



SUPERIOR COURT

CIVIL CASE COVER SHEET

CASE #

THIS FORM MUST BE FILED WITH EACH ORIGINAL DOCUMENT THAT COMMENCES A CIVIL PROCEEDING IN THE CLERK'S OFFICE. IF THE CASE IS A DISTRICT COURT APPEAL, THIS FORM MUST BE FILED WITH THE APPEAL IN THE DISTRICT COURT AND WILL BE TRANSFERRED WITH OTHER DOCUMENTS TO THE SUPERIOR COURT.

Attorney General Peter F. Kilmartin PLAINTIFF ID#	Town of Warren DEFENDANT ID#
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NATURE OF PROCEEDING - CHECK ONE APPLICABLE CASE TYPE UNDER MAIN CATEGORIES LISTED BELOW.

<b>CIVIL ACTION</b>		
<input type="checkbox"/> AA AGENCY APPEAL	<input type="checkbox"/> EX EXCESSIVE TAX	<input type="checkbox"/> PJ PERSONAL INJURY/VEHICLE
<input type="checkbox"/> AB ASSAULT AND BATTERY	<input type="checkbox"/> FF FORFEITURE	<input type="checkbox"/> PL PRODUCT LIABILITY
<input type="checkbox"/> AE ASBESTOS CASES	<input type="checkbox"/> FG FOREIGN JUDGMENT	<input type="checkbox"/> PR PARTITION
<input type="checkbox"/> AI ANTI-TRUST	<input type="checkbox"/> FS FRIENDLY SUIT	<input type="checkbox"/> RC REINSTATE CHARTER
<input type="checkbox"/> BA BOOK ACCOUNT	<input type="checkbox"/> ID PER INJURY/PROP DAM/VEH	<input type="checkbox"/> PT PROMISSORY NOTE
<input type="checkbox"/> BP BILL OF RIGHTS-POLICE OFF	<input type="checkbox"/> IJ INJUNCTIVE RELIEF	<input type="checkbox"/> RY REAL PROPERTY
<input type="checkbox"/> CH CIVIL RIGHTS/JOB DISCRIM	<input type="checkbox"/> IP INTERPLEADER	<input type="checkbox"/> SA SEXUAL ABUSE
<input type="checkbox"/> CI CRIMINAL INJURY COMP	<input type="checkbox"/> KP KUGEL PATCH	<input type="checkbox"/> SF SPECIFIC PERFORMANCE
<input type="checkbox"/> CL COMMON LAW ASSIGNMENT	<input type="checkbox"/> LC LEAD CASE	<input type="checkbox"/> SX SEXUAL HARASSMENT
<input type="checkbox"/> CM COMMON LAW LIEN	<input type="checkbox"/> LS LIBEL/SLANDER	<input type="checkbox"/> TD CONTRACT DAMAGES
<input type="checkbox"/> CS CONVERSION	<input type="checkbox"/> ME MALPRACTICE/LEGAL	<input type="checkbox"/> TE TRESPASS AND EJECTMENT
<input type="checkbox"/> CV CRIMINAL CONVERSION	<input type="checkbox"/> MM MALPRACTICE/MEDICAL	<input type="checkbox"/> TO TITLE CLEARING
<input type="checkbox"/> CH CIVIL RIGHTS/JOB DISCRIMIN	<input type="checkbox"/> MO MALPRACTICE/OTHER	<input type="checkbox"/> TV TRUSTEE/APPT CONVEY TITLE
<input type="checkbox"/> DJ DECLARATORY JUDGMENT	<input type="checkbox"/> MR MERS	<input type="checkbox"/> TG TRUSTEE/ACCOUNTING
<input type="checkbox"/> DG RECOVERY OF DAMAGES	<input checked="" type="checkbox"/> OV OTHER CIVIL ACTION	<input type="checkbox"/> UM UNINSURED MOTORIST
<input type="checkbox"/> DB DEBT ON JUDGMENT	<input type="checkbox"/> PB PROPERTY DAMAGES	<input type="checkbox"/> WD WRONGFUL DEATH/ OTHER
<input type="checkbox"/> DD DECEPTIVE TRADE PRACTICE	<input type="checkbox"/> PG PROPERTY DAMAGES/VEH	<input type="checkbox"/> WE WRONGFUL DEATH/ MED. MAL
<input type="checkbox"/> DN DENIAL OF PROBATE CLAIM	<input type="checkbox"/> PI PERSONAL INJURY	<input type="checkbox"/> WM WRIT OF MANDAMUS
