


8-1-2001

3rd Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2001

Department of the Attorney General, State of Rhode Island

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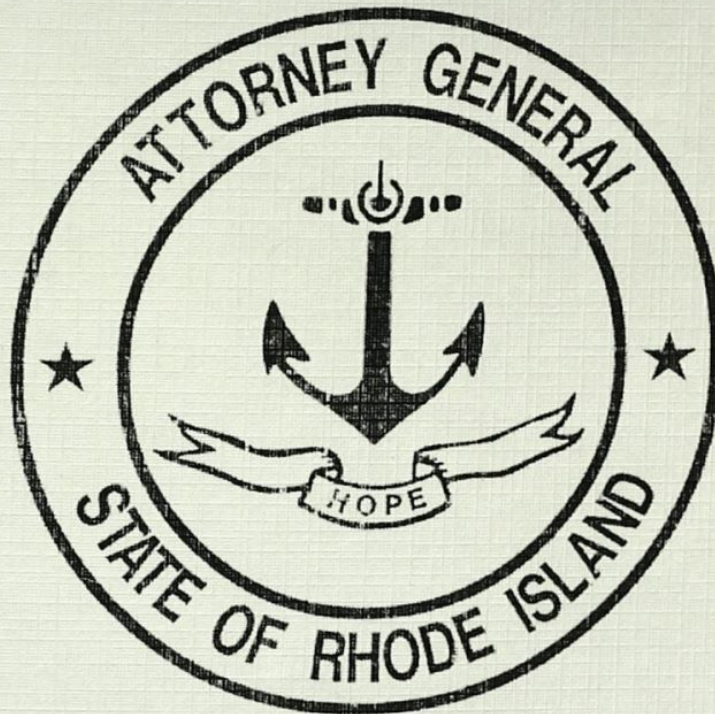
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Department of the Attorney General
Sheldon Whitehouse, Attorney General

3rd Annual
OPEN GOVERNMENT SUMMIT



**ROGER WILLIAMS UNIVERSITY
RALPH R. PAPITTO SCHOOL OF LAW
AUGUST 1, 2001**

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 1, 2000

Dear Open Government Summit Attendee:

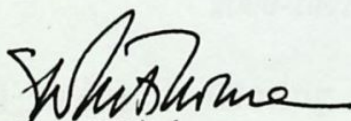
I would like to take this opportunity to thank you for attending the 3rd Open Government Summit and to thank the Roger Williams University Law Alumni Association for its co-sponsorship.

In the past two and one-half years, the Department of the Attorney General has reached many milestones 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. Several months later, 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 and implemented these procedures. In August 1999, the Department of the Attorney General hosted its 1st Open Government Summit, and today, the Department of the Attorney General is presenting its 3rd Open Government Summit to an audience of nearly 200 people.

Through these efforts, and with your assistance, the Department of Attorney General has witnessed a dramatic decrease in the number of complaints filed. For example, in the calendar year 2000, the Department of the Attorney General realized a decrease in the number of Open Meetings Act complaints filed by 68%. Similarly, in the present calendar year, the Department of the Attorney General is on pace to realize a decrease in the number of Access to Public Records Act complaints filed by 47%.

I am extremely proud of this Department's efforts. So much has been achieved, yet 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 to ensure that government remains open and accountable to the public.

Very truly yours,


Sheldon Whitehouse
Attorney General



OPEN GOVERNMENT SUMMIT
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW
AUGUST 1, 2001
9:00 A.M. – 11:50 A.M.



