



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

March 13, 2015
PR 15-12

Ms. C. Smith

Re: Smith v. Rhode Island Department of Education (August 15, 2013 APRA Request)
Smith v. Rhode Island Department of Education (September 25, 2013 APRA Request)
Smith v. Rhode Island Department of Education (May 5, 2014 APRA Request)

Dear Ms. Smith:

The investigations into your Access to Public Records Act (“APRA”) complaints filed against the Rhode Island Department of Education (“RIDE”) are complete. By correspondence dated October 22, 2013, you filed two APRA complaints against RIDE, one related to your August 15, 2013 request and the second related to your September 25, 2013 request. Later, on May 21, 2014, you filed a third APRA complaint against RIDE related to your May 5, 2014 request. Since all three APRA requests sought various documents pertaining to the West Bay Collaborative (“WBC”) and alleged numerous violations against RIDE, we have consolidated all three complaints into a single finding.

At the outset, we note that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether RIDE violated the APRA. See R.I. Gen. Laws § 38-2-7. In other words, we do not write on a blank slate.

I. Background

Before we begin our analysis, we note that one of the challenges in resolving this matter has been to trace through every correspondence submitted by you and RIDE. At various points during our investigation, facts and versions of events changed and overlapped. Also, multiple terms to describe the same documents were used and both parties raised issues that they acknowledged were not properly before us. In addition, this Department was not satisfied that RIDE’s substantive response to your October 22, 2013 complaints adequately addressed all the issues raised. Accordingly, we requested that RIDE submit a supplemental response, dated April 28, 2014, which more completely responded to your complaints. Frankly, the supplemental response still left this Department with questions. On November 25, 2014, the undersigned and Assistant Attorney General Michael Field, spoke with George Muksian, Esq. (legal counsel for RIDE) and Mr. Elliot Krieger (the Public Information Officer at RIDE) to attempt to clarify the remaining issues. Finally, this Department reviewed relevant Rhode Island General Laws and the

WBC's website in an effort to issue a finding that is legally and factually sound. A brief description of the WBC and relevant Rhode Island statutes follow.

The WBC "is a non-profit educational service agency" that operates, among other programs, "Alternative Learning Programs" to students with "academic, social-emotional, and behavioral needs" who are referred to the WBC by one of its member districts – Coventry, Cranston, Providence, Scituate, Warwick, West Warwick, Foster, and Gloucester. See <http://www.westbaycollaborative.org/grants-special-projects>. In relevant part, the website indicates the following:

"In addition to providing direct services to its clients, West Bay currently works in partnership with the Rhode Island Department of Education, the Office of Rehabilitation Services, the Office of Development Disabilities, the STEM Center at Rhode Island College, the Northern Rhode Island and East Bay Collaboratives, the RI Parent Information Network, the RI Adult Education PDC, and other professional entities.

Partnerships may take the form of short-term projects, limited in focus, audience and duration (i.e. training a cohort of individuals for one year), but they may also exist over multiple years, and include other aspects of educational leadership (as for example, our work over the past four years on Race to the Top, assisting the Department of Education)." Id.

The website further provides that:

"West Bay currently serves as the fiscal/logistical partner to the Rhode Island Department of Education, supporting its work on two aspects of the state's recent Race to the Top grant: Teacher Evaluation and Curriculum Standards/Common Core development. As such, we have been responsible for the printing and delivery of over 10,000 manuals and documents, the scheduling and space allocation for workshops, hiring and payroll of Intermediate Service Providers, and the billing and record-keeping for district-initiated training sessions." See <http://www.westbaycollaborative.org/grants-special-projects/ride-evaluation-curriculum-projects>.

In addition, the website states:

"This program partnership [with RIDE] has been in existence for over ten years, and continues to fulfill the Collaborative's mission of providing high-quality services to the educational community of Rhode Island." See <http://www.westbaycollaborative.org/grants-special-projects/quality-assurance-program-monitoring>.

In RIDE's August 20, 2013 denial letter, RIDE explained that "regional Collaboratives may operate programs on behalf of the participating school districts under RIGL 16-3.1. These programs are not nonpublic special education schools; they are programs of the schools in the Regional Collaborative and they operate similarly to programs operated by an individual school district. They do not apply to RIDE

for approval as nonpublic special education schools in that they are programs operated regionally by the members LEAs.”¹ Commissioner Gist affirmed RIDE’s denial in a September 17, 2013 correspondence and reiterated that “programs run by the regional collaboratives are run by LEAs and are not considered nonpublic special-education programs; they are not certified or licensed by RIDE.”

At various moments in your three (3) complaints, you reference assorted Rhode Island General Laws as support for your arguments. Specifically, in your November 18, 2013 rebuttal, you state that “Mr. Krieger directed me to RIGL 16-3.1.1 [sic], the law under which the Regional Collaboratives in our state operate...The General Assembly caused these laws to exist. RIDE has the power and duty to carry out these laws.” Since there appears to be some discrepancies regarding RIDE’s role with respect to the WBC, and since you cite several Rhode Island statutes throughout all three (3) complaints, a brief overview of those statutes is warranted.

