



State of Rhode Island

GENERAL ASSEMBLY
JOINT COMMITTEE ON LEGISLATIVE SERVICES

HENRY S. KINCH, JR.
Executive Director

JOSEPH F. RODGERS, III
General Counsel

March 5, 2025

VIA EMAIL ONLY

Adam Roach
Special Assistant Attorney General
Department of Attorney General
150 South Main Street
Providence, RI 02903
aroach@riag.ri.gov

Re: Solas v. Rhode Island Joint Committee on Legislative Services

Dear Attorney Roach:

We are in receipt of your letter of February 19, 2025 informing the Joint Committee on Legislative Services (hereinafter "JCLS") of the complaint filed against it by Nicole Solas. As you indicate, Ms. Solas alleges that the JCLS violated the APRA [among other things] by failing to respond to her APRA request and be improperly withholding records.

While you may have narrowed down Ms. Solas complaint to the issues governed by APRA and not the ancillary First Amendment arguments she alleges throughout her complaint, this office would be negligent if it did not address those statements in its response, as those constitutional claims go to the heart of JCLS's approach to the records in question.

Further, JCLS respectfully submits that the matter of Solas v. Rhode Island Joint Committee on Legislative Services is not properly before the Office of the Attorney General at present because the complainant has: (1) failed to appeal the initial denial of her APRA request to the chief administrative officer as required by R.I.G.L. § 38-2-8(a); and (2) raised constitutional questions involving the General Assembly which cannot be addressed by the Office of the Attorney General.

While we are in receipt of your previous reply to the same issue being raised now, we remain firm in our belief that the Office of the Attorney General lacks the authority to take up a direct appeal that has not first been taken by the chief administrative officer as required by R.I.G.L. § 38-2-8(a) and that that the AG's reliance on *Mercurio v. Cranston Police Department*, PR 20-31, to establish that a direct appeal can be made to the AG is improper. Not only was the "express" opinion cited by the AG in response to JCLS' previous objection contained within a footnote, but the decision is: in violation of constitutional and statutory provisions; in excess of the statutory authority of the department; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and; arbitrary and capricious, characterized by abuse of discretion and clearly unwarranted exercise of discretion.

Please accept this letter and the accompanying Affidavit along with other exhibits as the reply of the JCLS to Ms. Solas' complaint. (See Exhibit 1 attached hereto).

FACTS

At 7:18 PM, January 31, 2023, Nicole Solas filed a public records request to the General Assembly through its website at publicinfo@rilin.state.ri.us requesting "the resumes of all individuals who control and/or access the RI Senate X account, @RISenate." For the purposes of the public records act, JCLS received Ms. Solas' request for records on Monday, February 3, 2025. Beginning on February 3, JCLS had ten business days to respond to Ms. Solas' records request. On February 14, 2025, Ms. Solas posted on her X account @Nicoletta0602 that she was "looking forward [on that day] to learning which interns, staffers and senators at the @RISenate & @RIGen Assembly have been unconstitutionally censoring Rhode Islanders on X by hiding comments."

At 4:21 PM, on February 17, 2025 – ten business days from February 3 – JCLS denied Ms. Solas' request for the resumes. In denying Ms. Solas' requests for the resumes of the individuals who control and/or access the Senate X account, pursuant to R.I.G.L. § 38-2-2(4)(A)(I)(b), JCLS applied the proper balancing test to determine whether public's interest in disclosure outweighs an individual's right to privacy. Whereas JCLS understands that numerous public records decisions authored by the AG favor the release of resumes, JCLS cannot protect its employees' privacy or apply a proper balancing test in a vacuum. In the present matter, Ms. Solas asked for the resumes of persons who were performing a ministerial function on behalf of the Senate; without attribution.

And while JCLS tried to avoid raising constitutional issues in its denial, Ms. Solas' statements on her X account and in her complaint to your office require us to address those issues now. Simply stated, the "speech in debate" clause contained in Article VI, Section 5 of the Rhode Island Constitution provides that no member of either House shall be questioned in any other place. Any statements made on behalf of the Senate, in furtherance of its goals cannot be questioned in a forum other than the General Assembly in addition, the hiring of staff and the managing of their activities in support of Senate operations is a legitimate legislative function.

On February 19, 2025, Ms. Solas filed her complaint via email with your office.

ARGUMENT

The purpose of the public records act has been declared “[t]he public’s right to access to public records and the individual’s right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute *an unwarranted invasion of personal privacy*. (Emphasis added) See R.I.G.L. §38-2-1.

