

STATE OF RHODE ISLAND  
 WASHINGTON, SC

SUPERIOR COURT

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

V.

TOWN OF NORTH KINGSTOWN,  
 DEFENDANT.

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C.A. NO.: WC-2017-

**COMPLAINT**

**I. INTRODUCTION**

Attorney General Peter F. Kilmartin (“Attorney General”), acting in his official capacity, brings this action upon information and belief that the Town of North Kingstown (the “Town”) willfully and knowingly, or recklessly violated the Rhode Island Access to Public Records Act (“APRA”) when it failed to timely respond to an APRA request filed by Mr. William Mudge on March 15, 2017. The Attorney General respectfully requests that this Honorable Court declare that the actions of the Town violated the APRA, assess civil fines and attorneys fees against the Town, 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 Town 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 March 15, 2017, Mr. William Mudge filed an APRA request with the Town.
6. A response to said APRA request was due by March 29, 2017.
7. On April 19, 2017, Mr. William Mudge filed an APRA complaint with this Department, alleging that the Town failed to respond to his APRA request.
8. It was not until May 12, 2017 that the Town provided a response to said APRA request.
9. On September 5, 2017, this Department issued a finding, Mudge v. Town of North Kingstown, PR 17-44, wherein this Department found the complaint meritorious and the Town in violation of the APRA. Exhibit A, Mudge v. Town of North Kingstown, PR 17-44. Specifically, this Department found the Town violated the APRA when it

failed to timely respond to Mr. Mudge's APRA request dated March 15, 2017. See R.I. Gen. Laws § 38-2-7(b).

10. After concluding that the Town violated the APRA, this Department allowed the Town the opportunity to address whether the untimely response to said APRA request was knowing and willful, or reckless. Exhibit A at 4.

11. By supplemental finding dated November XX, 2017, this Department concluded that the APRA violation in Mudge v. Town of North Kingstown, PR 17-44, was willful and knowing, or reckless. Exhibit B, Mudge v. Town of North Kingstown, PR 17-44B.

**V. COUNT ONE – VIOLATION OF THE APRA**

12. Plaintiff hereby incorporates Paragraphs 1 through 11 herein.

13. The Town violated R.I. Gen. Laws § 38-2-7(b) when it failed to timely respond to the APRA request dated March 15, 2017.

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

**VI. COUNT TWO – RECKLESS VIOLATION**

15. Plaintiff hereby incorporates Paragraphs 1 through 14 herein.

16. The Town recklessly violated R.I. Gen. Laws § 38-2-7(b) when it failed to timely respond to said APRA request dated March 15, 2017 because:

- a. the Town had knowledge of the APRA and the time period requirements prescribed by R.I. Gen. Laws § 38-2-7(b).
- b. the Town responded to the March 15, 2017 APRA request on May 13, 2017, well outside the ten (10) business day timeframe.

c. the Town failed to follow through or follow up on Mr. Mudge's APRA request to ensure that it was responded to in a timely manner.

17. Plaintiff asks this Honorable Court to assess a civil fine against the Town for a reckless violation in accordance with R.I. Gen. Laws § 38-2-9(d).

18. Plaintiff asks this Honorable Court to assess attorney fees and costs against the Town pursuant to R.I. Gen. Laws § 38-2-9(d).

**VII. COUNT THREE – KNOWING AND WILLFUL**

19. Plaintiff hereby incorporates Paragraphs 1 through 18 herein.

20. The Town knowingly and willfully violated R.I. Gen. Laws § 38-2-7(a) when it failed to provide a response because:

a. the Town had knowledge of the APRA and the response requirements prescribed by R.I. Gen. Laws § 38-2-7(a).

b. the Town responded to the March 15, 2017 APRA request on May 13, 2017, well outside the ten (10) business day timeframe.

c. the Town failed to follow through or follow up on Mr. Mudge's APRA request to ensure that it was responded to in a timely manner.

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

22. Plaintiff asks this Honorable Court to assess attorney fees and costs against the Town 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 the Defendant Town knowingly and willfully, or recklessly violated R.I. Gen. Laws § 38-2-1 et seq.; 2) assess civil penalties against Defendant Town on both counts in accordance with R.I. Gen. Laws § 38-2-9(d); 3) assess attorney fees and costs against the

Town 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

*/s/ Michael W. Field*

*/s/ Lisa A. Pinsonneault*

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Dated: November 21, 2017

**CERTIFICATE OF SERVICE**

I, hereby certify that on the 21st day of November, 2017, I electronically filed this document through the electronic filing system. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System. I have also caused a copy to be sent electronically to:

Matthew F. Callaghan, Jr., Esq.  
matt@callaghanlawri.com

*/s/ Karen M. Ragosta*