You reference the following statutes:

R.I. Gen. Laws § 16-3.1-1, states:²

“The purpose of this chapter is threefold: to assist school districts within the state to establish cooperative service operations and the method of administering those operations; to provide for the delivery of administrative and instructional services desired by school districts; and to provide that the department of elementary and secondary education offer technical assistance to carry out the purpose of this chapter.”

R.I. Gen. Laws § 16-3.1-2(a):

“Any school committee, acting for or on behalf of its district, may enter into an agreement with one or more other school committees to conduct jointly instructional education programs and/or administrative functions, provided that the agreement has been reviewed and is recommended by the commissioner of elementary and secondary education and has the approval of each participating school committee.”

R.I. Gen. Laws § 16-3.1-3:

“The board of regents for elementary and secondary education shall adopt regulations regarding all aspects of the agreement. Each agreement shall fully describe the services to be rendered, the terms by which each school district shall share in the cost of the services, and shall provide for a method of governing the services which services shall be considered a part of the public school system.”

R.I. Gen. Laws § 16-3.1-13:

¹ “LEA” stands for Local Educational Agency.

² Rhode Island General Laws § 16-3.1 et seq., Cooperative Service Among School Districts.

“Any collaborative established under this chapter shall implement a uniform system of accounting in compliance with § 16-2-9.3 to track their expenditures and investments and file a report on said expenditures and investments by October 1, of each year, with the Rhode Island board of regents for elementary and secondary education, the office of the auditor general, the Rhode Island senate committee on education and finance, the Rhode Island house of representatives committee on health, education and welfare and finance and local school committees. Each collaborative shall also file periodic reports, to the board of regents, the senate education committee and the house health, education and welfare committee, detailing their activities and programs.”

R.I. Gen. Laws § 16-3.1-17:

“(a) The board of regents for elementary and secondary education shall adopt rules and regulations regarding all aspects of the educational collaboratives mission and goals.

(b) Instructional education programs and/or administrative and/or best business practice plans will be submitted to, and approved by, the commissioner of elementary and secondary education.”

Additionally, R.I. Gen. Laws § 16-3.1-9.1, which is specific to the West Bay region, is relevant to this discussion and indicates the following:

“Notwithstanding the provisions of any general or special law to the contrary, the school committees of the towns and school districts of West Warwick, Providence, Warwick, Coventry, Cranston, Scituate, Foster-Glocester regional school district, Foster, and Glocester are authorized and empowered to study and/or continue and/or initiate cooperative efforts to provide services included but not limited to special education programs and diagnostic services required by law or regulation; to utilize technology without restriction; to provide limited interest curriculum; and to provide programs for the gifted and talented, all on a collaborative basis in an effort to improve efficiency and cost effectiveness. The intent of the regional collaborative is to provide the opportunity for all children to receive educational services locally. The various school committees may assign and delegate to their respective school committee chairs or designee or superintendents of schools or designee, acting as a regional board any duties, responsibilities and powers that the committees may deem necessary for the conduct, administration and management of the regional collaborative - West Bay Rhode Island.”

II. Allegations Related to the August 15, 2013 APRA Request

Your August 15, 2013 APRA request sought access to the following documents:

- “1. Approved application for the [WBC] Special Education School currently being housed at the defunct Greene School in Warwick.
2. The Commissioner’s approval letter for this school.

3. The School Support System Report and Support Plan for this school.³
4. The tuition and/or fee schedule for this school.
5. Records that reflect the number of students attending this school (by district).”

In regards to item number five (5) above, you state in your Complaint that “RIDE was also untimely in providing a reason for denial of request.” Specifically, you indicate that you were “not informed why [you were] being denied access to the ‘census’ records within the 10 [business] day requirement of the APRA.” Thus, it appears that the allegation of untimely response applies to item number five (5) only.

A. Request for: 1) “Approved application for the [WBC] Special Education School currently being housed at the defunct Greene School in Warwick,” 2) “The Commissioner’s approval letter for this school,” and 4) “The tuition and/or fee schedule for this school.”

Before we begin our analysis, we must address what appears to be a discrepancy in the documents you sought and were denied in your August 15, 2013 APRA request, and the documents you claim you sought and were denied according to your complaint. In your complaint you state, “[t]he Rhode Island Department of Education (RIDE) has denied me access to the following requested documents:

1. Approved application/plan/agreement for the [WBC]...
2. The Commmissioner’s approval/recommendation for this school.
4. The tuition and/or fee schedule for this school (uniform system of accounting, periodic reports, agreement)[.]”

Respectfully, your complaint does not accurately reflect the precise nature of the documents you sought in your August 15, 2013 APRA request. Specifically, the “plan/agreement” and Commissioner’s “recommendation,” were mentioned in your September 12, 2013 appeal letter to the Commissioner, and your complaint to this Department, but were not part of your August 15, 2013 APRA request. Indeed, you admit in your complaint that:

“[w]hen RIDE responded to [your August 15, 2013 APRA request], they informed me that Regional Collaboratives operated under Rhode Island General Laws 16-3.1. Upon reviewing this law, I found that it is expected that any instructional education program run by the Collaborative must be submitted and receive approval by the Commissioner of Elementary and Secondary Education. In an effort to get the correct documents, on September 12, 2013, I appealed to the Commissioner...to provide me with a copy of whichever document was submitted on behalf of the [WBC] and a copy of her approval/recommendations.”