- 8:30 – 9:00 a.m. Check-in/Distribution of Material/Coffee & Pastry
- 9:00 – 9:05 a.m. Welcoming by Bruce I. Kogan, Interim Dean, Roger Williams University Ralph R. Papitto School of Law
- 9:05 – 9:10 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. Open Government Progress Report.
- 9:10 – 9:15 a.m. Remarks by Edward S. Inman, III, Secretary of State
The Secretary of State's Role in the Access to Public Records Act and the Open Meetings Act.
- 9:15 – 10:00 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 2000-2001 Case Law Update, and Your Questions.
- 10:00 – 10:15 a.m. Break/Coffee & Pastry
- 10:15 – 11:00 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.
- 11:00 – 11:45 a.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 Open Meetings Act manual, a 2000-2001 Case Law Update, and Your Questions.
- 11:45 – 11:50 a.m. Closing Remarks by Harvey Rishikof, Professor of Law, Roger Williams University Ralph R. Papitto School of Law

Continuing Legal Education Credits will be available free of charge
Co-sponsored by the Roger Williams University Law Alumni Association

Section I

Access to Public Records Act



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 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.

PR 00-15

Murray v. Town of Providence

Complaint filed when individual requested a folder from the Clerk's Office and was directed to a photocopy machine that charged \$1.00 per copy. Since no evidence was presented that the records to be copied were public records, and since no evidence was presented that the complainant informed the Clerk's Office that public records were to be copied, there was no violation. Issued July 13, 2000.

PR 00-16

Gorman v. Hopkins Hill Fire District

Fire District did not assess a charge that was inconsistent with the photocopying or the search/retrieval provisions of the Access to Public Records Act. Fire District violated the Access to Public Records Act by assessing a charge for postage and by failing to provide a detailed itemization upon request. WARNING GIVEN. Issued July 14, 2000.

PR 00-17

Chappell v. West Warwick Police Department et. al.

West Warwick Police Department did not violate the Access to Public Records Act since documents had already been provided. Autopsy photographs are not public records. Records maintained by State Police Department, which are similar to the records maintained by the West Warwick Police Department, were provided despite the fact that documents may have been exempt from public disclosure. Issued July 18, 2000.

PR 00-18

Canavan v. City of Central Falls

Complainant alleged that City Council had been denied access to public records. In order for this Department to have jurisdiction over an Access to Public Records Act complaint, the complainant must have requested a record and have been denied access. In this case, the City Council, and not the individual complainant, requested the records. Accordingly, the complainant did not have legal standing to pursue this aspect of the complaint. City did not violate the Access to Public Records Act when it initially denied complainant access to another record, but subsequently, provided the requested record within ten (10) business days of the original request. Issued July 18, 2000.

PR 00-19

Fortin v. Bristol/Warren Regional School District

School District violated the Access to Public Records Act by failing to respond to a request for public records within ten (10) business days. Records were maintained by School District, among other public bodies. WARNING GIVEN. Issued July 18, 2000.

PR 00-20

Dupre v. Warren Fire Department

Fire Department 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 July 13, 2000.

- PR 00-21 **Conley v. Town of West Greenwich**
Complainant had requested Town to provide records in an ASCII computer text-format, which the Town was unable to provide. Since the Access to Public Records Act does not require a public body to reorganize, consolidate, or compile electronic records where the public body would be unduly burdened, there was no violation. See R.I. Gen. Laws § 38-2-3(f). Issued August 30, 2000.
- PR 00-22 **Conley v. Town of Richmond**
Town violated the Access to Public Records Act by charging an “unreasonable” amount for providing access to electronic records. See R.I. Gen. Laws § 38-2-4. WARNING GIVEN. Issued August 31, 2000.
- PR 00-23 **Gorman v. Coventry Fire District**
Fire District violated the Access to Public Records Act cost provisions by charging \$125 per hour for search and retrieval, which represented the per hour charge of the attorney who performed the search and retrieval. The Fire District also violated the Access to Public Records Act by charging for the cost of providing a “certified” copy of the charter, which was assessed by the Secretary of State’s Office. WARNING GIVEN. Issued October 27, 2000.
- PR 00-24 **Edson v. Woonsocket Harris Public Library Board of Trustees**
Minutes were requested for meeting that never took place. Since the minutes did not exist, the Board of Trustees did not violate the Access to Public Records Act by not providing copies of the minutes. See R.I. Gen. Laws § 38-2-3(f). Issued October 31, 2000.
- PR 00-25 **Cournoyer v. North Smithfield Water Authority**
Documents made available to complainant within ten (10) business days of the request. The Access to Public Records Act grants a public body the authority to promulgate reasonable procedures to provide the public access to public records. Time provisions do not begin to run until a request is made in accordance with a public body’s procedures. Issued October 31, 2000.
- PR 00-26 **Central Falls City Council v. City of Central Falls**
City Council requested that City Solicitor obtain certain documents from the City Administration, however, Solicitor never made a request to the City Administration. Since an Access to Public Records Act request was never made to the City Administration, the Department of the Attorney General did not have jurisdiction to address this complaint. Issued November 16, 2000.
- PR 00-27 **Dietz v. R.I. Bd. Of Registration for Professional Land Surveyors**
Board provided complainant with a copy of a transcript and provided complainant access to an audiotape of the meeting, as well as equipment to listen to the audiotape, to the extent that Board maintained this equipment. Allegation that transcript did not accurately reflect meeting and contained

