

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

SUPERIOR COURT

HANNAH STERN, in her capacity as :
Policy Associate of the AMERICAN CIVIL :
LIBERTIES UNION OF RHODE ISLAND; :
and AMERICAN CIVIL LIBERTIES UNION :
OF RHODE ISLAND :

Plaintiffs :

v. :

MATTHEW WELDON, in his capacity as :
DIRECTOR OF THE RHODE ISLAND :
DEPARTMENT OF LABOR AND :
TRAINING :

Defendant :

C.A. No.

COMPLAINT

1. The Plaintiffs, Hannah Stern, in her capacity as Policy Associate of the American Civil Liberties Union of Rhode Island, and American Civil Liberties Union of Rhode Island, hereby bring this Complaint against the Defendant, Matthew Weldon, in his capacity as Director of the Rhode Island Department of Labor and Training.
2. This is an action for declaratory and other relief under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et. seq. (“APRA”), seeking the production of public records.
3. The Plaintiff Hannah Stern is a Rhode Island resident and Policy Associate of the American Civil Liberties Union of Rhode Island.
4. The Plaintiff American Civil Liberties Union of Rhode Island is a Rhode Island non-profit corporation dedicated to preserving the civil liberties and civil rights of residents of the state, including rights related to open government as well as the right to privacy.
5. The Defendant Matthew Weldon (“Defendant”) is the Director of the Rhode Island Department of Labor and Training.
6. This Court has jurisdiction over this action pursuant to R.I. Gen. Laws § 38-2-9(a) and § 9-30-1.
7. The Rhode Island Department of Labor and Training is an “agency” or “public body” as defined by R.I. Gen. Laws § 38-2-2(1).
8. Venue is proper pursuant to R.I. Gen. Laws § 38-2-8(b).
9. Both the American Civil Liberties Union of Rhode Island and the Rhode Island Department of Labor and Training are in Providence County, Rhode Island.
10. On or about August 2, 2021, the Plaintiffs submitted a formal request (“APRA Request”) to the Rhode Island Department of Labor and Training requesting certain public documents. *See August 2, 2021 APRA Request*, a true and accurate copy of which is attached hereto as **Exhibit A**.

11. The APRA Request related to the Rhode Island Department of Labor and Training's "actual or considered usage of facial recognition and identity verification software . . . in the course of processing unemployment claims." See **Exhibit A**.
12. The Plaintiffs' APRA Request sought records maintained "in connection with the transaction of official business by" the Rhode Island Department of Labor and Training, which are public records as defined under R.I. Gen. Laws § 38-2-2(4).
13. There is a significant public interest in the records sought by the Plaintiffs' APRA Request.
14. On August 17, 2021, the Defendant, by and through Siobhan L. Stephens-Catala, Legal Counsel for the Rhode Island Department of Labor and Training, issued a Response denying the APRA Request, producing no records at all. See *August 17, 2021 Response*, a true and accurate copy of which is attached hereto as **Exhibit B**.
15. In response to the Plaintiffs' APRA Request, the Defendant claimed that the "documents you seek are not public records and are confidential by law under R.I. Gen. Laws § 28-39-20, § 28-42-38, and 42 U.S. Code § 1320b-7(5)." See **Exhibit B**.
16. The Defendant did not explain how R.I. Gen. Laws § 28-39-20, § 28-42-38, and 42 U.S. Code § 1320b-7(5) apply or relate to the records sought by the Plaintiffs' APRA Request.
17. Based on the Defendant's claim that the records were confidential, the Defendant cited R.I. Gen. Laws § 38-2-2(4)(A)(II)(S), stating that said statute exempts the disclosure under R.I. Gen. Laws § 38-2-1 *et seq.* of "[r]ecords, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court." See **Exhibit B**.
18. The documents sought by the APRA Request are not confidential pursuant to R.I. Gen. Laws § 28-39-20 as defined by R.I. Gen. Laws § 28-39-19, which states, in part, "[e]very employee of the department of labor and training is expressly prohibited from divulging" information related to specific individuals and/or employing units.
19. The documents sought by the Plaintiffs in the APRA Request are not confidential pursuant to R.I. Gen. Laws § 28-42-38, which states, in part, that "[i]nformation obtained, or information contained in any other records of the department obtained from any individual . . . shall be held confidential."¹
20. The documents sought by the APRA Request are not confidential pursuant to 42 U.S. Code § 1320b-7(5), which discusses the protection of wage information and wage reports, and the exchange of personally identifiable information amongst state agencies to confirm an individual's eligibility for certain benefit programs.
21. The APRA Request does not seek information related to any individual employee, participant, recipient, applicant, or citizen involved in the business of the Rhode Island Department of Labor and Training.

