


7-27-2018

20th Annual Open Government Summit: Access To Public Records Act And Open Meetings Act, 2018

Department of Attorney General, State of Rhode Island

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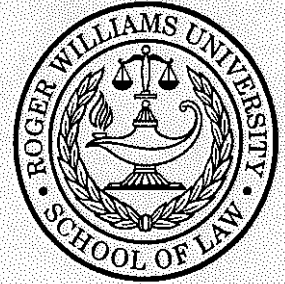
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OPEN GOVERNMENT SUMMIT
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW
JULY 27, 2018
9:00 A.M. – 12:00 P.M.



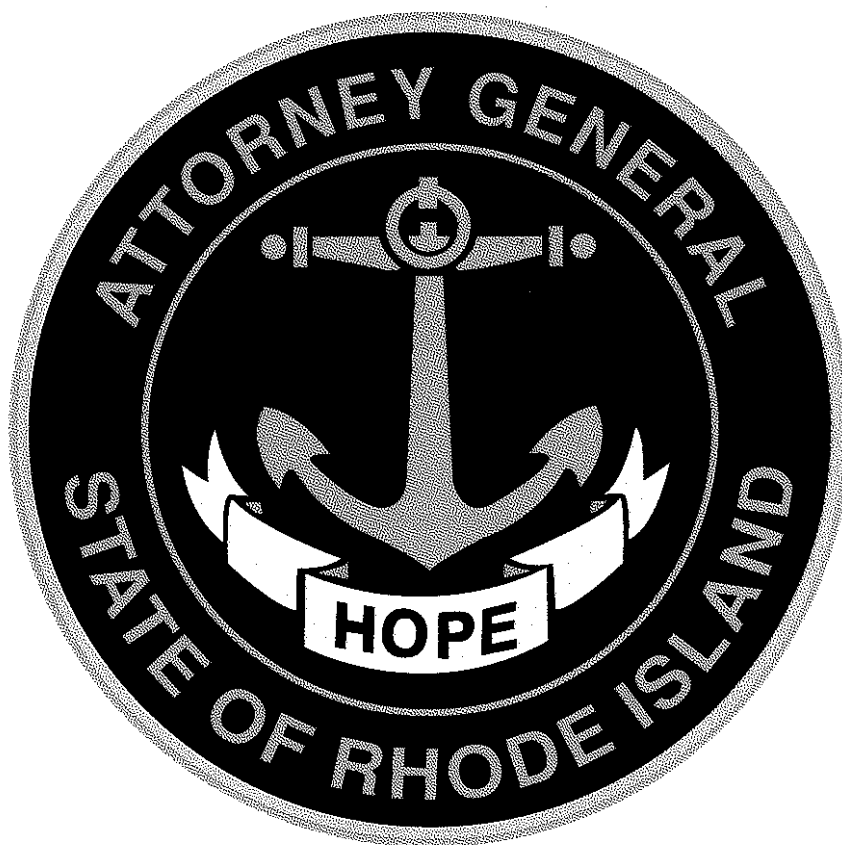
- 8:30 – 9:00 a.m. Check-in/Distribution of Material
- 9:00 – 9:05 a.m. Welcoming by Roger Williams University School of Law
- 9:05 – 9:15 a.m. Opening Remarks by Peter F. Kilmartin, Attorney General
- 9:15 – 10:15 a.m. Access to Public Records Act Presentation
Michael W. Field, Assistant Attorney General; and
Lisa Pinsonneault, Special Assistant Attorney General
Statutory requirements will be discussed and a 2017-2018 case law/legislative update will be provided. Frequent trouble areas, examples, and hot topics will also be highlighted.
- 10:15 – 10:30 a.m. Break
- 10:30 – 11:30 a.m. Open Meetings Act Presentation
Michael W. Field, Assistant Attorney General; and
Lisa Pinsonneault, Special Assistant Attorney General
Statutory requirements will be discussed and a 2017-2018 case law/legislative update will be provided. Frequent trouble areas, examples, and hot topics will also be highlighted.
- 11:30 – 12:00 p.m. Access to Public Records Act and Open Meetings Act Questions and Answers
Questions posed in advance (see below) and questions asked at the Summit will be addressed.

To reserve seating email agsummit@riag.ri.gov or contact 274-4400 ext. 2101. Reservation should include your name, bar number (if applicable), the entity that you are representing and a contact telephone number. Seating for this event may be limited. For directions to the Roger Williams University School of Law visit <http://law.rwu.edu/admission/plan-your-visit/maps-directions>.

ClerkBase will be streaming this presentation live over the internet and a link will be available on the Attorney General's website. This Program is co-sponsored by the Roger Williams University Law Alumni Association and is certified for a total of 3 Continuing Legal Education Credits (approval pending). Attorneys must be physically present at Roger Williams University to obtain CLE credits. This program (live or via video) also qualifies for APRA certification pursuant to § 38-2-3.16. Agenda subject to change.

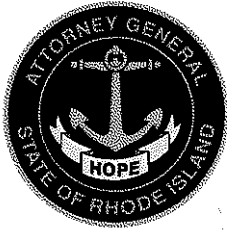
If communication assistance is needed or any other accommodation to ensure equal participation, please contact the above email or telephone number as soon as possible, but prior to July 23, 2018.

STATE OF RHODE ISLAND
OFFICE OF ATTORNEY GENERAL
ACCESS TO PUBLIC RECORDS ACT
AND
OPEN MEETINGS ACT



Peter F. Kilmartin

ATTORNEY GENERAL



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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

Peter F. Kilmartin, Attorney General

July 27, 2018

Dear Open Government Summit Attendee:

I would like to thank you for attending the 20th annual Open Government Summit and I would also like to thank Roger Williams University School of Law for hosting such an important event.

Rhode Island's Open Meetings Act and Access to Public Records Act are critical to ensuring that this State's government operations remain open and accountable to the public. It has long been this Department's philosophy that education concerning the Open Meetings Act and the Access to Public Records Act advances the goal that government remains open and accountable to the public.

To this end, the Department of Attorney General is committed to public outreach and education concerning the requirements of the Open Meetings Act and the Access to Public Records Act. Members of the Attorney General's Office are available to conduct open government trainings and I encourage you to contact the Office to arrange training sessions for a city/town or regional area. Additionally, this Department continues to issue, upon request from legal counsel for public bodies, two types of advisory opinions concerning any pending matter that may implicate either the Open Meetings or Access to Public Records Acts: oral/telephonic advisory opinions, which are not binding upon the Department of Attorney General, and written advisory opinions, which express the opinion of this Department.

I also encourage you to take advantage of the resources available at the Department of Attorney General website, www.riag.ri.gov. Our popular *Attorney General's Guide to Open Government in Rhode Island* is located in the "Access to Public Records Act and Open Meetings Act" section and can be printed for distribution. Also, a video copy of this Open Government Summit will be archived on our website for future viewing and I am particularly grateful to ClerkBase for providing this video and live-streaming service to our State.

On behalf of the entire Department, I again thank you for your interest and commitment to ensuring that state and local government is both transparent and accessible to the people of this State. If either the Department or I can assist you, please do not hesitate to contact us.

Very truly yours,

Peter F. Kilmartin
Attorney General

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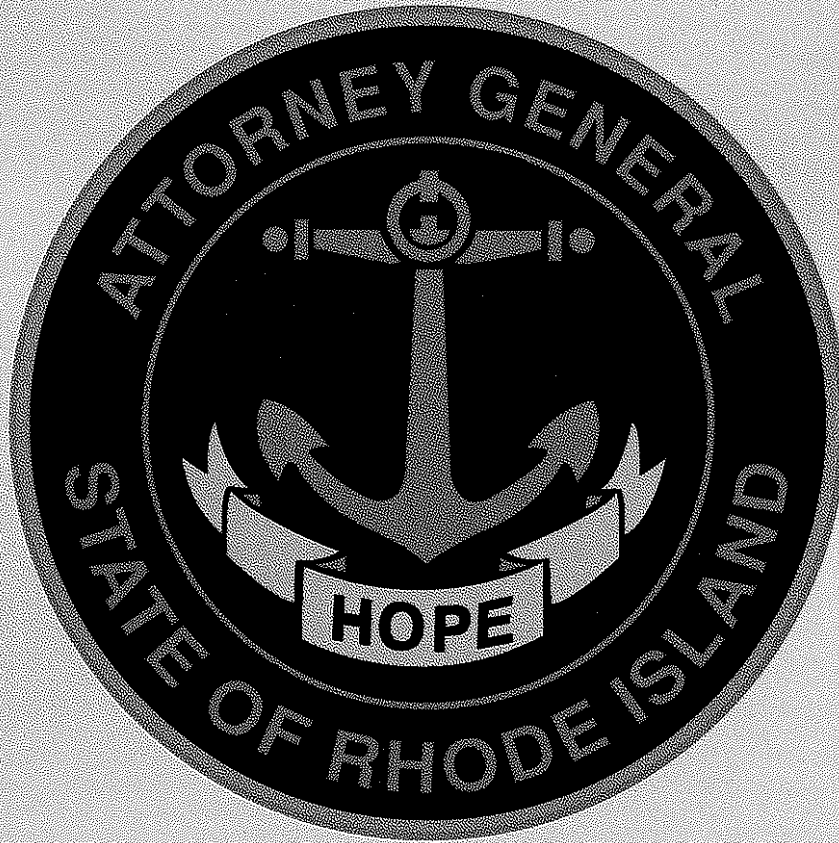
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SECTION I



ACCESS TO
PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS – 2018

PR 18-01

DiGregorio v. Town of North Kingstown

The Complainant alleged that the Town violated the APRA when it twice produced the same document with slightly different spacing. We found that the Town timely responded to both of the Complainant's APRA requests by providing the requested document. The slightly different spacing was due to differences in the forwarding address but did not alter the document's content. We also found that the Complainant's APRA requests failed to specify which format he was requesting. For these reasons, we found no violation.