certain errors did not implicate Access to Public Records Act. Issued December 15, 2000.

PR 00-28

Gorman v. Town of Coventry

Town violated the Access to Public Records Act by failing to respond within ten (10) business days of the request. **WARNING GIVEN.** Issued December 18, 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.

ACCESS TO PUBLIC RECORD ACT FINDINGS-2001

PR 01-01

Blais v. Revens

Access to Public Records Act complaint filed with the Department of Attorney General after a lawsuit concerning the same subject matter was filed in Superior Court. The Department of the Attorney General will not interfere with the judicial process since the subject matter of the complaint is within the jurisdiction of the judicial system. Issued May 18, 2001.

PR 01-02

Henley v. South Kingstown School District et. al.

A severance agreement reached between a town employee and the School District is a record "identifiable to an individual...employee," and therefore, is not a public record, except for the specific categories enumerated in R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Issued April 13, 2001.

PR 01-03

Sheehan v. Economic Development Corporation

A document forwarded from the Economic Development Corporation to the Governor's Budget Office summarizing new or special budget projects is not a preliminary memorandum or a working paper and therefore must be disclosed. Document was disclosed. VIOLATION FOUND. Issued May 25, 2001.

PR 01-04

Arruda v. Law Revision Office

Complainant alleges denied access to a copy of a public law and related documents by the Law Revision Office. The Secretary of State's Office is the custodian of the requested documents and not the Law Revision Office. Investigation also revealed that complainant received documents from the Secretary of State's Office. Issued July 10, 2001.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS-2001

ADV PR 01-01

In re Narragansett Fire Department

A per se Department policy that prohibits disclosing that a particular individual has been "transported to a particular hospital for medical attention" is inconsistent with the Access to Public Records Act. Requests must be evaluated on a case-by-case determination involving the balancing test. Issued April 18, 2001.

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Updated: July 9, 2000

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.		SECTION.	
38-2-1.	Purpose. ...	38-2-4.	Cost.
38-2-2.	Definitions.	38-2-7.	Denial of access.
38-2-3.	Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for ac- cess.	38-2-8.	Administrative appeals.
		38-2-9.	Jurisdiction of superior court.
38-2-3.1.	Records required.	38-2-14.	Information relating to settle- ment of legal claims.
		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 "rec-

ords" 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, except 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.

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.

38-2-3.1. Records required. — All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a "real-time translation reporter".

History of Section.

P.L. 2000, ch. 430, § 1.

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.

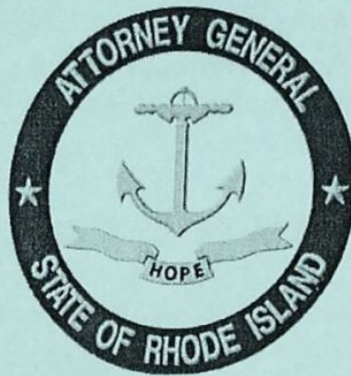
Compiler's Notes. In 1998, the compiler

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.