¹ The Department of Labor and Training was recently found by the R.I. Attorney General to have violated APRA in citing this exemption in similar circumstances, where the requester did "not seek any . . . employee information and the Department has not explained why it believes that statute is relevant to this matter." *Gunnip v. Rhode Island Department of Labor and Training*, PR 21-27, October 27, 2021. Available at https://clerkshq.com/Content/RIAG-ri/decisions/2021/PR21_27.htm

22. The APRA Request seeks documents regarding the Defendant's "actual or considered usage of facial recognition and identity verification software . . . in the course of processing unemployment claims." *See Exhibit A.*
23. The APRA Request seeks documents related to this topic including "communications" with facial recognition or identity verification companies about the products sold by those companies. *See Exhibit A.*
24. The APRA Request seeks documents reflecting the consideration or existence of a relationship between the Rhode Island Department of Labor and Training and "any company that manufactures or sells any facial recognition and identity verification product." *See Exhibit A.*
25. The APRA Request seeks documents regarding the "operational effectiveness or accuracy rate" of facial recognition or identity verification products "examined or obtained by the Department." *See Exhibit A.*
26. The APRA Request seeks information and documents that are public records, that do not contain personally identifiable information, and that are not considered "confidential" pursuant to the statutes cited by the Defendant.
27. The Defendant's denial of the APRA Request was improper.
28. The Plaintiffs have a right of access to the records sought in the APRA Request under R.I. Gen. Laws § 38-2-1 et. seq.
29. There is no legal basis for the Defendant's denial of access of the records sought in the APRA Request under R.I. Gen. Laws § 38-2-1 et. seq.

WHEREFORE, upon all allegations and counts alleged herein, the Plaintiffs respectfully 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 the APRA Request seeks records that are public records as defined under R.I. Gen. Laws § 38-2-1 et. seq. and that the records are required to be released and made available to the Plaintiffs.
- c. DECLARE that it is in the public's interest that the records sought in the APRA Request be released and made available to the Plaintiffs.
- d. ORDER that the Defendant respond to the APRA Request forthwith and produce all records responsive to the APRA Request.
- e. ORDER that the Defendant waive any fees for the copying, search and retrieval of said records.
- f. ENTER judgment in favor of the Plaintiffs.
- g. IMPOSE civil fines on the Defendant pursuant to R.I. Gen. Laws § 38-2-9(d).
- h. AWARD the Plaintiffs reasonable costs and attorney fees.

- i. GRANT such other and further relief as this Court deems just and proper.

The Plaintiffs,
Hannah Stern, in her capacity as Policy
Associate of the American Civil Liberties Union
of Rhode Island, and American Civil Liberties
Union of Rhode Island
By their attorneys,

/s/ C. Alexander Chiulli
C. Alexander Chiulli | R.I. Bar No. 9139
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BARTON GILMAN LLP
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Providence, RI 02903
401.273.7171 | 401.273.2904 – Fax

Cooperating counsel,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF RHODE ISLAND

Dated: November 29, 2021

Exhibit A

From: "RI.gov Transparency Portal" <no-reply@wufoo.com>

Reply-To: "apra.request@governor.ri.gov" <apra.request@governor.ri.gov>

Date: Monday, August 2, 2021 at 10:41 AM

To: Hannah Stern <hstern@riaclu.org>

Subject: APRA Request - Executive Branch Agencies

Thank you for your request to access public records through the RI.gov Transparency Portal at <http://www.transparency.ri.gov>. We are routing your request to the appropriate agency, which will respond to you within the requisite 10 business days. The details of your request can be found below. Thanks again – RI.gov

APRA Request – Executive Branch Agencies

Name	Hannah Stern
How would you like to receive your documents? *	Email
Email *	hstern@riaclu.org
Approximate publish date of record *	Wednesday, January 1, 2020

Related Agency? * Labor and Training

Topic - Dept of Labor & Training Other

Name and Description of record *

To Whom It May Concern:

Please consider this letter an open records request under the state Access to Public Records Act, R.I.G.L. §38-2-1 through §38-2-11. I am writing to request copies of documents related to the actual or considered usage of facial recognition and identity verification software, such as but not limited to the software sold by ID.me, by the Department of Labor and Training in the course of processing unemployment claims.