Also, your reference to the “uniform system of accounting, periodic reports, agreement” in your complaint, were not included in your August 15 APRA request. Instead, you mention the “uniform system of accounting” and the “periodic reports filed to the board of regents” in your appeal letter to the

³ Item number three (3) was provided to you and is not part of your complaint.

Commissioner. Since RIDE denied you access to items one (1), two (2) and four (4) of your August 15 APRA request, and since the Commissioner denied your appeal for items one (1), two (2), and four (4) as indicated in your August 15 request, this finding will focus on the items as they appeared in your August 15 request.⁴ See Canavan v. City of Central Falls, PR 00-18.

On August 20, 2013, RIDE denied your request for: 1) "Approved application for the West Bay Collaborative Special Education School currently being housed at the defunct Greene School in Warwick," 2) "The Commissioner's approval letter for this school," and 4) "The tuition and/or fee schedule for this school," on the grounds that:

"These records do not exist. RIDE notes that regional Collaboratives may operate programs on behalf of the participating school districts under RIGL 16-3.1. These programs are not nonpublic special education schools; they are programs of the schools in the Regional Collaborative and they operate similarly to programs operated by an individual school district. They do not apply to RIDE for approval as nonpublic special education schools in that they are programs operated regionally by the member LEAs." See R.I. Gen. Laws § 38-2-3(h).

You filed an appeal with the Commissioner and indicated that "[u]pon reviewing RIGL § 16-3.1 [you] found that it is expected that any instructional educational program run by the Collaborative must be submitted and receive approval by, the Commissioner of Elementary and Secondary education," and that you are "just asking to be provided with a copy of whichever document was submitted and a copy of your approval letter/recommendation." In the Commissioner's September 17, 2013 appeal denial letter, the Commissioner reiterated that the Regional Collaboratives, "operate similarly to programs operated by an individual school district. They do not apply to RIDE for approval as nonpublic special education schools in that they are programs operated regionally by the member LEAs." Accordingly, your appeal was denied for essentially the same reasons specified in RIDE's August 20, 2013 denial letter.

In your complaint, you argue that "RIGL 16-3.1 and 16-3.1-17(b) does require that the Commissioner review plans and agreements submitted by/for the collaborative." With respect to the denial of the "tuition and/or fee schedule," you argue that the WBC "is expected to participate in the Uniform system of accounting (RIGL 16-2-9.3) and they are also suppose to file periodic reports detailing their activities and programs (RIGL 16.3.13) [sic]. Since the agreement, uniform system of accounting, and periodic

⁴ You also allege in your complaint that the "Commissioner did not answer as to why I am being denied these records." Specifically, you state that "RIGL 16-3.1 and 16-3.1-17(b) does require that the Commissioner review plans and agreements submitted by/for the collaborative. I did ask for these documents and have not received them. The Commissioner did not answer as to why I am being denied these records." As explained above, our focus is on RIDE's denial of the documents requested in your August 15, 2013 APRA request and not the additional documents you sought access to for the first time in your September 12, 2013 appeal letter, i.e., approved "plan/agreement" and the Commissioner's "recommendation." As such, we will not address your allegation that the Commissioner failed to state why those records were denied, except to the extent these documents were encompassed in your August 15 APRA request.

reports are expected to be reviewed by RIDE, it would be reasonable to assume that these records would be maintained by the Department of Education.”⁵

RIDE provided a substantive response on November 12, 2013. In relevant part, RIDE contends that “[w]hether [you] believe[] that RIDE might have or should have records requested [] is immaterial; RIDE has no such records in its possession or control, and RIDE believes that no such records exist.” In your November 18, 2013 rebuttal you counter that “Mr. Krieger directed me to RIGL 16-3.1.1 [sic], the law under which the Regional Collaboratives in our state operate...the General Assembly caused these laws to exist. RIDE has the power and duty to carry out these laws. It is reasonable to conclude that the documents that the law states must be submitted, were submitted and the documents that required approval, were approved.”

On April 17, 2014, this Department directed RIDE to provide further information addressing why RIDE asserts that the documents do not exist, in light of R.I. Gen. Laws § 16-3.1 et. seq., to indicate what search and retrieval was done to come to the conclusion that the documents do not exist, and whether RIDE is aware of where responsive documents may be maintained. RIDE’s April 28, 2014 supplemental response, in pertinent part, reads as follows:

“[RIDE] contacted and spoke with the director of each RIDE office that could possibly have been the recipient of any of these records, which includes the RIDE Office of Multiple Pathways (responsible for records regarding nonpublic schools), the Office of Student, Community, and Academic Supports (responsible for records regarding the education of students with disabilities), the Office of Finance, the Office of Statewide Efficiencies (responsible for the Uniform Chart of Accounts), the Commissioner’s Office, and the Legal Office. To our knowledge and belief, RIDE is not in control or possession of any of these three records.