Issued February 13, 2018.

PR 18-02

Lombardo v. Town of Westerly

The Complainant alleged the Town of Westerly violated the APRA when it denied his request for "all public documents concerning the Master Agreement between the Town of Westerly, Rhode Island and Westerly Local #503, International Brotherhood of Police Officers July 1, 2016 to June 30, 2019." The Town exempted numerous documents under R.I. Gen. Laws § 38-2-2(4)(H) claiming they related to reports and statements of strategy or negotiation involving labor negotiations and collective bargaining, as well as R.I. Gen. Laws § 38-2-2(4)(K), as such drafts or revisions constitute "preliminary drafts, notes, impressions, working papers." Although documents related to the negotiation process are exempt from public disclosure, see Providence Journal v. Convention Center Authority, 774 A.2d 40 (R.I. 2001), based upon this Department's in camera review, we determined there are five documents (eight pages) that were deemed by the Town to be responsive that this Department did not believe fell within the purview of R.I. Gen. Laws §§ 38-2-2(4)(K) or (H). This Department directed the Town to release these documents within ten (10) business days.

VIOLATION FOUND.

Issued February 20, 2018.

PR 18-03B

Gill v. Tiverton Town Council (Supplement to PR 17-57)

In Gill v. Tiverton Town Council, we found the Town Council violated the APRA when it claimed it did not maintain or possess the document the Complainant requested, namely a statement that Councilor Lebeau referred to at the July 10, 2017 Town Council meeting. We directed Mr. Lebeau and/or the Town Council to provide the Complainant with a copy of the document within ten (10) business days of our finding. The Town's legal counsel emailed the Complainant a one-sided color photograph, which purported to be document in question. Both the

Complainant and this Office were unsatisfied with the response as it appeared that the document may have had writing on the backside. As such, we directed that within ten (10) business days of this supplemental finding, a copy of both sides of this document must be provided to the Complainant and this Office, along with an affidavit from Councilor Lebeau that the provided document represents a true and accurate copy of both sides of the document previously photographed and provided to the Complainant. If the Town Council claims that the backside of the document does not contain responsive information, the supplemental finding details the alternative measures that must be taken.

VIOLATION FOUND.

Issued March 6, 2018.

PR 18-04

Tanish v. Warwick School Department

The Warwick School Department ("School Department") did not violate the APRA when it failed to respond to the Complainant's October 9, 2017 APRA request that he transmitted by email. The evidence appeared uncontradicted that the School Department did not receive the Complainant's electronic APRA request. The APRA provides that "[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request." See R.I. Gen Laws § 38-2-3(e)(emphases added). The School Department submitted an affidavit and a supporting email evidencing that the email was never received by the School Department. Since the School Department responded to this request within ten (10) business days of receiving it (through the filing of this APRA complaint), we found no violations.

Issued March 12, 2018.

PR 18-05

Simoneau v. City of Warwick

Complainant alleged that the City violated the APRA when it failed to provide certain documents responsive to his request. Because the Complainant was already in possession of documents responsive to his request, we investigated whether the Complainant's allegations represented a knowing and willful, or reckless, violation of the APRA that would subject the City to civil penalties. See Farinelli v. City of Pawtucket, PR 16-27. After reviewing all of the evidence presented, we found that the City's response was based, in part, on a mistaken misconstruction of the Complainant's APRA request. We also found credible the affidavit evidence submitted by the City that its computer system did not produce responsive documents because the documents were mislabeled. As such, we found no willful and knowing, or reckless, violations.

Issued March 14, 2018.

PR 18-06

Crenshaw v. Rhode Island Department of Public Safety

Complainant alleged that the DPS violated the APRA when it failed to provide all responsive documents in its possession. Because the Complainant already had all documents responsive to his request, we investigated whether the Complainant's allegations represented a knowing and willful, or reckless, violation of the APRA that would subject the DPS to civil penalties. See Farinelli v. City of Pawtucket, PR 16-27. After reviewing all of the evidence presented, we found that the DPS did provide documents responsive to the requests. Moreover, the DPS's efforts to further assist the Complainant after responding to his requests by answering questions belies any "specific intent" to violate the APRA. See Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453, 459 (R.I. 1986). As such, we found no willful and knowing, or reckless, violations.

Issued March 14, 2018.

PR 18-07
OM 18-07

Fernandes v. Foster Center Volunteer Fire Center

The Complainant alleged that the FCVFC violated the OMA by failing to post sufficient notice and failing to post sufficient and/or timely meeting minutes for numerous meetings. With respect to these OMA allegations, Complainant provided no indication that these alleged defects specifically disadvantaged him, instead providing only conclusory assertions. Because bare assertions of interest are insufficient to demonstrate "aggrieved" status, we found that Complainant had not met his burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). We next addressed Complainant's allegation that the FCVFC failed to respond to his APRA request. The evidence indicated that the FCVFC is a separate and independent entity without an established agency relationship with any governmental entity. As such, we found that FCVFC is not a "public body" under the APRA. Therefore, we found no violations.

Issued March 19, 2018.

PR 18-08

Harris v. City of Providence

The Complainant alleged that the City violated the APRA when it made approximately 500 redactions when producing over 5,000 calendar entries. Based on our in camera review, we found each redaction proper under the APRA. Numerous entries – such as those regarding interviewees who were not hired, those regarding a public official's safety, and those regarding the attorney-client privilege – were appropriately redacted in a manner consistent with our precedent and case law. Other entries were appropriately redacted where the public interest in disclosure did not outweigh the implicated privacy interests. See R.I. Gen. Laws § 38-2-2(A)(I)(b). We also noted that the Complainant

did not submit any evidence that any City employee had engaged in any improper conduct nor did our in camera review disclose any such evidence. We concluded that the information redacted by the City did not advance the public interest in knowing “what their government is up to,” U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 773 (1989), and/or was otherwise properly redacted. We found no violations.

Issued April 2, 2018.

PR 18-09

Harris v. City of Providence

The Complainant alleged that the City violated the APRA when it responded to her request by seeking prepayment and stating that review and redaction would take 123 hours. Based on the evidence presented, including the large scope of the request, we found that this estimate was reasonable. See R.I. Gen. Laws § 38-2-4(b). Specifically, we noted that the Complainant’s request for approximately 7,400 calendar entries equated to one minute of review and redaction per entry. Based on the City’s documented time responding to a previous similar request concerning calendar entries, we found that the City’s estimate did not violate the APRA.

Issued April 2, 2018.

PR 18-10

Peckham v. City of Pawtucket

The Complainant alleged that the City violated the APRA when it failed to provide a document responsive to his request. Although we had concerns whether the Complainant’s request fell within the ambit of the APRA, we noted that because the Complainant already had the requested document, we only needed to determine whether his allegations represented a knowing and willful, or reckless, violation of the APRA that would subject the City to civil penalties. See R.I. Gen. Laws § 38-2-8. Having framed this narrow issue, and after reviewing all the evidence presented, we found no evidence of a willful and knowing, or reckless, violation. We noted that misconstruing an APRA request “is a mistaken act, not a willful, knowing, or reckless one.” Simoneau v. City of Warwick, PR 18-05. We also noted that the City’s determination that it did not maintain the requested document – even though it subsequently provided the requested document – may very well have been correct. Finally, we found that the City’s initial intended response that it did not have any responsive documents was preceded by an adequate search. Accordingly, we found no violations.

Issued May 16, 2018.

PR 18-11

Pierson v. Central Coventry Fire District

The Central Coventry Fire District violated the APRA when it failed to respond to the Complainant’s APRA request dated September 18, 2017.

The evidence revealed that the Complainant made an APRA request on September 15, 2017, which the Fire District responded to on September 18, 2017 at 4:00 PM. The Complainant made another APRA request for a similarly-related document on September 18, 2017 at 9:14 PM to which the Fire District failed to respond. This Department directed the Fire District to respond to the Complainant's September 18, 2017 APRA request within ten (10) business days of this finding in a manner consistent with this finding and the APRA.

VIOLATION FOUND.

Issued May 31, 2018.

PR 18-12

Paiva v. Rhode Island Department of Corrections

An inmate incarcerated for life in prison requested the job applications of two correctional officers and after being denied certain information, namely the name of the elementary school or secondary school last attended, the type of high school, the highest and lowest salary for prior employment, and the dates of prior employment, filed a complaint with this Office. Based upon Gallop v. Adult Correctional Institutions, slip. op. (R.I. May 8, 2018), the Complainant is civilly dead and has no right to file an Access to Public Records Act complaint. Independent of Gallop, the public interest in disclosure of the requested information is not outweighed by the privacy interest, and therefore, is exempt from disclosure. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

Issued June 5, 2018.

PR 18-13

DiGregorio v. Town of Exeter

The Town of Exeter ("Town") did not violate the APRA when the evidence revealed that the Complainant's APRA request was made to a member of a public body. The request was personally directed to a Town Council member. The Councilor by himself is not a public body. As such, the Complainant's APRA request represented a legal nullity and we found no violation relating to this APRA request. See Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001).

Issued June 15, 2018.

**PR 18-14
OM 18-19**

Residences at Slatersville Mill v. Town of North Smithfield

Because the subject-matter of this Complaint is the same subject-matter of a lawsuit pending in the Rhode Island Superior Court by the Complainant, this Office dismissed the Complaint filed with this Office since it is duplicative with the lawsuit that has already been filed.

Issued June 22, 2018.

PR 18-15

Cote v. Warwick Fire Department

The Complainant alleged that the Fire Department violated the APRA when it denied his request for documents on the grounds that

they did not exist. The Complainant alleged that the documents did exist. We found that the Complainant's request unequivocally sought completed forms. Since no completed forms existed at the time of the Complainant's request, the Fire Department did not violate the APRA by failing to provide non-existent documents. See e.g., Murphy v. City of Providence, PR 15-07; O'Rourke v. Bradford Fire District, PR 13-11. Accordingly, we found no violation.

