

8-9-2000

2nd Annual Open Government Summit: Department of the Attorney General, State of Rhode Island

Department of the Attorney General, State of Rhode Island

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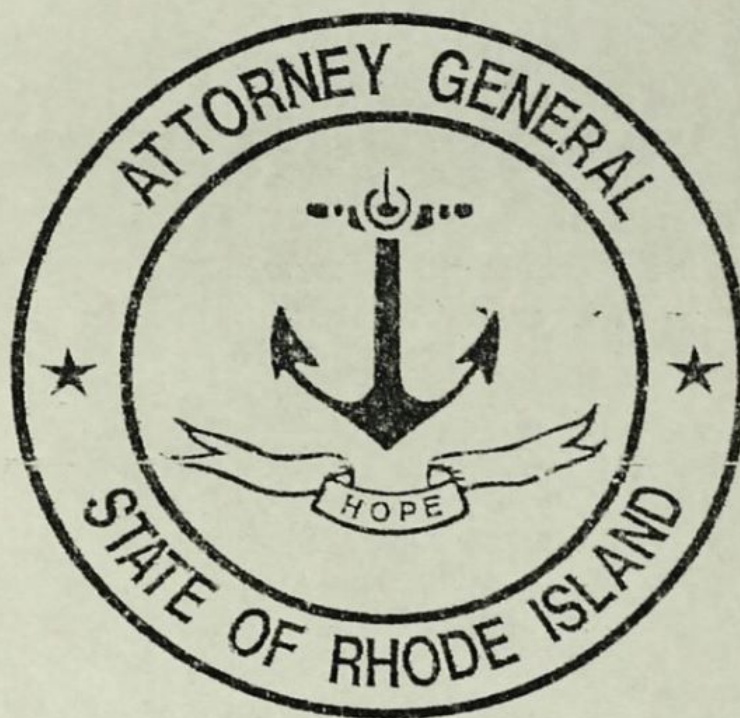
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Department of the Attorney General
Sheldon Whitehouse, Attorney General

2ND Annual
OPEN GOVERNMENT SUMMIT



**ROGER WILLIAMS UNIVERSITY
RALPH R. PAPITTO SCHOOL OF LAW
AUGUST 9, 2000**

Co-sponsored: Roger Williams University
Law School Alumni Association

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State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Sheldon Whitehouse, Attorney General

August 9, 2000

Dear Open Government Summit Attendees:

I would like to take this opportunity to thank you for attending the 2nd Annual Open Government Summit.

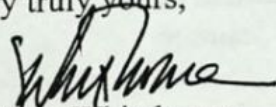
In the past twenty months, the Department of the Attorney General has worked hard to ensure that government remains open and accountable to the public. In January 1999, I implemented a procedure whereby legal counsel to public bodies may request an advisory opinion from this Department concerning the 'legality' of proposed actions that may implicate either the Open Meetings Act or the Access to Public Records Act. Now, for the first time, this Department has the opportunity to review and advise public bodies concerning contemplated action in an effort to avert the filing of a formal complaint.

The Department of the Attorney General has also taken additional steps to promote open government. In June 1999, the Rhode Island Municipal Police Chiefs' Association unanimously adopted open record protocol procedures developed by this Department. Every police department in Rhode Island has adopted these procedures. In August 1999, the Department of the Attorney General held its first-ever Open Meetings Act Summit where we distributed the first-ever Open Meetings Act pocket manual. Due to the success of the first-ever Open Meetings Act Summit, and your comments, we have expanded both the Summit and the pocket manual to include the Access to Public Records Act. Moreover, we have continued to do what this Department has always done - adjudicate complaints filed by members of the public, conduct training sessions on complying with the Access to Public Records Act and the Open Meetings Act, and update our website with the latest open government information.

I am extremely proud of this Department's efforts in the past twenty months. So much has been achieved, but there is still a great deal ahead. Please take a moment to complete the Open Government Summit evaluation so that we may have the benefit of your input as we continue to ensure that government remains open and accountable to the public.

Thank you for your commitment to open government!

Very truly yours,


Sheldon Whitehouse
Attorney General



Open Government Summit
Roger Williams University School of Law
August 9, 2000
9:00 a.m. – 12:15 p.m.

- 8:30 – 9:00 a.m. Check-in/Distribution of Material/Coffee & Pastry
- 9:00 – 9:05 a.m. Welcoming by Harvey Rishikof, Dean of the Roger Williams University Ralph R. Papitto School of Law
- 9:05 – 9:20 a.m. Opening Remarks by Sheldon Whitehouse, Attorney General
The Attorney General's Role in the Access to Public Records Act and the Open Meetings Act.
- 9:20 – 9:30 a.m. Remarks by James R. Langevin, Secretary of State
The Secretary of State's Role in the Access to Public Records Act and the Open Meetings Act.
- 9:30 – 10:20 a.m. Access to Public Records Act Presentation by Michael W. Field, Special Assistant Attorney General
What is the Access to Public Records Act and Complying with its Requirements. Presentation also to include an overview of the Access to Public Records Act manual, a Recent Case Law Update, and Your Questions.
- 10:20 – 10:30 a.m. Break/Coffee & Pastry
- 10:30 – 11:15 a.m. Open Government Panel Discussion Moderated by Jim Martin, Public Information Officer
Open Meetings Act and Access to Public Records Act issues facing public bodies and the media. Discussion to include the media, members of public bodies, and legal counsel.
- 11:15 – 12:15 p.m. Open Meetings Act Presentation by Michael W. Field, Special Assistant Attorney General
What is the Open Meetings Act and Complying with its Requirements. Presentation also to include an overview of the updated Open Meetings Act manual, a 1999 Case Law Update, and Your Questions.

Section I

Open Meetings Act



OPEN MEETINGS ACT FINDINGS-1999

- OM 99-01 **Rainey v. Warren Town Council**
Town Council posted notice in accordance with R.I. Gen. Laws § 42-46-6. Town Council not required to publish notice in a newspaper. Notice indicating that Town Council would discuss placing a "Sewer Commission" amendment on the ballot apprised the public of the nature of business to be discussed and the Act does not require posting of the complete text. Issued February 10, 1999.
- OM 99-02 **Lizotte v. Lincoln Housing Authority**
Housing Authority violated the Open Meetings Act by failing to provide a sufficient statement specifying the nature of business to be discussed. Merely referencing that an executive session will be convened to discuss "personnel" was not sufficient. Housing Authority also violated the Open Meetings Act by failing to reference in its open call the subdivision of R.I. Gen. Laws § 42-46-5(a) upon which the executive session had been convened and by failing to articulate a statement specifying the nature of the business to be discussed. Housing Authority also failed to state and memorialize in its open call that the person to be discussed in executive session had been notified in writing and advised of their right to have the discussion held in open session. **WARNING GIVEN.** Issued February 11, 1999.
- OM 99-03 **Banes v. West Warwick Sewer Subcommittee**
Subcommittee violated the Open Meetings Act by convening into executive session to discuss not a specific person, but compensation, vacation time, sick time, and clothing allowances for non-union employees. Subcommittee further violated the Open Meetings Act by discussing a contract in executive session under the auspices of collective bargaining where the executive session minutes revealed that the subcommittee did not discuss negotiations. The executive session minutes are not sealed and thus considered public. Issued February 23, 1999.
- OM 99-04 **Arruda v. Audit Committee of the Special Task Force on the Administrative Adjudication Court**
Since Task Force on the Administrative Adjudication Court was created by an executive order signed by the Chief Justice of the Rhode Island Supreme Court the Task Force is, in essence, a proceeding of the judicial branch of government and thus exempt from the Open Meetings Act's definition of a "public body." R.I. Gen. Laws § 42-46-5(c). State Purchases Act controls the activities of the Task Force. Issued March 24, 1999.