RIDE does not have in our possession or control any application from the [WBC] or letter of approval from the Commissioner regarding the operation of the [WBC] Special Education School. Please note that any such application or approval letter need be submitted or issued only once and not renewed annually or at any point of time. To the best of our knowledge, this school has been in operation for many years – certainly for well over a decade. If an application and approval letter were submitted or issued at any time since the passage of RIGL Chapter 16-3.1 in 1975, any such records are no longer in our possession and control...it is possible that any such application or approval letter may be in the possession and control of the [WBC] or any of the school districts that are members of this collaborative.

⁵ As indicated above, the “uniform system of accounting” and “periodic reports” were not sought in your August 15 APRA request and, therefore, will not be addressed in this finding. It bears mentioning, however, the “uniform system of accounting,” or the “uniform chart of accounts,” as RIDE refers to, was provided to you in a subsequent APRA request to RIDE.

RIDE has no knowledge as to whether a tuition or fee schedule for this school exists, as RIDE does not collect or retain any such record nor does RIDE have any reason to do to so..." (Emphases added).

Here, while it may be "reasonable to conclude that the documents that the law states must be submitted, were submitted and the document that required approval, were approved," as you claim in your complaint and your November 18, 2013 rebuttal, we have been presented with no evidence that an approved application for the WBC, the Commissioner's approval letter, or the tuition and/or fee schedule exist within the custody and control of RIDE. Respectfully, even you acknowledge the lack of evidence in your May 5, 2014 correspondence ("[RIDE] knows that the [WBC] has a special education school at the defunct Greene School in Warwick, but RIDE, does not have any documents to support this statement... [RIDE] knows that the [WBC] receives tuition money from LEAs, but RIDE, can not produce any documents that detail the financial agreements between the LEAs and the [WBC]."). Based on the evidence presented, including RIDE's affidavits, our interview with Mr. Krieger and Attorney Muksian, and our own independent research, we conclude that RIDE did not violate the APRA when it denied your request for: 1) "Approved application for the West Bay Collaborative Special Education School currently being housed at the defunct Greene School in Warwick," 2) "The Commissioner's approval letter for this school," and 4) "The tuition and/or fee schedule for this school," on the grounds that the documents do not exist. See R.I. Gen. Laws § 38-2-7(c).

B. Request for: 5) "Records that reflect the number of students attending this school (by district)"

In item five (5) of your August 15, 2013 APRA request, you sought "[r]ecords that reflect the number of students attending this school (by district)." Despite your request for records, in its August 20, 2013 response, RIDE responded, in pertinent part:

"RIDE accepts this as a request for information, rather than for public records, and RIDE provides [you] with this information:

There are were [sic] 47 active students on the June 2013 special education census listed as attending the West Bay Collaborative, with these numbers by district:

1-Barrington
1- Central Falls
15- Cranston
2- East Greenwich
1- Johnston
1- North Kingstown
26- Warwick" (Emphasis added).

On September 12, 2013, you appealed RIDE's response and claimed that "[a]ccording to [the] Access to Public Records Act I am entitled to the source documents and not a list formulated from documents that are in your possession. Please provide me with the source documents." In response to your appeal, the Commissioner indicated, in pertinent part:

“RIDE went above and beyond the requirements of the Access to Public Records Act in an attempt to provide you with the information you were seeking. RIDE has no record – other than what RIDE created for you – showing the number of students attending individual programs by district. The ‘source documents’ that you request in your appeal are individually-identifiable student records that are deemed confidential by federal law and their disclosure would constitute a clearly unwarranted invasion of personal privacy, and are therefore not deemed public, RIGL 38[-]2-2(4)(A)(I)(b).”

Respectfully, we reject RIDE’s statement that it “accepts this as a request for information, rather than for public records[.]” This Department knows of no authority, and RIDE suggests none, that allows a public body to treat a proper APRA request as a “request for information.” On the contrary, the APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). See IBPO Local 302 v. Town of Portsmouth IBPO Local 302 v. Town of Portsmouth, PR 14-34. If RIDE, or any public body, does not have the requested documents in its possession, the APRA addresses this contingency and provides that “nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.” See R.I. Gen. Laws § 38-2-3(h).⁶ (Emphasis added).

Here, no argument has been made that the record does not exist and indeed, as discussed infra, RIDE has provided this Department an electronic copy of a responsive document for our in camera review. Instead, RIDE argues that because the record is identifiable, it is exempt under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b)⁷ and protected by “federal law.” At no moment does RIDE direct us to the relevant “federal law.” In our April 17, 2014 correspondence to RIDE, we inquired how RIDE would be unduly burdened by “organizing, consolidating, or compiling” the data requested, as contemplated by R.I. Gen. Laws § 38-2-3(h). In response, RIDE stated that:

“RIDE derived this information by analysis of the Special Education Census Database...In order to organize this database so as to provide Smith with a record that reflects ‘the number of students attending this school (by district),’...RIDE would have

⁶ In RIDE’s November 13, 2013 response, RIDE states “there is no requirement that a public agency reorganize, consolidate, or compile data not maintained in the requested form, as noted by the Office of the Attorney General in the 2013 Open Government Summit.” Respectfully, RIDE’s paraphrasing of R.I. Gen. Laws § 38-2-3(h) ignores the remainder of the provision, which indicates “except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.”