		<input type="checkbox"/> WR WRIT OF REPLEVIN
<b>MISCELLANEOUS PETITION</b>		
<input type="checkbox"/> AC ARBITRATION/CONFIRM	<input type="checkbox"/> GJ GRAND JURY INVESTIGATION	<input type="checkbox"/> PX PETITION TO EXPUNGE
<input type="checkbox"/> AD ARBITRATION AWARD	<input type="checkbox"/> HC HABEAS CORPUS	<input type="checkbox"/> PY PETITION INVENT (WIRE TAP)
<input type="checkbox"/> AS ASSESSMENT OF DAMAGES	<input type="checkbox"/> LN LEVEL COMMUN NOTIFICATION	<input type="checkbox"/> RB ARBITRATION REFERRAL
<input type="checkbox"/> CE CONDEMNATION	<input type="checkbox"/> ML MECHANICS LIEN	<input type="checkbox"/> RP RULE 5A PETITION
<input type="checkbox"/> CN CONFIRM COMPROMISE	<input type="checkbox"/> MW MATERIAL WITNESS	<input type="checkbox"/> RV RECEIVERSHIP
<input type="checkbox"/> CP CONTEMPT	<input type="checkbox"/> OM OTHER MISC PETITION	<input type="checkbox"/> SO SEXUAL VIOLENT PREDATOR
<input type="checkbox"/> DI DISCLAIMER	<input type="checkbox"/> OW OUT OF STATE WITNESS	<input type="checkbox"/> SS STRUCTURED SETTLEMENT
<input type="checkbox"/> DS DISSOLUTION OF CORP	<input type="checkbox"/> PC POST CONVICTION RELIEF	<input type="checkbox"/> TA APPOINTMENT OF TRUSTEE
<input type="checkbox"/> DT DECLINATION OF TRUSTEE	<input type="checkbox"/> PD PETITION TO TAKE DEPO	<input type="checkbox"/> TC TITLE CLEARING (TAX TITLE)
<input type="checkbox"/> EN END PARTNERSHIP	<input type="checkbox"/> PM PETITION FOR IMMUNITY	<input type="checkbox"/> TL FORECLOSURE/TAX LIEN
<input type="checkbox"/> FC FORFEITURE OF CHARTER	<input type="checkbox"/> PO PETITION FOR CONSTABLE	<input type="checkbox"/> TS TRUSTEE SUCCESSOR
<input type="checkbox"/> FL FORECLOSURE RIGHTS REDEM	<input type="checkbox"/> PS PERFORM SURGERY	<input type="checkbox"/> VC VACATE ARBITRATION
<b>PROBATE APPEAL</b>		
<input type="checkbox"/> GD GUARDIANSHIP	<input type="checkbox"/> OA OTHER PROBATE APPEAL	<input type="checkbox"/> WL WILL
<input type="checkbox"/> NC NAME CHANGE	<input type="checkbox"/> TU TRUST	
<b>DISTRICT COURT APPEAL</b>		
<input type="checkbox"/> DISTRICT COURT APPEAL		

TRIAL  YES  NO IF YES:  JURY  NON-JURY

ATTORNEY NAME AND RHODE ISLAND BAR NUMBER: Malena Lopez Mora #8730  
 PRO SE/NAME: DATE: August 28, 2014

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

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

C.A. NO.: P.C. 14-

V. :

TOWN OF WARREN :  
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 Town of Warren (“Town”) committed a willful and knowing violation of the Rhode Island Access to Public Records Act (“APRA”) when it failed to timely respond to an APRA request filed by Ms. Joelle Sylvia, Esquire, on behalf of Kelly & Mancini PC, on March 11, 2014. 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, the 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 11, 2014, Ms. Joelle Sylvia filed an APRA request with the Town, on behalf of Kelly & Mancini PC.