Section II

Open Meetings Act



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. VIOLATION FOUND. 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. VIOLATION FOUND. 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.

OM 00-16 **Project Basic v. Providence School Board**

School Board did not violate the Act by convening into executive session to discuss personnel matters, nor did the School Board violate the Act when the Superintendent of Schools distributed materials regarding contract testing. School Board did violate the Open Meeting Act by failing to articulate and record in its minutes the open call prior to convening into executive session. VIOLATION FOUND. Issued July 12, 2000.

OM 00-17 **McIntyre v. Portsmouth School Department Building Committee**

Building Committee did not post notice for two meetings. Building Committee will review actions taken during these two meetings and reconsider these matters at a future properly scheduled meeting. VIOLATION FOUND. Issued July 13, 2000.

OM 00-18 **Parks v. Cumberland School Committee**

School Committee did not violate the Act when it discussed and voted upon the Teacher's Association contract, which was posted as "Negotiation Update." The Act does not require a public body to indicate on its public notice that it intends to vote upon a particular topic, provided that the notice is not misleading. School Committee failed to indicate on its public notice the date the notice was posted. See R.I. Gen. Laws § 42-46-6(b). VIOLATION FOUND. Issued July 13, 2000.

OM 00-19 **Mackintosh et. al. v. Little Compton Agricultural Conservancy Trust**

Trust violated the Act by failing to make unofficial minutes available to the public in a timely manner, failing to disclose the vote of its members, and failing to maintain a copy of its supplemental notice for at least one year following its meeting. Trust also violated the Act by failing to vote and

record in its minutes that a majority of the members approved amending the agenda and by failing to indicate the specific litigation matter discussed in executive session. Trust did not violate the Act by failing to indicate the specific property to be discussed in executive session, nor did the Trust improperly convene into executive session. VIOLATIONS FOUND. Issued July 14, 2000.

OM 00-20

McIntyre v. Portsmouth School Committee

School Committee violated the Open Meetings Act by failing to post public notice in a newspaper of general circulation even though other public notices were posted in Town. School Committee ratified actions at a later, properly posted meeting. VIOLATION FOUND. Issued August 23, 2000.

OM 00-21

Providence Retired Police & Firefighters Assoc. v. Bd. Of Investment Commission

Investment Commission did not violate Open Meetings Act when it convened in executive session to discuss litigation with the attorney/plaintiff suing the Retirement Board since the Retirement Board litigation would affect the Investment Commission. The Open Meetings Act does not govern who may attend the executive session. This Department has no jurisdiction to inquire into the ethical or conflict of interest concerns. Issued September 22, 2000.

OM 00-22

Allen v. Claims Committee of the Lincoln Town Council et. al.

Complainant alleged that majority of Town Council discussed a senior citizens' tax exemption outside the public's purview. During the Department of Attorney General's investigation, this Department requested, on several occasions, that the Town Council provide additional information. The Department of the Attorney General was not provided with the requested additional information, and therefore, due to the Town Council's failure to respond, the Town Council failed to satisfy its burden of proof. See R.I. Gen. Laws § 42-46-14. Since no action taken during meeting, injunctive relief would be inappropriate. VIOLATION FOUND. Issued September 22, 2000.

OM 00-23

Edson v. Woonsocket Harris Public Library Bd. Of Trustees

Evidence demonstrated that Board of Trustees had planned to convene a meeting, but cancelled the meeting due to proper notice concerns. Evidence further demonstrated that a second complained "meeting" was not a meeting of the Board of Trustees, but a City Council meeting where members of the Board of Trustees attended. Board of Trustee members did not have a collective discussion, nor did members take any action at the City Council meeting. Issued October 30, 2000.

