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Department of Attorney General, State of Rhode Island

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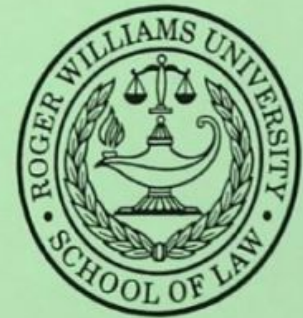
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OPEN GOVERNMENT SUMMIT
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW
JULY 31, 2015
9:00 A.M. – 12:00 P.M.



- 8:30 – 9:00 a.m. Check-in/Distribution of Material
- 9:00 – 9:05 a.m. Welcoming by Dean Michael J. Yelnosky,
Roger Williams University School of Law
- 9:05 – 9:15 a.m. Opening Remarks by Peter F. Kilmartin, Attorney General
- 9:15 – 10:15 a.m. Access to Public Records Act Presentation
Michael W. Field, Assistant Attorney General; and
Lisa Pinsonneault, Special Assistant Attorney General
Statutory requirements will be discussed and a 2014-2015 case law/legislative update will be provided. Frequent trouble areas, examples, and hot topics will also be highlighted.
- 10:15 – 10:30 a.m. Break
- 10:30 – 11:30 a.m. Open Meetings Act Presentation
Michael W. Field, Assistant Attorney General; and
Lisa Pinsonneault, Special Assistant Attorney General
Statutory requirements will be discussed and a 2014-2015 case law/legislative update will be provided. Frequent trouble areas, examples, and hot topics will also be highlighted.
- 11:30 – 12:00 p.m. Access to Public Records Act and Open Meetings Act Questions and Answers
Questions posed in advance (see below) and questions asked at the Summit will be addressed.

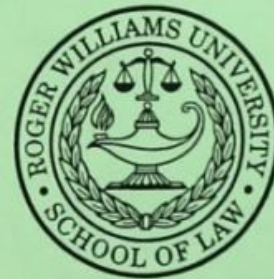
To reserve seating email agsummit@riag.ri.gov or contact 274-4400 ext. 2101. Reservation should include your name, bar number (if applicable), the entity that you are representing and a contact telephone number. Seating for this event may be limited. For directions to the Roger Williams University School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

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

If communication assistance is needed or any other accommodation to ensure equal participation, please contact the above email or telephone number as soon as possible, but prior to July 27, 2015.