6. On March 21, 2014, the Town extended the time to respond pursuant to R.I. Gen. Laws § 38-2-3(e).
7. A response was due on or about April 21, 2014.
8. On May 5, 2014, Kelly & Mancini filed an APRA complaint with this Department, alleging that the Town failed to respond to Kelly and Mancini's APRA request.
9. On May 20, 2014, the Town provided some, but not all, of the requested records.
10. On June 11, 2014, this Department received a response to said APRA complaint.
11. On July 28, 2014, this Department issued a finding, Kelly & Mancini v. Town of Warren, PR 14-19, wherein this Department found the complaint meritorious and the Town in violation of the APRA. Exhibit A, Kelly & Mancini v. Town of Warren, PR 14-19. Specifically, this Department found the Town violated the APRA when it failed to timely respond to Kelly & Mancini's APRA request dated March 11, 2014. See R.I. Gen. Laws § 38-2-7(b).
12. 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.
13. By supplemental finding dated August 27, 2014, this Department concluded that the APRA violation in Kelly & Mancini v. Town of Warren, PR 14-19,

was willful and knowing. Exhibit B, Kelly & Mancini v. Town of Warren, PR 14-19B.

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

14. Plaintiff hereby incorporates Paragraphs 1 through 13 herein.

15. The Town violated R.I. Gen. Laws § 38-2-7(b) when it failed to timely respond to the APRA request dated March 11, 2014.

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

**VI. COUNT TWO – WILLFUL AND KNOWING VIOLATION**

17. Plaintiff hereby incorporates Paragraphs 1 through 16 herein.

18. The Town willfully and knowing violated R.I. Gen. Laws § 38-2-7(b) when it failed to timely respond to said APRA request dated March 11, 2014 because:

- a. The Town had knowledge of the APRA and the time period requirements prescribed by R.I. Gen. Laws § 38-2-7(b).
- c. The Town extended the time to respond pursuant to R.I. Gen. Laws § 38-2-3(e).
- b. The Town provided some of the requested records to the March 11, 2014 APRA request on May 20, 2014, well outside the thirty (30) business day timeframe.

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

20. 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 that the Town willfully and knowingly violated R.I. Gen. Laws § 38-2-1 et seq.; 2) assess civil penalties against the Town 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



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Malena Lopez Mira (#8730)  
Special Assistant Attorney General  
Department of Attorney General  
150 South Main Street  
Providence, Rhode Island 02903  
Tel: (401) 274-4400, ext. 2225  
Fax: (401) 222-3016

Dated: August 28, 2014.

# EXHIBIT A



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

July 28, 2014  
PR 14-19

Joelle C. Sylvia, Esquire  
Kelly & Mancini PC  
Attorneys At Law  
128 Dorrance Street, Suite 300  
Providence, Rhode Island 02903

**RE: Kelly & Mancini v. Town of Warren**

Dear Attorney Sylvia:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of Warren (“Town”) is complete. By correspondence dated May 5, 2014, you alleged the Town violated the APRA when it failed to respond to your March 11, 2014 APRA request. You further allege that “[o]n March 21, 2014, Ms. Coelho, the Town Clerk, responded that she required an additional twenty (20) days to compile and deliver the responses to the request” and, that as of May 5, 2014, “[you had] not received the requested documents.” Also, you state that “[a]t a Zoning Board hearing held on April 17, 2014, the Assistant Town Solicitor admitted that the response to the public record request was due by April 22, 2014.”