Issued June 27, 2018.

PR 18-16

Boynton v. Rhode Island Interscholastic League

The Complainant alleged that the RIIL failed to respond to his requests for documents. The RIIL maintained that they are not a "public body" under the APRA. In determining whether the RIIL is a "public body" pursuant to the APRA, we found that the RIIL is not "acting on behalf of and/or in place of" a governmental entity. R.I. Gen. Laws § 38-2-2(1). Indeed, no evidence was presented that any school committee has expressly delegated any services to the RIIL. Instead, the evidence demonstrated that, as a 501(c)(3) nonprofit corporation, the RIIL elects its own members and maintains control of its finances. As membership is voluntarily determined by a school's principal, including private schools, the RIIL operates completely independent from any school committee. These facts are corroborated by the Rhode Island Supreme Court's decision in Hebert v. Ventetuolo, 480 A.2d 403, 407 (R.I. 1984). Therefore, we found that the RIIL was not a "public body" under the APRA, and, accordingly, found no violations.

Issued June 27, 2018.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS – 2018

ADV PR 18-01 In Re: Exeter Volunteer Fire Company No. 2

The Exeter Volunteer Fire Company No. 2 sought an APRA advisory opinion concerning whether the Company is a “public body” subject to the APRA. Based on R.I. Gen. Laws § 38-2-2(1) and Reilly & Olneyville Neighborhood Association v. Providence Department of Planning and Development and/or Providence Redevelopment Agency, PR 09-07B, we looked at whether the Company acts on behalf of and/or in place of any public agency. The evidence demonstrated, inter alia, that in 2014 the General Assembly amended the law governing the Exeter Fire District such that the District has the authority to direct the actions of the Company. Accordingly, on the evidence presented, we opined that the Company was a “public body” under the APRA.

Issued February 22, 2018.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

- 38-2-1. **Purpose.** — The 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.
- 38-2-2. **Definitions.** — As used in this chapter:
- (1) "Agency" or "public body" means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in section 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.
 - (2) "Chief administrative officer" means the highest authority of the public body.
 - (3) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - (4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:
 - (A) (I) (a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files;

- (b) Personnel 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.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.
- (II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of any public retirement systems as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.
- (B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.
- (C) Child custody and adoption records, records of illegitimate

births, and records of juvenile proceedings before the family court.

- (D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.
- (E) Any records which would not be available by law or rule of court to an opposing party in litigation.
- (F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.
- (G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.
- (H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- (I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time

as those transactions are entered into.

- (J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.
- (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical or scholarly issues, whether in electronic or other format; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.
- (L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- (M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.
- (N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.
- (O) All tax returns.
- (P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.
- (Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- (R) Requests for advisory opinions until such time as the public body issues its opinion.

- (S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.
- (T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.
- (U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.
- (V) Printouts from TELE -TEXT devices used by people who are deaf or hard of hearing or speech impaired.
- (W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country; at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.
- (X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.
- (Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island General Law § 9-1.1-6.
- (Z) Any individually identifiable evaluations of public school teachers employees made pursuant to state or federal law or regulation.
- (AA) All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

38-2-3.

Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. —

- (a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.
- (b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.
- (c) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.
- (d) Each public body shall establish written procedures regarding access to public records but shall not require written requests for public information available pursuant to R.I.G.L. section 42-35-2 or for other documents prepared for or readily available to the public.

These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body's website if such a website is maintained and be made otherwise readily available to the public. The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to subsection (e). A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records.

- (e) A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the

voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

- (f) If a public record is in active use or in storage and, therefore, not available at the time a person or entity requests access, the custodian shall so inform the person or entity and make an appointment for the person or entity to examine such records as expeditiously as they may be made available.
- (g) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. Any public body which maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, as requested.
- (h) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.
- (i) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.
- (j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.
- (k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

38-2-3.1.

Records required. — All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a “real-time translation reporter.”

38-2-3.2.

Arrest logs. – (a) Notwithstanding the provisions of subsection 38-2-3(e), the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the public body:

- (1) Full name of the arrested adult;
- (2) Home address of the arrested adult, unless doing so would identify a crime victim;
- (3) Year of birth of the arrested adult;
- (4) Charge or charges;
- (5) Date of the arrest;
- (6) Time of the arrest;
- (7) Gender of the arrested adult;
- (8) Race of the arrested adult; and
- (9) Name of the arresting officer unless doing so would identify an undercover officer.

(b) The provisions of this section shall apply to arrests made within five (5) days prior to the request.

38-2-3.16.

Compliance by agencies and public bodies. – Not later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access to records under this chapter have been provided orientation and training regarding this chapter. The attorney general may, in accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements of this section.

38-2-4.

Cost. – (a) Subject to the provisions of section 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copyable on

common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records or retrieving records from storage where the public body is assessed a retrieval fee.

- (b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.
- (c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body upon request, shall provide an estimate of the costs of a request for documents prior to providing copies.
- (d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.
- (e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

38-2-5.

Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

- (1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;
- (2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or
- (3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

38-2-7.

Denial of access. — (a) Any denial of the right to inspect or copy records,

in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

- (b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended in accordance with the provisions of subsection 38-2-3(e) of this chapter. All copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under section 38-2-4.
- (c) A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the request in accordance with this chapter, state that it does not have or maintain the requested records.

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.

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

38-2-9.

Jurisdiction of superior court. —

- (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.
- (b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.
- (c) Actions brought under this chapter may be advanced on the calendar upon motion of any party, or sua sponte by the court made in accordance with the rules of civil procedure of the superior court.
- (d) The court shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body or official 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 and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or costs if the court determines that the defendant's case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

38-2-10.

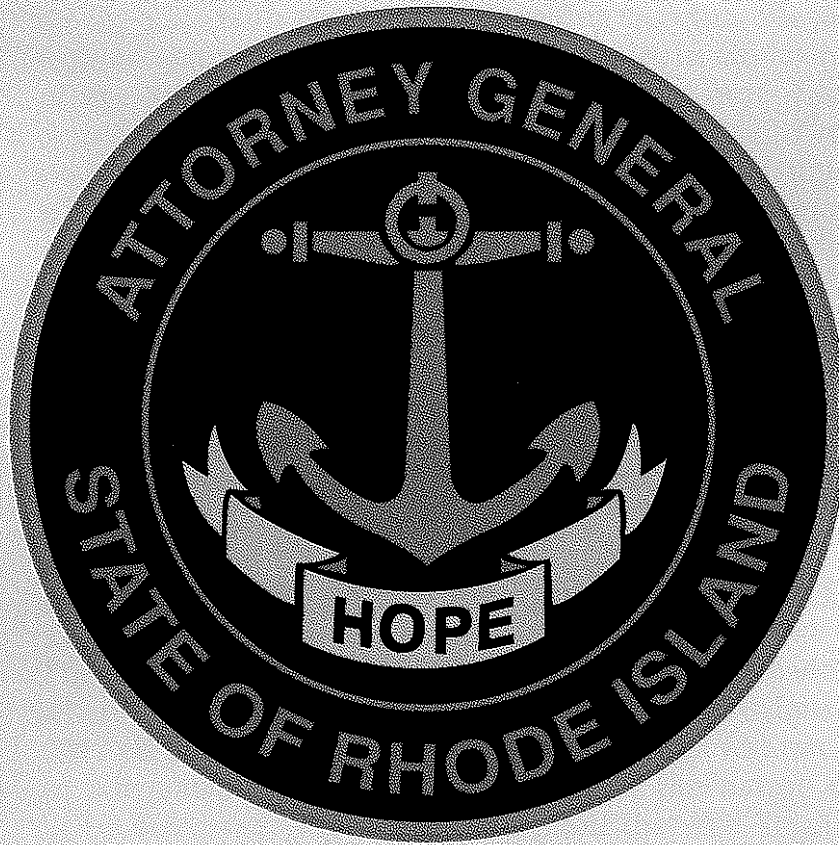
Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

38-2-11.

Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

- 38-2-12. **Severability.** — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.
- 38-2-13. **Records access continuing.** — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.
- 38-2-14. **Information relating to settlement of legal claims.** — Settlement agreements of any legal claims against a governmental entity shall be deemed public records.
- 38-2-15. **Reported violations.** — Every year the attorney general shall prepare a report summarizing all the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.
- 38-2-16. **38 Studios, LLC investigation.** — Notwithstanding any other provision of this chapter or state law, any investigatory records generated or obtained by the Rhode Island state police or the Rhode Island attorney general in conducting an investigation surrounding the funding of 38 Studios, LLC by the Rhode Island economic development corporation shall be made available to the public; provided, however:
- (1) With respect to such records, birthdates, social security numbers, home addresses, financial account number(s) or similarly sensitive personally identifiable information, but not the names of the individuals themselves, shall be redacted from those records prior to any release. The provisions of § 12-11.1-5.1 shall not apply to information disclosed pursuant to this section.

SECTION II



OPEN MEETINGS ACT

OPEN MEETINGS ACT FINDINGS – 2018

OM 18-01 Caldwell v. East Greenwich Town Council / McNamara v. East Greenwich Town Council

Complainants alleged that the Town Council violated the OMA when a rolling quorum occurred outside the public purview and when an agenda item on the Town Council's July 17, 2017 meeting failed to sufficiently specify "the nature of the business to be discussed." R.I. Gen. Laws § 42-46-6(b). With respect to the rolling quorum allegation, the Town Council submitted uncontroverted evidence in affidavit form that none of the Town Council members discussed or were told the thoughts, actions, or opinions of any other members of the Town Council. With no evidence of a "collective discussion," we did not find a rolling quorum and, consequently, did not find an OMA violation. With respect to the notice allegation, consistent with Rhode Island Supreme Court precedent, we found that the agenda item "Town Manager's Report" provided no indication that collective bargaining agreements would be discussed. Therefore, the Town Council violated the OMA. However, we did not find evidence of a willful or knowing violation and no action was taken under this agenda item.