⁷ Rhode Island General Laws § 38-2-2(4)(A)(I)(b) exempts from disclosure “personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.”

had to initiate data queries to create a new record. RIDE believes this obligation to create a new record in response to a records request goes beyond the provisions and scope of the Access to Public Records Act.”

Although RIDE contends that it need not reorganize the electronic data for purposes of responding to your APRA request, at no time does RIDE explain how it would be “unduly burdened” by reorganizing, consolidating, or compiling the electronic data for purposes of your APRA request. See R.I. Gen. Laws § 38-2-3(h). In fact, RIDE provided this Department with the Special Education Census Database, in electronic format, for an *in camera* review and this Department “reorganized” the data, redacted any individually-identifiable information, created a document responsive to your request for the “number of students attending this school (by district)” in a matter of minutes. While we do not question that the requested document contains individually identifiable information or data that is exempt from public disclosure, based upon the evidence presented it appears that this information could be redacted from the electronic data in accordance with R.I. Gen. Laws § 38-2-3(b) (“Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion...”). See *d’Oliveira v. Department of Public Safety*, PR 11-10. Lastly, although “federal law” may play a role in the disclosure of even a redacted record, RIDE has provided no direction or argument concerning the “federal law” that it claims to support its position. Accordingly, we find that RIDE violated the APRA when it failed to provide you with the redacted source documents responsive to your request.

Lastly, with respect to this issue, you claim that RIDE violated the APRA when it provided an untimely “reason for denial of request.” Specifically, you state, “I was not informed why I was being denied access to the ‘census’ records within the 10 [business] day requirement of the APRA. It was only after I appealed the decision to provide me with information rather than the source documents did the Commissioner inform me that the records I sought were confidential records.”

The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. Also, the “[f]ailure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial.” Id.

As indicated supra, RIDE violated the APRA when it provided you with numerical information and/or a narrative response instead of allowing you to “inspect and/or copy” the documents sought, as required by R.I. Gen. Laws § 38-2-3(a). Since we have already found that RIDE improperly denied your request, your allegation that RIDE failed to provide the specific reason for the denial is effectively incorporated into this issue.

III. Allegations Related to the September 25, 2013 APRA Request

Your September 25, 2013 APRA request sought access to the following documents:

- “1) a copy report of the expenditures and investments for the West Bay Collaborative for years 2010-2011 and 2011-2012.
- 2) the latest report that the West Bay Collaborative has submitted to the Board of Regents detailing their activities and programs.
- 3) a copy of the Rules and Regulations adopted by the Board of Regents for Collaboratives.”

A. Request for: 1) “a copy report of the expenditures and investments for the West Bay Collaborative for the years 2010-2011 and 2011-2012.”

On October 9, 2013, RIDE granted your request for “a copy report of the expenditures and investments for the [WBC] for the years 2010-2011 and 2011-2012.” The following day, you emailed RIDE claiming that you did not “receive the complete report of the expenditures and investments submitted by the [WBC] for the years 2011 and 2012,” and further specified that “pages 1-21 for the year 2012 and pages 1-20 for the year 2011” were missing. RIDE replied that “[it] sent you the complete reports from the [WBC]. The other pages on this cumulative document concern other matters.” As a result, you allege that RIDE “reviewed the documents, decided they were not relative to my original request and denied me access to [the missing pages] despite my request for access to these records.”

In its April 28, 2014 response, RIDE indicated that “the record appears to be a selection from a larger document, based on pagination beginning at page #21. This is the entire document in our possession and control; we have no paper document, nor do we have this record in any other version...RIDE made no redactions to either of these records. RIDE therefore has no additional records to provide to the Attorney General for in camera review.” RIDE also stated that it “may have implied in a previous e-mail [to you] that we sent you only a portion of the records in our possession and control; in fact, the [WBC] evidently submitted to RIDE only a portion of its complete financial reports for 2011 and 2012.”

In your rebuttal, you argue that since “[a] Certified Public Accountant has stated that the [WBC] is in compliance with the Single Audit Act and OMB Circular A133 for the years 2011 and 2012...One could reasonably conclude that complete audits have been filed with RIDE and therefore would now be public documents that are available for public inspection.” Even if we assume, without argument, that complete audits should have been filed with RIDE, the APRA issue presented for our resolution is not whether a complete audit should have been completed and filed with RIDE, but whether RIDE provided you with all documents responsive to your request, which RIDE maintained. In addition to providing this Department with the 2011 and 2012 reports, RIDE submitted correspondences between RIDE and the WBC for an *in camera* review. Without disclosing the contents of the documents submitted *in camera*, the evidence demonstrates that the documents RIDE provided to you pursuant to your APRA request are the exact documents the WBC submitted to RIDE. Therefore, based on all the evidence presented, including RIDE’s affidavits, our interview with Mr. Krieger and Attorney Muksian, and our review of the

2011 and 2012 reports *in camera*, we find that RIDE provided you with the complete documents in RIDE's possession.⁸ As such, we find no violation.