**OPEN GOVERNMENT SUMMIT
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW
JULY 31, 2015**



Evaluation Form

I am: ____ Legal counsel to a public body

____ A law enforcement officer

____ A member of a public body

____ Other _____

1. Overall, how would you rate this program?

Poor < -----> Excellent
1 2 3 4 5 6 7 8 9 10

2. Please reference 1 or 2 things you learned during the Summit.

3. What did you like and/or dislike about this program? Do you think the checklist will be helpful? Comments?

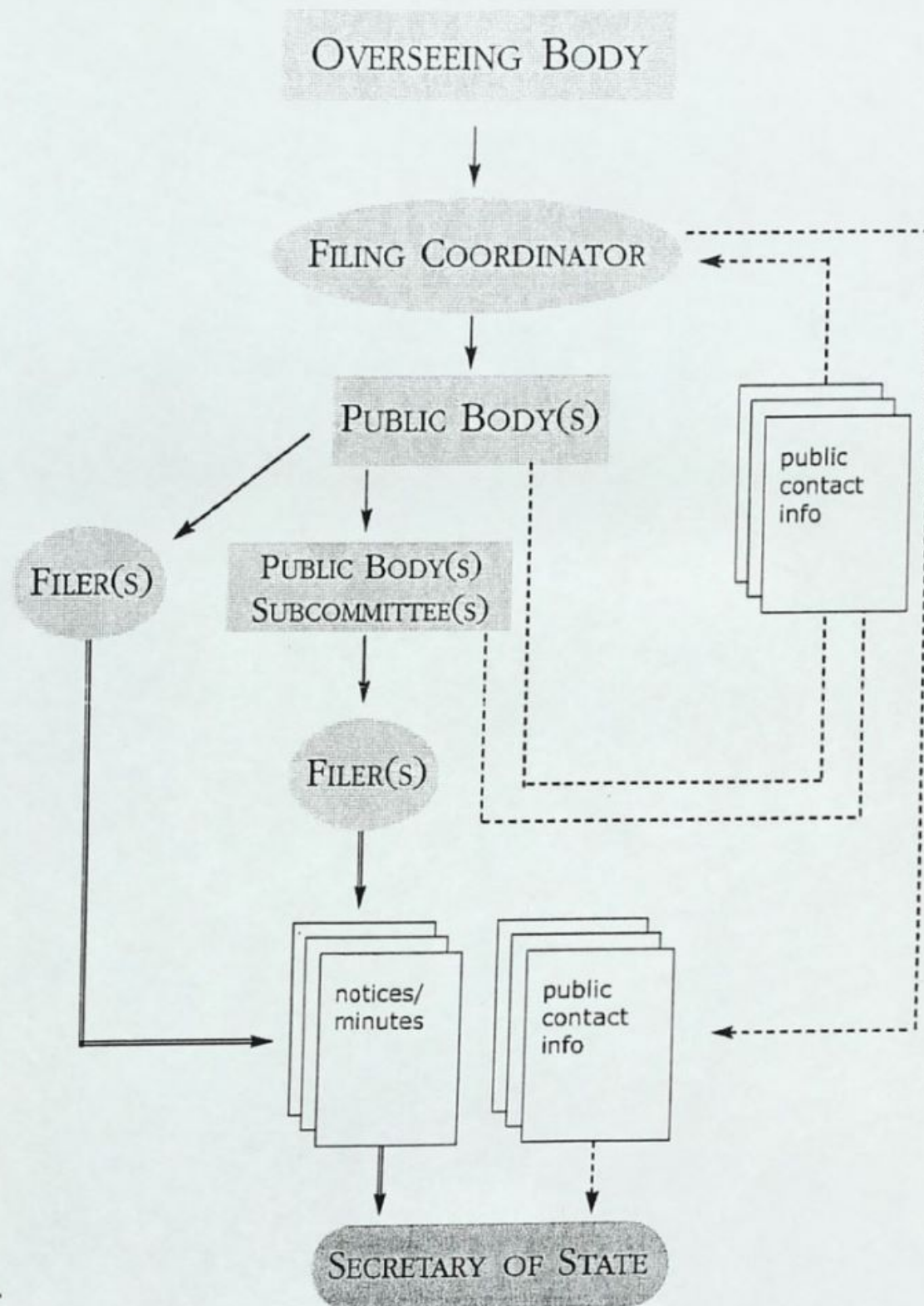
4. How would you rate the presentation on the Open Meetings Act and the Access to Public Records Act? What areas should have been covered that were not?

5. Have you attended other Open Government Summits and if so, how many? _____

6. Additional Comments or Suggestions.

Thank you for your participation.

OPEN MEETINGS LAW STRUCTURE



Entities.

Person(s).

Relationship between each level.

Information passed through each level.

Notices/Minutes to be filed.

For more information about Open Meetings Law, please visit www.state.ri.us/cpi or contact Stacy DiCola at sdicola@sec.state.ri.us or at 222-3983.

DEPARTMENT OF ATTORNEY GENERAL

Peter F. Kilmartin, Attorney General



**ACCESS TO PUBLIC RECORDS ACT
&
OPEN MEETINGS ACT**



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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

Peter F. Kilmartin, Attorney General

July 31, 2015

Dear Open Government Summit Attendee:

I would like to thank you for attending the 17th annual Open Government Summit and I would also like to thank Roger Williams University School of Law for hosting such an important event.