ID.me is a facial recognition and identity verification product which has been marketed as a tool to allow state agencies to "cut down on a surge of fraudulent claims for state and federal benefits that cropped up during the pandemic alongside a tidal wave of authentic unemployment claims."

Specifically, we would like to request the following records from your agency generated on or after January 1, 2020:

1. All communications, including emails, between or among the Department and any representative of any company that manufactures or sells any facial recognition and identity verification product, including but not limited to ID.me, about that product;
2. Records evidencing or describing any past, existing or potential relationship, or the Department's consideration of such a relationship, whether on a trial or more formal basis, with any company that manufactures or sells any facial recognition and identity verification product, including but not limited to ID.me.
3. Records referencing the operational effectiveness or accuracy rate of any facial recognition and identity verification service or product, including but not limited to ID.me, examined or obtained by the Department. These records include but are not limited to e-mails, handouts, Powerpoint presentations, advertisements, audits, and specification documents.

As provided for by APRA, I look forward to receiving the requested documents within ten (10) business days. We are willing to pay reasonable costs for this information in accordance with the Act. I would like to request that all responsive documents be sent in an electronic format to my email at hstern@riaclu.org.

If you have any questions regarding this request, please feel free to reach out to me. Thank you in advance for your prompt attention to this matter.

Best,

Hannah Stern, Policy Associate, ACLU of RI

Number of copies requested * 1

Exhibit B

STATE OF RHODE ISLAND



Department of Labor and Training

Center General Complex
1511 Pontiac Avenue
Cranston, RI 02920-4407

Telephone: (401) 462-8000
TDD: R.I. Relay 711

Daniel J. McKee
Governor

Matthew D. Weldon
Director

Sent by email transmission
hstern@riaclu.org

August 17, 2021

Re: APRA Request 21-172

Dear Ms. Stern,

This is Rhode Island Department of Labor & Training's (DLT) official response to your access to public records request received Monday, August 2, 2021 for the below listed records:

...documents related to the actual or considered usage of facial recognition and identity verification software, such as but not limited to the software sold by [ID.me \[id.me\]](#), by the Department of Labor and Training in the course of processing unemployment claims.

[ID.me \[id.me\]](#) is a facial recognition and identity verification product which has been marketed as a tool to allow state agencies to "cut down on a surge of fraudulent claims for state and federal benefits that cropped up during the pandemic alongside a tidal wave of authentic unemployment claims."

Specifically, we would like to request the following records from your agency generated on or after January 1, 2020:

- 1. All communications, including emails, between or among the Department and any representative of any company that manufactures or sells any facial recognition and identity verification product, including but not limited to [ID.me \[id.me\]](#), about that product;*
- 2. Records evidencing or describing any past, existing or potential relationship, or the Department's consideration of such a relationship, whether on a trial or more formal basis, with any company that manufactures or sells any facial recognition and identity verification product, including but not limited to [ID.me \[id.me\]](#).*
- 3. Records referencing the operational effectiveness or accuracy rate of any facial recognition and identity verification service or product, including but not limited to [ID.me \[id.me\]](#), examined or obtained by the Department. These records include but are not limited to e-mails, handouts, Powerpoint presentations, advertisements, audits, and specification documents...*

STATE OF RHODE ISLAND



Department of Labor and Training

Center General Complex
1511 Pontiac Avenue
Cranston, RI 02920-4407

Telephone: (401) 462-8000
TDD: R.I. Relay 711

Daniel J. McKee
Governor

Matthew D. Weldon
Director

Your request is governed by the Rhode Island Access to Public Records Act (“APRA”) contained in the R.I. Gen. Laws § 38-2-1 *et seq.* Based on your request, access to the documents has been denied, because the documents you seek are not public records and are confidential by law under R.I. General Laws § 28-39-20, § 28-42-38, and 42 U.S. Code §1320b-7(5). Therefore, the DLT has deemed the requested documents to be exempt in accordance with Rhode Island General Law § 38-2-2(4)(A)(II)(S) which states:

“Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.”

If you would like to appeal this response, you may do so in accordance with the provisions of R.I. Gen. Laws § 38-2-8 which is set forth below.

§ 38-2-8. Administrative appeals.

- (a) Any person or entity denied the right to inspect a record of a public body may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.
- (b) If the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.
- (c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

STATE OF RHODE ISLAND



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Daniel J. McKee
Governor

Matthew D. Weldon
Director

(d) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

Sincerely,

/s/ Siobhan L. Stephens-Catala

Siobhan L. Stephens-Catala, Esq.
Legal Counsel