VIOLATION FOUND.

Issued January 12, 2018.

OM 18-02 Aveyard v. East Greenwich Town Council / Kitchin v. East Greenwich Town Council

The Complainants alleged that the Town Council violated the OMA when it voted to terminate their respective positions at its June 26, 2017 executive session meeting, yet the agenda was not specific enough to adequately inform the public of the nature of the business to be discussed. The agenda indicated that the Town Council would convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a) (2), "[s]essions pertaining to collective bargaining or litigation, or work session pertaining to collective bargaining or litigation." Our review of the meeting minutes revealed that the discussion concerned a Town restructuring plan that included layoffs of municipal employees. The Town alleged this topic was proper for executive session since the Town Solicitor advised the Town Council members of any legal implications in terminating Town employees. We concluded, however, after the Town Council discussed litigation issues that could have surrounded the terminations, the discussion and/or vote to implement its plan (and by extension Complainants' terminations) did not relate to "litigation." Since we found that the terminations violated the OMA, we directed the Town Council to re-consider its June 26, 2017 action at a properly

noticed subsequent meeting. We found no evidence to support the allegation that a quorum of the Town Council met outside the purview of a properly noticed public meeting on June 5, 2017, or on June 19, 2017.

VIOLATION FOUND.

Issued January 12, 2018.

OM 18-03

Salvatore v. Town of Cumberland

The Complainant alleged that the Mayor's Advisory Council was a "public body" under the OMA and was meeting outside of the public purview. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we found that the Advisory Council is not a "public body" within the meaning of the OMA. We noted that the Advisory Council shares numerous key features with the CRC in Pontarelli: the Advisory Council is an "informal, strictly advisory committee"; there is no requirement that the Advisory Council meet pursuant to any set schedule or at any particular intervals; the Advisory Council was not created by executive order, *cf. Solas*, 774 A.2d at 825; and the Advisory Council's "sole function is to advise the [Mayor], who in turn has to make a recommendation to the council." These similarities with the CRC in Pontarelli conclusively place the Advisory Council outside of the OMA umbrella. Therefore, we found no violations.

Issued February 19, 2018.

OM 18-04

Paul v. Coventry Planning Commission

The Complainant alleged the Coventry Planning Commission ("Commission") violated the OMA when a quorum of the Commission met and discussed public business during the recess of one of its open meetings. Following the recess, the Commission Chairman announced that the Commission reached an agreement to continue the discussion and vote on a particular agenda item to a future meeting. Based upon this Department's review of the videotape, it appears that during the Commission's recess, although three (3) individuals spoke to the Chairman, for approximately fifteen (15) seconds, it did not appear that a discussion occurred amongst a quorum of the Commission members. R.I. Gen. Laws § 42-46-2. Additionally, we doubted that the subject-matter of this alleged meeting – rescheduling a meeting – fell within the ambit of the OMA. *See* R.I. Gen. Laws § 42-46-5(b)(1).

Issued February 20, 2018.

OM 18-05

Furness v. Scituate Town Council

Complainant alleged that a quorum of the Town Council regularly met

outside of scheduled Town Council meetings regarding public business. Based on the corroborated affidavits, we found no credible evidence that a quorum of the Town Council had met outside of the public purview. Instead, it appeared that the Complainant's allegations were based on unsupported circumstantial evidence and inferences drawn from Facebook postings. Noting that this was insufficient, we found no violation.

Issued March 14, 2018.

OM 18-06

Westerly Residents for Thoughtful Development v. Westerly Town Council

Complainant alleged that the Town Council violated the OMA when it changed an agenda item with less than forty-eight hours' notice and when an agenda item was insufficient. Because the Complainant did not provide any indication that the alleged violations specifically prevented her or other members of her organization from attending the meetings, and failed to provide any evidence that they were disadvantaged by the alleged violations, we found that Complainant had not met her burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). As such, we found that Complainant was not an "aggrieved" party and therefore had no standing to allege the OMA violations contained in her complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20. Notwithstanding, even assuming, arguendo, that the Complainant had standing to bring these allegations, we found no violations because there was no evidence that the agenda item was changed or that the agenda item failed to "fairly inform the public of the nature of the business to be discussed or acted upon[.]" Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013).

Issued March 14, 2018.

OM 18-07
PR 18-07

Fernandes v. Foster Center Volunteer Fire Center

The Complainant alleged that the FCVFC violated the OMA by failing to post sufficient notice and failing to post sufficient and/or timely meeting minutes for numerous meetings. With respect to these OMA allegations, Complainant provided no indication that these alleged defects specifically disadvantaged him, instead providing only conclusory assertions. Because bare assertions of interest are insufficient to demonstrate "aggrieved" status, we found that Complainant had not met his burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). We next addressed Complainant's allegation that the FCVFC failed to respond to his APRA request. The evidence indicated that the FCVFC is a separate and independent entity without an established agency relationship with any governmental entity. As

such, we found that FCVFC is not a “public body” under the APRA. Therefore, we found no violations.
Issued March 19, 2018.

OM 18-08

Roberts v. Woonsocket Board of Assessment Review

The Woonsocket Board of Assessment Review (“Board of Review”) violated the OMA when it convened into executive session. The evidence was completely devoid of any open call as is required pursuant to R.I. Gen. Laws § 42-46-4(a). See R.I. Gen. Laws § 42-46-5(a). Because we conclude that the Board of Review violated the OMA when it did not comply with the requirement of an “open call” and provided no evidence or argument that it convened into executive session for an appropriate purpose, we required that the Board of Review release the December 19, 2017 executive session meeting minutes.

VIOLATION FOUND.

Issued April 11, 2018.

OM 18-09

Langseth v. Rhode Island Commerce Corporation

The Complainant alleged the Rhode Island Commerce Corporation (“Corporation”) violated the OMA when it untimely posted minutes on the Secretary of State’s website for numerous meetings. The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant provided no indication that he was aggrieved during the time period when the meeting minutes should have been posted but were not. In fact, the Complainant informed this Department that he did not have a specific interest in any of the subject meetings. As such, the Complainant had no standing to object and accordingly, we found no violation.

Issued April 19, 2018.

OM 18-10

Langseth v. Air Service Development Council

The Complainant alleged the Air Service Development Council (“Council”) violated the OMA when it failed to post its meeting meetings on the Secretary of State’s website for its September 8, 2017 meeting in a timely manner. As it did not appear that the Council had legal counsel, this Department attempted on three (3) occasions to obtain a formal response from the Council’s Special Advisor regarding these allegations. We received no substantive response. Through this Department’s own investigation, we concluded that the September 8, 2017 meeting minutes were filed on the Secretary of State’s website on December 4, 2017. The meeting minutes should have been filed no later

than October 13, 2017. This Department determined it was appropriate to seek a supplemental response from the Council concerning whether the violation was willful or knowing, which would subject the Council to civil penalties.

VIOLATION FOUND.

Issued April 19, 2018.

OM 18-11

Novak v. Western Coventry Fire District

The Complainant alleged the Western Coventry Fire District (“Fire District”) violated the OMA when it failed to post the unofficial minutes for its September 7, 2017 meeting on the Secretary of State’s website in violation of R.I. Gen. Laws § 42-46-7(b)(2). The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, it was unclear how the alleged violation specifically disadvantaged the Complainant. This Department found that the Complainant was not an “aggrieved” party and therefore did not have standing to allege the OMA violation. See Fernandes v. Foster Center Volunteer Fire Center, OM 18-07; Langseth v. Rhode Island Commerce Corporation, OM 18-09. *Issued May 9, 2018.*

OM 18-12

Spodnik v. West Warwick Town Council

The Complainant alleged the West Warwick Town Council violated the OMA when the agenda for its January 16, 2018 meeting was posted less than forty-eight (48) hours in advance of the meeting in violation of R.I. Gen. Laws § 42-46-6(b). The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, it was unclear how the alleged violation specifically disadvantaged the Complainant. This Department found that the Complainant was not an “aggrieved” party and therefore did not have standing to allege the OMA violation. See Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12; Novak v. Western Coventry Fire District, OM 18-11. *Issued May 15, 2018.*

OM 18-13

Belmore v. Newport City Council

Complainant alleged that the City Council violated the OMA when it discussed the process for selecting a new councilmember outside of the public purview. Complainant also alleged that the interviews of

candidates in executive session was improper. The submitted affidavits revealed that numerous City Councilors had conversations regarding the open City Council seat, all outside the public purview. We found that these individual interactions collectively added up to a quorum of the City Council. See In re: Pawtucket City Council, ADV OM 05-01. By discussing the process for selecting the new City Councilor outside the public purview, the City Council violated the OMA. As such, this Department directed the City Council to provide a supplemental response addressing why the violations we found should not be considered “willful or knowing” violations. We also found that the interviews of candidates were appropriate for executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1).

VIOLATION FOUND.

Issued May 16, 2018.

OM 18-13B

Belmore v. Newport City Council

This supplemental finding addressed whether the OMA violations found in Belmore v. Newport City Council, OM 18-13 were willful or knowing. After reviewing all the evidence presented, we found insufficient evidence of a willful or knowing violation. We concurred with the City Solicitor’s contention that this matter presented “a hodge-podge of discussions in which there is no indication that councilors involved knew who else was involved other than the ones that they had talked to.” While ultimately violative of the OMA, in our opinion, the City Council’s actions reflected a careless and freewheeling process, not a willful or knowing violation of the OMA.

Issued June 13, 2018.