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

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

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

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

Very truly yours,

Peter F. Kilmartin
Attorney General

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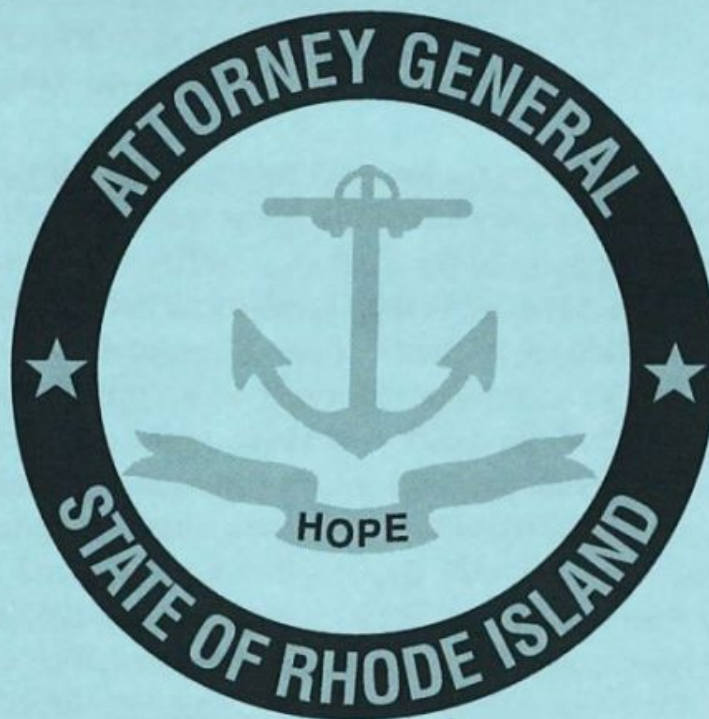
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SECTION I



ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2015

PR 15-01 Clark v. West Glocester Fire District (February 3, 2014)

The Complainant sought minutes for executive sessions convened on July 23, 2013, November 5, 2013, and November 19, 2013. Because the July 23, 2013 executive session minutes were not sealed, these executive session minutes were public records. Conversely, because the November 2013 executive session minutes were sealed, these documents were exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(J). The Fire District's denial adequately provided the reasons for the denial and no evidence was submitted that the denial was based upon the reason the records were sought. The Fire District was directed to provide the Complainant copies of the July 23, 2013 executive session minutes.

VIOLATION FOUND.

Issued January 8, 2015.

PR 15-02 Kurland v. Providence Department of Public Safety

The Complainant alleged that the Department of Public Safety ("DPS") violated the APRA when it failed to timely respond to her APRA request, dated Saturday, October 18, 2014, and received by the DPS on Monday, October 20, 2014. The DPS responded on November 3, 2014. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws §§ 38-2-7, 38-2-3(e). We concluded that the DPS correctly calculated the due date, namely ten (10) business days from the receipt of the APRA request. See Burke v. Rhode Island College, 671 A.2d 803 (R.I. 1996); Young v. Town of Hopkinton, PR 05-10; and Rhode Island Superior Court Rules of Civil Procedure 6(a). All of these authorities make clear that the date an APRA request is received is not counted as the first business day.

Issued February 2, 2015.

PR 15-03 Felise v. East Bay Energy Consortium

The Complainant alleged that the East Bay Energy Consortium ("EBEC") violated the APRA by withholding various documents. Our in camera review found that many documents listed in the EBEC privilege log were not responsive to the APRA request and other documents that may have been responsive were exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) and (K).

Issue February 3, 2015.

PR 15-04

CVDDI, LLC v. Town of Smithfield

The Complainant alleged that the Town violated the APRA when it failed to provide a sufficient explanation for extending the time to respond to his APRA request, as required by R.I. Gen. Laws § 38-2-3(e). Complainant's request sought any documents maintained by the Town "in any way relating to the property located at 320 Stillwater Rd." and contained no time frame limiting the search. Based on the broad nature of the request and the nearly thirteen (13) hours the Town exhausted "searching for, compiling, sorting, and printing out the requested records," we concluded that the Town did not violate the APRA when they extended the time to respond and that the Town's basis for the extension - "due to the scope and breadth of [the] request" - was particularized to the request.

Issued February 6, 2015.

PR 15-05

Durand v. Warwick Board of Canvassers

The Complainant alleged the Warwick Board of Canvassers ("Board") violated the APRA when he made an oral request for a site map and the Board required him to complete a form. The APRA provides that "[e]ach public body shall establish written procedures regarding access to public records but shall not require written requests * * * for other documents prepared for or readily available to the public." See R.I. Gen. Laws § 38-2-3(d). The fact that the Board required the request be in writing did not violate the APRA since no evidence had been presented that the site map was "prepared for or readily available to the public." If the Board had required the Complainant to fill out its APRA form to the exclusion of other forms of writing, or if the Complainant had refused to complete the APRA form, yet put the request in writing such that it was "otherwise readily identifiable as a request for public records," we may very well have a different view of this matter. Because no evidence has been submitted to substantiate this version of events, we found no violation.

Issued February 9, 2015.