B. Request for: 2) “[t]he latest report that the West Bay Collaborative has submitted to the Board of Regents detailing their activities and programs,” and 3) “[a] copy of the Rules and Regulations adopted by the Board of Regents for Collaboratives.”

On October 9, 2013, RIDE denied your request for items two (2) and three (3) above on the grounds that “[t]hese records do not exist or are not in the custody and control of the R.I. Department of Education. The R.I. Department of Education does not have or maintain these records.” With respect to item two (2), you argue in your complaint that:

“Rhode Island General Law[s] 16-3.1-13 states ‘Each collaborative shall also file periodic reports, to the board of regents, the senate education committee and the house health, education and welfare committee, detailing their activities and programs.’[] RIDE has denied my request to this document stating that it doesn’t exist. The [WBC] exists, they have activities and programs, the law requires that a report be submitted, these documents should be maintained by RIDE.”

Similarly, for item three (3) you argue that:

“Rhode Island General Law[s] 16-3.1-17(a) states ‘The board of regents for elementary and secondary education shall adopt rules and regulations regarding all aspects of the educational collaboratives mission and goals.’[] RIDE claims that Rules and Regulations for collaboratives do not exist. There is a law requiring Rules and Regulations be adopted so therefore RIDE should maintain Rules and Regulations for collaboratives.”

In reply, Mr. Krieger maintains that “RIDE is not aware of any reports that the [WBC] has submitted to the Board of Regents or the Board of Education detailing activities or programs...[N]either the Board of Regents nor the Board of Education has adopted rules and regulations for collaboratives, and therefore these records do not exist.”

Here, in addition to reviewing RIDE's affidavits and discussing our concerns directly with Mr. Krieger and Attorney Muksian, this Department also conducted a search for the Board of Regents' rules and regulations for collaboratives on the Secretary of State's website. We were unable to find documents

⁸ In RIDE's November 12, 2013 response Mr. Krieger comments on an October 10, 2013 APRA request you submitted seeking “West Bay Collaborative Financial Statements for the Fiscal Year 2011 and 2012 with Independent Auditor's Reports’.” The contents of your October 10, 2013 request and RIDE's response are not properly before this Department. Indeed, in your December 22, 2013 correspondence, you affirm that “this APRA complaint is not about my request for records made on October 10, 2013, nor about RIDE's response to that request made on October 11, 2013 and October 22, 2013.” As such, we decline to speculate what relevance, if any, RIDE's statement about your October 10, 2013 APRA request has on the present issues.

responsive to your request. Furthermore, even you appear to acknowledge that RIDE does not maintain the requested documents in your May 5, 2014 correspondence, *i.e.*, “[RIDE] knows that in addition to students attending this school, students are receiving services at this school, yet RIDE, is unable to provide any documentation of the activities at this school...[RIDE] knows the timeline requirements for a collaborative to apply for approval for a program, yet RIDE can not produce any Rules and Regulations that would define the procedures for collaboratives to follow.” Without evidence to the contrary, and in light of RIDE’s affidavit, representations made to this Department during our telephone interview, and our review, this Department cannot make a determination that RIDE violated the APRA by failing to provide you with documents that are not in RIDE’s custody or that do not exist. See R.I. Gen. Laws § 38-2-3(h). Therefore, we find no violation.

IV. Allegations Related to the May 5, 2014 APRA Request.

Your May 5, 2014 APRA request sought the following documents:

- “1. Eride school profile for the [WBC].
2. Personnel assignments submitted for the [WBC].
3. 2013 School Classification report for the [WBC].
4. Emergency-drill information (lock down, fire, evacuation) as submitted by the principal/administrator of the [WBC] (operated at the defunct Greene School).”

A. Request for: 1) “Eride school profile for West Bay Collaborative.”

Here, RIDE indicated that it granted item number 1, but instead of providing any responsive source documents, RIDE provided you directions to a website that, according to RIDE’s response to your APRA request, “provide[s] links to both school and district profiles for the [WBC].” In RIDE’s June 4, 2014 response to your complaint, RIDE directs this Department to the same website, provides this Department with step by step directions to the profile site and states, “[y]ou will not see any listing for the West Bay Collaborative; the West Bay Collaborative and schools or programs that it operates are not part of our system of school classifications and accountability.” (Emphasis added).

