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23rd Annual Open Government Summit: Access To Public Records Act, Open Meetings Act Powerpoint Presentation 07-30-2021

Office of Attorney General State of Rhode Island

Peter F. Neronha

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Office of Attorney General

Peter F. Neronha, Attorney General



ACCESS TO PUBLIC RECORDS ACT

OPEN MEETINGS ACT

ACCESS TO PUBLIC RECORDS ACT



Questions during the Summit?

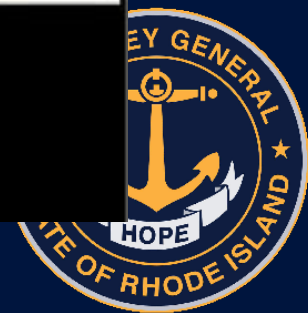
Submit via email: agsummit@riag.ri.gov or Twitter [@AGNeronha](https://twitter.com/AGNeronha)

What is the APRA?

“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.”

R.I.G.L. § 38-2-1

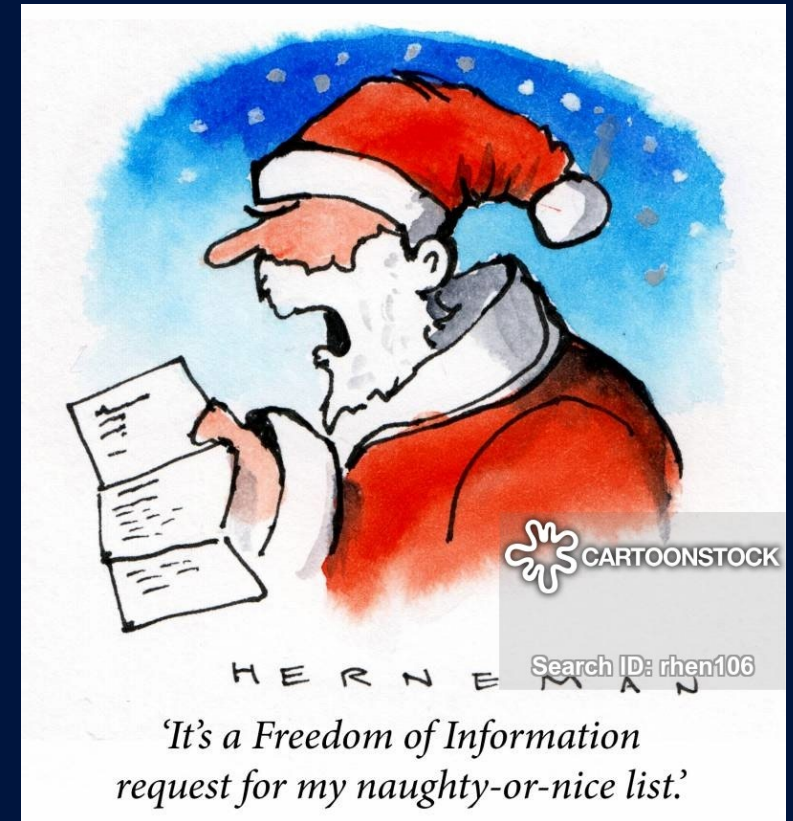




Is it a Public Body?

“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)



In re: North Scituate Volunteer Fire Dept., ADV PR 20-01;
DePault v. RI High School Football Coaches Assoc., PR 20-14
Providence Journal v. RICCA, PR 21-11



APRA Procedures



“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)

Fitzmorris v. Office of the Auditor General, PR 20-46



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

APRA Requests

If you wish to make an Access to Public Records Act (APRA) request for documents maintained by the Office of Attorney General, view a copy of our  [APRA policy and APRA request form](#).

Requests for records maintained by other state or local governmental entities should be sent directly to those entities.



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)





OFFICE OF THE ATTORNEY GENERAL
PETER F. NERONHA, 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: _____

Is it an APRA Request?



Provide Documents
Not Narratives/Summaries

Lyssikatos v. City of Pawtucket, PR 20-29



Within 10 Business Days After Receiving a Request

- **EXTEND:** extend the time period for an additional twenty (20) business days, or
- **DENY:** deny access to records within ten (10) business days, or
- **GRANT:** provide the records within ten (10) business days.

R.I.G.L. § 38-2-7



Calculating 10 Business Days

- When calculating response time, the date of receipt does not count:
 - Date of receipt = Day 0
- Requests sent outside of normal business hours, on weekends or state holidays shall be deemed received on the next business day.

TJ v. City of Providence, PR 17-30



Extension:

- 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)



Is it a 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.G.L. § 38-2-2(4)

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



Is the Record Maintained?

“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)

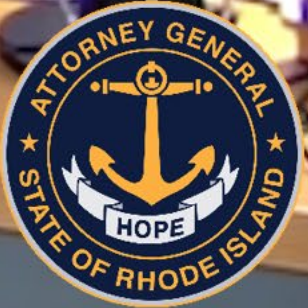
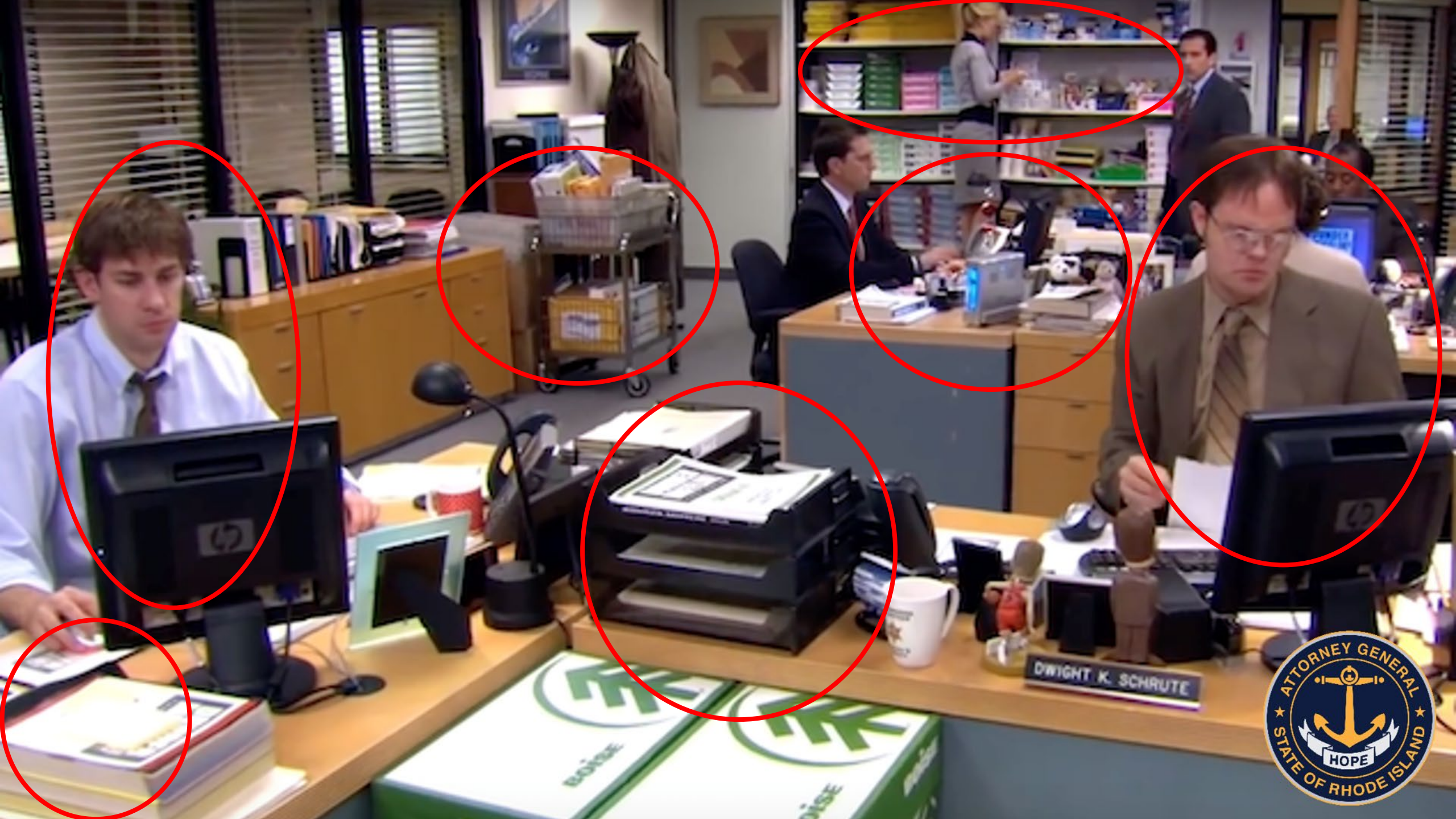