- OM 99-05 **Richard v. Richmond Town Council**
No evidence that two Council members collectively discussed public business during a site visit. Since two members do not constitute a quorum, and since visit by a single Council member is not a "public body," the Open Meetings Act's provisions are not applicable. Issued March 24, 1999.
- OM 99-06 **Graziano v. R.I. Lottery Commission**
Lottery Commission not required to cite the name of the person(s) who will be discussed in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), but it must articulate a separate statement for each matter to be discussed in executive session. If the matter is not public, the nature of the subject is sufficient, otherwise must cite case or the matter to be discussed. Closed session to discuss grading salaries and/or benefits was proper since the discussions related to an employee's job performance. Since R.I. Gen. Laws § 42-46-5(a)(1) permits only "discussions" of job performance, Lottery Commission properly held vote in open session. No requirement that a public body discuss every item on its agenda or approve its minutes publicly. Lastly, no violation when Commission member discussed public business with Executive Director since there was no "quorum" and the lone Commission member is not a "public body." Issued April 14, 1999.
- OM 99-07 **Pulchalski v. Charlestown Town Council**
Since the Open Meetings Act imposes no restrictions on how a public body decides what topics or issues will be discussed, the Charlestown Planning Commission did not violate the Act by withdrawing a topic from the agenda. No requirement that a public body indicate on its notice that it intends to vote. Issued April 14, 1999.
- OM 99-08 **Fortin, et al., v. Warren Fire Department Board of Engineers**
Board failed to articulate an open call before convening into executive session to discuss job performance. Since written notice did not advise the affected persons of their right to have the discussion held in open session, the Board violated the Open Meetings Act. Board also violated the Act by not holding the discussions in open session as requested. Since no action was taken in executive session, nothing for a court to declare null and void. WARNING GIVEN. Issued May 20, 1999.
- OM 99-09 **Westerly Residents for Thoughtful Development v. Westerly Wastewater Facilities Committee**
Since an informational session was held for the developer to present an overview of the Wastewater Facilities Plan and to answer questions, there was no evidence that the Committee collectively discussed this matter, and a "meeting," as defined by the Open Meetings Act, did not convene. Issued June 1, 1999.

- OM 99-10 **Raymond v. Glendale Board of Fire Wardens**
 The Open Meetings Act does not cover whether a public body must convene an annual meeting to elect new Board members, thus this Department has no jurisdiction to inquire of this issue. The Board violated the Open Meetings Act by failing to include on its notice the date posted and by failing to post notice at the Board's principal office, or if no principal office exists, at the building where the meetings are convened. WARNING GIVEN. Issued June 1, 1999.
- OM 99-11 **Viveiros v. Newport School Committee Architectural Screening Subcommittee and Newport School Committee**
 Notices for all meetings were posted at the Administration Center Building, the City Hall, the public library, and the Triplett School, thus no violation of the Open Meetings Act. A school subcommittee is not required to publish notice in a newspaper R.I. Gen. Laws § 42-46-6(c). Allegation that Subcommittee convened in "secret" executive sessions was "taken out of context" and Subcommittee convened into executive session properly to discuss job performance even though only one candidate was recommended to the Subcommittee. The Subcommittee violated the Open Meetings Act by not providing a sufficient statement to apprise the public that it would be discussing an architectural firm's job qualifications. WARNING GIVEN. Issued June 1, 1999.
- OM 99-11B **Viveiros v. Newport School Committee Architectural Screen Subcommittee and Newport School Committee.**
 Affirmed OM 99-11. Issued December 2, 1999.
- OM 99-12 **Westerly Residents for Thoughtful Development v. Westerly Planning Board**
 Planning Board posted notice a minimum of forty-eight hours prior to the meeting at the Town Hall and at one additional prominent location within the governmental unit. Notice stating "redesignation of a portion of the Panceira Farm from Planned Commercial to High Density Residential" provided a sufficient statement to apprise the public of the nature of business to be discussed. Evidence contradictory as to whether unofficial minutes were made available within thirty-five days of the meeting or before next regularly scheduled meeting. Board instructed to make unofficial minutes available within statutory time period regardless of whether minutes have been approved. Issued June 14, 1999.
- OM 99-13 **Westerly Residents for Thoughtful Development v. Westerly Planning Board**
 Planning Board properly posted notice at the Town Hall and at one other prominent location within the governmental unit a minimum of forty-eight

hours prior to the meeting. Unofficial minutes available for public inspection day after meeting. Issued June 14, 1999.

OM 99-14

Westerly Residents for Thoughtful Development v. Westerly Town Council, et al.

Joint informational discussion with the Westerly Town Council and the Westerly Planning Board was not a "meeting" pursuant to the Open Meetings Act. Informational session consisted of presentation on the history and the development of a proposed zoning ordinance. Issued June 14, 1999.

OM 99-15

White v. R.I. Youth Soccer Association

Since the Rhode Island Youth Soccer Association is a tax exempt, non-profit organization not associated with state or municipal government, the Association is not a "public body" pursuant to the Open Meetings Act. Issued May 19, 1999.

OM 99-16

Indeck North Smithfield, LLC v. North Smithfield Town Council

No evidence to support allegation that members of the Town Council secretly agreed to deny Indeck North Smithfield, LLC, an opportunity to make a presentation to the Town Council. Issued July 19, 1999.

OM 99-17

Shuttert v. Coventry Town Council

Discussion involving the acquisition of land in the Centre of New England Business Park Development to be used for softball fields was proper for executive session where the developer of the business park revealed proprietary information that could have jeopardized negotiations and affected his willingness to proceed with the softball fields project. Town Council violated the Open Meetings Act by forming a subcommittee in executive session and, although related to the softball field project, by failing to apprise the public that it would discuss a former landfill site. Lastly, the Town Council failed to articulate/record an open call and failed to maintain open session minutes. Town Council was instructed that open session minutes must be maintained, at a minimum, to record the open call prior to convening in closed session. **WARNING GIVEN.** Issued July 21, 1999.

OM 99-18

Cole et. al. v. Westerly Town Council

Town Council properly convened into executive session to discuss and authorize its solicitor to settle a threatened lawsuit where the solicitor reasonably believed that the Town Council had assumed liability after tendering a voluntary payment for partial reimbursement of legal fees without the benefit of obtaining a release. Town Council violated the Open Meetings Act by not including the date of posting on its notice, R.I. Gen. Laws § 42-46-6(b), and by not articulating/listing a separate statement for each matter to be discussed in executive session. Town

Council advised that its minutes, which indicated that a particular issue was passed by "the consensus of the majority of the Council," was confusing and did not reveal how each member voted. Since the threatened lawsuit had been settled, the Town Council was instructed to disclose the executive session vote(s). Town Council also instructed to disclose an unrelated collective bargaining executive session vote. WARNING GIVEN. Issued August 19, 1999.

OM 99-19

Hirst v. Chariho School Committee

School Committee properly discussed issues pertaining to Superintendent's job performance and contract in executive session, but violated the Open Meetings Act by voting in executive session. Pursuant to R.I. Gen. Laws § 42-46-5(a)(1), a public body may hold only discussions in executive session and voting must be done in open session. Having voted in executive session, the School Committee further violated the Act by failing to disclose the executive session voted "once the session is reopened," even though no members of the public were present. R.I. Gen. Laws § 42-46-4. School Committee also instructed to include the date of posting on its notice, record in its open session minutes by individual member any votes cast, and to the extent possible post notice for a continued meeting. Individual member votes have been made public. WARNING GIVEN. Issued August 20, 1999.

OM 99-20

In re Providence School Board

School Board did not violate the Open Meetings Act when its members attended a Screening Committee meeting, which was posted as a Screening Committee meeting. School Board members took no action, nor did they collectively discuss any issue. Accordingly, for purposes of the Open Meetings Act, School Board members did not convene a meeting. Issued September 14, 1999.

OM 99-21

Lataille v. Primrose Volunteer Fire Department

For purposes of the Open Meetings Act, the Primrose Volunteer Fire Department does not constitute a "public body." Therefore, the requirements of the Open Meetings Act are not applicable to the Fire Department. Issued September 23, 1999.

OM 99-22

Berube v. Coventry Town Council

Town Council properly convened into executive session to discuss its concerns for the safety and security of its students in light of the nationwide outbreak of school violence. Town Council violated the Open Meetings Act when its solicitor, and not a member of the Town Council, articulated an open call and when it failed to maintain open session minutes. WARNING GIVEN. Issued September 28, 1999.