OM 18-14

Sinapi v. Warwick School Committee

The Warwick School Committee violated the OMA when it discussed a non-noticed item in executive session. See Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al., 151 A.3d 301 (R.I. 2016). More specifically, the School Committee discussed a recent Rhode Island Department of Education decision and whether or not the School Committee was going to appeal the decision. It was unclear to this Department why the School Committee could not have scheduled a special meeting to discuss the decision and potential appeal. While this may very well be an isolated incident, this Office directed the School Committee to supply it with the agenda and official minutes for all of the School Committee’s February 2018 and March 2018 minutes for our *in camera* review. See R.I. Gen. Laws § 42-46-8(e). Should additional similar violations be found, this Office does not rule out taking appropriate action, nor does it rule out future unannounced requests for agendas/minutes to review.

VIOLATION FOUND.
Issued May 31, 2018.

OM 18-15

Davis v. Cranston City Council

The Cranston City Council violated the OMA when it referred a resolution, namely “No Guns in Schools” to the Ordinance Committee, yet later in the meeting – after the Complainant left the meeting – decided not to forward this resolution to the Ordinance Committee.
VIOLATION FOUND.
Issued June 1, 2018.

OM 18-16

Waring v. Portsmouth Town Council

The Complainant alleged that the Town Council violated the OMA when the agenda for its September 11, 2017 meeting was insufficiently specific with respect to a sound variance and when the September 11, 2017 meeting minutes were insufficient and/or inaccurate. With respect to the alleged notice defect, we found that the Complainant attended the meeting in question and that he failed to sufficiently articulate how he was aggrieved by the alleged defect. Accordingly, we found that the Complainant was not aggrieved. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Even assuming, arguendo, that the Complainant had standing to bring his allegation regarding an insufficient agenda, we found no violation because the agenda item “fairly inform[ed] the public of the nature of the business to be discussed or acted upon[.]” Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013). With respect to the allegation regarding insufficient meeting minutes, we similarly found no violation because the minutes contained all the requisite information and accurately recorded the Town Council vote. See R.I. Gen. Laws § 42-46-7(a).
Issued June 4, 2018.

OM 18-17

Block v. Rhode Island Board of Elections

The complainant alleged that the Board of Elections filed its official/ approved minutes on the Secretary of State’s website in an untimely manner for fourteen meetings. Several of these meetings were cancelled or did not constitute meetings. In addition, for nine of these meetings, the complainant filed his complaint with this Office after the statute of limitations for filing a lawsuit had already expired. See R.I. Gen. Laws § 42-46-8. For the one remaining meeting – an April 2017 meeting – we determined that the complainant was not aggrieved since the complainant indicated that the “critical window” of his interest was in the “summer of 2016” and “before the 2016 general election.” The April 2017 minutes were outside the window described by the complainant, and therefore, he failed to demonstrate he was aggrieved. See Graziano

v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).
Issued June 14, 2018.

OM 18-18

Frank DiGregorio v. Exeter Town Council

The Complainant alleged the Exeter Town Council (“Town Council”) violated the OMA when its agenda did not sufficiently inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b). Based on our review of the agenda and the open session minutes, we found nothing that indicated the agenda item provided “vague and indefinite notice to the public.” Anolik v. Zoning Bd. of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013).
Issued June 15, 2018.

OM 18-19
PR 18-14

Residences at Slatersville Mill v. Town of North Smithfield

Because the subject-matter of this Complaint is the same subject-matter of a lawsuit pending in the Rhode Island Superior Court by the Complainant, this Office dismissed the Complaint filed with this Office since it is duplicative with the lawsuit that has already been filed.
Issued June 22, 2018.

OM 18-20

Gladstone v. City of Pawtucket

The Complainant alleged that the City violated the OMA when it formed a stakeholder group that met or will meet outside the public purview. The uncontroverted evidence demonstrated that no meeting of the stakeholders group had occurred. Therefore, the OMA was not implicated. Furthermore, based on the undisputed evidence, the stakeholders group acknowledged that it is subject to the OMA and had taken steps to comply with the OMA’s requirements. For these reasons, we found no violation.
Issued June 27, 2018.

OPEN MEETINGS ACT ADVISORY OPINIONS – 2018

ADV OM 18-01 **In Re: South Foster Volunteer Fire Company**

Legal counsel for the South Foster Volunteer Fire Company (“SFVFC”) sought an OMA advisory opinion concerning whether the SFVFC is a “public body” subject to the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), as well as this Department’s previous findings, we looked to the SFVFC’s federal income tax forms, Articles of Incorporation, and By-Laws to assist our analysis. The evidence demonstrated, *inter alia*, that the SFVFC is a nonprofit corporation that selects its own members independent of any governmental or public approval process, that the SFVFC provides no medical benefits and no pensions to its members, and that the SFVFC does not have any taxing authority. Based on the specific evidence presented, we opined that the SFVFC is not a “public body” under the OMA.

Issued March 19, 2018.

ADV OM 18-02 **In re: Open Meetings Agenda Posting**

The Rhode Island Secretary of State sought guidance as to whether using an electronic kiosk to post Open Meetings Act information was proper. We concluded that the proposed electronic kiosk that is physically present outside the State Library complies with R.I. Gen. Laws § 42-46-6(c). We also found that the OMA did not prohibit the electronic kiosk from linking to the Secretary of State’s website.

Issued May 16, 2018.

CHAPTER 46

OPEN MEETINGS

42-46-1. **Public policy.** — It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

42-46-2. **Definitions.** — As used in this chapter:

- (1) “Meeting” means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term “meeting” expressly include, without limiting the generality of the foregoing, so-called “workshop,” “working,” or “work” sessions.
- (2) “Open call” means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of § 42-46-5 is being involved.
- (3) “Public body” means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.
- (4) “Quorum,” unless otherwise defined by applicable law, means a simple majority of the membership of a public body.
- (5) “Prevailing plaintiff” include those persons and entities deemed “prevailing parties” pursuant to 42 U.S.C. § 1988.
- (6) “Open forum” means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.

42-46-3. **Open meetings.** — Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

42-46-4. **Closed meetings.** — (a) By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by § 42-46-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting. No public body shall discuss in closed session any public matter which does not fall within the citations to § 42-46-5(a) referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.

(b) All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).

42-46-5. **Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct.** —

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including but not

limited to the deployment of security personnel or devices.

- (4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.
 - (5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.
 - (6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.
 - (7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including but not limited to state lottery plans for new promotions.
 - (8) Any executive sessions of a local school committee exclusively for the purposes (i) of conducting student disciplinary hearings or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.
 - (9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.
 - (10) Any discussion of the personal finances of a prospective donor to a library.
- (b) No meeting of members of a public body or use of electronic communication, including telephonic communication and tele-

phone conferencing, shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

- (1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.
- (2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.
- (3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:
 - (i) cannot attend meetings of that public body solely by reason of his or her disability; and
 - (ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.
- (4) The governor's commission on disabilities is authorized and directed to:
 - (i) establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;
 - (ii) grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and
 - (iii) any waiver decisions shall be a matter of public record.

- (c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.
- (d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

42-46-6.

Notice. —

- (a) All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the secretary of state at the beginning of each calendar year in accordance with subsection (f).
- (b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours, excluding weekends and state holidays in the count of hours, before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. School committees may, however, add items for informational purposes only, pursuant to a request, submitted in writing, by a member of the public during the public comment session of the school committee's meetings. Said informational items may not be voted upon unless they have been posted in accordance with the provisions of this section. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.
- (c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (f); however, nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed

necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (e) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours in accordance with § 42-46-6(b) and only discuss the issue or issues which created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

- (d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.
- (e) A school committee may add agenda items not appearing in the published notice required by this section under the following conditions:
 - (1) The revised agenda is electronically filed with the secretary of state pursuant to subsection (f), and is posted on the school district's website and the two (2) public locations required by this section at least forty-eight (48) hours in advance of the meeting in accordance with § 42-46-6(b);
 - (2) The new agenda items were unexpected and could not have been added in time for newspaper publication;
 - (3) Upon meeting, the public body states for the record and minutes why the agenda items could not have been added in time for newspaper publication and need to be addressed at the meeting;



- (4) A formal process is available to provide timely notice of the revised agenda to any person who has requested that notice, and the school district has taken reasonable steps to make the public aware of this process; and
- (5) The published notice shall include a statement that any changes in the agenda will be posted on the school district's web site and the two (2) public locations required by this section and will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of the meeting in accordance with § 42-46-6(b).
- (f) All notices required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of notices with the secretary of state shall take effect one (1) year after this subsection takes effect.
- (g) If a public body fails to transmit notices in accordance with this section, then any aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

42-46-7.

Minutes. —

- (a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:
 - (1) The date, time, and place of the meeting;
 - (2) The members of the public body recorded as either present or absent;
 - (3) A record by individual members of any vote taken; and
 - (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.
- (b) (1) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever

is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

- (2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website.
- (c) The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5.
- (d) All public bodies shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.
- (e) All minutes and unofficial minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. If a public body fails to transmit minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may file a complaint with the attorney general in accordance with §42-46-8.

42-46-8.

Remedies available to aggrieved persons or entities. —

- (a) Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.
- (b) No complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of

the meeting at which the alleged violation occurred, or, in the case of an unannounced or improperly closed meeting, after one hundred eighty (180) days from the public action of a public body revealing the alleged violation, whichever is greater.

- (c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.
- (d) The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust.

The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter.

- (e) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.
- (f) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner.
- (g) The attorney general shall consider all complaints filed under this chapter to have also been filed under § 38-2-8(b) if applicable.

42-46-9.

Other applicable law. — The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29, which has been expressly repealed.

42-46-10.

Severability. — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the

remaining provisions or the other applications of this chapter.