What does a reasonable search look like?



J.H. Lynch & Sons v. RI Dept. of Transportation, PR 19-06, PR 20-22





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



Scenarios

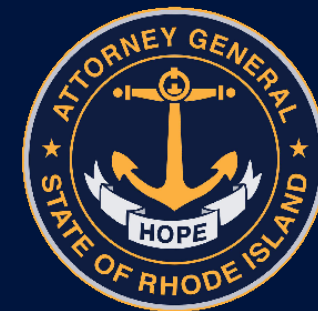
1. Public body member's private email



2. Request asks for "list" – no "list" already maintained

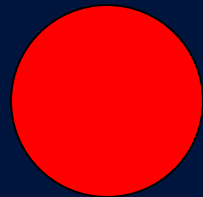
THINGS TO DO:
◀◀◀◀◀◀ ▶▶▶▶▶▶

- _____
- _____
- _____
- _____
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- _____

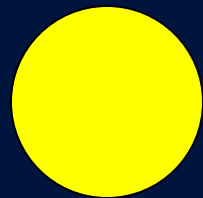


The Exemptions: R.I.G.L. § 38-2-2(4)

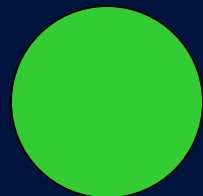
27 Exemptions



Confidential

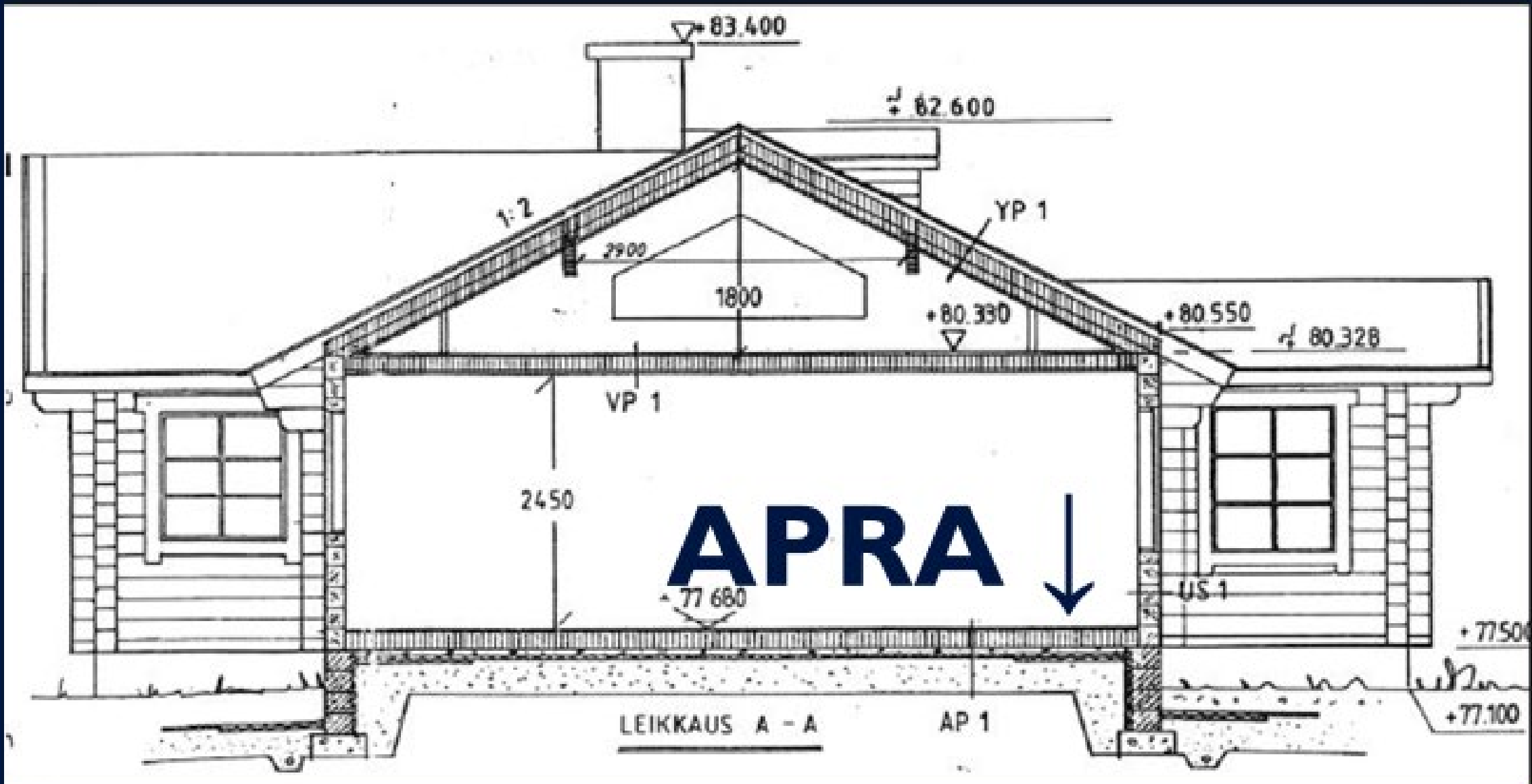


Exempt



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)

Lamendola v. E.G. School Committee, PR 20-20



Exemption (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.”