- OM 99-23 **Nielson v. Charlestown Town Council**
 Town Council properly convened into executive session to discuss a moratorium on the issuance of building permits since discussions were limited to crafting and conforming the moratorium in order to survive a legal challenge. Investigation revealed that the Town Council discussed legal strategy and received frank appraisals from its solicitor. Since the moratorium issue was not a matter of public record, Town Council provided adequate notice by stating that it would discuss "Litigation" in executive session. Issued October 18, 1999.
- OM 99-24 **Cervasio v. Foster Town Council**
 Town Council did not violate the Open Meetings Act when two members held a private conversation during the course of a meeting since these two members did not constitute a quorum of a public body. Issued November 18, 1999.
- OM 99-25 **Dietz v. Board of Registration for Professional Land Surveyors**
 Since Board did not present any evidence to the contrary, it violated the Open Meetings Act by failing to file a copy of its minutes with the Secretary of State within thirty-five (35) days of a meeting. Board has revised its procedures to ensure that its minutes are forwarded to the Secretary of State and memorialized in a letter to provide evidence of the filing. WARNING GIVEN. Issued November 19, 1999.
- OM 99-26 **Newport Daily News v. Middletown Town Council**
 Executive session discussion where Town Council compared the cost for renovating a school to the cost of constructing a new school veered beyond the permissible scope of discussions. R.I. Gen. Laws § 42-46-5(a)(5) permits executive session discussions where advanced public information concerning the disposition of publicly held property would be detrimental to the interests of the public. "Disposition" concerns transferring to the care of another or giving up property. WARNING GIVEN. Issued November 30, 1999.
- OM 99-27 **Allen v. Lincoln Town Council**
 Merely co-sponsoring an ordinance prior to presenting the ordinance to the Town Council, without more, does not violate the spirit or the requirement of the Open Meetings Act. No indication that Town Council members discussed the ordinance or otherwise attempted to obscure the public's right to witness deliberations. Signing an ordinance is a procedural requirement necessary to forward a proposed ordinance to a Town Council for consideration on its merits. Issued November 30, 1999.

- OM 99-28 **Hobson v. Coventry Charter Review Commission**
 Commission violated the Open Meetings Act by failing to post notice "in at least one other prominent location within the governmental unit." R.I. Gen. Laws § 42-46-6(c). Posting notice in a newspaper does not constitute "a prominent location within the governmental unit." WARNING GIVEN. Issued December 2, 1999.
- OM 99-29 **Viveiros v. Newport School Committee's Thompson Middle School Housing Subcommittee**
 School Committee did not violate the Open Meetings Act's posting requirements since public notices were displayed in several locations within forty-eight (48) hours of a meeting. No requirement that School Committee's minutes be maintained at the public library. Lastly, the School Committee did not violate the Open Meetings Act by posting notice of a continued meeting with less than forty-eight (48) hours notice. Issued December 2, 1999.
- OM 99-30 **Viveiros v. Thompson Middle School Housing Subcommittee**
 Notices properly posted as discussed in OM 99-29. Issued December 2, 1999.
- OM 99-31 **Macchioni v. Johnston Town Council**
 Emergency meeting to prohibit the appropriation of funds for hiring new firefighters was appropriate to avoid an impending financial crisis. Town Council violated the Open Meetings Act by failing to post notice "as soon as practicable." R.I. Gen. Laws § 42-46-6(c). WARNING GIVEN. Issued December 13, 1999.
- OM 99-32 **Car Depo Credit, Inc. v. Rhode Island Dealers' Licensing Board**
 Investigation revealed that Board did not convene into executive session. Thus, no merit to petitioner's allegation that Board violated the Open Meetings Act by convening into executive session. Issued December 3, 1999.
- OM 99-33 **Costa v. Scituate Town Council**
 Investigation revealed that there was no merit to allegation that Town Council violated the Open Meetings Act by convening an unscheduled and unnoticed Water Committee meeting. Issued December 10, 1999.
- OM 99-34 **McNeely v. Coventry Town Council**
 No evidence to support allegation that three Town Council members convened to discuss a matter outside the public's purview. Issued December 22, 1999.

- OM 99-35 **The Times v. Pawtucket School Committee**
Town Council violated the Open Meetings Act by failing to announce the vote after adjourning an executive session and by failing to indicate how each individual member voted during the executive session within two weeks of the vote. The Open Meetings Act does not require a public body to disclose the identities of the individuals affected. WARNING GIVEN. Issued December 23, 1999.
- OM 99-36 **Lafleur v. North Smithfield Town Council**
Town Council did not violate the Open Meetings Act when a majority of members voted to amend the agenda since the Town Council only discussed the amended matter and took no action. No requirement that a public body state on its notice the section of the Rhode Island General Laws upon which it will convene into executive session. Town Council violated the Open Meetings Act by stating "Executive Session" on its notice and not providing "a statement specifying the nature of the business to be discussed" in the executive session., WARNING GIVEN. Issued December 23, 1999.
- OM 99-37 **Schmidt v. Ashaway Fire District**
Fire District violated the Open Meetings Act by failing to provide a statement specifying that the Fire District would discuss or place a consultant study matter on its agenda for December. Fire District merely listed "New Business." Notices did not list contradicting times for a November meeting, thus no violation. WARNING GIVEN. Issued December 24, 1999.
- OM 99-38 **Schmidt v. Ashaway Volunteer Fire Association et. al.**
Fire Department is not a "public body" for purposes of the Open Meetings Act, thus the Open Meetings Act's provisions do not govern it. Issued December 24, 1999.
- OM 99-39 **Littlefield v. New Shoreham Town Council**
Town Council violated the Open Meetings Act by failing to maintain written minutes of its executive session. The Town Council did not violate the Open Meetings Act, however, by reconvening into executive session to construct executive session minutes that were not contemporaneously maintained, provided that the original topic discussed was appropriate for executive session. Town Council violated the Open Meetings Act by failing to enunciate an open call, by discussing an issue in executive session that had not been made part of the open call or the posted notice, and by failing to post notice for a continued meeting. WARNING GIVEN. Issued December 24, 1999.

OPEN MEETINGS ACT ADVISORY OPINIONS-1999

ADV OM 99-01

In re City of Cranston

Social, non-business reception where members of the Town Council and the School Committee will attend does not implicate the Open Meetings Act, provided that members do not discuss or act upon any matter over which they have control, supervision, jurisdiction, or advisory power. Issued February 23, 1999.

ADV OM 99-02

In re Gloucester Town Council

Open Meetings Act is not implicated where Town Council appoints two of its five members to act as liaisons with Local Union 1322 of the Laborers' International Union of North America. Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999) (requiring a quorum). Issued March 22, 1999.

ADV OM 99-03

In re West Warwick Town Council

A Town Council that rescheduled a meeting to an auditorium in order to accommodate an expected seven hundred members of the public will not violate the Open Meetings Act in the event that attendance exceeds legal capacity and members of the public are prevented from entering the auditorium. The Town Council may not, however, provide preferential seating to West Warwick residents while allowing non-residents seating on a first-come first-serve basis. Issued March 11, 1999.

ADV OM 99-04

In re Newport School Committee

A "meeting" will not convene where subcommittee members give a presentation or progress report to the community and parent group forums, provided that the subcommittee members do not discuss business amongst themselves or take other action. Issued May 4, 1999.

ADV OM 99-05

In re North Kingstown Town Council

Discussions planned with the developer of the proposed port at Quonset Point, the Governor, and the leadership of the General Assembly to express the Town's concerns is not a "meeting" pursuant to the Open Meetings Act provided that the members of the Town Council do not engage in a collective discussion, vote, or take other action. The Open Meetings Act is only applicable if a "quorum" of the Town Council is present. Issued May 5, 1999.

ADV OM 99-06

In re North Providence School Committee

Proposed meeting where North Providence Town Council invites the North Providence School Committee to discuss the efficacy of

making the truant officer position full time must be advertised as a School Committee meeting (and thus published in a newspaper) based upon representation that this is a School Committee "meeting" where School Committee business will be discussed. Subject matter does not appear to be appropriate for executive session. Issued May 7, 1999.

ADV OM 99-07

In re West Warwick Pension Board

Cancellation of May and June regularly scheduled meetings will not violate the Open Meetings Act. Addition of a special meeting in June, not previously scheduled, does not violate the Act provided other provisions are satisfied. Issued May 14, 1999.

ADV OM 99-08

In re Providence School Board

Informational session where President of Brown University will present general information regarding the search for a new Superintendent for the Providence Public Schools and answer questions from School Board members is not a "meeting" pursuant to the Open Meetings Act provided School Board members do not engage in a collective discussion. Subject matter not appropriate for executive session. Issued May 20, 1999.