This Department received a substantive response from Anthony DeSisto, Esquire. Mr. DeSisto states, in pertinent part:

“On March 11, 2014, the Warren Town Clerk received a number of Access to Public Records Act (APRA) request from the complainants.<sup>1</sup> The requests sought numerous documents maintained by the Warren Building Official. On March 21, 2014, the Warren Town Clerk informed the complainants that she needed additional time to respond pursuant to R.I. Gen. Laws § 38-2-3(e), due to the expansive nature of the requests.

The ultimate responses to the complainants [sic] March 11 requests were inadvertently delayed due to a miscommunication between the Town Clerk and

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<sup>1</sup> This Department was only supplied with one (1) APRA request seeking five (5) categories of documents.

the Town Building Official. Both the Clerk and the Building Official believed that the other person would respond to the complainants [sic] requests. The Town was not alerted to the fact that the responses did not go out until receiving your letter dated May 15, 2014. If the complainant had contacted the Town of Warren prior to filing the instant complaint with your office on May 5, 2014, the responses would have been made immediately available to the complainants. The APRA requests have been provided to the complainants as of May 20, 2014.

First, the instant complaint is not appropriately before your office. Under R.I. Gen. Laws § 38-2-8(a), the complainants may petition the chief administrative officer of the public body, in this case the Warren Town Manager, if they believed they are aggrieved. Only after the chief administrative officer has been petitioned may the complainants seek redress with your office under § 38-2-8(b). Here, complainants have made no effort to seek redress with the Town before filing the complaint with your office.

Further, this is not a knowing, willful, or reckless act on the part of the Town. This is an honest, understandable, and inadvertent mistake on the part of two Town employees. If complainants had reached out to the Town, the Town would have worked to immediately redress any grievances on the part of the complainants. The Town will continue to work with the complainants to ensure their access to public documents.”

We received your June 16, 2014 rebuttal. You state, in pertinent part:

“\*\*\*I want to correct the statement that we have received the records and have had them since May 20, 2014. This is not, in fact, the case. On May 20, 2014, the Town Clerk emailed us three documents which are minutes of meetings.\*\*\*This clearly falls far short of the records requested in my March 11, 2014 public records request. In fact, when inquiring into the same, Ms. Coelho informed me that the Building Department was producing the rest of the documents. \*\*\* I have yet to receive the remaining documents responsive to the March 11, 2014 request.”

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred or to examine the wisdom of a given statute, 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 the Town violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

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 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. A public body has ten (10) business days to respond in some capacity to a records request, whether by producing responsive documents, denying the request with reason(s), or extending the time period necessary to comply. 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 those ten (10) business days 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 those ten (10) business days, then the public body may extend the period an additional twenty (20) business days, for a total of thirty (30) business days. See R.I. Gen. Laws § 38-2-7(b).

In arriving at our conclusion, we respectfully reject the Town's argument that, pursuant to R.I. Gen. Laws § 38-2-8, this Department does not have jurisdiction over your complaint simply because you did not first petition the chief administrative officer of the Town. Under R.I. Gen. Laws § 38-2-8(a), "[a]ny person . . . denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body . . . ." R.I. Gen. Laws § 38-2-8(a). (Emphasis added). The plain language of R.I. Gen. Laws § 38-2-8 does not require that a complainant exhaust his or her administrative remedies prior to filing an APRA complaint with this Department. See Downey v. Carcieri, 996 A.2d 1144, 1150-51 (R.I. 2010) (holding that under the plain language of R.I. Gen. Laws § 38-2-8 a complainant is not required to exhaust all administrative remedies prior to filing a complaint in Superior Court). To the contrary, and as evidenced by the use of the word "may" in the statute, a complainant has the option to petition the chief administrative officer, but is not required to do so prior to filing a complaint with this Department.