Angelo v. Town of Westerly, PR 20-59, PR 20-59B;
East Bay Media Group v. Barrington School Department, PR 20-61



Exemption (B)

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



Providence Journal Co. v. Convention Center Authority, PR 21-11;
Food Marketing Institute v. Argus Leader Media, 139 S.Ct. 2356 (2019);
Providence Journal Co. v. Covention Center Authority, 774 A.2d 40 (R.I.
2001)



Exemption (E)

“Any records which would not be available by law or rule of court to an opposing party in litigation.”

Providence Journal v. Executive Office of Health and Human Services,

PR 20-01



Exemption (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”

Providence Journal v. Office of the Governor, PR 20-08



Exemption (K)

Exception:

above listed documents submitted at a public meeting shall be public

Finnegan v. Town of Scituate, PR 20-40

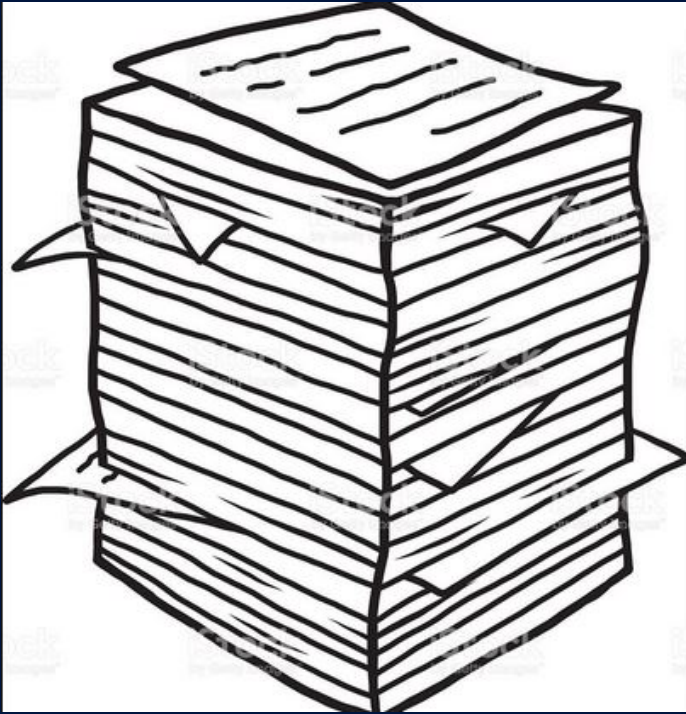


Exemption (M)

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



Exemption (P)



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

Miech v. South Kingstown School Department, PR 20-28



Exemption (S)



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



Exemption (S)



Examples:

R.I. Gen. Laws § 14-1-64: All police records relating to the arrest of a minor

R.I. Gen. Laws § 39-21.1-4, 17: 911 Telephone calls and records

R.I. Gen. Laws § 5-37.3-3: Health Care Information

R.I. Gen. Laws § 12-1-4: BCI Records



Exemption (Z)

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



Exemption (A)(I)(b)

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



Exemption (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



Exemption (A)(I)(b)

2021 Update



- For the purposes of this section, the city or town of residence shall not be deemed public for peace officers, and **shall not be released.**
- Peace Officers include:
 - Police Officers
 - Rhode Island Conservation Officers
 - Department of Environmental Management Officers
 - Fire Marshalls
 - Correctional Investigators/Officers
 - Any Federal Law Enforcement

R.I.G.L. § 12-7-21



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);

Farinelli v. City of Pawtucket, PR 21-03

Yolken, et al. v. City of Providence, PR 21-09



Dodgeball: A True Underdog Story (R50)



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)