RIDE’s response provides great confusion. In brief, RIDE “granted” your request for the WBC’s “profile,” indicated that the “records are posted online,” when in fact, RIDE was aware (or should have been aware) that there was no “profile” for the WBC. In fact, RIDE tells this Department that the WBC “does not have a profile as such on the e-RIDE portal,” so it is unclear why your request for the “profile” was “granted” on this basis. Moreover, RIDE’s directions grant access to the “directory” for the WBC, however, the “directory,” as we understand, provides different information than the requested “profile.” Our review confirms that there is no online “profile” for the WBC and no evidence has been proffered to suggest that any other hard copy documents are responsive to your request. Accordingly, we find that RIDE violated the APRA by granting your request for the “profile” when no responsive document existed.

B. Request for: 2) Personnel assignments submitted for the West Bay Collaborative and 3) 2013 School Classification report for the West Bay Collaborative.

In your complaint, you claim that “RIDE denied me access to this request stating that RIDE does not have or maintain the requested records,” and that the “documents that I seek should be maintained at RIDE.” In its June 4, 2014 response, Mr. Krieger attests that:

“I contacted the directors of all offices at RIDE who might for any reason collect ‘personnel assignments submitted by the West Bay Collaborative.’ These offices include the Office of Data, Analysis, and Research (which maintains the e-RIDE database); the Office of Student, Community, and Academic Supports (responsible for schools and programs for students with disabilities); and the Office of Multiple Pathways (responsible for high-school graduation issues). Other than the information contained in the ‘Schools Directory’ (provided to Smith), the West Bay Collaborative does not submit personnel assignments to RIDE. The Attorney General’s Office asked if RIDE is aware of ‘where responsive documents are maintain[ed]’; RIDE can suggest that the West Bay Collaborative or any of the school districts that are members of the Collaborative may maintain such records.”

In your June 9, 2014 rebuttal, you challenge that “it is also possible...[that RIDE] can find additional personnel records for the [WBC] in other records at RIDE...[RIDE] listed the department that [RIDE] checked with to determine if RIDE had the personnel assignments for the [WBC]. One department that [RIDE] omitted to check with was the office of Educator Quality and Certification.” You then direct this Department to the “Educator Verification Portal” at <http://ecert.ride.ri.gov/public/>, which you claim “allows the public to review the personnel assignments of the teachers at a particular school,” and enclosed “a copy of the Northern Collaborative’s personnel assignments,” which you obtained through the eCert portal. Based on your rebuttal, it appears you also question whether RIDE conducted a reasonable search before concluding that RIDE does not maintain documents responsive to your request.

Here, it is unclear whether the certification information available through the eCert portal is responsive to your request for “personnel assignments submitted for the [WBC].” The portal supplies the name, certificate number, certificate type, certificate area, “HQ” status, issue date, expiration date, assigned district, and assigned school for staff members of a particular learning institution, however, it does not indicate specific assignment details such as what grade(s) or subject(s) educators are assigned. According to the Office of Educator Quality and Certification, the eCert portal is designed for “educators in Rhode Island to manage their certification” and allows educators to “view, download and print their certifications and apply online for certification.”⁹ Since the eCert portal only denotes the assigned school and district and provides no insight into more specific teaching assignments, we have concerns whether the information supplied through the eCert portal is responsive to your request for “personnel assignments.” Furthermore, in your rebuttal you argue that “[a] couple of personnel assignments appear on the [WBC] directory,” however, the only “assignment” details on the WBC’s “directory” is the name

⁹ <http://www.ride.ri.gov/Portals/0/Uploads/Documents/Teachers-and-Administrators-Excellent-Educators/Educator-Certification/Cert-main-page/MyeCert.pdf>

of WBC's Principal and Director of Special Education. On November 24, 2014, this Department spoke with Mr. Krieger and Attorney Muksian and inquired whether RIDE considered the information contained in the WBC's "directory" to be responsive to your request for "personnel assignments submitted for the [WBC]," to which RIDE answered in the negative. In this respect, we note that the term "personnel assignments" encompasses a range of possible interpretations and it has been observed that "it is the requester's responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested." Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217 (D.D.C. 1989). See also Palazzo v. Rhode Island Senate, PR 11-21.

Notwithstanding our concerns, it is significant that you challenge the reasonableness of RIDE's search when, at the time of your APRA request, no information for the WBC was available through the eCert portal.¹⁰ While it may be possible that the Office of Educator Quality and Certification maintains responsive documents not available through the eCert portal, no such evidence has been presented or discovered. Regardless, we conclude that RIDE's search with the "Office of Data, Analysis, and Research...Office of Student Community and Academic Supports...and the Office of Multiple Pathways," was reasonable in light of your broad request, as well as RIDE's contention that it does not consider the information in the "directory" to be responsive for "personnel assignments submitted for the [WBC]." In addition, while we assume you reference the Northern RI Collaborative to demonstrate that RIDE, through its portal, maintains certain information on another collaborative, respectfully, such a demonstration in no way evidences that RIDE maintains similar information for the WBC. Based on all the evidence presented, we conclude that RIDE did not violate the APRA when it denied your request. See R.I. Gen. Laws § 38-2-7(c).