42-46-11. Reported violations. — Every year the attorney general shall prepare a report summarizing the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

42-46-12. Notice of citizen's rights under this chapter. — The attorney general shall prepare a notice providing concise information explaining the requirements of this chapter and advising citizens of their right to file complaints for violations of this chapter. The notice shall be posted in a prominent location in each city and town hall in the state.

42-46-13. Accessibility for persons with disabilities. —

(a) All public bodies, to comply with the nondiscrimination on the basis of disability requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of title 11), shall develop a transition plan setting forth the steps necessary to ensure that all open meetings of said public bodies are accessible to persons with disabilities.

(b) The state building code standards committee shall, by September 1, 1989 adopt an accessibility of meetings for persons with disabilities standard that includes provisions ensuring that the meeting location is accessible to and usable by all persons with disabilities.

(c) This section does not require the public body to make each of its existing facilities accessible to and usable by persons with disabilities so long as all meetings required to be open to the public pursuant to chapter 46 of this title are held in accessible facilities by the dates specified in subsection (e).

(d) The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this

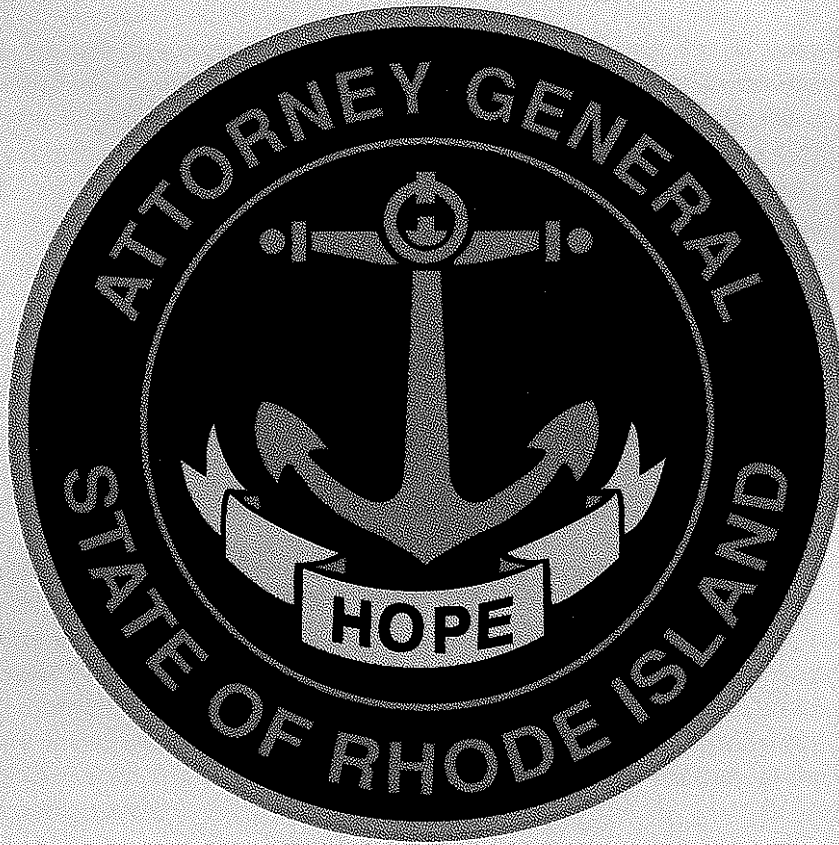
section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.

- (f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor's commission on disabilities for review and approval. The governor's commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.
- (g) The provisions of §§ 45-13-7 — 45-13-10, inclusive, shall not apply to this section.

42-46-14.

Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.

SECTION III



PROCEDURES & FORMS



DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL
150 South Main Street - Providence RI 02903



PUBLIC RECORDS REQUEST GUIDELINES
OPEN GOVERNMENT UNIT

The Department of Attorney General adheres to the Access to Public Records Act, R.I. Gen. Laws §38-2-1, *et. seq.*, and has instituted the following procedures for the public to obtain public records.

1. To reach us by telephone please call (401) 274-4400 and ask to be connected to the Open Government Unit. Requests for records must be mailed to the Open Government Unit, which is the Unit within the Department of Attorney General designated to handle these matters, except as provided in paragraph 4. The mailing address is: Department of Attorney General, ATTN: Open Government Unit, 150 South Main Street, Providence, RI 02903. Requests may also be hand delivered to the Department of Attorney General at the reception desk (150 South Main Street) and addressed to the Open Government Unit or requests may be emailed to aprarequest@riag.ri.gov.
2. The regular business hours of the Department are 8:30 a.m. to 4:30 p.m. If you come in after regular business hours, please complete the Public Records Request Form at the front desk and it will be given to the Unit the following day.
3. You are not required to provide identification or the reason you seek the information, and your right to access public records will not depend upon providing identification or reasons.
4. In order to ensure that you are provided with the public records you seek in an expeditious manner, unless you are seeking records available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public, we ask that you complete the Public Records Request Form located at the front desk, or on our website, www.riag.ri.gov or otherwise submit your request in writing. If you are seeking documents available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public and do not wish to submit a written request, you must contact an attorney in the Open Government Unit to make your request.
5. You may also obtain a copy of the Attorney General's Guide to Open Government, which can be found at: <http://www.riag.ri.gov> (then proceed to the link entitled "Open Government").
6. Please be advised that the Access to Public Records Act allows a public body ten (10) business days to respond, which can be extended an additional twenty (20) business days for "good cause." We appreciate your understanding and patience.
7. If you feel that you have been denied access to public records, you have the right to file a review petition with the Attorney General. You may also file a lawsuit in Superior Court.
8. The Department of Attorney General is committed to providing you with public records in an expeditious and courteous manner.



DEPARTMENT OF ATTORNEY GENERAL
 PETER F. KILMARTIN, ATTORNEY GENERAL
 150 South Main Street - Providence RI 02903



PUBLIC RECORDS REQUEST FORM
 UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date _____ Request Number _____
 Name (optional) _____
 Address (optional) _____

 Telephone (optional) _____
 Requested Records: _____

OFFICE USE ONLY

Request taken by: _____ Request Number _____
 Date: _____ Time: _____
 Records to be available on: _____ Mail _____ Pick Up _____
 Records provided: _____
 Costs: _____ copies _____ search and retrieval

Forward this Document to the Open Government Unit

Department of Attorney General - Public Records Request Receipt

If you desire to pick up the records, they will be available on _____ at the front desk. If, after review of your request, the Department determines that the requested records are exempt from disclosure for a reason set forth in the Access to Public Records Act, the Department reserves its right to claim such exemption.

Note: If you chose to pick up the records, but did not include identifying information on this form (name, etc.), please inform the receptionist at the front desk of the date you made the request, records requested and request number.

Thank you.

RULES AND REGULATIONS

Regarding Training under the Access to Public Records Act

1. The Chief Administrative Officer, as defined by the Access to Public Records Act, must certify annually, as provided in R. I. Gen. Laws §38-2-3.16 (“compliance by agencies and public bodies”), that persons who have the authority to grant or deny Access to Public Records Act requests have received training for the upcoming calendar year. Individuals must be certified each calendar year.
2. Any person who has not received training prior to the beginning of the calendar year, but who during the calendar year becomes authorized to grant or deny Access to Public Records Act requests, shall receive training as required under the Access to Public Records Act as soon as practicable, but not less than one (1) month after being authorized to grant or deny Access to Public Records Act requests. Such time may be extended at the discretion of the Department of Attorney General for “good cause.” The Chief Administrative Officer must certify to the Attorney General that training has been received when training has been completed.
3. Authorized training must be conducted by the Department of Attorney General. The Department of Attorney General will offer various training programs throughout each calendar year and such training programs will be conducted at various locations throughout the State. Public bodies or governmental entities wishing to schedule training sessions may contact the Department of Attorney General. Public entities wishing to schedule Access to Public Records Act training should make every effort to schedule training sessions to as large a group as practicable. The Department of Attorney General reserves the sole discretion to determine whether and when to schedule a training session.
4. For purposes of these Rules and Regulations the requirement for training may be satisfied by attending an Attorney General training in person or by viewing a recent video of an Access to Public Records Act presentation given by the Department of Attorney General. Any person satisfying the Access to Public Records Act training requirement must certify to the Chief Administrative Officer that he or she viewed the entire Access to Public Records Act presentation, or attended the live training program, and such certification shall be forwarded by the Chief Administrative Officer to the Department of Attorney General.
5. Certification may be e-mailed to agsummit@riag.ri.gov, or mailed to the Department of Attorney General, Attn: Public Records Unit, 150 South Main Street, Providence, Rhode Island 02903. Certification forms are available on the Department of Attorney General Website.

6. The Attorney General may annually prepare and post a list of all certifications received by the office by public bodies.
7. The Department of Attorney General may assess a reasonable charge for the certification required by R.I. Gen. Laws § 38-2-3.16, is to defray the cost of such training and related materials.



State of Rhode Island
Department of the Attorney General

CERTIFICATE OF COMPLIANCE
ACCESS TO PUBLIC RECORDS ACT SECTION 38-2-3.16
COMPLIANCE BY AGENCIES AND PUBLIC BODIES

SECTION A – TO BE COMPLETED BY CHIEF ADMINISTRATOR

This certifies that _____ of _____, has completed the Access to Public Records training on the _____ day of _____, 20____, and is in compliance with § 38-2-3.16.

The above has completed training by means of: _____ Live Presentation _____ Video Presentation

Chief Administrator

Department/Entity

Dated

SECTION B – TO BE COMPLETED BY CERTIFIED PERSONNEL

I certify that I have viewed the video presentation and/or a live presentation and am in compliance with § 38-2-3.16 of the Access to Public Records Act. In addition, I certify that the information I have provided on this statement is true and correct.