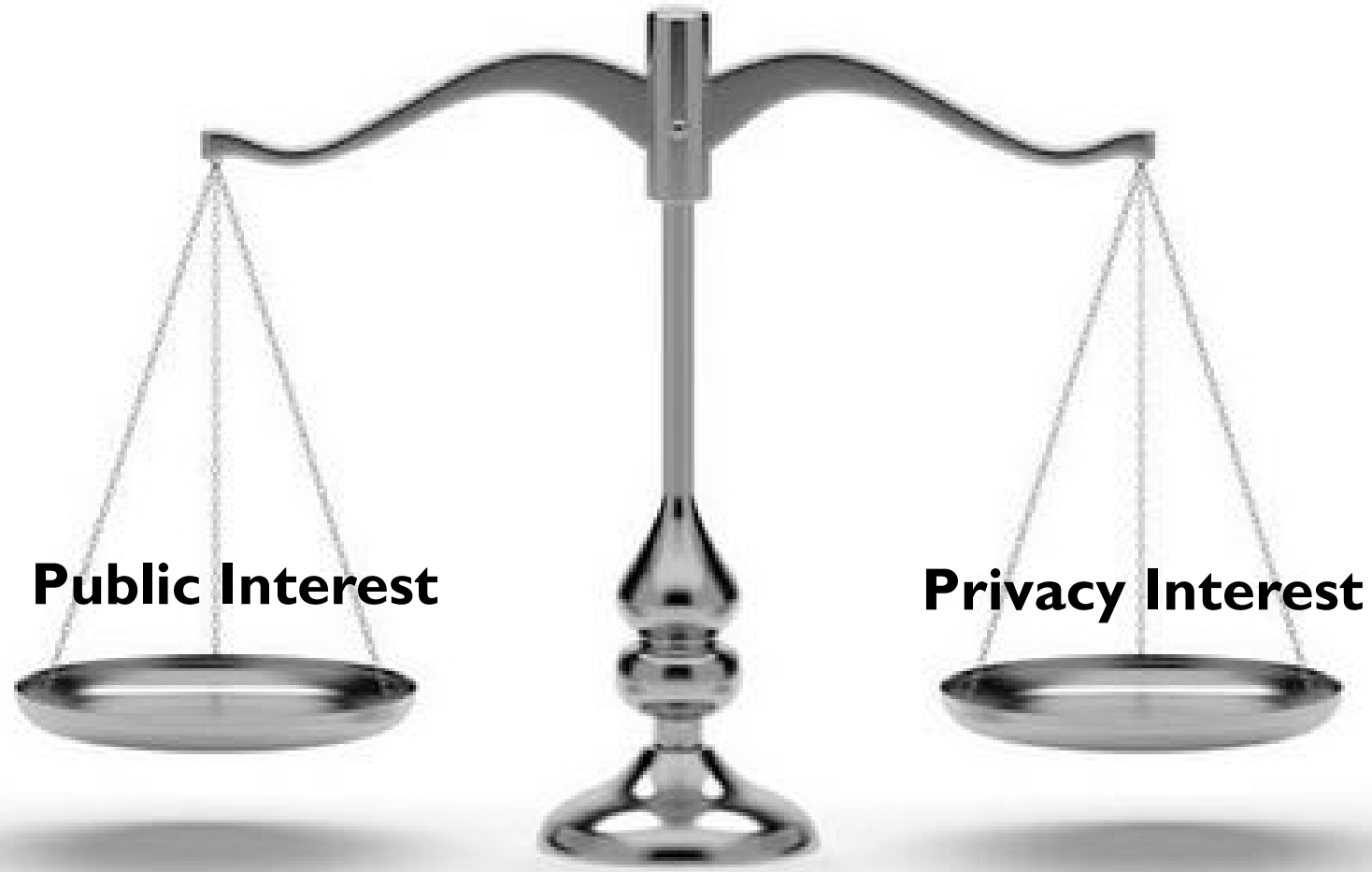
Public Interest

“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)





Public Interest

Privacy Interest



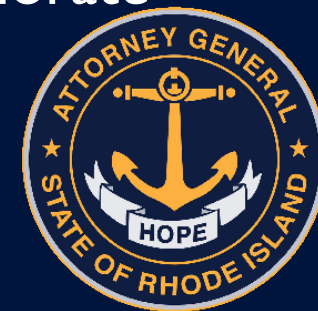
Internal Affairs Reports

When considering whether a report is exempt under the APRA, each report must be reviewed on a **case-by-case basis**, applying the balancing test. *Example factors to consider that may be helpful when conducting the balancing test may include:

- Whether report(s) are likely to shed light on overall government functions
- Whether allegations of misconduct were determined to be founded
- Rank and positions of official(s) investigated
- Nature and severity of alleged misconduct
- Any particular public interest in disclosure apparent or identified by requestor
- Any evidence of government impropriety in investigating the allegations
- Whether redaction can ameliorate any privacy concerns

**This is a non-exhaustive list of considerations that may be relevant when conducting the balancing test.*

Lyssikatos v. Pawtucket, PR 21-12;
Farinelli v. City of Pawtucket, PR 20-47



Exemption (D) Law Enforcement

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



- (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

Grenier v. Town of Hopkinton, PR 21-13;

Gagliano v. Narragansett Police Department, PR 21-14;

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 or
- (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



Scenarios

I. Requester seeks their own case file.



Scenarios

2. Request seeks job applications and résumés.

Celine Dion

Sing a Life – Live a Song
But always be a blessing!

Aim _____

To get a position of music shop assistance for the period of two weeks – to have all CDs being sold and to become your shop's blessing.

Skills _____

- Years of stage experience and work directly with audience made me confident and exceptionally people oriented.
- Able to find common language in 5 foreign languages: English, French, Spanish, German and Japanese.
- Excellent cooperation and presentation skills.
- The performer at 5 Oscar ceremonies.

The achieving steps _____

- Will sing couple of songs outside the shop in the mornings to attract visitors.
- Will spend dedicated time with buyers one-on-one to answer questions about my career and life attitude that brought me success.
- Will assist in suggesting best quality music to my taste.
- Will organize press-conference presenting last releases of best artists.
- Will sing in the shop to arrange the best friendly atmosphere while working with colleagues and the team.

Interesting facts _____

- Wrote first song at the age of 12;
- Third French-language album *Tellement j'ai d'amour* sold nearly 1 million copies in France;
- "My Heart Will Go On" spent 10 weeks at No. 1 on Billboard's Hot 100 Airplay chart; was the second song to win an Oscar for Best Original Song; won 4 Grammy Awards including Best Female Pop Vocal Performance.

Awards _____

Holder of more than 150 music awards.

Message _____

Don't miss the chance for your life to be changed and tons of lives to be rewarded!

Jackson v. Town of Coventry, PR 14-35;
Taylor v. City of Providence, PR 20-32



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

White v. Providence Police Department, PR 21-02



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)

D.A.R.E. v. Gannon, 819 A.2d 651, 661 (R.I. 2003)



Cost and Delivery Procedures

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

DARE v. Gannon, 819 A.2d 651, 661 (R.I. 2003).



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.

R.I.G.L. § 38-2-4(b)

- All fees waived if fail to produce requested records in a timely manner.

R.I.G.L. § 38-2-7(b)



Cost and Delivery Procedures

“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



Cost and Delivery Procedures: Detailed Itemization of Costs

“Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.”

R.I.G.L. § 38-2-4(d)

White v. Providence Police Department, PR 21-02



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.

Real World Media, LLC v. Providence Police Department, PR 21-07;
R.I.G.L. § 38-2-3(k)



Cost and Delivery Procedures

“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)



What Constitutes a Denial?

- Failing to timely respond or assess prepayment
- Withholding documents in whole
- Withholding documents in part (i.e. redacted)
- Stating responsive documents are not maintained or that no responsive documents exist

*Non-exhaustive list of example denials.



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

Lyssikatos v. City of Pawtucket, PR 21-04

Angelo v. Town of Westerly, PR 21-05



Procedures for Denying Access to Records

“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 *** state that it does not have or maintain the requested records.”

R.I.G.L. § 38-2-7(c)

Sherman v. Joint Committee on Legislative Services, PR 20-37

Teper v. Providence Police Department, PR 20-64



Sample Appeal Procedures Language

“This decision can be appealed pursuant to R.I. Gen. Laws § 38-2-8(a), which provides that ‘[a]ny person or entity denied the right to inspect the 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.’ Any appeal may be submitted to this Office in the same manner you submitted your APRA request.”

*Modify this language as needed for your public body’s procedures.



Procedures for Appealing a Denial

- Appeal to the chief administrative officer of the public body.
- The chief administrative officer shall review the record and make a final determination whether or not to allow public inspection within ten (10) business days after receipt of appeal.
- File a Complaint with the Office of Attorney General Open Government Unit.

R.I.G.L. § 38-2-8(a), (b)

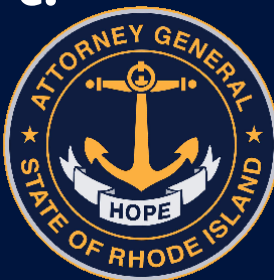
Grenier v. Town of Hopkinton, PR 21-13



Complaints

- The Attorney General investigates alleged violations of the APRA.
- Submit complaints to: opengovernment@riag.ri.gov
- The Attorney General will investigate the complaint and issue a finding.
- If the Attorney General determines that the allegations are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court.
- A complainant may also file a complaint in the Superior Court.