In response to a request for a public record pursuant to the APRA, a public body is required to make available for public disclosure those records that are responsive to a request, are in possession of the agency and are not otherwise exempted from disclosure.

There are twenty-eight specific exemptions to what constitutes a public document, including R.I.G.L. § 38-2-2(4)(A)(I)(b) which exempts, in part, “[p]ersonnel 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.*” (Emphasis added)

While § 38-2-2(4)(A)(I)(b) provides that there are certain employee records that are releasable such as salary, job title, job description, dates of employment and positions held with the state that are similar to the type of information contained in a resume and the AG has found in numerous cases that resumes should be released as public documents, in this matter we are being asked for the resumes of persons responsible for posting information on behalf of their employer for which they receive no individual recognition. However, while JCLS most likely would have released a majority of staff resumes, with the appropriate redactions, if such a request were made; in this instance, in applying the balancing test to determine whether the public’s right to public records outweighs an individual’s personal privacy¹ JCLS was faced with one issue, will the release of the resumes shine a light on the operations of government. See *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749. Notwithstanding any constitutional argument regarding the “speech in debate” clause, in this case the decision is easy; the ministerial work involved in posting Senate authorized information has nothing to do with the qualifications of the individuals being directed to perform the work.

Outside of a general claim that all resumes are public records, Ms. Solas fails to present an argument that JCLS improperly applied R.I.G.L. § 38-2-2(4)(A)(I)(b) in denying her request. Instead, Ms. Solas chose to ignore the fact that X account and its operations are nothing more than a ministerial function intended to benefit the Senate as a whole and that the posting of informational material provided on the account lacked the type of independent decision making that may have favored the release of resumes.

¹ While we aware that that the AG has repeatedly cited the 2012 change of § 38-2-2(4)(A)(I)(b) that favors the release of records due to the new standard being *a clearly unwarranted invasion of personal privacy*, the defining purpose of the Act in § 38-2-1 remains to “protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would *constitute an unwarranted invasion of personal privacy.*” (Emphasis added).

While Ms. Solas is of the belief that “resumes of individuals carrying out official public business absolutely shed light on how government works because it shows the qualifications - or lack thereof - of the individuals whom government hired to do official government work or delegated official government duties to in some other capacity”; her argument fails to understand that the denial was narrowly applied to a situation where skill and education were not the predominant factor in the assignment of work. Under Ms. Solas’ approach the resume of a painter working in buildings and grounds could shine a light on the operations of government because she wants to see whether a house painter attended RISD. We cannot speak in absolutes if we are going to apply a legitimate balancing test.

While JCLS stands firm in its belief that the denial of Ms. Solas records request under R.I.G.L. § 38-2-2(4)(A)(I)(b) was proper, it would be remiss if it did not address her specious claims that the Senate and/or JCLS were infringing on certain unknown persons First Amendment rights even though this is not the appropriate forum to discuss such matters.

The protections provided in Article VI Section 5 of the Rhode Island Constitution provides, “[f]or any speech in debate in either house, no member shall be questioned in any other place.” The speech and debate clause is not limited to those actions that arise within the confines of either legislative chamber, but include the activities of legislators carrying out their legislative duties related to the legislative process. It also protects the legislature as an institution from attack by either of the other co-equal branches of government. It confers a privilege on legislators from inquiry into their legislative acts or into the motivation for actual performance of legislative acts that are clearly part of the legislative process.


The decision denying Ms. Solas’ request pursuant to R.I.G.L. § 38-2-2(4)(A)(I)(b) was completely consistent with APRA and its exemptions.

CONCLUSION

JCLS applied the appropriate balancing test to this matter, because the issue regarding whether the resumes of persons performing ministerial functions are a public document has not been addressed previously JCLS has not willfully violated any provision of the public records act. Moreover, it is clear that JCLS did answer Ms. Solas’ request within the statutorily prescribed ten-business days.

Accordingly, JCLS respectfully requests that your office deny and dismiss Ms. Solas’ appeal.

Sincerely,



Joseph F. Rodgers, III (#6916)
General Counsel, JCLS

CERTIFICATION

I hereby certify that on this 5th day of March 2025, a true copy of this Letter along with the Affidavit and Exhibits were sent via email to Ms. Nicole Solas at nicolesolas@gmail.com.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'J. Solas'.