

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ATTORNEY GENERAL PETER F. KILMARTIN, :
IN HIS OFFICIAL CAPACITY, :
PLAINTIFF :

C.A. NO.: P.C. 16-

VS. :

THE COMPASS SCHOOL :
DEFENDANT :

COMPLAINT

I. INTRODUCTION

Attorney General Peter F. Kilmartin (“Attorney General”), acting in his official capacity, brings this action upon information and belief that the Compass School committed a willful and knowing, or reckless, violation of the Rhode Island Access to Public Records Act (“APRA”) when it failed to timely respond to an APRA request filed by Mr. Joe Smith, on January 13, 2015. The Attorney General respectfully requests that this Honorable Court declare that the actions of the Compass School violated the APRA, assess civil fines and attorneys fees against the Compass School, and further order any other such remedy this Honorable Court deems just and equitable.

II. PARTIES

1. Plaintiff is the Attorney General of the State of Rhode Island. Pursuant to Rhode Island General Laws § 38-2-8(b), the Attorney General shall investigate APRA complaints filed with the Department of Attorney General (“Department”), and if the complaint is found to be meritorious, the Attorney General may institute proceedings for civil penalties and/or injunctive or declaratory relief.

2. Defendant, the Compass School, is a “public body” as defined by Rhode Island General Laws § 38-2-2(1), and is thus subject to the APRA. See R.I. Gen. Laws § 38-2-1 et seq.

III. JURISDICTION

3. The Rhode Island Superior Court is vested with jurisdiction over this matter pursuant to R.I. Gen. Laws § 38-2-9.

IV. FACTS

4. The APRA requires that all public bodies respond within ten (10) business days to a request for documents. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within ten (10) business days of the request to the person or entity making the request. See R.I. Gen. Laws § 38-2-7(a). If no response is sent within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). If, for good cause, the public body cannot comply with a records request within ten (10) business days, then the public body may extend the time to respond an additional twenty (20) business days, for a total of thirty (30) business days. See id.; see also R.I. Gen. Laws § 38-2-3(e).
5. On January 13, 2015, Mr. Joe Smith filed an APRA request with the Compass School seeking a response to six (6) categories of documents.
6. On January 21, 2015, the Compass School acknowledged receipt of the APRA request and indicated that “the information is being gathered.”

7. On January 22, 2015 the Compass School provided documents responsive to one category of documents and indicated it was “gathering additional correspondence.”
8. On February 4, 2015, Mr. Smith wrote to the Compass School reminding it of its APRA statutory obligations and – even though the APRA’s ten (10) business day statutory timeframe had expired - Mr. Smith offered to extend the School’s response time an additional twenty (20) business days.
9. On February 5, 2015, the School provided documents responsive to a second category of documents and indicated “[t]he school is trying to accommodate your request. An extension – yes, would help.”
10. Mr. Smith received no further response to his APRA request.
11. On May 12, 2015, Mr. Smith filed an APRA complaint with this Department alleging, inter alia, the School failed to respond to his APRA request.
12. On June 12, 2015, this Department received a response to said APRA complaint.
13. On May 5, 2016, this Department issued a finding, Smith v. The Compass School, PR 16-16, wherein this Department found the complaint meritorious and the Compass School in violation of the APRA. Exhibit A, Smith v. The Compass School, PR 16-16. Specifically, this Department found the Compass School violated the APRA when it failed to timely respond to Mr. Smith’s APRA request dated January 13, 2015. See R.I. Gen. Laws § 38-2-7(b).
14. After concluding that the Compass School violated the APRA, this Department allowed the Compass School the opportunity to address whether

the untimely response to said APRA request was knowing and willful, or reckless. Exhibit A at 5.

15. By supplemental finding dated November 2, 2016, this Department concluded that the APRA violation in Smith v. The Compass School, PR 16-16, was willful and knowing, or reckless. Exhibit B, Smith v. The Compass School, PR 16-16B.

V. COUNT ONE – VIOLATION OF THE APRA

16. Plaintiff hereby incorporates Paragraphs 1 through 15 herein.

17. The Compass School violated R.I. Gen. Laws § 38-2-7(b) when it failed to timely respond to the APRA request dated January 13, 2015.

18. Plaintiff asks this Honorable Court to declare that the Compass School violated R.I. Gen. Laws § 38-2-7(b).

VI. COUNT TWO – WILLFUL AND KNOWING VIOLATION, OR RECKLESS, VIOLATION

19. Plaintiff hereby incorporates Paragraphs 1 through 16 herein.

20. The Compass School willfully and knowing, or recklessly, violated R.I. Gen. Laws § 38-2-7(b) when it failed to timely respond to said APRA request dated January 13, 2015 because:

- a. The Compass School had knowledge of the APRA and the time period requirements prescribed by R.I. Gen. Laws § 38-2-7(b).
- b. The Compass School provided some of the requested records to the January 13, 2015 APRA request on February 5, 2015, outside the ten (10) business day timeframe.

c. The Compass School provided no additional documents within the thirty (30) business day timeframe after invoking an untimely extension of the time to response to the pending APRA request.

21. Plaintiff asks this Honorable Court to assess a civil fine against the Compass School for a willful and knowing, or reckless, violation in accordance with R.I. Gen. Laws § 38-2-9(d).

22. Plaintiff asks this Honorable Court to assess attorneys fees and costs against the Compass School pursuant to R.I. Gen. Laws § 38-2-9(d).

WHEREFORE, pursuant to R.I. Gen. Laws § 38-2-8(b), Plaintiff respectfully requests this Honorable Court 1) declare that the Compass School willfully and knowingly, or recklessly, violated R.I. Gen. Laws § 38-2-1 et seq.; 2) assess civil penalties against the Compass School in accordance with R.I. Gen. Laws § 38-2-9(d); 3) assess attorneys fees and costs against the Compass School in accordance with R.I. Gen. Laws § 38-2-9(d); and 4) further award any such relief as this Court deems just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL

Respectfully submitted,

PLAINTIFF,
By his Attorney,

PETER F. KILMARTIN
ATTORNEY GENERAL

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Dated: November 2, 2016