R.I. Gen. Laws § 38-2-8(b)



Superior Court Remedies

- **\$2,000** for a willful and knowing violation
- **\$1,000** for a reckless violation
- Injunctive Relief
- Attorney Fees



Communication is Key

**Communication with Requester
Can Often Promote Understanding
and Resolve Disputes**



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



Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
 - Findings
 - Video presentation of Open Government Summit
 - Open Government Summit Digital Booklet
 - APRA Law
- Attorney General's Office
 - 401 274 4400
 - opengovernment@riag.ri.gov
- APRA Checklist





Questions during the Summit?

Email: agsummit@riag.ri.gov

Twitter: @AGNeronha

We will be back after a 5 minute break.



OPEN MEETINGS ACT



Questions during the Summit?

Submit via email: agsummit@riag.ri.gov or Twitter [@AGNeronha](https://twitter.com/AGNeronha)

What is the OMA?

“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.”

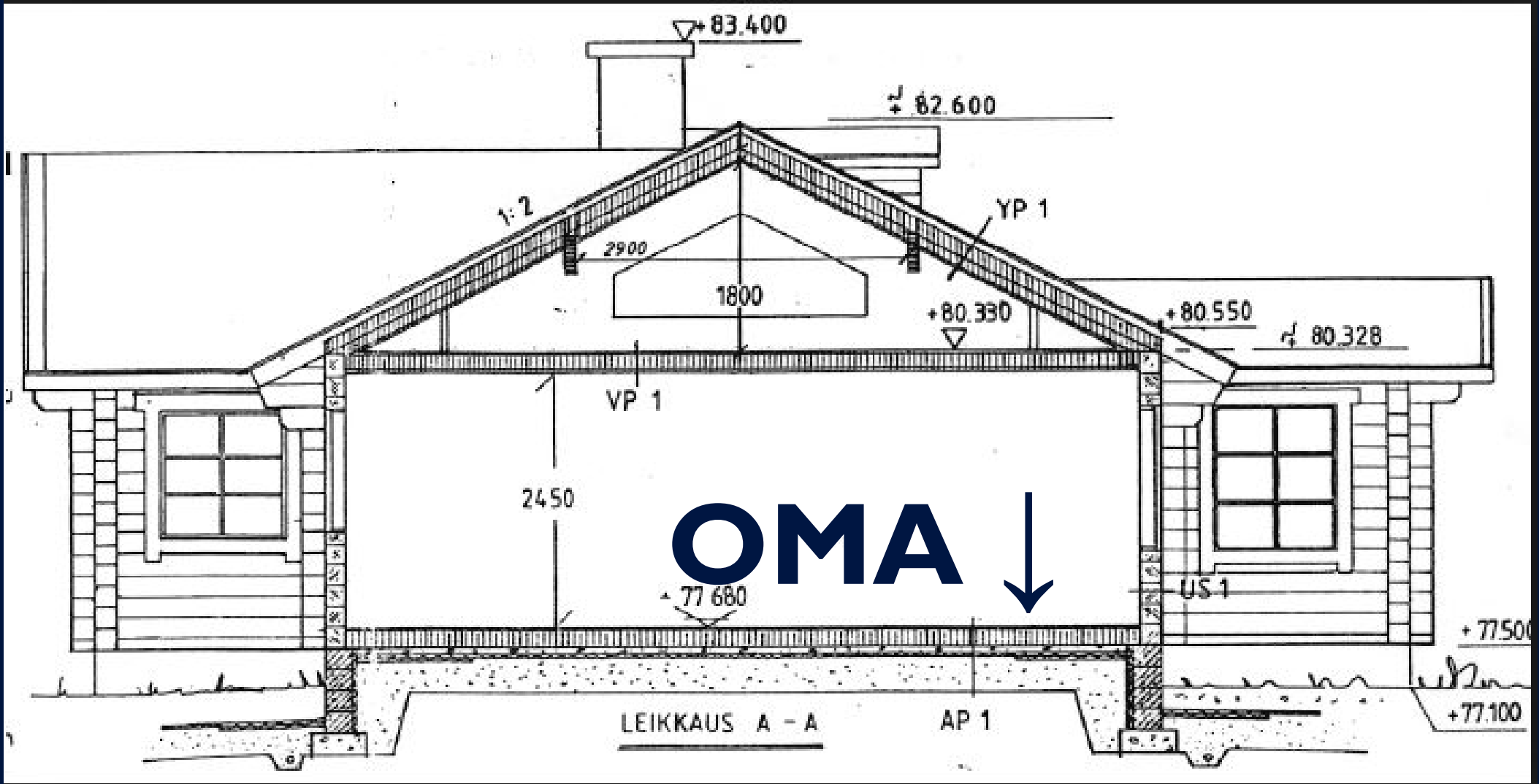
R.I.G.L. § 42-46-1



What does the OMA require?

- Open meetings
- Limited circumstances for closed meetings
- Notice
 - Annual
 - Supplemental
- Meeting minutes



