

LINDSAY KOSO,

Plaintiff,

vs.

C.A. No.

PETER F. NERONHA, in his official capacity
as Attorney General of the State of Rhode Island,

Defendant.

COMPLAINT

1) This action is brought pursuant to Rhode Island General Laws §§ 38-2-1, *et seq.*, entitled “Access to Public Records” [“APRA”].

2) Pursuant to Rhode Island General Laws § 38-2-9, jurisdiction to hear APRA claims is vested in the Superior Court.

3) Plaintiff Lindsay Koso [“Koso”] is a law student at Roger Williams University School of Law [“RWU”] in Bristol, Rhode Island.

4) Plaintiff is researching and preparing a law review article on the subject of immigration law in the State of Rhode Island.

5) One aspect of Plaintiff’s current and future research and law review article currently in preparation relates to the operation of Rhode Island General Laws § 12-12-22, which involves notice of the impact of a criminal conviction upon a defendant non-citizen’s immigration status.

6) Rhode Island General Laws § 12-12-22(b) states:

Prior to accepting a plea of guilty or nolo contendere in the district or superior court, the court shall inform the defendant that if he or she is not a citizen of the United States, a plea of guilty or nolo contendere may have immigration consequences, including deportation, exclusion of admission

to the United States, or denial of naturalization pursuant to the laws of the United States. Upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of this advisement.

7) Rhode Island General Laws § 12-12-22(c) states:

If the court fails to so inform the defendant as required by this section, and the defendant later shows that his plea and conviction may have immigration consequences, the defendant shall be entitled, upon a proper petition for post-conviction relief, to have the plea vacated. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not [to] have received the advisement.

8) Rhode Island General Laws § 12-12-22(e) states:

In the first week of January, 2001, and each year thereafter, the attorney general shall submit to the general assembly a list of cases in which a disposition was vacated pursuant to this section.

9) Defendant Peter F. Neronha [“Attorney General”] is the Attorney General of the State of Rhode Island, and is sued in that official capacity.

a. The Attorney General’s office is an “agency” or “public body” within the meaning of APRA, Rhode Island General Laws § 38-2-2(1);

b. Defendant is the custodian or “chief administrative officer” 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 requested by Plaintiff.

10) On or about October 28, 2020, Plaintiff submitted a written Public Records Request Form to the Office of the Attorney General requesting “a copy of each year’s report as required by RIGL 12-12-22(e) from 2001 to present.” A copy of the Plaintiff’s public records request is attached hereto as **Exhibit A** and incorporated herein.

11) The records requested by Plaintiff are public records within the meaning of APRA, Rhode Island General Laws § 38-2-2(4) and are owned, maintained and controlled by the Defendant.

12) On November 12, 2020, Plaintiff received an email communication from Adam Roach, Special Assistant Attorney General, Civil Division in Defendant's office. A copy of this communication is attached as **Exhibit B** and incorporated herein.

13) Mr. Roach's email states:

[W]e determined that we do not maintain records for 2019 or 2020 responsive to your request.... However, we cannot rule out the possibility that responsive records for other years may be located if we continue to search. We estimate that completing our search would take fifteen (15) hours. Using fifteen (15) hours as an estimate (this Office already exhausted the first free hour), completing your request will cost \$225.00. See R.I. Gen. Laws § 38-2-4(b). This estimate is conservative, and pre-payment is required prior to this Office engaging in search and retrieval. Payment must be made via check to the "State of Rhode Island" and sent to Rhode Island Office of the Attorney General[.] Please be advised that payment does not guarantee that the records you have requested are maintained by this Office or constitute public records (in whole or in part, i.e., redacted), but only authorizes this Office to conduct its search. ... If we do not hear from you and receive payment within 30 days, we will consider this request closed, though you are free to re-submit your request.

14) The records requested by Plaintiff consist of an annual report that the office of the attorney general is required by R.I. Gen. Laws § 12-12-22(e) to submit to the general assembly.

15) A public body may impose a "reasonable charge" for the search or retrieval of documents. R.I. Gen. Laws § 38-2-4(b).

16) It is per se unreasonable for any search and/or retrieval fee to be charged for an APRA request for public records that are statutorily mandated to be submitted to another governmental body by the agency to which the request is made.

17) It is per se unreasonable for any search fee to be charged for an APRA request for public records that are statutorily mandated to be prepared and submitted to another governmental body by the agency to which the request is made, but which may not have been prepared or submitted in accordance with the law.

18) The “conservative” estimate of 15 hours to perform a search for the requested records, which are statutorily mandated to be submitted by the attorney general to the general assembly on an annual basis, is per se unreasonable as such records should be readily accessible.

19) The pre-payment of \$225 for the search and retrieval of the requested records is per se unreasonable as this amount is so large as to deter Plaintiff and members of the public from pursuing their request for the records.

20) In the alternative, any search fee that might apply to the request made by Plaintiff in this case should be waived under R.I. Gen. Laws § 38-2-4(e) because the records are in the public interest and not in the commercial interest of the Plaintiff, who is a student preparing a paper of public interest to be shared with the general public and not for commercial use or enterprise.

21) There is no basis in APRA for “consider[ing a] request closed” due to nonpayment of a search fee by a requester within 30 days or any particular period of time.

22) There is no basis in APRA for “consider[ing a] request closed” and requiring a requester to resubmit their request for records due to a lack of a response by a requester to a communication from the responding agency, within 30 days or any particular period of time, the effect of which is to significantly extend the length of time a public body has to fulfill a request for public records.

WHEREFORE, Plaintiff requests that this Honorable Court:

- a. Advance this matter on the calendar pursuant to Rhode Island General Laws § 38-2-9(c);
- b. Declare that Plaintiff is entitled to access to the requested records pursuant to the Access to Public Records Act;
- c. Declare that fees and costs associated with search or retrieval of records shall not be charged when documents requested under Rhode Island General Laws § 38-2-3 consist of records which are statutorily required to be prepared and publicly submitted by and between agencies or public bodies as defined in APRA, or alternatively, declare that such charges shall be waived because release of such records is presumptively in the public interest;

- d. Declare that an agency may not impose a deadline for the prepayment of search and retrieval fees upon the penalty of the closing or dismissal of an APRA request for records;
- e. Declare that an agency may not impose a deadline for a requester to respond to communications from the subject agency regarding payment of a fee or the agency's need for extended time to locate and retrieve records requested under APRA, nor may the agency impose the penalty of the closing or dismissal of an APRA request for records due to a requester's failure to respond to communications from the agency.
- f. Issue such orders incident to the foregoing as may be necessary to command the Defendant to make available Plaintiff's requested records forthwith;
- g. Impose civil fines as provided for in Rhode Island General Laws § 38-2-9(d);
- h. Waive all search and retrieval fees in this case;
- i. Award Plaintiff her reasonable attorney fees and costs;
- j. And issue such other, further relief as this court may deem necessary and proper.

Respectfully submitted,

PLAINTIFF,
Lindsay Koso,

By Her Attorneys,

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