OM 00-24

Marcello v. Scituate Recreation Committee

Recreation Committee failed to maintain copies of its minutes and failed to make minutes available to the public. Recreation Committee advised to maintain minutes of its future meetings and to make these minutes available to the public in accordance with R.I. Gen. Laws § 42-46-7(b). VIOLATION FOUND. Issued November 15, 2000.

- OM 00-25 **Marzullo v. West Warwick Bd. Of Canvassers**
Board of Canvassers violated the Open Meetings Act by certifying election questions at a meeting that had not been posted. Subsequently, the Board of Canvassers requested that the Secretary of State take no further action on questions. Accordingly, injunctive relief was not appropriate. VIOLATION FOUND. Issued November 16, 2000.
- OM 00-26 **Warfel v. New Shoreham Town Council**
Town Council did not violate the Open Meetings Act when it discussed a moratorium on the installation of wind energy conversion systems. Public notice stated "Wind Energy Conversion System Zoning." Open Meetings Act does not require that a public body state on its public notice that it intends to vote, provided that the notice is not misleading to the public. Issued December 15, 2000.
- OM 00-27 **Gaffett v. New Shoreham Town Council**
Town Council did not violate the Open Meetings Act when it discussed a moratorium on the installation of wind energy conversion systems. Public notice stated "Wind Energy Conversion System Zoning." Open Meetings Act does not require that a public body state on its public notice that it intends to vote, provided that the notice is not misleading to the public. Issued December 15, 2000.
- OM 00-28 **Project Basic v. Providence School Board**
School Board violated the Open Meetings Act by failing to post public notice in a newspaper of general circulation within forty-eight (48) hours of a meeting. Newspaper notice appeared in the newspaper the day of the meeting, while other public notices were posted within forty-eight (48) hours of the meeting. School Board agreed to reconsider the matter voted upon at the improperly scheduled meeting. VIOLATION FOUND. Issued December 18, 2000.
- OM 00-29 **Dietz v. R.I. Bd. Of Registration for Professional Land Surveyors**
No evidence that the Board improperly convened into executive session to discuss complainant. Instead, evidence demonstrated that action taken by Assistant to the Board and by Legal Counsel to the Board. Issued December 15, 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.

ADV OM 00-05

In re Glocester Police Department

Foster/Glocester Regional Juvenile Hearing Board is not governed by the Open Meetings Act. Legislation enabling Hearing Board provides

that the Board's proceedings "shall be closed to the public, and the provisions of [the Open Meetings Act] shall not apply to such proceedings." Issued August 23, 2000.

ADV OM 00-06

In re South Kingston School Committee

School Committee may convene into executive session to conduct hearings on, or discussions of a grievance, provided that the grievance is filed pursuant to a collective bargaining agreement. See R.I. Gen. Laws § 42-46-5(a)(9). Issued August 23, 2000.

OPEN MEETINGS ACT FINDINGS – 2001

OM 01-01

Henley v. South Kingtown School District et. al.

School Committee's decision to discuss in executive session the denial of an Access to Public Records Act request did not violate Open Meetings Act since School Committee reasonably anticipated that the matter would lead to (and did lead to) litigation. See R.I. Gen. Laws § 42-46-5(a)(2). The fact that the request for documents was already a matter of public record had no bearing. Issued April 13, 2001.

OM 01-02

Full Channel TV, Inc. v. Division of Public Utilities and Carrier

Three members of the Advocacy Section represent a collection of staff members and not a public body for purposes of the Open Meetings Act. Issued June 1, 2001.

OPEN MEETINGS ACT ADVISORY OPINIONS-2001

ADV OM 01-01

In re Coastal Resources Management Council

Convening informational session for legislators and other representatives was not a "meeting" provided that a public body does not engage in a collective discussion or take any action. Issued February 9, 2001.

