspective, none of them occupies a "shade of gray" in interpreting APRA. Rather, precisely because they are so clear-cut, they warrant decisive action on your part in order to address the lackadaisical interest in a strong APRA that the responses embody.

1. On September 8th, Kathy Gregg from the *Providence Journal* reported on an APRA request she had filed with the Department of Transportation for records related to your office's much-discussed proposal to establish truck tolls on Rhode Island highways. Her story documents a number of shortcomings by DOT: incomplete responses to her request for records; failing to properly request an extension of time to fulfill the records request; taking the maximum possible amount of time – a full 30 business days – to respond to the request without good cause for doing so; and denying records without either specifying what documents had been withheld or affirming that they contained no reasonably segregable information, as the law requires.

2. Your decision to hire former Rep. Donald Lally to an executive office position has also led to disconcerting responses to APRA requests for information about it. For instance, the *South County Independent* newspaper sought copies of "any correspondence and emails related to his

hiring and employment.” Your legal counsel responded that *no* records at all were publicly available, claiming that the APRA exemptions for documents protected by “attorney-client privilege” and records that constitute “preliminary draft” or “working papers” left nothing to disseminate. This blanket denial of records is untenable on its face.

Even assuming certain documents might fall into these two exemption categories – e.g., legal research you asked to be conducted on whether the “revolving door” law applied – a *decision* to hire Rep. Lally and a *decision* to transfer his hiring were made. There is nothing preliminary (and certainly nothing attorney-client related) about that. Further, even if some aspects of those documents relating to the hiring and transfer were exempt, APRA requires the release of all “reasonably segregable” information, yet this was clearly ignored as well.

Interestingly, Ms. Andreozzi did not cite APRA’s so-called personnel exemption in denying access to the records, perhaps since that exemption would have required a balancing of private and public interests in deciding whether records should be released. In any event, whatever records might legitimately be exempt, a claim that all documents related to this hiring are confidential simply cannot withstand scrutiny under any fair reading of APRA.

3. Finally, recent news reports describe how the Executive Office of Health and Human Services (EOHHS) refused to release to WPRI-TV and the Ocean State Current a copy of an application the agency filed with the federal government, seeking additional funding for the state’s Unified Health Infrastructure Project. Instead, EOHHS counsel responded that the document (along with related records) was exempt as a “preliminary draft,” claiming that the “proposal” was “still in development as part of the budget development process.” But the application itself that was filed with the federal government is clearly not “in development” or a “working paper.” It is a final document in any and every meaningful sense of the word. Under EOHHS’s interpretation of the “preliminary draft” exemption, one could argue that your annual budget proposal submitted to the Legislature could be withheld from disclosure until it had been approved by the General Assembly.

Before closing, we think it is also worth mentioning an incident described just yesterday in the *Providence Journal*, indicating how your administration denied a request to release the time sheet records of Department of BHDDH director Maria Montanaro. Unlike the three other incidents mentioned in this letter in which the APRA violations are clear, we acknowledge that these particular records may or may not be subject to required disclosure under the law. But there is no question that your office, like former Governor Chafee’s, has the authority to release them if it chose to. When viewed in the context of the other APRA disputes we have summarized, it is distressing, to say the least, that your office has back-pedaled from a conclusion made by the previous Governor that these records were worthy of disclosure.

This pattern of disturbingly inadequate APRA responses, all made within a short period of time by executive agencies on truly critical matters of public import, is cause for great concern. On numerous occasions, you have expressed the strong need to promote transparency

and accountability in government, but these recent incidents call that pledge into question. We therefore urge you to demonstrate your commitment to transparency by issuing an executive order that emphasizes your Administration's commitment to open government. At a minimum, we believe it should be calling on executive branch agencies to respond to APRA requests promptly and to err on the side of disclosure rather than secrecy in considering requests for records, and providing for the adoption of additional guidelines on training and responsiveness that will better promote public accountability.

We would be happy to discuss in more detail with you possible affirmative efforts that your Administration can implement to promote APRA compliance. Thank you in advance for your attention to this request, and we look forward to hearing back from you.

Respectfully,

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