ADV OM 99-09

In re Smithfield Town Council

All votes cast in executive session must be disclosed once the session is reopened. Within two (2) weeks of a vote (in open or closed session) a record of all votes taken, listing how each member voted on each issue, must be made available to the public at the office of the public body. An executive session vote need not be disclosed for the period of time during which disclosure would jeopardize any strategy, negotiation or investigation. Although a public body should not mislead the public, the Open Meetings Act does not require a public body to identify on its notice that it intends to vote on a particular subject. Issued June 1, 1999.

ADV OM 99-10

In re Hope Library of Hope, Rhode Island

Based upon representation that the Board of Trustees for the Hope Library Association of Hope, Rhode Island, is a non-profit corporation comprised of responsible people who pay annual dues, has not been chartered by legislative act or town ordinance, and has its members elected by those present at the annual meeting, the Association is not a "public body" pursuant to the Open Meetings Act. Issued July 2, 1999.

ADV OM 99-11

In re Rhode Island State Council on the Arts

Informational-type session where a joint presentation is made by the Executive Director of the Rhode Island State Council on the Arts and the Commissioner of Education to the newly formed Governor's Task Force on Literacy in the Arts is not a "meeting" pursuant to the Open Meetings Act. Session was designed as a

combination social event and orientation to review the Governor's Executive Order. Rhode Island State Council on the Arts represents that no action or decisions will be made and there is no evidence to indicate that the Task Force members will engage in a collective discussion. Issued August 20, 1999.

ADV OM 99-12

In re Health Council Services

Voting by secret ballot during an open session is inconsistent with the intent and the spirit of the Open Meetings Act. Issued September 14, 1999.

ADV OM 99-13

In re Warwick Police Department

A three-member committee appointed by the Mayor of the City of Warwick to establish a search process, formulate performance and character qualifications, develop questions, review applications, and evaluate candidates for the position of Police Chief is a "public body." Committee may meet in executive session to discuss the job performance, character, or physical or mental health of a candidate provided that the candidate is notified of their right to hold discussions in open session. Closed session to evaluate all candidates previously interviewed will not violate the Act where only one candidate requests an open session meeting and discussions cannot be segregated. Issued March 10, 1999.

ADV 99-14

In re Town of New Shoreham

Advisory opinion concerning whether pursuant to R.I. Gen. Laws § 42-46-5(a)(1) an affected person who was given notice that a public body intends to discuss his/her job performance, character, or physical or mental health in executive session may exercise their option to hold the meeting in open session with little to no notice. Since the General Assembly did not provide a time restriction in which an affected person must exercise their option, this evinces the intent not to restrict the individual's right to have the discussion in open session. Public bodies should not state on notices that it will convene into executive session, rather a public body should notice that it will seek to convene into executive session. Issued October 6, 1999.

ADV 99-15

In re Town of Scituate

Zoning Board proceedings are not per se appropriate for executive session. Open session discussions may not occur in a manner that prevents or purposefully hinders the public from understanding the discussions. Issued November 30, 1999.

OPEN MEETINGS ACT FINDINGS – 2000

- OM 00-01 **Schmidt v. Ashaway Fire District**
The Fire District did not violate the Open Meetings Act by beginning its meetings after the scheduled time, failing to control audience members' behavior, or having two district members talk at the same time. Issued January 13, 2000.
- OM 00-02 **Miller Scott and Holbrook v. Barrington School Committee**
The School Committee did not violate the Open Meetings Act since an investigation revealed that unofficial minutes were available to the public within thirty-five (35) days of a meeting, or prior to the next regularly scheduled meeting, whichever was earlier. R.I. Gen. Laws § 42-46-7(b). Issued January 19, 2000.
- OM 00-03 **Walsh v. Charlestown Town Council**
The Town Council did not violate the Open Meetings Act since their actions were based upon a 1996 unofficial finding. However, the Department of the Attorney General no longer believes the 1996 unofficial finding to be persuasive and henceforth, in order for a public body to convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2), the collective bargaining exception, the Open Meetings Act requires that the executive session include a representative/organized union for the employees. Issued January 19, 2000.
- OM 00-04 **Demirjian v. Rhode Island Board of Governors for Higher Education**
No evidence to substantiate claims that the Board of Governors for Higher Education discussed or voted upon the subject matter of Dr. Robert Carothers' employment contract as President of the University of Rhode Island outside the public's purview. Issued January 19, 2000.
- OM 00-05 **Major v. Johnston Town Council**
The Town Council did not violate the Open Meetings Act when the Town Council President ejected a member of the public who had disrupted the meeting. Issued March 6, 2000.
- OM 00-06 **Mandeville v. Lincoln School Committee**
The School Committee's public notice advising that "School Committee Goals" would be considered provided a sufficient statement specifying the nature of the business to be discussed and did not violate the Open Meetings Act. Issued March 6, 2000.

- OM 00-07 **Okwara v. Rhode Island Commission on the Deaf and Hard of Hearing**
Commission violated the Open Meetings Act by failing to post notice, failing to maintain minutes, failing to provide a statement specifying the nature of the business to be discussed, and failing to articulate/record an open call. The Commission did not violate the Open Meetings Act by discussing a candidate's job qualifications for a state job in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), nor did the Commission violate the Open Meetings Act by convening into executive session to approve minutes of a prior executive session meeting. Complainant does not have legal standing to object to the Commission's alleged failure to provide the affected person written notice advising that they may have the meeting in open session since the complainant was not an affected individual. **WARNING GIVEN.** Issued March 8, 2000.
- OM 00-08 **Mageau v. Charlestown Conservation Commission**
The Conservation Commission did not violate the Open Meetings Act since an investigation revealed that the Commission does not maintain an office, and since the investigation revealed that minutes were filed with the Planning Office (within the Town Hall) in a timely manner. R.I. Gen. Laws § 42-46-7(b). Issued March 8, 2000.
- OM 00-09 **Mutter v. Cumberland Town Council**
An executive session was properly convened to discuss an auditor's job performance and the reasons for the audit delay. Complainant was not an affected individual, and therefore, did not have legal standing to complain that the auditor did not receive advanced written notice pursuant to R.I. Gen. Laws § 42-46-5(a)(1). Issued March 15, 2000.
- OM 00-10 **Audette v. Warren Town Council**
The Town Council properly convened into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2), where the complainant had retained legal counsel and had threatened legal action concerning an unsuccessful attempt to obtain a boat building contract. Issued April 19, 2000.
- OM 00-11 **Sexton v. Shelter Harbor Fire District**
The Fire District's pre-annual and annual meetings do not constitute a "meeting" for purposes of the Open Meetings Act, since the Board members did not engage in a collective discussion, nor did the Board members take any action. See Pine v. McGreavy, 487 A.2d 1244 (R.I. 1997). Issued May 12, 2000.
- OM 00-12 **Dietz v. Rhode Island Bd of Registration for Professional Land Surveyors**
Board violated the Open Meetings Act by failing to forward official minutes to the Secretary of State's Office within thirty-five (35) days of a meeting. See R.I. Gen. Laws § 42-46-7(d). Legal action not appropriate since Board filed minutes in a timely manner at its office and filed unofficial minutes with

the Secretary of State's Office within thirty-five (35) days of the meeting.
VIOLATION FOUND. Issued May 12, 2000.

- OM 00-13 **Rubino v. South Kingstown Town Council**
Statute of limitations for Attorney General to file suit had expired prior to filing of the complaint. Consequently, the Department of the Attorney General is unable to address the merits of this complaint. Issued May 26, 2000.
- OM 00-14 **Mederios v. Tiverton Town Council**
Town Council did not violate the Open Meetings Act by referring to the incorrect subsection of the Rhode Island General Laws on its notice since there is no requirement that a public body cite the appropriate subsection upon which it intends to convene into executive session. The subject matter of the discussions was appropriate for executive session and the complainants did not have standing to complain that the affected individuals did not receive advanced written notice pursuant to R.I. Gen. Laws § 42-46-5(a)(1). Town Council violated the Open Meetings Act by referencing the incorrect subsection of the General Laws during the open call and by forming interview questions in executive session. WARNING GIVEN. Issued May 30, 2000.
- OM 00-15 **Carroll v. Tiverton Personnel Board**
Board did not convene a "meeting" when several members of the Board forwarded a letter to the Department of the Attorney General alleging violations of the Open Meetings Act. Issued May 30, 2000.