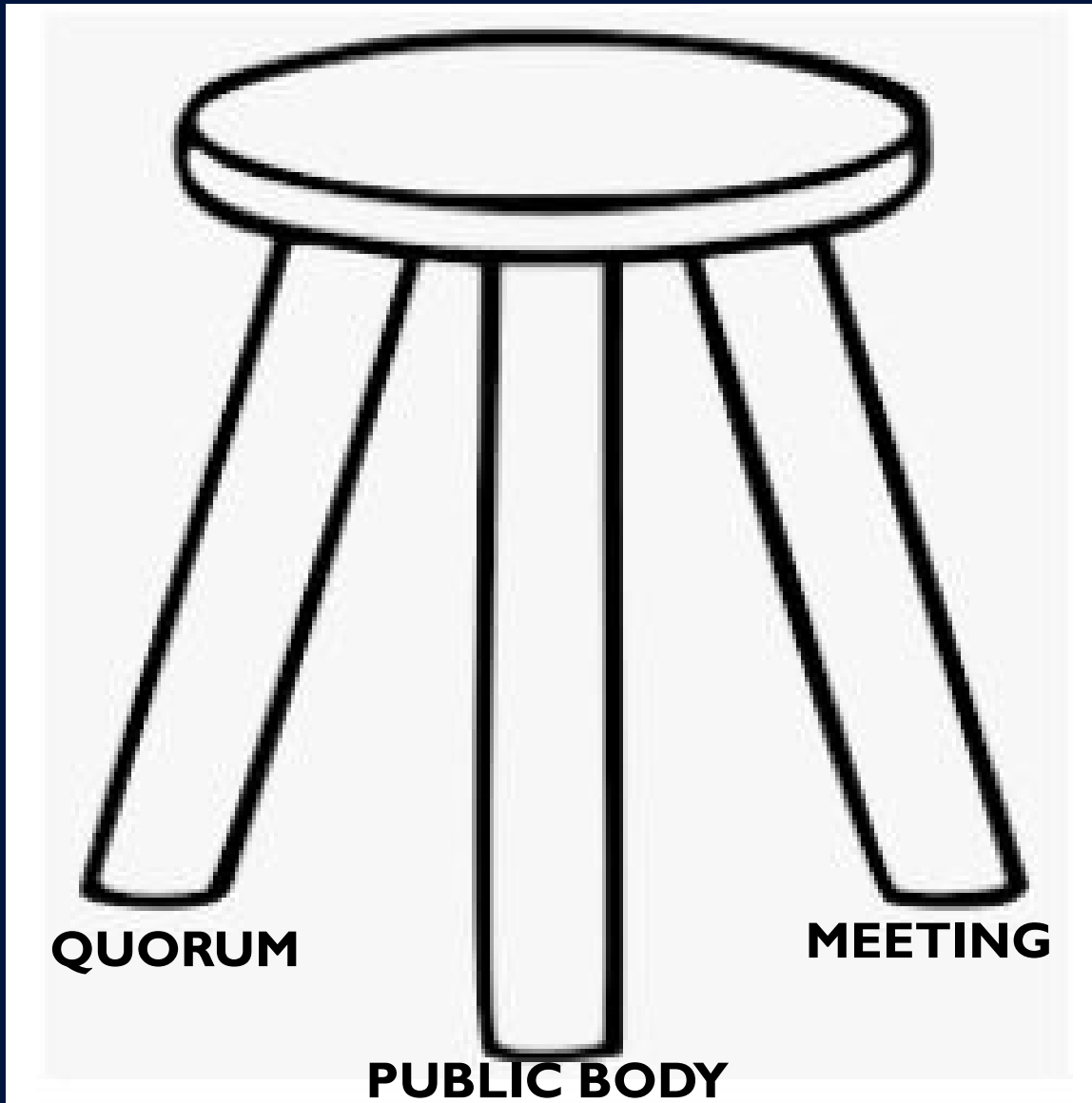


OMA



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)

Howard v. Portsmouth Senior Center Focus Group, OM 21-22;
Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016);
Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001)



What is a Public Body?

- There is no bright-line test
- We consider a number of factors, including:
 - The authority that created the entity
 - If the entity has set membership
 - If the entity has regular meetings
 - Any powers or decision-making authority that have been delegated to the entity

Howard v. Portsmouth Senior Center Focus Group, OM 21-22;
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)

GoLocalProv v. Providence City Council, OM 20-15



“Rolling” or “Walking” Quorum

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

Langer v. Bonnet Shores Fire District, OM 21-04



“Rolling” or “Walking” Quorum

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

Finnegan v. Scituate Town Council, OM 20-22



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

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



ALL THOSE IN FAVOR
OF WHAT WE DISCUSSED
IN OUR E-MAIL THREAD
AND AT LARRY'S SON'S
BIRTHDAY PARTY SAY 'AYE'

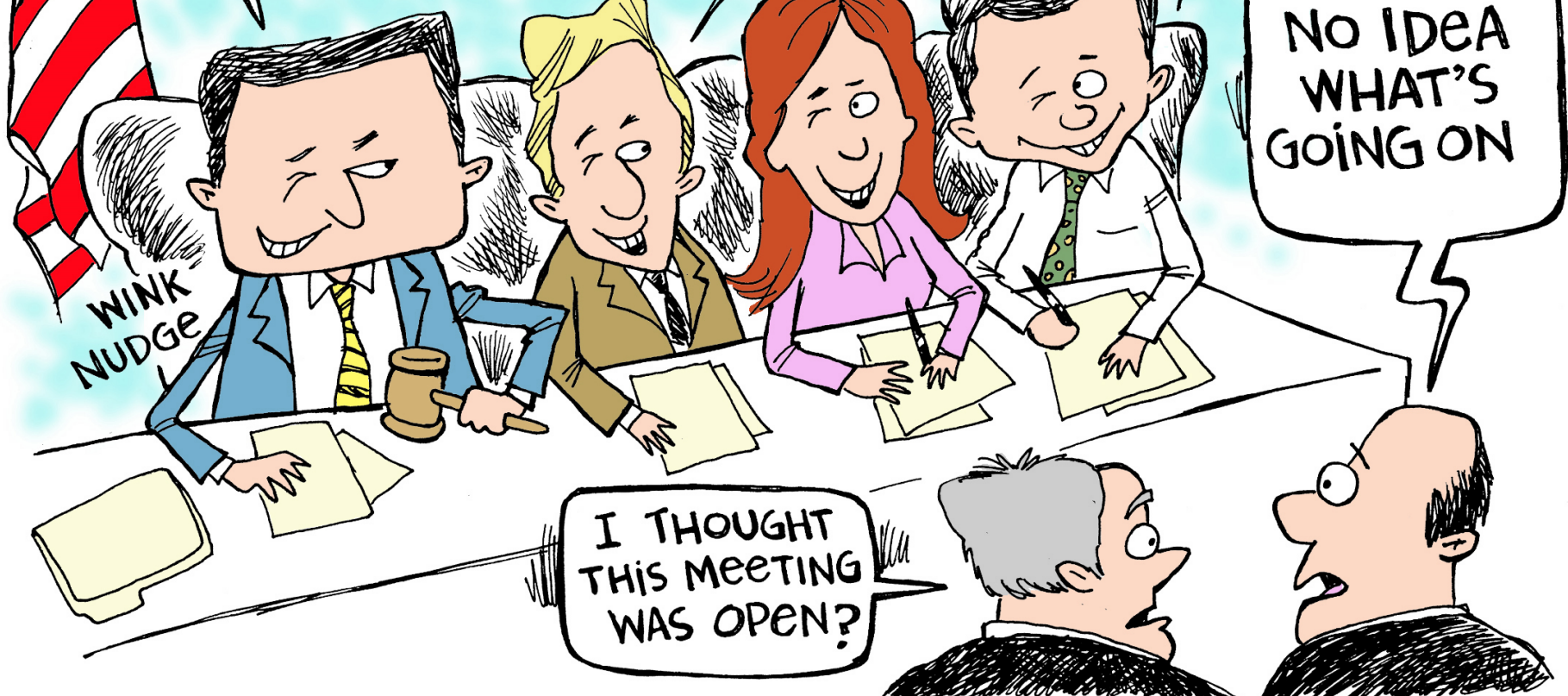
'Aye'

'Aye'

'Aye'

I

... HAVE
NO IDEA
WHAT'S
GOING ON



WINK
NUDGE

I THOUGHT
THIS MEETING
WAS OPEN?

