

State of Rhode Island

Superior Court

**Rhode Island Legal Services and
Veronika Kot,**

Plaintiffs,

v.

**City of Providence, Providence School District
and Jeffrey Dana, City Solicitor of the
City of Providence, in his official capacity**

Defendants.

COMPLAINT

1. This is an action for injunctive, declaratory and other relief under the Access to Public Records Act, Rhode Island General Laws §§ 38-2-1 et seq. ("APRA"), seeking the production of public records that are in the public interest.
2. Pursuant to Rhode Island General Laws § 38-2-9, jurisdiction to hear APRA claims is vested in the Superior Court.
3. Venue is proper pursuant to Rhode Island General Laws § 38-2-8(b).
4. Plaintiff Rhode Island Legal Services ("RILS") is a Rhode Island non-profit corporation dedicated to providing high quality legal assistance and representation to low-income individuals and eligible client groups for the purpose of improving their economic condition and overall wellbeing by protecting and enforcing legal rights, including their rights to public education.
5. Plaintiff Veronika Kot is a Rhode Island resident and a staff attorney at Rhode Island Legal Services.

6. Defendant City of Providence operates the City of Providence Law Department's Public Record Unit that responds to requests for public records regarding the Providence School District.
7. Defendant Providence School District provides education to students in Providence.
8. The City of Providence is an "agency" or "public body" within the meaning of APRA, Rhode Island General Laws § 38-2-2(1).
9. Providence School District is an "agency" or "public body" within the meaning of APRA, Rhode Island General Laws § 38-2-2(1).
10. Defendant Jeffrey Dana is the custodian or "chief administrative officer" of the Public Records Unit of the City of Providence within the meaning of APRA, Rhode Island General Laws § 38-2-2(2), and the person who has the custody or control of the public records of the Providence School District and the City of Providence.
11. On or about March 18, 2019, Plaintiffs submitted a written request to City of Providence Law Department Public Records Unit requesting "a full copy of the Notice / Communication, and attachments if any, provided to the Providence School District by the U.S. Department of Justice, indicating that the United States has identified conditions that violate Section 1703(f) of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 et seq." A copy of the Plaintiffs' letter is attached hereto as Exhibit "A."
12. Plaintiffs had previously learned that the United States Department of Justice ("United States") had reached a settlement agreement with the Providence School District to address and resolve noncompliance issues raised by the United States regarding the District's legal obligations under the Equal Educational Opportunities Act of 1974, 20

U.S.C. §§ 1701 et seq. ("EEOA").

13. The Settlement Agreement referenced Findings that the United States had made regarding the English Language Learner (ELL) programs operated by the Providence School District in correspondence with the Providence School District on March 8, 2018:

After conducting a thorough review of the District's EL programs and services, the United States notified the District on March 8, 2018, that the United States has identified conditions that violate Section 1703(f) of the EEOA. Specifically, the United States identified that the District: (1) placed hundreds of ELs in schools that lacked EL services without obtaining the parent's voluntary and informed waivers of these services; (2) used an educationally unsound EL program called the Consultation Model; (3) failed to adequately implement several of its EL programs, including by not providing sufficient ESL; (4) failed to staff its EL programs with enough qualified teachers; (5) segregated some ELs in its Sheltered ESL program for an unreasonable amount of time; (6) lacked sufficient materials to implement some of its EL programs; (7) failed to adequately train principals; (8) did not timely identify all ELs; (9) did not effectively communicate with LEP parents; (10) did not provide ELs equal opportunities to participate in specialized programs; (11) used inappropriate exit criteria and did not adequately monitor former ELs; and (12) did not properly evaluate its EL programs for effectiveness.

A copy of the Settlement Agreement is attached as Exhibit B.

14. Plaintiffs received a response denying the request. The response stated:

Record request #19-262 has been closed. The closure reason supplied was: Documents responsive to your request have been withheld, consistent with R.I. Gen. Laws 38-2-2(4)(A)(1)(a) to prevent the disclosure of information protected by the attorney-client privilege, which would not be available by law or rule of court to an opposing party in litigation.

Documents responsive to your request have been withheld consistent with R.I. Gen. Laws and 38-2-2(4)(E), for documents which would not be available by law or rule of court to an opposing party in litigation.

Documents have been [withheld/redacted] pursuant to R.I. Gen. Laws § 38-2-2(4)(K) because they are "preliminary drafts, notes, impressions, memoranda, working papers, and work products."

Documents responsive to your request are exempt from disclosure under the Access to Public Records Act. More specifically, such documents are exempt, pursuant, to R.I. Gen.

Laws § 38-2-2(4)(P), because they are investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation other than records of final actions taken.

A copy of that response is attached as Exhibit C.

15. Pursuant to Rhode Island General Laws § 38-2-8, Plaintiffs appealed the denial in a letter dated April 2, 2019 to Jeffrey Dana. A copy of that letter is attached as Exhibit D. Plaintiffs advised that “none of the reasons cited for the denial is in fact applicable to our request.”

16. Plaintiffs explained that the first reason cited for the denial is Rhode Island General Laws § 38-2-2-2(4)(A)(1)(a) that references records protected by the client/attorney privilege. Plaintiffs stated: “That privilege does not apply to a communication from the Department of Justice to the City of Providence as no attorney/client privilege exists or existed between the two agencies or their employees.”