It is undisputed that you made an APRA request dated March 11, 2014. It is further undisputed that you received a response from the Town on March 21, 2014 extending the time to respond by an additional twenty (20) business days. Finally, it is undisputed that as of May 5, 2014, you still had not received the documents requested. Thus, the Town violated the APRA when it failed to respond to your March 11, 2014 APRA request in a timely manner. See R.I. Gen. Laws § 38-2-7. In addition, we have concerns regarding the Town's untimely response and whether such omission should be considered knowing and willful, or alternatively, reckless.

This Department has previously examined the issue of public bodies failing to provide timely responses to APRA requests. In Boss v. Woonsocket Superintendent's Office, PR 13-19 and PR 13-19B and Law Office of Michael Kelly v. City of Woonsocket, PR 13-13 and PR 13-13B, this Department found knowing and willful violations of the APRA, which resulted in lawsuits.<sup>2</sup>

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<sup>2</sup> The Rhode Island Supreme Court examined the "knowing and willful" standard in Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453 (R.I. 1986). In Carmody, the Court determined that:

"the requirement that an act be 'knowingly and willfully' committed refers only to the concept that there be 'specific intent' to perform the act itself, that is, that the

Additionally, in Scripps News v. Rhode Island Department of Business Regulations, PR 14-07 and PR 14-07B, we found that the Rhode Island Department of Business Regulations committed a reckless violation of the APRA and a lawsuit was filed.

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). Also 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).

You contend that as of June 16, 2014, with the exception of “three documents which are minutes of meetings\*\*\*,” you “have yet to receive the remaining documents responsive to the March 11, 2014 request.” In contrast, the Town contends that “[t]he APRA requests have been provided to the complainants as of May 20, 2014.” Since this Department has been provided with no evidence to support either contention, you shall have five (5) business days from receipt of this finding to provide the Town, and this Department, with a list of the documents or categories from the March 11, 2014 APRA request that are still outstanding. Upon receipt of that list, the Town shall have ten (10) business days to provide this Department (and you) with a supplemental explanation as to why its untimely response should not be considered knowing and willful, or reckless, in light of its recognition of the APRA requirements and this Department’s precedent. Such a determination by this Department would subject the Town to civil fines. In its

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act or omission constituting a violation of law must have been deliberate, as contrasted with an act that is the result of mistake, inadvertence, or accident. This definition makes clear that, even in the criminal context, acts not involving moral turpitude or acts that are not inherently wrong need not be motivated by a wrongful or evil purpose in order to satisfy the ‘knowing and willful’ requirement.” See id. at 459.

In a later case, DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994), the Court expounded on Carmody and held:

“that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute \* \* \* Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.’” (internal citations omitted). Id. at 1164. (Emphasis added).

Kelly & Mancini v. Town of Warren

PR 14-19

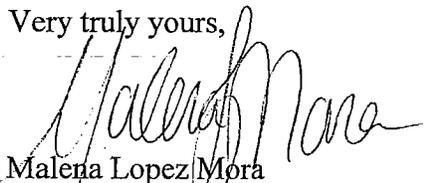
Page 5

response, the Town must also substantively address your contention that your March 11, 2014 APRA request remains unsatisfied and provide appropriate supporting documents.

A copy of any and all responses by the Town should be presented to you. If you wish, you may also present evidence or arguments addressing the civil fine issue within the same timeframe, which must also be forwarded to legal counsel for the Town. At the end of this time period, we will issue our supplemental finding on this matter and determine whether civil fines are appropriate.