Date of Training: _____

Signed: _____

Email Address: _____

[Email address will be used only to provide notice of future Open Government seminars]

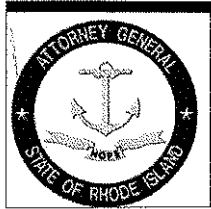
****Please List ANY and ALL Entities for which you are certifying compliance. For instance, the Clerk's**

Office, the Police Department, the School Department, the entire City/Town/Department.

Upon completion please return to this office by either emailing to opengovernment@riag.ri.gov; facsimile 401-222-3016 or mail to Department of Attorney General, Open Government Unit, 150 South Main Street, Providence, Rhode Island 02903.

Department of Attorney General

Peter F. Kilmartin, Attorney General



Co-sponsored by the Roger Williams
University Law Alumni Association

IS IT A PUBLIC BODY?

“or any other public or private agency,
person, partnership, corporation, or
business entity acting on behalf of and/or
in place of any public agency”

R.I.G.L. § 38-2-2(1)

Fernandes v. Foster Volunteer Fire Center, PR 18-07;

DiGregorio v. Town of Exeter, PR 18-13;

Boynton v. RI Interscholastic League, PR 18-16;

In re: Exeter Fire Company No. 2, ADV PR 18-01

IS IT AN APRA REQUEST?

Provide Documents
Not Narratives/Summaries

No Duty Under APRA to
Answer Questions

J. Brian Day v. City of Pawtucket, PR 17-08;
Pierson v. Coventry Board of Canvassers, PR 17-12

“all records maintained or kept on
file by any public body *** shall be
public records and every person or
entity shall have the right to inspect
and/or copy those records”

R.I.G.L. § 38-2-3(a)

Gill v. Town of Tiverton, PR 17-57;

DiGregorio v. Town of Exeter, PR 18-13

PUBLIC RECORD

“Material regardless of physical form or
characteristics made or received
pursuant to law or ordinance or in
connection with the transaction of
official business by any agency”

R.I. Gen Laws § 38-2-2(4)

Pontarelli v. Rhode Island Dept. of Education,
176 A.3d 472 (R.I. 2018)

Is It a Public Record?

- Does one of the twenty-seven exceptions apply?
- The Balancing Test: Does the individual’s privacy interest outweigh the public’s interest in disclosure?

The Exemptions:
R.I.G.L. § 38-2-2(4)

27 Exemptions



Confidential



Exempt



Public

Any reasonably segregable portion of a public record shall be available

If entire document is exempt, must state in writing that no reasonable segregable information exists.

R.I.G.L. § 38-2-3(b)

Harris v. City of Providence, PR 18-08

Individually – identifiable records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to the FOIA.

R.I.G.L. § 38-2-2(4)(A)(I)(b)

Public Employee Information*

- name
- gross salary
- salary range
- total cost of paid fringe benefits
- gross amount received in overtime
- other remuneration
- job title
- job description
- employment contract
- dates of employment
- positions held with the state, municipality, or public works projects
- work location or project
- business telephone number
- city/town of residence
- date of termination

Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature

R.I.G.L. § 38-2-2(4)(B)

Harris v. City of Providence, PR 17-17

“Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.”

R.I.G.L. § 38-2-2(4)(H)

Lombardo v. Town of Westerly, PR 18-02

Law Enforcement

Records maintained by law enforcement agencies for criminal law enforcement are exempt, but only if disclosure could:

R.I.G.L. § 38-2-2(4)(D)

- (a) reasonably be expected to interfere with investigations of criminal activity or enforcement proceedings
- (b) deprive a person of the right to a fair trial
- (c) reasonably be expected to constitute an unwarranted invasion of personal privacy

Providence Journal v. Dept. of Public Safety,
136 A.3d 1168 (R.I. 2016)

- (d) reasonably be expected to identify a confidential source
- (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions
- (f) reasonably be expected to endanger the life or physical safety of any individual

Records relating to the management and the direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult are public records

R.I.G.L. § 38-2-2(4)(D)
Thomson v. Town of Johnston, PR 17-09

Adult Arrest Logs

- Must be made available within 48 hours of a request (72 hours if made on a weekend or holiday).
- Applies only to arrests made within 5 days of the request.

R.I.G.L. § 38-2-3.2

Adult Arrest Logs

- Full name of arrested adult;
- Home address of arrested adult, unless doing so would identify a crime victim;
- Year of birth of arrested adult;
- Charge or charges;
- Date of the arrest;
- Time of the arrest;
- Gender of the arrested adult;
- Race of the arrested adult;
- Name of the arresting officer unless doing so would identify an undercover officer

R.I.G.L. § 38-2-3.2

Incident Reports

When an arrest has not taken place, there is a presumption that initial incident reports are exempt from public disclosure.

R.I.G.L. § 38-2-2(4)(D)

Conley v. City of East Providence, PR 17-39

“Any minutes of a meeting of a public body which are not required to be disclosed pursuant to [the OMA].”

R.I.G.L. § 38-2-2(4)(J)

“Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical or scholarly issues, whether in electronic or other format”

R.I.G.L. § 38-2-2(4)(K)

Vitkevich v. Rhode Island Department of Transportation, PR 17-42;
Hartley v. Coventry Fire District, PR 17-55

Exception:

above listed documents submitted at a public meeting shall be public

R.I.G.L. § 38-2-2(4)(K)

Correspondence of/to elected officials with or relating to those they represent and correspondence of/to elected officials in their official capacity

R.I.G.L. § 38-2-2(4)(M)

All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation, other than records of final action taken

R.I.G.L. § 38-2-2(4)(P)

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

R.I.G.L. § 38-2-2(4)(S)
Paiva v. RI Department of Corrections, PR 18-12

Any individually identifiable evaluations of public school teachers employees made pursuant to state or federal law or regulation.

R.I.G.L. § 38-2-2(4)(Z)

Balancing Test

Does the privacy interest of the individual outweigh the public's interest in disclosure?

DARE v. Gannon, 713 A.2d 218, 225 (R.I. 1998);
Harris v. City of Providence, PR 17-16;
Gannon v. City of Pawtucket, PR 17-47

Public Interest

“Official information that sheds light on an agency’s performance of its statutory duties.”

Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)

Privacy Interest

“[W]here the subject of the documents ‘is a private citizen,’ ‘the privacy interest . . . is at its apex.’”

National Archives & Records Admin. v. Favish,
541 U.S. 157 (2003)

Reason or Identity of Person Making Request

Public body cannot require, as condition of fulfilling request, a person/entity provide reason for request or provide personally identifiable information

R.I.G.L. § 38-2-3(j)

“Each public body shall establish written procedures regarding access to public records”

- No written request if available per APA or prepared for/readily available to the public

R.I.G.L. § 38-2-3(d)

Oliver v. Rhode Island Commission on the Deaf and Hard of Hearing, PR 17-15

Procedures Must Include

- Identification of designated public records officer or unit
- How to make a request
- Where to make a request

No requirement that request be made on public body’s form, provided identifiable as request

R.I.G.L. § 38-2-3(d)

Procedures

Copy of procedure shall be posted on public body’s website if maintained & be otherwise readily available

Timeframe to Respond After Receiving a Request

- provide the records within ten (10) business days, **or**
- extend the time period for an additional twenty (20) business days for “good cause,” **or**
- deny access to records within ten (10) business days

R.I.G.L. § 38-2-7

Mudge v. Town of North Kingstown, PR 17-44

Procedures for Denying Access to Records

- denial must be in writing, **and**
- state the specific reason(s) for the denial, **and**
- indicate the procedure(s) for an appeal in R.I.G.L. § 38-2-8

R.I.G.L. § 38-2-7

Procedures Prior to Providing Records

- upon request, provide estimate of charges, **and**
- upon request, provide detailed itemization of search/retrieval costs, **and**
- perform search/retrieval within reasonable amount of time, **and**
- provide reduction or waiver of search/retrieval costs upon a court order

Procedures For “Good Cause”

- Explain in writing need for additional time
- Specific to request made (no boilerplate forms)
- Extend time based upon:
 - voluminous nature of request,
 - number of pending requests, or
 - difficulty in searching/retrieving/copying records

R.I.G.L. § 38-2-3(e)

Greenbaum v. City of Providence, PR 17-25

Procedures For “Good Cause”

Unavailability of designated public records officer shall not be deemed “good cause”

R.I.G.L. § 38-2-3(d)

Cost and Delivery Procedures

- \$.15 per photocopy on common/legal size paper
- \$15.00 per search/retrieval hour, no charge for the first hour
- No more than the actual reasonable cost for providing electronic records

R.I.G.L. § 38-2-4

“the costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested document”

DARE v. Gannon, 819 A.2d 651, 661 (R.I. 2003); Harris v. City of Providence, PR 18-09

Cost and Delivery Procedures

- For purposes of calculating search and retrieval time, multiple requests from same person or entity during a 30 day time period shall be considered one request.
- All fees waived if fail to produce requested records in a timely manner.

R.I.G.L. § 38-2-4(b)

R.I.G.L. § 38-2-7(b)

Public Body May Seek Pre-Payment

“production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under § 38-2-4”

R.I.G.L. § 38-2-7

Lavallee v. Rhode Island Commerce Corporation, PR 17-56

Cost and Delivery Procedures

At the option of the person requesting the records, the public body shall provide copies * * * electronically, by facsimile, or by mail * * * unless complying * * * would be unduly burdensome due to the volume of records requested or the costs incurred.

R.I.G.L. § 38-2-3(k)

Cost and Delivery Procedures

- Persons requesting delivery responsible for any actual cost of delivery.

R.I.G.L. § 38-2-3(k)

- May assess charge for retrieving records from storage where public body is assessed retrieval fee.

R.I.G.L. § 38-2-4(a)

No requirement to reorganize, consolidate, or compile data not maintained in the requested form

Exception: records in an electronic format and not unduly burdensome

R.I.G.L. § 38-2-3(h)

Cote v. Warwick Fire Department, PR 18-15

“Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them”

R.I.G.L. § 38-2-3(g)

Training

Chief Administrative Officers of all public bodies must certify by January 1st of each year that all employees who have authority to grant/deny access to records have received training.