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)

Cook v. Tiverton Town Council, OM 20-23





Scenarios



1. After meeting trip to diner



2. Two members of Town Council meet with two members of School Committee



Scenarios



3. Google Docs



4. Social Media Comments

Mosher v. South Kingstown School Committee, PR 20-19



Virtual/Telephone

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

Jones v. Kingston Hill Academy Board of Trustees, OM 20-26



Virtual/Telephone

- A member of a public body may participate by use of electronic communication or telephone if:
 - on **active duty in the armed services**
 - 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)



Hybrid and Virtual Meetings

- Executive Order 21-72, which allowed virtual and hybrid meetings, expired on July 23, 2021
- This means that all members of public bodies must be physically present for meetings, unless they meet a specific exemption set forth in the OMA
- Further, members of the public must be permitted to attend meetings of public bodies in person and observe the conducting of those meetings



Hybrid and Virtual Meetings

- While the OMA requires that members of public bodies must be physically present, public bodies may livestream their meetings to the public
- Public bodies may permit members of the public to participate remotely in open meetings, so long as such remote participation can be heard/observed by everyone in attendance of the in-person meeting
- The University of Rhode Island Board of Trustees have slightly different rules, set out in RIGL §42-46-5(b)(5)





Executive Session



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 in and out of Executive Session

- During open session: Motion to convene into executive session, pursuant to R.I. Gen. Laws § [appropriate section here], to [repeat whatever is on the agenda here]
- During closed session, at conclusion of substantive closed session business: Motion to reconvene into open session
- During open session: report out any votes taken; motion to seal the executive session minutes (optional)

R.I.G.L. § 42-46-4(a), (b)



Remember: the
invitation into
executive session lies
with the public body

R.I.G.L. § 42-46-5(a)(1)

McFadden v. Exeter-West Greenwich School Committee, OM 19-13



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
 - advised that the person may require the discussion to be held at an open meeting
 - state in open call and open minutes that notice provided

Driggs v. Tiverton Town Council, OM 20-47

Sullivan v. Coventry School Committee, OM 21-05



R.I.G.L. § 42-46-5(a)(2)



Sessions or work sessions pertaining
to collective bargaining or litigation

Zonfrillo v. Narragansett Town Council, OM 21-20



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)(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





Two Types of Notice



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

Childs, et al. v. Bonnet Shores Fire District, OM 20-29



Supplemental Notice 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

Annual

- Dates, times and location of regularly scheduled meetings
- Available to public upon request
- Posted with the Secretary of State

Supplemental

- Date, time and location of the meeting
- Date posted
- Statement specifying business to be discussed

R.I.G.L. § 42-46-6(a), (b)



Supplemental Notice Requirements

“Statement specifying business to be discussed” means:

- “whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted.”

Fact-specific inquiry, taking into account:

- Specificity of the agenda item
- Relation between agenda item and topics of discussion
- Whether notice is given of any action (votes, discussion) taken

Ford v. Barrington School Committee, OM 21-21

Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016);

Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I.2013)



Typically Improper Agenda Items

- Old Business/New Business
- Good and Welfare
- President's Report
- Any other matter brought before the Board



Drew v. Coventry Charter Review Commission, OM 21-03;

Sullivan v. Coventry School Committee, OM 21-05



Pop Quiz

1. “Interviews for Potential Boards and Commission Appointments”

- Where Town Council conducted interviews and voted on appointments



Tanner v. Town of East Greenwich, 880 A.2d 784 (R.I. 2005)

2. “IV. Communications:

Request for Extension from Turner Scott received 11/30/08 Re: Petition of Congregation Jeshuat Israel”

- Extension was granted



Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013)



Pop Quiz

3. “7.b. Approval of RIDE’s Executive Pay Plan and Organizations Chart. Enclosure 7b.”

- Multiple pay plans considered
- Enclosure not on SOS website



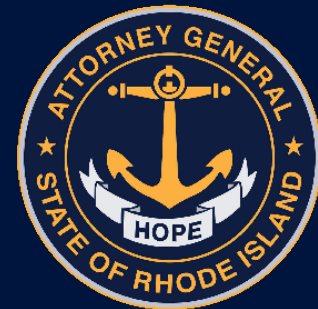
Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al., 151 A.3d 301 (R.I. 2016)

4. “The Board may discuss and vote upon the recall election process pertaining to Town of Tiverton Councilors Robert D. Coulter and Justin P. Katz.”

- Discussed recall election process with Tiverton Town Clerk and Board of Canvassers members



Katz v. Rhode Island Board of Elections, OM 20-27



Executive Session Notice

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

R.I. Gen. Laws § 42-46-4(a)

Straus v. Westerly Town Council, OM 21-10



Executive Session Notice Examples*

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)(2)
(potential litigation – land dispute)

4. R.I.G.L. § 42-46-5(a)(2)
(litigation – Plaintiff v. Public Body, PC-2018-1234)

*The necessary notice information will depend on the specific circumstances and must be evaluated on a case-by-case basis.



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)

Novak v. Western Coventry Fire District, OM 20-08



Amending the Agenda School Committees

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), (e)



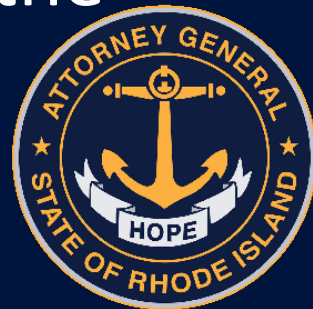
Emergency Meetings

“where the meeting is deemed necessary to address an **unexpected occurrence that requires immediate action to protect the public.**”

R.I.G.L. § 42-46-6(c)

- notice and agenda shall be posted as soon as is practicable and shall be electronically filed with the secretary of state
- the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting.

Jones v. Kingston Hill Academy Board of Trustees, OM 20-26



PUBLIC
COMMENT



- “Nothing contained in [the OMA] 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.”

R.I.G.L. § 42-46-6(d)

- Public participation may be required by other applicable laws or regulations.



Public Comment

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)

Castelli v. Coventry Town Council, OM 20-32





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)

Langseth v. Buttonwoods Fire District, OM 19-27



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)*.

*Fire companies see *R.I. Gen. Laws § 42-46-7(b)(2)*.
Wahl, et al. v. Indian Lake Shores Fire District, OM 20-01



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

R.I.G.L. § 42-46-7(d)

Keep Metacomet Green v. East Providence City Council, OM 21-15



Accessibility

All open meetings must
be accessible to persons
with disabilities

R.I.G.L. § 42-46-13

Governor's Commission on Disabilities v. Board of Elections, OM 20-44



Public's Right to Record

- Not specifically addressed in the OMA.
- Case law and this Office's prior findings have interpreted the OMA to permit audio or videotaping of meetings, subject to reasonable restrictions set forth by the public body.