OPEN MEETINGS ACT ADVISORY OPINIONS-2000

ADV OM 00-01

In re Stephen Brusini

Informal/Show Cause hearing convened to determine whether a matter concerning allegations of wrongdoing against a licensed professional can be resolved ministerially or whether sufficient evidence exists to warrant a formal proceeding may be appropriate for an executive session depending upon the specific circumstances of each case. R.I. Gen. Laws § 42-46-5(a)(4). Furthermore, although the appointed prosecutors may not constitute a quorum of the "parent" public body, the appointed prosecutors may constitute a quorum of a subcommittee, thus satisfying the quorum requirement. Issued February 4, 2000.

ADV OM 00-02

In re Cranston Democratic City Committee

If all nine (9) elected democratic members of the City Council convene as a political caucus, where only political strategy is discussed, and no business that is subject to the jurisdiction, control, supervision, or advisory power of the City Council is discussed, the Open Meetings Act will not apply. Issued February 11, 2000.

ADV OM 00-03

In re Rhode Island Ethics Commission

Members of a public body who confer and address questions to legal counsel (and receive answers from legal counsel) will not convene a "meeting" for purposes of the Open Meetings Act, provided the members are engaged in a colloquy with legal counsel and the members are not collectively discussing and/or acting upon any matter over which they have supervision, control, jurisdiction, or advisory power. Issued May 12, 2000.

ADV OM 00-04

In re Rhode Island State Council on the Arts

R.I. Gen. Laws § 42-46-5(a)(5) provides two separate avenues for convening into executive session. First, an executive session may be convened for "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes," without considering whether advanced public information would be detrimental to the interest of the public. Second, an executive session may be convened for "the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public." Advisory opinion also discusses the definition of "real property." Issued May 12, 2000.

OPEN MEETINGS ACT FINDINGS

I N D E X
(1993 - 2000)

ACQUISITION OR LEASE OF REAL PROPERTY (§ 42-46-5(a)(5))

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OM94-12	OM99-26
OM95-22	ADV OM00-04
OM96-07	
OM97-04	

ADVERTISEMENT OF MEETINGS / NEWSPAPER ADVERTISEMENT

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OM95-09	OM98-20
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OM96-06	OM99-02
OM97-16	
OM97-16B	

AGENDA AMENDMENTS (§ 42-46-6(b))

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U93-03	OM99-36
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OM95-25	
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OM96-28

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OM94-03

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OM96-03	OM98-20
OM96-04	OM98-23
OM96-08	OM98-24
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CLOSED SESSION-METHOD TO CONVENE (§§ 42-46-2(b), 42-46-4)

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U93-71	OM98-12
OM94-18	OM98-17
OM95-02	OM98-30
OM95-30B	OM99-02
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OM96-27	
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COLLECTIVE BARGAINING (§ 42-46-(5)(a)(2))

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OM94-12-13
OM95-06
OM95-11
OM95-30A
OM96-19
OM96-22
OM96-27
OM00-03

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OM98-17
OM99-29
OM99-39

DISRUPTION OF MEETING (§ 42-46-5(d))

OM00-05

ELECTRONIC COMMUNICATIONS

See "Telephone/Electronic Communications"

EMERGENCY MEETINGS (§ 42-46-6(c))

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U93-34
U93-63
OM94-16
OM96-08
OM96-31
OM97-12
OM99-31

HANDICAPPED ACCESSIBILITY / ACCESSIBILITY OF MEETINGS

OM97-08
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INVESTIGATIVE PROCEEDINGS (§ 42-46-5(a)(4))

OM96-33
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INVESTMENT OF PUBLIC FUNDS (§ 42-46-5(a)(7))

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LITIGATION (§ 46-42-(5)(a)(2))

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U93-52	OM98-16
U93-53	OM99-18
OM94-09	OM99-23
OM94-16	OM00-10
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OM95-12	
OM95-13	
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OM94-14	ADV OM99-04
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OM94-11	OM98-29
OM94-24	OM99-12
OM95-02	OM99-13
OM95-03	OM99-17
OM95-11	OM99-22
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Official OM96-03	OM99-39
Official OM96-04	OM00-02
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OM96-06	OM00-08
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OM94-21	Official OM96-03	OM97-13
OM94-24	Official OM96-04	OM97-16
OM95-02	OM96-02	OM97-25
OM95-03	OM96-03	OM97-27
OM95-05	OM96-04	OM98-03
OM95-10	OM96-06	OM98-23

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OM96-06	OM99-15
OM96-18	OM99-21
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Updated: July 1, 2000

CHAPTER 46
OPEN MEETINGS

SECTION.		SECTION.	
42-46-1.	Public policy.		proceedings — Disruptive conduct.
42-46-2.	Definitions.	42-46-6.	Notice.
42-46-3.	Open meetings.	42-46-7.	Minutes.
42-46-4.	Closed meetings.	42-46-8.	Remedies available to aggrieved persons.
42-46-5.	Purposes for which meeting may be closed — Use of electronic communications — Judicial	42-46-9.	Other applicable law.
42-46-10.	Severability.	42-46-13.	Handicapped accessibility.
42-46-11.	Reported violations.		
42-46-12.	Notice of citizen's rights under this chapter.		

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.

History of Section.

G.L. 1956, § 42-46-1; P.L. 1976, ch. 330, § 2.

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

(a) "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" shall expressly include, without limiting the generality of the foregoing, so-called "workshop," "working," or "work" sessions.

(b) "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.

(c) "Public body" means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, 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.

(d) "Quorum," unless otherwise defined by applicable law, means a simple majority of the membership of a public body.

(e) "Prevailing plaintiff" shall include those persons and entities deemed "prevailing parties" pursuant to 42 U.S.C. § 1988.

History of Section.

G.L. 1956, § 42-46-2; P.L. 1976, ch. 330, § 2; P.L. 1982, ch. 352, § 1; P.L. 1984, ch. 372,

§ 1; P.L. 1995, ch. 297, § 1; P.L. 1998, ch. 379, § 1.

NOTES TO DECISIONS

ANALYSIS

1. Public body.
2. Violation not found.

1. Public Body.

A financial town meeting of the electors qualified to vote on the imposition of a tax and the expenditure of money does not fit within the definition of public body. *Pine ex rel. Edward A. Sherman Publishing Co. v. McGreavy*, 687 A.2d 1244 (R.I. 1997).

solicitor's offer to explain any questions arising from his memorandum to zoning board members as a request for a closed public board meeting, but the parties all agreed there was never any such request actually made and no executive session ever convened or public business transacted, the trial justice did not err in finding there was no violation of the open meetings act. *Fischer v. Zoning Board of the Town of Charlestown, et al.*, 723 A.2d 294 (R.I. 1999).

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.

History of Section.

G.L. 1956, § 42-46-3; P.L. 1976, ch. 330, § 2.

Reenactments. The 1984 Reenactment (P.L. 1984, ch. 81, § 1) deleted "of this chapter" following "§§ 42-46-4 and 42-46-5."

42-46-4. Closed meetings. — 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.

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).

History of Section.

G.L. 1956, § 42-46-4; P.L. 1976, ch. 330, § 2; P.L. 1988, ch. 84, § 29; P.L. 1988, ch. 659,

§ 1, P.L. 1990, ch. 201, § 1; P.L. 1998, ch. 379, § 1.

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 26

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 (a) of conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy of students and their records, 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.

(b) No meeting of members of a public body or use of electronic communication shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

Provided, further however, that discussions of a public body via electronic communication shall be permitted only to schedule a meeting.

(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 wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

History of Section.

G.L. 1956, § 42-46-5; P.L. 1976, ch. 330, § 2; P.L. 1982, ch. 352, § 1; P.L. 1988, ch. 659,

§ 1; P.L. 1995, ch. 265, § 1; P.L. 1998, ch. 379, § 1.

NOTES TO DECISIONS

1. Quasi-Judicial Proceedings.

Only quasi-judicial contested administrative determinations or proceedings that establish the legal rights, duties, or privileges of a party after a hearing and that embody sufficient attributes of judicial proceedings may generate causes of action for malicious prosecution or for abuse of process. Specifi-

cally, such administrative proceedings should include at least (1) notice to the parties in interest, (2) the presentation of evidence and/or testimony under oath, and (3) a timely recorded decision by duly appointed or elected officials. *Hillside Assocs. v. Stravato*, 642 A.2d 664 (R.I. 1994).

42-46-6. Notice. — (a) All public bodies shall give written notice of their regular 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.