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Updated: July 9, 2000

CHAPTER 46

OPEN MEETINGS

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

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, § 1; P.L. 1995, ch. 297, § 1; P.L. 1998, ch. 379, § 1;
§ 2; P.L. 1982, ch. 352, § 1; P.L. 1984, ch. 372.

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. § 1, P.L. 1990, ch. 201, § 1; P.L. 1998, ch. 379, G.L. 1956, § 42-46-4; P.L. 1976, ch. 330, § 1. § 2; P.L. 1988, ch. 84, § 29; P.L. 1988, ch. 659.

42-46-5. Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct. — (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

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

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

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

(3) Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including but not limited to state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes (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.

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

(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; P.L. 2000, ch. 330, § 1; P.L. 2000, ch. 463,

Compiler's Notes. P.L. 2000, ch. 330, § 1, and P.L. 2000, ch. 463, § 1 enacted identical amendments to this section.

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).

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.

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.

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

Reenactments. The 1988 Reenactment

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.

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

Reenactments. The 1993 Reenactment

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 the handicapped for review and approval. The governor's commission on the handicapped 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.

History of Section.

P.L. 1989, ch. 487, § 1.

Reenactments. The 1993 Reenactment (P.L. 1993, ch. 422, § 1) made stylistic, punctuation, and capitalization changes throughout the section; corrected a typographical

error in the word "insurer" in subsection (a), which change was first made by the compiler in 1989; and corrected typographical errors in the words "handicapped" and "insuring" in subsection (b), which corrections were first made by the compiler in 1989.

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.

Access to Public Records Act

2000-2001 Update

Public Body/Custodian

- Access to Public Records Act only creates a cause of action for an individual or entity denied access to records maintained by a public body against the public body that is the custodian of the records. Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001).
- Beacon Mutual Insurance Company, which is also known as “The Rhode Island Workers’ Compensation Insurance Fund,” is not acting on behalf of or in place of any public agency. Therefore, Beacon is not a public body and is not subject to the Access to Public Records Act. Blais v. Beacon Mutual Insurance Company, Superior Court, No. 98-6070.
- Councilperson filing Access to Public Records Act complaint in their individual capacity was not the proper party to file a complaint when the allegation concerned the entire Town Council, in its official capacity, being denied access to certain documents. Canavan v. City of Central Falls, PR 00-18.

§ 38-2-2(4)(i)(A)(I)

- R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) “expresses the Legislature’s clearly stated intention to exempt from public disclosure those records concerning a particular and identifiable individual, and in particular, when that disclosure would constitute an unwarranted invasion of that person’s privacy.” Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001).
- A severance agreement between a town employee and a school district is a record “identifiable to an individual...employee,” and therefore, not a public record except for the fourteen categories enumerated. Henley v. South Kingstown School District et al., PR 01-02.

§ 38-2-2(4)(i)(B)

- If a request is made for financial or commercial information that a person is obliged to provide to the Government, it is exempt from disclosure if the disclosure is likely either: (1) to impair the Government’s ability to obtain information in the future, or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. If a request is made for financial or commercial information that is provided to the Government on a voluntary basis, it is exempt from disclosure if the information “is a kind that would customarily not be released to the public by the person from whom it was obtained.” The Providence Journal Company v. Convention Center Authority, ___ A.2d ___ (R.I. 2001).

§ 38-2-2(4)(i)(P)