17. Plaintiffs explained that the second reason cited for the denial is Rhode Island General Laws § 38-2-2(4)(E), “any records that would not be available by law or rule of court to an opposing party in litigation.” Plaintiffs stated that they “know of no law or rule of court that would make this Findings Letter/DOJ communication subject to this section. Indeed, the denial fails to mention any such rule.”

18. Plaintiffs further explained that Rhode Island General Laws § 38-2-2(4)(K) is inapplicable. It applies only to “Preliminary drafts, notes, impressions, memoranda, working papers and work products,” and nothing about the Findings Letter can be characterized as “preliminary draft, notes, impressions . . .” It is, Plaintiffs explained, very much a final statement of noncompliance findings, and the DOJ Settlement Agreement is based on those findings.

19. Further, Plaintiffs explained that Rhode Island General Laws § 38-2-2(4)(P) is inapplicable as the request seeks a “formal notification of violations or noncompliance,” and not an “investigatory record” occurring “prior to formal notification.”

20. In response to Plaintiffs’ appeal, they received a letter dated April 15, 2019 from Jeffrey Dana, Esq., City Solicitor. A copy of the letter is attached as Exhibit E. He stated, “I affirm the decision of the Public Records Unit to withhold responsive records may be properly withheld pursuant to Rhode Island General Laws §§ 38-2-2(4)(A)(I)(a), 38-2-2(4)(E), 38-2-2(4)(K) and 38-2-2(4)(P).”

21. As noted above, the cited provisions do not support the Respondent’s determination to withhold production of the records.

22. Rhode Island General Laws § 38-2-2(4)(A)(I)(a) refers to the client/attorney relationship. As the United States is the federal agency responsible for investigating Respondents, it did not have any client/attorney relationship with the Providence School District or City of Providence.

23. Rhode Island General Laws § 38-2-2(4)(E) refers to records that would not be made available to an opposing party in litigation. That provision is inapplicable to findings by a federal agency such as those sought by this request.

24. Rhode Island General Laws §38-2-2(4)(K) refers to drafts, notes, and work product. This provision is inapplicable to the final findings of the U.S. Department of Justice.

25. Rhode Island General Laws § 38-2-2(4)(P) refers to investigatory records other than “records of final action taken.” This provision is inapplicable because the Department of Justice Findings were records of final action taken.

26. Records requested in Plaintiffs' letter of March 18, 2019, Exhibit A, are public records within the meaning of APRA, Rhode Island General Laws § 38-2-2(4), and are owned, maintained and controlled by the Defendants.

27. These Findings were of enormous public interest. The United States posted the Settlement Agreement on its webpage. <https://www.justice.gov/crt/case-document/providence-public-schools-settlement-agreement-between-united-states-and>.

28. The Providence Journal devoted significant attention to the story, noting that over a million dollars was being devoted to implementing the settlement agreement in the 2018-2019 school year. "Providence schools agree to provide more help to English learners," Providence Journal (Aug. 13, 2018), found at <https://www.providencejournal.com/news/20180813/providence-schools-agree-to-provide-more-help-to-english-learners>.

29. The Commissioner of Education, in proposing to take control over the Providence School District, specifically noted the Findings by the Department of Justice referenced in the settlement agreement. Providence Public School District: Proposal for Decision and Order Establishing Control Over the Providence Public School District and Reconstituting Providence Public Schools (Aug. 8, 2019), found at [https://www.ride.ri.gov/Portals/0/Uploads/Documents/Board-of-Education/Proposal%20for%20Decision%20and%20Order%20\(00000003\).pdf](https://www.ride.ri.gov/Portals/0/Uploads/Documents/Board-of-Education/Proposal%20for%20Decision%20and%20Order%20(00000003).pdf).

30. As records maintained or kept on file by a public body, the requested records are public records as defined in Rhode Island General Laws § 38-2-2(4).

31. As public records, the requested records are subject to the provisions of Rhode Island General Laws § 38-2-2(3) granting "every person or entity ... the right to inspect

and/or copy those records at such reasonable time as may be determined by the custodian thereof.”

32. Defendants’ denial of Plaintiffs’ request violates the rights of Plaintiffs and the public under the Access to Public Records Act, Rhode Island General Laws §§ 38-2-1 et seq.

33. Defendants’ denial of Plaintiffs’ March 18, 2019 APRA request was improper.

34. Plaintiffs have a right of access to the requested records under Rhode Island General Laws § 38-2-1 et seq., and there is no legal basis for Defendants’ denial of such access.

WHEREFORE, Plaintiffs request that this Honorable Court:


- a. Advance this matter on the calendar pursuant to Rhode Island General Laws § 38- 2-9(c);
- b. Declare that Plaintiffs are entitled to access to the requested records pursuant to the Access to Public Records Act;
- c. Issue injunctive relief, including but not limited to issuance of an order requiring production of the requested documents forthwith and without cost;
- d. Issue such other orders incident to the foregoing as may be necessary to command the Defendant to make available Plaintiffs’ requested records forthwith;
- e. Impose fines and penalties as provided for in Rhode Island General Laws § 38-2- 9(d);
- f. Award Plaintiffs their attorneys fees and costs;
- g. And issue such other, further relief as this Court may deem necessary.

Dated: August 29, 2019

Respectfully submitted, PLAINTIFFS,

RHODE ISLAND LEGAL SERVICES and
VERONIKA KOT

By Their Attorneys,



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