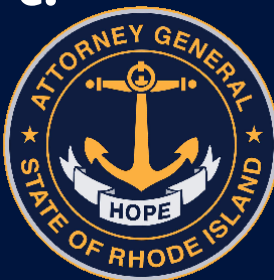
Sheldon v. Warwick Minimum Housing Review Board, OM 14-14;
Belcher v. Mansi, 569 F. Supp. 379, 382-83 (D.R.I. 1983)



Complaints

- The Attorney General investigates alleged violations of the OMA.
- Submit complaints to: opengovernment@riag.ri.gov
- The Attorney General will investigate the complaint and issue a finding.
- If the Attorney General determines that the allegations are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court.
- A complainant may also file a complaint in the Superior Court.

R.I. Gen. Laws § 38-2-8(b)



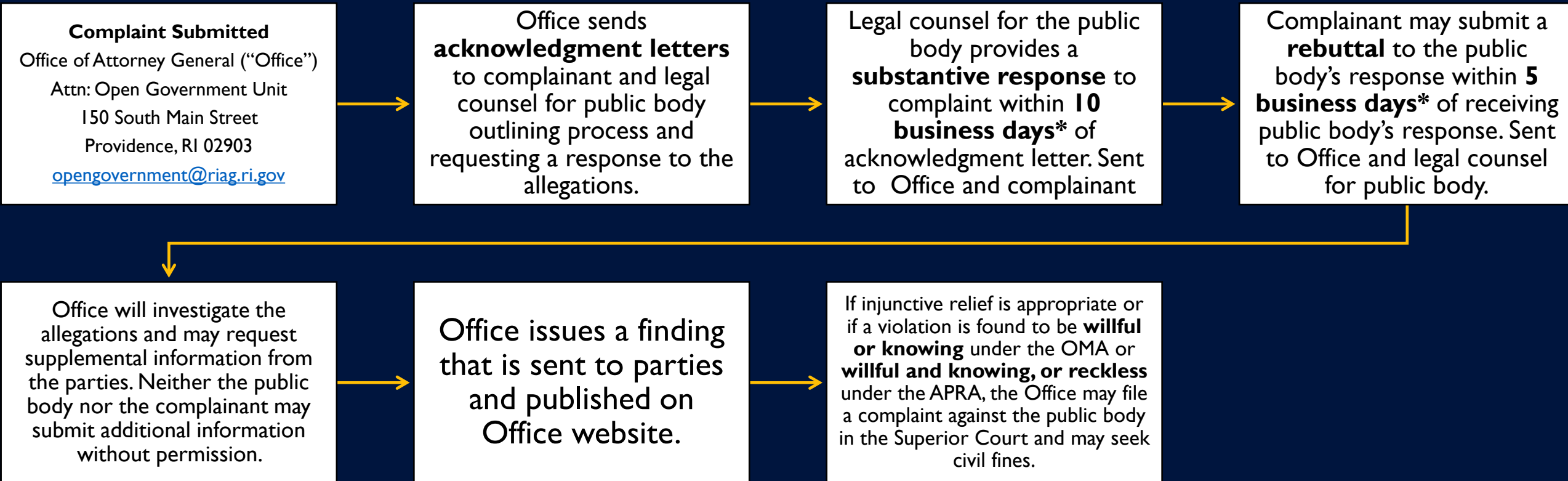
Superior Court Remedies

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

R.I.G.L. § 42-46-8(d)



Open Meetings Act & Access to Public Records Act Complaint Process



***This process is subject to change at the discretion of the Office.
Reasonable extensions may be granted upon a showing of good cause.**



Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
 - Findings
 - Video presentation of Open Government Summit
 - Open Government Summit Digital Booklet
 - OMA Law
- Attorney General's Office
 - 401 274 4400
 - opengovernment@riag.ri.gov
- OMA Checklist



Quick Links

Bureau of Criminal Identification (BCI)

Civil Division +

Consumer Protection

Criminal Division +

Civil Rights

Investigations and Reports



Information on Background Checks

COVID-19 Resource Guide



riag.ri.gov

Information, guidance, tips, & links to help you access what you need during the COVID-19 emergency



Office of the Attorney General

COVID-19 Resource Guide



Consumer Protection Information



Expungement Information



Assistance for Victims

Investigations and Reports



Office of the Attorney General

Investigations and Reports




Quick Links

- [Bureau of Criminal Identification \(BCI\)](#)
- [Civil Division +](#)
- [Antitrust Unit](#)
- [Charitable Trust Unit](#)
- [Environmental Advocacy Unit](#)
- [Government Litigation Unit](#)
- [Insurance Advocacy Unit](#)
- [Contractors Registration & Licensing Board](#)
- [Civil Rights Advocate](#)
- [Office of the Health Care Advocate](#)
- [Open Government Unit](#)
- [Public Utilities Regulatory Unit](#)
- [Tobacco Enforcement Unit](#)




Information on Background Checks

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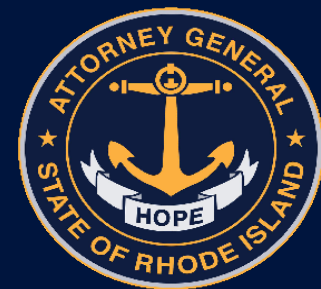
Assistance for Victims

Investigations and Reports



Office of the Attorney General

Investigations and Reports





Quick Links

[Bureau of Criminal Identification \(BCI\)](#)[Civil Division +](#)[Consumer Protection](#)[Criminal Division +](#)[Civil Rights](#)[Investigations and Reports](#)[About](#) [Training/Certification](#) [Open Govt. Findings](#)

About

The [Open Meetings Act \(OMA\)](#) and the [Access to Public Records Act \(APRA\)](#) establish important requirements for ensuring that government in Rhode Island is carried out in an open and transparent manner.

The Open Government Unit:

- Investigates complaints against public bodies in Rhode Island for alleged violations of these statutes
- Issues findings and files lawsuits to enforce the statutes when appropriate
- Processes APRA requests to this Office for public documents
- Provides training and resources on the requirements of the OMA and the APRA, including at our signature event, the annual Open Government Summit

Questions about open government? Contact us:

- [✉ opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)
- (401)274-4400, ext. 2020

Submit an APRA request

If you are seeking public documents maintained by the Office of the Attorney General, you can submit an Access to Public Records Act request by following the guidelines below.





Questions during the Summit?

Email: agsummit@riag.ri.gov

Twitter: @AGNeronha

We will be back after a 5 minute break.