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) 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. 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; provided, that in the case of school committees the required public notice shall be published in a newspaper of general circulation in the school district under the committee's jurisdiction; however, ad hoc committees, sub committees and advisory committees of school committees shall not be required to publish notice in a newspaper; 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, 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 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.

History of Section.

G.L. 1956, § 42-46-6; P.L. 1976, ch. 330, § 2; P.L. 1981, ch. 182, § 1; P.L. 1984, ch. 372, § 1; P.L. 1988, ch. 659, § 1; P.L. 1998, ch. 379, § 1.

Compiler's Notes. In 1998, the compiler deleted a comma following "include" in the second sentence of subsection (b).

NOTES TO DECISIONS

1. Good Faith.

Although the members of a school committee and a school superintendent conducted a meeting without full newspaper notification as required by this section in that their advertisement referred to a "work session" but did not contain an agenda, and at the meeting they voted to opt out of the early retirement

program, since they did not act willfully or in bad faith since they did not attempt to keep the meeting secret nor to avoid meeting with those most affected by the retirement program, their action at the meeting was valid and should not have been declared null and void. *Edwards v. State*, 677 A.2d 1347 (R.I. 1996).

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) 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.

(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 within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations 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.

History of Section.

G.L. 1956, § 42-46-7; P.L. 1976, ch. 330,
§ 2; P.L. 1984, ch. 372, § 1; P.L. 1985, ch. 373,

§ 1; P.L. 1989, ch. 431, § 1; P.L. 1995, ch. 165,
§ 1.

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) [Deleted by P.L. 1988, ch. 659, § 1.]

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

(g) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner.

(h) The attorney general shall consider all complaints filed under this chapter to have also been filed under § 38-2-8(b) if applicable.

History of Section. § 1; P.L. 1988, ch. 659, § 1; P.L. 1998, ch. 379, P.L. 1978, ch. 146, § 2; P.L. 1981, ch. 279, § 1. § 1; P.L. 1984, ch. 372, § 1; P.L. 1985, ch. 373,

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.

History of Section. P.L. 1976, ch. 330, § 2; P.L. 1977, ch. 111, § 1.

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.

History of Section. G.L. 1956, § 42-46-10; P.L. 1976, ch. 330, § 2. Reenactments. The 1988 Reenactment

(P.L. 1988, ch. 84, § 1) substituted "the decision" for "such decision" near the middle of the section; and made a minor punctuation change.

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.

History of Section.

P.L. 1988, ch. 659, § 2.

Reenactments. The 1993 Reenactment

(P.L. 1993, ch. 422, § 1) substituted "Every year" for "Each and every year" at the beginning of the section.

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.

History of Section.

P.L. 1988, ch. 659, § 2.

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.

History of Section.
P.L. 1998, ch. 379, § 2.

2000 -- S 2518 AS AMENDED

LC02143

S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2000

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS

Introduced By: Senators Roberts and Gallo

Date Introduced: February 9, 2000

Referred To: Committee on Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Section 42-46-5 of the General Laws in Chapter 42-46 entitled "Open Meetings" is hereby amended to read as follows:

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 section 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 (a) of conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy of students and their records, 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.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

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.

(b) No meeting of members of a public body or use of electronic communication shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

Provided, further however, that discussions of a public body via electronic communication shall be permitted only to schedule a meeting.

(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.

SECTION 2. This act shall take effect upon passage.

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LC02143
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Section II

Access To Public Records Act



ACCESS TO PUBLIC RECORDS ACT FINDINGS-1999

PR 99-01

Moran v. PUC

Request for information regarding citations issued to Valley Gas Company not a public record. Division has no records of final action and Notices of Probable Violation are exempt from disclosure as non-final action by R.I. Gen. Laws § 38-2-2(4)(i)(P). Issued February 23, 1999.

PR 99-02

Coyle v. Providence School Department

Request for various documents ranging from witness statements given to the Providence Police Department to documentation between a parent and a counselor regarding zero tolerance policy infraction logs at the West Broadway Elementary School deemed not public. The complainant is a plaintiff in a current lawsuit and the Access to Public Records Act was never intended as an alternative method of discovery. See Hydron Laboratories v. Department of Attorney General, 492 A.2d 135 (R.I. 1985). School Department advised to comply timely with future requests. Issued February 23, 1999.

PR 99-03

Cianci v. R.I. Ethics Commission

Records obtained during the course of an investigation were exempt from disclosure because they were not records of final action, see R.I. Gen. Laws § 38-2-2(4)(i)(P), and because R.I. Gen. Laws § 36-14-12(c)(6) provides that the Commission is not authorized to make any of its investigatory records public. Report pertaining to legal review was exempt from disclosure for above reasons and because it contains information relating to the attorney/client privilege. R.I. Gen. Laws § 38-2-2(4)(i)(A). Lastly, the Commission does not maintain any records relating to the recommendation of the Board of Officers, thus no records must be disclosed. Issued March 22, 1999.

PR 99-04

Offer v. R.I. Department of Education

Records regarding the "number of teachers in each town or city in the State who have been granted special provisional certificates" is a public record. Information requested does not involve students or the release of test scores. Also, since request is for the "number" of teachers with provisional certification, this request is not "identifiable" to an individual and the fact that this information may later be matched to identify a person is not a sufficient reason why the information may not be disclosed. Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982). VIOLATION FOUND Issued April 9, 1999.

PR 99-05 **Prybyla v. Dr. D'Acchioli; City of Woonsocket**
Former employee's employment contract, and specifically the portion regarding notification of termination-of-employment, is not a public record because the contract is a record identifiable to an individual maintained in personnel files to hire, evaluate, promote or discipline. Termination-of-employment provision does not fall within the limited exception of employee categories made accessible to the public. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). A public body is not required to answer questions. Issued April 27, 1999.

PR 99-06 **Morra v. East Providence Tax Assessors**
Field cards for properties are public records as well as minutes of public meetings not required to be kept confidential pursuant to chapter 46 of title 42. Home addresses of properties currently receiving homestead exceptions are not public, although the names of owners, property types, total assessment, and amount of the exemption are public records. City violated the Act by not providing an estimate for copying and retrieval costs. City may charge a maximum of \$.15 per copy and a maximum of \$15.00 per search hour with the first hour free. VIOLATION FOUND. Issued April 27, 1999.

PR 99-07 **Shuttert v. Coventry Town Council**
Copy of preliminary draft lease agreement that was submitted and discussed during an open work session of the Coventry Town Council is a public document and must be disclosed. R.I. Gen. Laws § 38-2-2(4)(i)(K). VIOLATION FOUND. Issued May 27, 1999.

PR 99-08 **Marcello v. Town of Scituate**
Documents prepared by Town Clerk relating to "Town Clerk Duties -vs.- Administrative Assistant" were public because these documents were submitted at an open meeting of the Town Council. R.I. Gen. Laws § 38-2-2(4)(i)(K). Documents also accessible under R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), which permits disclosure of an employee's job description. VIOLATION FOUND. Issued May 27, 1999.

PR 99-09 **Raymond v. Glendale Board of Fire Wardens**
Although the request for documents was honored, the Board violated the Access to Public Records Act by not responding timely. VIOLATION FOUND. Issued June 1, 1999.

PR 99-10 **Prybyla v. Department of Administration**
Request for all documents allowed by law relating to an employee's employment at the Board of Elections was honored when records relating

to name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime and other remuneration, job title, dates of employment, positions held, work location, business telephone number, town of residence, and date of termination were supplied. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Board advised that if it maintains records relating to "job description," these records must also be disclosed and it must respond timely to future requests. Issued August 5, 1999.

PR 99-11

Carroll v. Tiverton Budget Committee

Request for Tiverton Budget Committee open session minutes not immediately honored since documents were in a locked filing cabinet. Since minutes were provided within ten business days, no violation. Issued September 3, 1999.

PR 99-12

Carrellas v. Portsmouth Police Department

Police Department provided access to all requested documents that were maintained. Since a public body is not required to reorganize, consolidate, or compile data that is not maintained, the Police Department did not violate the Access to Public Records Act by failing to provide documents that it does not possess. Issued September 8, 1999.

PR 99-13

DeLeo v. Bristol Building Office

Access to building permit application initially denied. In the course of this Department's investigation, the requested application was provided. See R.I. Gen. Laws § 23-27.3-108.1.7. Issued September 23, 1999.