R.I.G.L. § 38-2-3.16

Remedies

\$2,000 for a willful and knowing violation

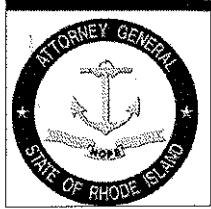
\$1,000 for a reckless violation

Injunctive Relief

Attorney Fees

Department of Attorney General

Peter F. Kilmartin, Attorney General



Open Meetings Act

Purpose

“It is essential...that public business be performed in an open and public manner and that citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of Public Policy.”

R.I.G.L. § 42-46-1

Davis v. Cranston City Council, OM 18-15

Three Threshold Elements that Trigger OMA

- A “quorum” of a “public body” has a “meeting”
- If one (or more) element is missing, the OMA does not apply

What is a Public Body?

“department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government”

R.I.G.L. § 42-46-2(c)

Esposito, et al. v. Scituate School Committee and Superintendent Search Committee, OM 17-08;
Salvatore v. Town of Cumberland, OM 18-03;
Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016)

What is a Quorum?

“unless otherwise defined ... a simple majority of the membership”

R.I.G.L. § 42-46-2(d)

Furness v. Scituate Town Council, OM 18-05

“Rolling” or “Walking” Quorum

A series of meetings each less than a “quorum,” but that collectively represent a “quorum”

Apperson v. South Kingstown School Committee, OM 17-30

“Rolling” or “Walking” Quorum

Quorums can be created not only by members of a public body, but through a third person

What is a Meeting?

“The convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power”

R.I.G.L. § 42-46-2(a)
Paul v. Coventry Planning Comm., OM 18-04;
Belmore v. Newport City Council, OM 18-13;
Gladstone v. City of Pawtucket, OM 18-20

Email/Telephone

- Can a public body use email or telephone conferencing?
 - § 42-46-5(b)(1): Discussions of a public body via electronic communication, including telephone, are permitted **only** to schedule a meeting

Blecinski v. Warwick School Comm., OM 17-20

Email/Telephone

- A member of a public body may participate by use of electronic communication or telephone if:
 - on **active duty**
 - has a **disability** and cannot otherwise participate
- Subject to rules/regulations and waiver process governed by Governor’s Commission on Disabilities

R.I.G.L. § 42-46-5(b)(2),(3) & (4)

“List serves” (email distribution lists through which subscribers receive information on a particular topic) do not violate the OMA

Keegan/Silva v. Burrillville Town Council,
OM 17-07

Executive Session

- Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

R.I.G.L. § 42-46-3

- Purposes for which may be closed.

R.I.G.L. § 42-46-5(a)(1)-(10)

Convening Into Closed Session

- “Open Call”
 - Majority vote in open session
 - State in open session and in minutes subsection of § 42-46-5
 - State in open session and in minutes a statement of the business to be discussed
 - Not discuss any other matter

R.I.G.L. § 42-46-4(a)

Graziano v. R.I. Lottery Comm., OM 99-06;

Roberts v. Woonsocket Board of Assessment Review, OM 18-08;

Sinapi v. Warwick School Committee, OM 18-04

R.I.G.L. § 42-46-5(a)(1)

- **Discussions** of job performance, character, or physical or mental health of affected person or persons
 - advanced written notice that discussion may take place in open session
 - state in open call and open minutes that notice provided

Avanzato v. North Kingstown Town Council, OM 17-14

The invitation into executive session lies with the public body, not the individual seeking to attend.

R.I.G.L. § 42-46-5(a)(2)

Sessions or work sessions pertaining to collective bargaining or litigation

R.I.G.L. § 42-46-5(a)(4)

Investigative proceedings regarding allegations of civil or criminal misconduct

R.I.G.L. § 42-46-5(a)(4)

R.I.G.L. § 42-46-5(a)(5)

Acquisition or lease of real property for public purposes, or disposition of publicly held property, wherein advanced public info would be detrimental to public

R.I.G.L. § 42-46-5(a)(8)

School Committee sessions to conduct student disciplinary hearings or to review other matters relating to the privacy of students or their records, provided that:

- Advanced written notice that discussion may take place in open session
- State in open call and open minutes that notice provided

Votes

Executive session votes must be disclosed upon reconvening into open session except if disclosure would jeopardize a strategy, negotiation, or investigation.

Two Types of Notice

- **Annual Notice:** at the beginning of each calendar year
- **Supplemental Notice:** a minimum of 48 hours, excluding weekends & state holidays

Spodnik v. West Warwick Town Council, OM 18-12

Posting Requirements

- Principal office of public body
- One other prominent location within the governmental unit
- Secretary of State (electronic)

R.I.G.L. § 42-46-6(c)

Notice Requirements

Kiosk at the State Library – publicly accessible and located in the State House – is “prominent.”

In re: Open Meetings Agenda Posting, ADV OM 18-02

Notice Requirements

- | <u>Annual</u> | <u>Supplemental</u> |
|---|--|
| • Dates, times and location of regularly scheduled meetings | • Date, time and location of all meetings |
| • Available to public upon request | • Date posted |
| | • <u>Statement specifying business to be discussed</u> |

Pontarelli v. RI Bd. Council on Elem. and Sec. Ed. 151 A.3d 301 (R.I. 2016)

Improper Agenda Items

- Old Business/New Business
- Treasurer's Report
- Police Chief's Report
- Any other matter brought before the Board

Caldwell/McNamara v. East Greenwich Town Council, OM 18-01
Aveyard/Kitchin v. East Greenwich Town Council, OM 18-02

Executive Session Notice

- No boiler plate language
- Identify number of items to be discussed
- Statement of each item to be discussed

Graziano v. R.I. Lott'y Comm., OM 99-06

- If publicly known, provide detailed statement
- If not publicly known, may use more general language

Proper Executive Session Notice

1. R.I.G.L. § 42-46-5(a)(1)
(Town Manager performance review)
2. R.I.G.L. § 42-46-5(a)(2)
(Police Union Negotiation)
3. R.I.G.L. § 42-46-5(a)(1),(2)
(Personnel Matter)
4. R.I.G.L. § 42-46-5(a)(2)
(potential litigation – land dispute)

Amending the Agenda **(Not School Committees)**

“Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members.”

R.I.G.L. § 42-46-6(b)

Amending the Agenda

No vote may be taken, except:

- where necessary to address an unexpected occurrence that requires immediate action to protect the public.
- to refer the matter to an appropriate committee or to another body or official.

R.I.G.L. § 42-46-6(b)

Dionne v. Woonsocket City Council, OM 17-33

**Amending Agenda
School Committee**

1. Posted within 48 hours of meeting at:
 - a. The 2 public locations
 - b. Secretary of State
 - c. Posted on School District's website
2. Process available to provide timely notice to:
 - a. Any person who has requested
 - b. Reasonable steps taken to make public aware

**Amending Agenda
School Committee (Cont.)**

3. Original notice indicate that changes will be:
 - a. Posted on website
 - b. Posted in 2 locations
 - c. Filed with Secretary of State

R.I.G.L. § 42-46-6(e)

**Public Comment
(Not School Committee)**

Public body may respond to comments initiated by a member of the public during a properly noticed open forum

R.I.G.L. § 42-46-6(d)

**Public Comment
School Committee**

Pursuant to a request:

1. Submitted in writing
2. By a member of the public
3. During the public comment session
4. Informational purposes only

R.I.G.L. § 42-46-6(b)

Minutes: contents

- the date, time, and place of meeting
- the members who are absent/present
- a record by individual member of any vote(s) taken
- any other relevant information that a member of the public body requests

R.I.G.L. § 42-46-7(a)

Waring v. Portsmouth Town Council, OM 18-16

**DISCLOSURE OF UNOFFICIAL
MINUTES**

- (All*): "unofficial minutes shall be available, to the public at the office of the public body, within thirty-five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier[.]" R.I. Gen. Laws § 42-46-7(b)(1).

Langseth v. Air Service Development Council, OM 18-10

DISCLOSURE OF UNOFFICIAL MINUTES

– Exceptions: Sealed executive session minutes

Extend the time period for filing minutes and publicly state the reason

DISCLOSURE OF UNOFFICIAL MINUTES

• (Fire Companies): “within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website.” R.I. Gen. Laws § 42-46-7(b)(2).

– No extension

– Post to Secretary of State website

DISCLOSURE OF OFFICIAL/APPROVED MINUTES

All public bodies shall keep official and/or approved minutes and file a copy of all open meetings with the Secretary of State within 35 days of a meeting

Exception: Advisory Public Bodies

No extension

R.I.G.L. § 42-46-7(d)

All open meetings must be accessible to persons with disabilities

R.I.G.L. § 42-46-13

Nothing requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic

R.I.G.L. § 42-46-6(d)

Emergency Meeting

Upon a majority vote, an emergency meeting may be convened:

“to address an unexpected occurrence that requires immediate action to protect the public.”

R.I.G.L. § 42-46-6(c)

Any citizen or entity of the state who is aggrieved as a result of violations * * * of this chapter may file a complaint with the attorney general.

R.I.G.L. § 42-46-8(a)

Fernandes v. Foster Volunteer Fire Center, OM 18-07;
Langseth v. Rhode Island Commerce Corporation, OM 18-09;
Novak v. Western Coventry Fire District, OM 18-11

Remedies

- File an action with the Superior Court
- File a complaint with the Department of Attorney General

R.I.G.L. § 42-46-8

Penalties

- Injunctive relief and declare actions null and void
- Civil fine up to \$5,000 for a willful and knowing violation
- Attorney fees and costs

R.I.G.L. § 42-46-8(d)