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: Anthony DeSisto, Esquire

# EXHIBIT B



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

August 28, 2014

PR 14-19B

Joelle C. Sylvia, Esquire  
Kelly & Mancini PC  
Attorneys At Law  
128 Dorrance Street, Suite 300  
Providence, Rhode Island 02903

**RE: Kelly & Mancini v. Town of Warren**

Dear Attorney Sylvia:

This correspondence serves as a supplemental finding to Kelly & Mancini, PC v. Town of Warren, PR 14-19, released July 28, 2014. In Kelly & Mancini, PC v. Town of Warren, we reviewed your May 5, 2014 Access to Public Records Act ("APRA") complaint against the Town of Warren ("Town") and concluded that the Town violated the APRA when it failed to respond to your March 11, 2014 APRA request in a timely manner. See R.I. Gen. Laws § 38-2-7. The sole issue to be addressed in this supplemental finding is whether the Town's violation was willful and knowing, or reckless. As requested, the Town responded to our inquiry and we now resolve this outstanding issue.

By letter dated August 4, 2014, Attorney Anthony DeSisto provided a supplemental response. Attorney DeSisto states, in pertinent part:

"On May 20, 2014, the Warren Town Clerk provided, via email, attorney Sylvia with all responsive documents to her Access to Public Records requests that were retained in the Clerk's Office. Attorney Sylvia was informed that there were additional responsive documents in the custody of the Building Official's office. The Warren Building Official subsequently informed attorney Sylvia that, due to the voluminous nature of her request, providing said documents to her office via mail or email would be prohibitively time consuming and expensive. Attorney Sylvia was informed, however, that she would be provided complete access to all public records retained on file at the Building Official's Office if she appeared

there in person, and she would be allowed to copy and retain any public records she desired. To this day, all public records at the Building Official's office remain open to attorney Sylvia and she may review, copy, and retain all public records on file there."

On August 5, 2014, you provided a rebuttal to Attorney DeSisto's supplemental response. You state, in pertinent part:

"\*\*\*I take great exception to the Town's statement that the Building Official attempted to contact me regarding my requests *at any point*, either before or after the Town Clerk's May 20, 2014 e-mail. If such were the case, I certainly would have let your office know. \*\*\* I did not receive an e-mail, phone call, or letter from the Building Official or his office as alleged in the Town's August 4, 2014 letter. The first I am hearing that I am required to proceed with a scavenger hunt of the documents requested at Town Hall, that the documents are available there, or that the Town is claiming an exception under R.I. Gen. Laws §38-2-3, is the letter to your attention, dated August 4, 2014, notably almost five (5) months after my records request." (Emphasis original).

Our focus is whether the Town knowingly and willfully, or recklessly, violated the APRA. The Rhode Island Supreme Court examined the "knowing and willful" standard in Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453 (R.I. 1986). In Carmody, the Court determined that:

"the requirement that an act be 'knowingly and wilfully' committed refers only to the concept that there be 'specific intent' to perform the act itself, that is, that the act or omission constituting a violation of law must have been deliberate, as contrasted with an act that is the result of mistake, inadvertence, or accident. This definition makes clear that, even in the criminal context, acts not involving moral turpitude or acts that are not inherently wrong need not be motivated by a wrongful or evil purpose in order to satisfy the 'knowing and wilful' requirement." See id. at 459.

In a later case, DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994), the Court expounded on Carmody and held:

"that when a violation of the statute is reasonable and made in good faith, it must be shown that the official 'either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute \* \* \* Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is 'difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was 'cognizant of an appreciable possibility that he [might] be subject to the

statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.” (internal citations omitted). Id. at 1164. (Emphasis added).

In Catanzaro v. East Greenwich Police Department, PR 13-08, this Department addressed the “reckless” standard for the first time since the APRA was amended to include a civil penalty of \$1,000 for a “reckless” violation of the law. Regrettably, the APRA itself does not provide a definition of “reckless,” and therefore, we look for guidance from other authorities.

As we observed in Catanzaro, Rhode Island General Laws § 3-14-7(c)(1) entitled, “Liability for Reckless Service of Liquor” states:

“[s]ervice of liquor is reckless if a defendant intentionally serves liquor to an individual when the server knows that the individual being served is a minor or is visibly intoxicated, and the server consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others.” (Emphasis added).