We reach the same conclusion with respect to RIDE's denial of your request for the "2013 School Classification report for the [WBC]," which RIDE denied on the grounds that "[t]he record requested does not exist." Here, we have been presented with no evidence that the documents you request exist and RIDE insists, in its June 4, 2014 response, that "the [WBC] is not and has never up to this time been a part of the Rhode Island school classification and accountability system." Respectfully, your argument that the "[WBC] is a public school, it provides public education to students...RIDE did collect this information for the Urban Collaborative," therefore, "[you] would expect that somewhere RIDE has records for the [WBC] as well," is simply unpersuasive. As explained above, your reference to the Urban Collaborative to demonstrate that RIDE maintains certain information on another collaborative, in no way evidences that RIDE maintains similar information for the WBC. Moreover, as demonstrated throughout this finding, expectations, conclusions, or assumptions as to the existence of a document does not equate to actual evidence. The evidence that has been presented, including RIDE's affidavits, our independent research, and our November 25, 2014 interview with Mr. Krieger and Attorney Muksian, shows that the document you requested was not maintained by RIDE at the time of your request. See R.I. Gen. Laws § 38-2-3(h). Thus, we find no violation.

¹⁰ At the time this finding was released, a search on the eCert portal for the WBC did produce certification information for educators assigned to the WBC.

C. Request for: 4) “Emergency-drill information (lock down, fire, evacuation) as submitted by the principal/administrator of the West Bay Collaborative School (operated at the defunct Greene School).”

Your APRA request sought the “[e]mergency-drill information [] as submitted by the principal/administrator of the West Bay Collaborative School.” RIDE indicated that it granted your request and provided you with a copy of two (2) emergency drill forms that the WBC submitted. The two (2) documents provided, however, appear to be templates and contain no substantive information concerning any emergency drills. In your complaint, you argue that your “request was specific to receive the form submitted by the principal/administrator,” and that the “forms that Mr. Krieger forwarded to [you], did not identify any staff member that submitted the forms to RIDE and the forms were not signed.” In response, RIDE indicated that it “provided [you] with the records for emergency-drill reports from the West Bay Collaborative [] as these records exist in our possession and control.” Later, in your rebuttal, you contend that “[e]ven though it is possible that RIDE does not have completed emergency drill records, [you] still believe that RIDE violated the APRA” and asked this Department to obtain from RIDE “the records that identifies the person who submitted the emergency drill forms, as well as the date and time of when this information was entered in RIDE’s database” because, in your words, “[t]he person that entered the school’s name on the document would likely have the information pertaining to where responsive documents are maintained.”

Here, “it is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested.” Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217 (D.D.C. 1989). See also Palazzo v. Rhode Island Senate, PR 11-21. While you suggest that RIDE may have provided you documents not submitted by the principal/administrator, and, therefore, asked this Department to determine who submitted the documents in order to determine whether RIDE provided responsive documents, your APRA request was sufficiently broad to encompass a wide variety of persons and certainly encompasses any person who would have access to submit an emergency drill form to RIDE.¹¹ Accordingly, while the fact that RIDE maintains only two (2) forms, neither of which contains any substantive information, may very well raise questions, these issues are not within the ambit of the APRA. Furthermore, even if “[t]he person that entered the school’s name on the document would likely have information pertaining to where responsive documents are maintained,” your APRA request was directed to RIDE and sought records maintained by RIDE. Whether the person who submitted the form to RIDE knows “where responsive documents are maintained,” is irrelevant to the issue at hand, since the APRA requires only that RIDE provide access to public records “maintained or kept on file” by RIDE. See R.I. Gen. Laws § 38-2-3(a). Here, the evidence before us, including RIDE’s affidavits and our interview with Mr. Krieger and Attorney Muksian, shows that the forms provided to you were the only responsive documents in RIDE’s possession at the time of your request. Thus, we find no violation.

¹¹ The Merriam-Webster Dictionary defines “administrator” as “a person whose job is to manage a company, school, or other organization,” and/or “a person who controls the use of something (such as property or money).” See <http://www.merriam-webster.com/dictionary/administrator>. Also, dictionary.com defines administrator as “a person who manages or has a talent for managing.” See <http://dictionary.reference.com/browse/administrator>.

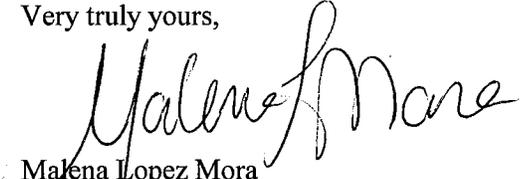
V. Conclusion

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter***.” See R.I. Gen. Laws § 38-2-9(d).

While we expressed numerous concerns throughout this finding, we find insufficient evidence that the violations discussed herein were willful and knowing, or reckless. Notwithstanding, we direct RIDE to provide you with a response to your August 15, 2013 APRA request for “[r]ecords that reflect the number of students attending this school (by district),” consistent with this finding, the APRA, and federal law, within ten (10) business days of this finding. If you do not receive a response within ten (10) business days, kindly advise this Department so that we may review this matter further to ensure compliance with the APRA. This finding serves as notice to RIDE that its actions violated the APRA and may serve as evidence of a willful and knowing or reckless violation in any future similar case.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: David Abbott, Esquire