PR 99-14

Tetreault v. Lincoln School Committee et. al

Complaint filed seeking access to a private detective's report allegedly maintained within the School Department's personnel records. Investigation revealed document did not exist. Issued September 23, 1999.

PR 99-14B

Tetreault v. Lincoln School Committee et. al

Evidence presented that document may exist. Assuming that the surveillance document does exist, it was prepared at the direction of the School Committee's legal counsel for use by the School Committee with respect to an investigation into alleged worker's compensation system abuses. As such, among other possible exemptions prohibiting public disclosure, the document identifies an employee and concerns records relating to a client/attorney relationship. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). The fact that the requested document concerns the complainant does not affect its status. Issued January 28, 2000.

PR 99-15

Smith v. Watch Hill Fire District

Request made for several categories of documents, the majority of which were either provided or which do not exist. With respect to documents relating to "the assessment of penalties, interest, and the auctioning of properties," an original request for these documents was not made to the public body, thus the Department of Attorney General has no jurisdiction. Since no evidence was provided to the contrary, handwritten "schematics

of the audible and inaudible signaling system" must be provided if the document exists. Issued October 19, 1999.

PR 99-16

Cervasio v. Foster Town Council

Series of questions submitted to public body. The Access to Public Records Act does not govern the conduct of public bodies with respect to answering oral or written questions. Issued November 18, 1999.

PR 99-17

Dietz v. Board of Registration for Professional Land Surveyors

Request made for all records pertaining to petitioner. Since the identical issue was pending before the Superior Court, the Department of the Attorney General will not interfere with the judicial process. Issued November 19, 1999.

PR 99-18

Prybla v. Dr. D'Acchioli, City of Woonsocket

Since School Department does not maintain a consolidated student or teacher absentee report, there is no obligation to reorganize, consolidate, or compile such a document. Issued November 19, 1999.

PR 99-19

Cranston United Taxpayers v. City of Cranston

City did not violate Access to Public Records Act since it does not maintain a copy of the requested three-year budget forecast plan. Transcripts to an ongoing arbitration hearing are exempt from public disclosure since these transcripts contain "reports and statements of strategy or negotiation involving labor negotiations or collective bargaining." R.I. Gen. Laws § 38-2-2(4)(i)(H). Issued December 23, 1999.

PR 99-20

Jordan v. West Kingston Elementary School

School provided copies of "the current information available on fund raising programs," thus no violation. Insufficient evidence that School violated the Access to Public Record Act's time provisions. Issued December 24, 1999.

PR 99-21

Schmidt v. Ashaway Fire Association et. al

The Department of the Attorney General does not have jurisdiction to inquire into whether the Fire Department's minutes were redacted properly. These minutes were sent to the Department of the Attorney General in conjunction with a 1997 Open Meetings Act investigation and there is no evidence that the complainant ever requested or was ever denied access to the unredacted minutes by the Fire Department. Since the complainant was not denied access, the Department of the Attorney General does not have jurisdiction over this matter. Likewise, the Department of the Attorney General does not have jurisdiction to inquire into the merits of a letter stating that the Fire District will not allow the complainant to inspect documents (but will allow copies to be made), until the complainant has actually been denied the right to inspect documents. Issued December 24, 1999.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS-1999

- ADV PR 99-01 **In re Division of Motor Vehicles**
Pursuant to the Confidentiality of Health Care Communications and Information Act all information "relating to a patient's health care history, diagnosis, condition, treatment or evaluation" must be redacted from a handicap parking permit application prior to disclosure. See R.I. Gen. Laws § 5-37.3-4(c). Medical information is also exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Also, all information "that identifies an individual," including "an individual's photograph, social security number, driver identification number, name, address (not the 5 digit zip code), telephone number, and medical or disability information" may be redacted from a handicap parking permit application prior to disclosure. R.I. Gen. Laws § 27-49-3.1 Issued August 23, 1999.
- ADV PR 99-02 **In re Narragansett Police Department – Initial Arrest Reports**
Police Department may redact the names of individual victim's in initial arrest reports upon an appropriate case-by-case balancing test where the public's right to disclosure is weighed against the victim's right to privacy. Issued September 7, 1999.
- ADV PR 99-03 **In re Newport Police Department**
Advisory opinion posing a series of questions, including what constitutes a public document, redacting victims/witnesses names, requesting records via the Access to Public Records Act in lieu of discovery, and appropriate costs for records. Issued September 28, 1999.
- ADV PR 99-04 **In re Town of Scituate**
Public body should implement its own procedure concerning the destruction of public records, which are requested and gathered, but not retrieved. Public body may only charge, however, for documents that are actually provided to the public, although the Access to Public Records Act does not prohibit a public body from requiring an individual to prepay for documents. Issued November 20, 1999.

ACCESS TO PUBLIC RECORD ACT FINDINGS-2000

- PR 00-01 **Graziano v. Department of Administration**
An employee's current gross salary and current job description are public records. Because an employee's starting gross salary, and an employee's starting job description, are not designated as public records, the Department of Administration did not violate the Access to Public Records Act by denying access to these categories. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Issued January 5, 2000.
- PR 00-02 **D'Amario v. Town of Smithfield**
The Police Department did not violate the Access to Public Records Act since the requested records were made available for inspection. A public body is required only to make public records available for inspection and there is no requirement that a public body deliver documents to an individual. Issued February 28, 2000.
- PR 00-03 **Okwara v. Rhode Island Commission on the Deaf and Hard of Hearing**
The Commission did not violate the Access to Public Records Act since the Commission does not maintain copies of the requested records. A public body is not required to create, compile, or reorganize records that it does not maintain. Issued March 8, 2000.
- PR 00-04 **Compagone v. City of Cranston**
The City provided access to the requested documents, but violated the Access to Public Records Act by failing to do so within ten (10) business days. WARNING GIVEN. Issued March 8, 2000.
- PR 00-05 **Pocchiari v. Rhode Island School for the Deaf**
The School for the Deaf did not violate the Access to Public Records Act since the School does not maintain copies of the requested records. A public body is not required to create, compile, or reorganize records that it does not maintain. Issued March 15, 2000.
- PR 00-06 **Gorman v. Anthony (Coventry) Fire District**
The Fire District violated the Access to Public Records Act by failing to respond to a request for public records within ten (10) business days. WARNING GIVEN. Issued April 19, 2000.
- PR 00-07 **Maraia v. City of Cranston**
The City provided access to the requested documents, but violated the Access to Public Records Act by failing to do so within ten (10) business days. WARNING GIVEN. Issued April 24, 2000.

- PR 00-08 **Morales v. Providence Police Department**
Witness statements and internal Police Department communications were not public records since disclosure could interfere with enforcement proceedings and/or deprive a person of a right to a fair trial. Police Department correspondence to an Assistant City Solicitor was not a public record, since the document related to the attorney/client relationship and was also exempt as a memorandum. Police Department violated the Access to Public Records Act by failing to respond to the request within ten (10) business days. WARNING GIVEN. Issued May 15, 2000.
- PR 00-09 **Cahill v. Housing Authority of the City of Pawtucket**
A document submitted as a result of a request for proposals that reveals the final bid, as well as the methodology and the costs to arrive at the final bid, is not a public record since this information represents trade secrets and commercial and/or financial information that is of a privileged or confidential nature. Issued May 22, 2000.
- PR 00-10 **DeCristofano v. Town of North Smithfield**
The Town violated the Access to Public Records Act by charging \$2.50 for three documents that were created/compiled from data maintained within a computer. Since information was stored within a computer, and the public body would not have been unduly burdened in providing such data, the Access to Public Records Act requires that the requested information be compiled. R.I. Gen. Laws § 38-2-3(f). WARNING GIVEN. Issued May 24, 2000.
- PR 00-11 **Weber v. Cranston Public Schools**
No violation of the Access to Public Records Act since investigation revealed that records had been provided. Issued May 26, 2000.
- PR 00-12 **Sullivan v. Providence Police Department**
Police Department did not violate the Access to Public Records Act since investigation revealed that the Police Department did not maintain a copy of the requested records. Issued May 30, 2000.
- PR 00-13 **Sumner-Mack v. Division of State Police**
State Police did not violate the Access to Public Records Act since investigation revealed that the State Police did not maintain a copy of the requested records. Issued May 30, 2000.
- PR 00-14 **Ward v. City of Woonsocket**
City provided access to the requested records, but violated the Access to Public Records Act by failing to respond to the request for records within ten (10) business days. WARNING GIVEN. Issued May 30, 2000.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS-2000