Black’s Law Dictionary defines reckless as:

“[c]haracterized by the creation of substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than mere negligence; it is a gross deviation from what a reasonable person would do.” See Black’s Law Dictionary (9<sup>th</sup> ed. 2009).

According to the Restatement (Third) of Torts, an actor’s conduct is reckless if:

“(a) the actor knows of the risk of harm created by the actor’s conduct, or knows facts that make that risk obvious to anyone in the actor’s situation, and (b) the precaution that would eliminate or reduce that risk involves burdens that are so slight relative to the magnitude of the risk as to render the actor’s failure to adopt the precaution a demonstration of the actor’s indifference to the risk.” See REST 3D TORTS-PEH § 2.

Here, the Town has offered absolutely no evidence or argument to explain the untimely delay in responding to the request. In fact, at no moment in the supplemental response does the Town even address the “willful and knowing,” or “reckless” issue. Instead, the Town introduces additional facts, which were not previously before this Department and therefore were not considered in our July 28, 2014 finding. Specifically, the Town argues that:

“[s]ection 38-2-3(h) states that a public body is not required to reorganize or consolidate non-electronic records. Section 38-2-3(k) exempts a public body from delivering records to the requesting person or entity if delivery is unduly burdensome due to the volume of records requested or the costs that would be incurred in delivering the records. \*\*\* It would be prohibitively expensive for the

Town of Warren to compile, reorganize, and deliver all of these records to attorney Sylvia. Accordingly, the Town exercised the exception to the delivery requirement, and allowed attorney Sylvia to come to the Building Official's office to retrieve and copy any and all public records she desired."

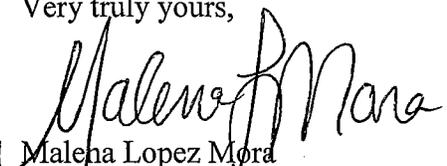
While this Department has concerns over the Town's newly asserted facts and issues, our current analysis is unaffected. In particular, nothing in the Town's response addresses the fact that it never provided documents or a denial to your March 11, 2014 APRA request until May 20, 2014 at the earliest.

Here, we consider whether the Town was "cognizant of an appreciable possibility that [it might] be subject to the statutory requirements and [it] failed to take steps reasonably calculated to [address the issue]." See DiPrete, 635 A.2d at 1164. In the Town's June 9, 2014 substantive response, it states that "[o]n March 21, 2014, the Warren Town Clerk informed the complainants the she needed additional time to respond pursuant to R.I. Gen. Laws § 38-2-3(e), due to the expansive nature of the requests. The ultimate responses to the complainants [sic] March 11 requests were inadvertently delayed due to a miscommunication between the Town Clerk and the Town Building Official." The fact that the Town extended the time to respond demonstrates that it was consciously aware of its statutory obligations and the "miscommunications between the Town Clerk and the Town Building Official," although never explained in the Town's supplemental response, confirms that the Town failed to take reasonable steps to address its statutory obligations. See Boss v. Woonsocket Superintendent's Office, PR 13-19B. While the Town has asserted that its violation represented an "honest, understandable, and inadvertent mistake," we conclude that this violation falls within the purview of DiPrete.

Given the evidence before us, and the lack of evidence presented to suggest the contrary, we find that the Town willfully and knowingly violated the APRA when it failed to respond to your March 11, 2014 APRA request in a timely manner. Accordingly, this Department will file a civil lawsuit against the Town of Warren. In addition, since the documents you requested remain outstanding yet appear to be available to you at the Building Official's Office, we are confident that the two sophisticated law firms involved in this matter will be able to address the outstanding document issue without further guidance from this Department. Because a response was not provided to you in a timely manner, however, any costs incurred in the reviewing, copying or retrieving of the documents shall be waived. See R.I. Gen. Laws § 38-2-7(b).

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

Cc: Anthony DeSisto, Esquire