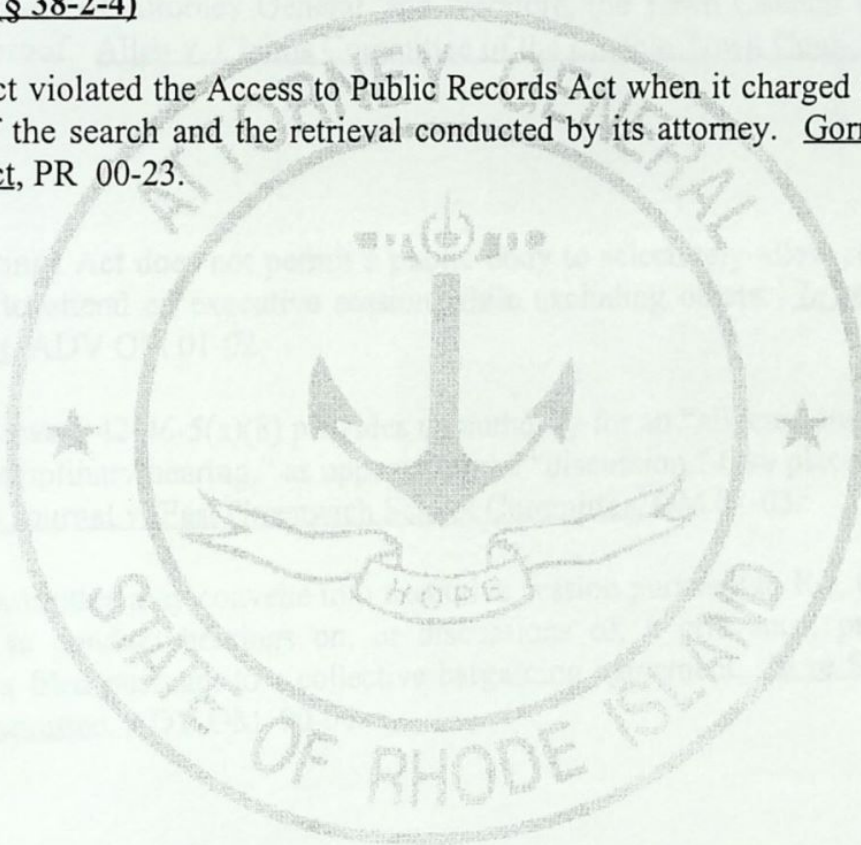
- A document forwarded from the Economic Development Corporation to the Governor's Budget Office was not a preliminary memorandum or working paper. Sheehan v. Economic Development Corporation, PR 01-03.

Compiling Electronic Data (§ 38-2-3(f))

- Town not required to provide records in a particular computer text format when doing so would unduly burden the public body. Conley v. Town of West Greenwich, PR 00-21.

Cost Provisions (§ 38-2-4)

- Fire District violated the Access to Public Records Act when it charged \$125.00/hour for the cost of the search and the retrieval conducted by its attorney. Gorman v. Coventry Fire District, PR 00-23.



Open Meetings Act 2000-2001 Update

Meeting

- Open Meetings Act applies to a public body that acts in an advisory capacity. Solas v. Emergency Hiring Council, ___ A.2d ___ (R.I. 2001).
- Members of Town Council engaged in a series of one-to-one conversations concerning public business. Legal counsel refused to provide additional information as requested by the Department of Attorney General, and therefore, the Town Council failed to meet its burden of proof. Allen v. Claims Committee of the Lincoln Town Council, et al., OM 00-22.

Executive Session

- Open Meetings Act does not permit a public body to selectively allow some members of the public to attend an executive session while excluding others. In re Pawtucket Fire Department, ADV OM 01-02.
- R.I. Gen. Laws § 42-46-5(a)(8) provides no authority for an "affected student" to have the "student disciplinary hearing," as opposed to the "discussion," take place in open session. Providence Journal v. East Greenwich School Committee, OM 01-03.
- School Committee may convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(9) to conduct hearings on, or discussions of, a grievance, provided that the grievance is filed pursuant to a collective bargaining agreement. In re South Kingstown School Committee, ADV OM 00-06.

Posting Notice

- Lottery Commission violated the Open Meetings Act by failing to post notice in two locations, failing to post notice within 48 hours of a meeting, and failing to specify the nature of the business to be discussed. Graziano v. Lottery Commission, Superior Court, No. 96-4076.
- School Committee violated the Open Meetings Act when an inadvertent error caused a notice not to be published in a newspaper of general circulation. McIntyre v. Portsmouth School Committee, OM 00-20.