- ADV PR 00-01 **In re Johnston Police Department**
Records reflecting the Police Chief's final disposition of an internal affairs investigation constitutes a public record since these reports relate to the management and the direction of a law enforcement agency. Issued January 19, 2000.
- ADV PR 00-02 **In re Greenville Public Library**
Since a library membership list does not reveal the identity of a library user requesting, checking out, or using library materials, the membership list constitutes a public record. Issued January 28, 2000.
- ADV PR 00-03 **In re Narragansett Police Department**
A person's criminal background check records maintained by the Bureau of Criminal Identifications is not a public record. Issued March 10, 2000.
- ADV PR 00-04 **In re Bristol Police Department**
In order to determine whether a third party's identity is a public record, a police department must conduct a balancing test weighing the public interest in disclosure against the privacy interest of the affected individual. Issued March 23, 2000.
- ADV PR 00-05 **In re University of Rhode Island**
Records relating to expenses reimbursed by the University to employees and records relating to disbursement of funds from the alumni organization to employees are public records despite the fact that the records were the subject of an ongoing investigation into possible violations of statute, rule, or regulation. See R.I. Gen. Laws § 38-2-13. Names of employees to whom disbursements were made are public records, but only to the extent that disbursements constitute remuneration, as opposed to reimbursement. Issued April 13, 2000.
- ADV PR 00-06 **In re City of Pawtucket**
A City may not charge more than the reasonable actual cost of providing remote (online) electronic access to land evidence records. Issued April 18, 2000.

ADV PR 00-07

In re Town of South Kingston

Records relating to the Town Manager delineated as public pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) are public records. The Town Manager's contract is not delineated as a public record and is exempt from public disclosure as a record identifiable to an individual employee. Any requests by the Town Manager to the Town Council to serve on a board may be exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(M). Records reflecting the number of hours billed and the total amount paid to a law firm are public records, however, the narratives describing the work conducted are exempt from public disclosure as records relating to the attorney/client relationship. Issued April 19, 2000.

ADV PR 00-08

In re Narragansett Bay Commission

Account balance information that is identifiable to an individual client is exempt from public disclosure. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Any records that can be redacted without identifying a particular client must be disclosed. Issued May 12, 2000.

0799H/1-6

ACCESS TO PUBLIC RECORDS ACT FINDINGS

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TITLE 38

PUBLIC RECORDS

CHAPTER

2. ACCESS TO PUBLIC RECORDS, §§ 38-2-1 — 38-2-15.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.		SECTION.	
38-2-1.	Purpose.	38-2-7.	Denial of access.
38-2-2.	Definitions.	38-2-8.	Administrative appeals.
38-2-3.	Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for ac- cess.	38-2-9.	Jurisdiction of superior court.
		38-2-14.	Information relating to settle- ment of legal claims.
38-2-4.	Cost.	38-2-15.	Reported violations.

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.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1998, ch. 378.

§ 1.

Collateral References. What are

"records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)). 153 A.L.R. Fed. 571.

38-2-2. Definitions. — As used in this chapter:

(1) "Agency" or "public body" shall mean 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 § 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 as defined in subsection (a) of this section.

(3) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(4)(i) "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) All records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

(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 the retirement systems established by the general laws 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 established in title 8, title 36, title 42, and title 45 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.

(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; 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.

(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

(5) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

(6) "Prevailing plaintiff" means and shall include those persons and entities deemed prevailing parties pursuant to 42 U.S.C. § 1988.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1980, ch. 269, § 1; P.L. 1981, ch. 353, § 5; P.L. 1982, ch. 416, § 1; P.L. 1984, ch. 372, § 2; P.L. 1986, ch. 203, § 1; P.L. 1991, ch. 208, § 1; P.L. 1991, ch. 263, § 1; P.L. 1995, ch. 112, § 1; P.L. 1998, ch. 378, § 1; P.L. 1999, ch. 83, § 85; P.L. 1999, ch. 130, § 85.

Compiler's Notes. In 1998, the compiler inserted "or" preceding "administrative" and inserted a comma following "functions" in paragraph (1), substituted "client" for "cli-

ents" and the fifth comma for a semicolon, deleted a dash after "any files" and inserted "with" before "respect" in subparagraph (4)(i)(A)(I), substituted "those retirement" for "that retirement" in subparagraph (4)(i)(A)(II), deleted a comma following "submitted" in subparagraph (4)(i)(K), and inserted a comma following "agencies" in subparagraph (4)(i)(P).

P.L. 1999, ch. 83, § 85, and P.L. 1999, ch. 130, § 85, enacted identical amendments to this section.

NOTES TO DECISIONS**ANALYSIS**

- 1.5. Financial information.
7. Police records.

1.5. Financial Information.

Depositors' bank records are not public records under this chapter. *Pontbriand v. Sundlun*, 699 A.2d 856 (R.I. 1997).

7. Police Records.

In response to a request by a community-action group for police department records pertaining to civilian complaints of police misconduct, a city was required to provide access to redacted copies of police civilian complaint forms, reports by police depart-

ment hearing officers regarding their decisions from the findings of investigations, and reports on all disciplinary actions taken as the result of recommendations made by hearing officers. *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998).

In response to a request by a community-action group for police department records pertaining to civilian complaints of police misconduct, a city was under no obligation to provide access to a listing of all findings from internal affairs investigations since it would require the compilation of data that was not maintained in the form requested. *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998).

Collateral References. What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)). 153 A.L.R. Fed. 571.

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) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.

(c) Each public body shall establish procedures regarding access to public records but shall not require written requests for public information available pursuant to R.I.G.L. § 42-35-2 or for other documents prepared for or readily available to the public.

(d) If a public record is in active use or in storage and, therefore, not available at the time a person requests access, the custodian shall so inform the person and make an appointment for the citizen to examine such records as expeditiously as they may be made available.

(e) 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.

(f) 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.

(g) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.

(h) No public records shall be withheld based on the purpose for which the records are sought.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1984, ch. 372, § 2; P.L. 1997, ch. 326, § 168; P.L. 1998, ch. 378, § 1.

Collateral References. What are

"records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)). 153 A.L.R. Fed. 571.

38-2-4. Cost. — (a) Subject to the provisions of § 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.

(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.

(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 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.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1986, ch. 416, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subdivisions.

38-2-6. Commercial use of public records. — No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one year.

History of Section.
P.L. 1979, ch. 202, § 1.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person or entity requesting the right by the public body official who has custody or control of the public record 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 for a period not to exceed thirty (30) business days.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

38-2-8. Administrative appeals. — (a) Any person or entity denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body 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 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.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1981, ch. 279,
§ 2; P.L. 1998, ch. 378, § 1.

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 one thousand dollars (\$1,000) against a public body or official found to have committed a knowing and willful violation of 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.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1988, ch. 87,
§ 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378,
§ 1.
Compiler's Notes. In 1998, the compiler

substituted "further" for "futher" in two places in subsection (d).
The first clause of the second sentence in subsection (d) is set out as it appears in P.L. 1998, ch. 378, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

NOTES TO DECISIONS

1. In General.

This section imposes the burden of proof upon the public body to demonstrate that the record in dispute can be properly withheld from public inspection. No portion of the stat-

ute purports to provide a remedy for a person or an entity that seeks to prevent disclosure. *Rhode Island Fed'n of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991).

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.

History of Section.
P.L. 1979, ch. 202, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

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.

History of Section.
P.L. 1986, ch. 345, § 1.

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.

History of Section.
P.L. 1991, ch. 263, § 2; P.L. 1998, ch. 378,
§ 1.
Compiler's Notes. In 1998, the compiler

deleted "of any legal claims against a governmental entity shall be deemed public records" from the end of the section as duplicative.

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.

History of Section.
P.L. 1998, ch. 378, § 2.

2000 -- H 7300

LC00934

S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2000

A N A C T

RELATING TO PUBLIC RECORDS -- ACCESS TO PUBLIC RECORDS

Introduced By: Representatives Cambio, C. Levesque, Jacquard, Cicilline and Corvese

Date Introduced: February 2, 2000

Referred To: Committee on Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 38-2 of the General Laws entitled "Access to Public Records" is hereby amended by adding thereto the following section:

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 translation reporter."

SECTION 2. This act shall take effect upon passage.

LC00934