PR 15-06

Nangle v. Town of North Smithfield

The Town of North Smithfield ("Town") did not violate the APRA when it denied the Complainant's APRA request seeking the names and email addresses of individuals who receive the Town's newsletter. We concluded, based upon the evidence presented, that disclosure of the names and email addresses of those who subscribe to a Town's newsletter will not shed any light on government operations. Balanced against a minimal, if any, "public interest," we perceive a greater privacy interest. See Fuka v. RI Dept. of

Environmental Mgmt, 2007 WL 1234484 (the home addresses of licensed fishermen were exempt under the APRA); United States Department of State v. Ray, 502 U.S. 164 (1991)(disclosing names of illegal emigrants constituted clearly unwarranted invasion of personal privacy); Bibles v. Oregon Natural Desert Ass'n, 519 U.S. 355 (1997)(mailing list containing names and addresses where newsletter sent not a public record).

Issued February 16, 2015.

PR 15-07 Murphy v. City of Providence

The Complainant alleged the City of Providence ("City") violated the APRA when it did not provide her any records responsive to her June 21, 2014 APRA request. There was simply no evidence to demonstrate that the City's search for the requested records was unreasonable or that the City maintained the requested records. We were presented no evidence to establish that the City had responsive documents that it refused to provide to the Complainant. This Department has previously held that the failure of a public body to produce records that do not exist does not violate the APRA. *See, e.g., O'Rourke v. Bradford Fire District*, PR 13-11; *Hazelwood v. Town of West Greenwich*, OM 13-09; *Tetreault v. Lincoln School Committee and Superintendent of Schools*, PR 99-14. *See also* R.I. Gen. Laws § 38-2-3(h).

Issued February 17, 2015.

PR 15-08 DesMarais v. Manville Fire Department (May 14, 2014 Complaint)

The Fire Department violated the APRA when it failed to timely respond to Complainant's APRA request. Specifically, the undisputed evidence showed that on February 24, 2014, Complainant filed an APRA request with the Fire Department and on March 10, 2014, the Fire Department extended the time to respond an additional twenty (20) business days but no further response was provided by the Fire Department until approximately seven months after the APRA request was received. This Department previously confronted this issue in *DesMarais v. Manville Fire Department Board of Wardens*, PR 12-05. The Fire Department was allowed ten (10) business days to provide a response explaining why this Department should not find its failure to timely respond to Complainant's APRA request knowing and willful, or alternatively, reckless, in light of the Fire Department's recognition of the APRA requirements and this Department's precedent. A supplemental finding will follow.

VIOLATION FOUND.

Issued February 20, 2015.

PR 15-08B DesMarais v. Manville Fire Department/District

After viewing all the evidence presented, this Department determined sufficient evidence to conclude that the Fire Department knowingly and willfully violated the APRA when it failed to timely respond to Complainant's APRA request. Accordingly, this Department filed a lawsuit against the Fire Department seeking civil fines. See R.I. Gen. Laws § 38-2-9.

LAWSUIT FILED.

Issued April 13, 2015.

PR 15-09 Fusaro v. Westerly Police Department

The Complainant alleged that the Westerly Police Department ("Police Department") violated the APRA when it improperly denied her APRA request seeking "a copy of [her] police background check * * * including the detective notes." This Department was provided with copies of records the Police Department exempted from disclosure and determined that these documents contain information consistent with a background check on the Complainant, as well as information obtained from third parties. Rhode Island General Laws § 38-2-2(4)(A)(I)(b) exempts from disclosure "[p]ersonnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq...[]" (Emphasis added). Considering the nature and content of the requested documents, as well as the arguments and evidence presented, there exists little to no public interest adequate to overcome the clearly unwarranted invasion of personal privacy that would result from disclosure.

Issued February 19, 2015.

PR 15-10 Saunders v. RI Division of Lotteries

The Complainant alleged the Rhode Island Division of Lotteries ("Division") violated the APRA when it improperly denied a September 17, 2014 APRA request. The Division sent an email indicating that the estimated time to produce the requested documents would be approximately 140 hours for an estimated fee of \$2,100. With respect to pre-payment of the fees, we have previously found that the APRA does not prohibit a public body from requesting pre-payment of fees. See Smith v. Watch Hill Fire District, PR 99-15. Moreover, ever since the 2012 APRA amendment, the APRA expressly allows an entity, such as the Division, to require prepayment for "costs properly charged" and provides that in such a case "the production of records shall not be deemed untimely if the public body is awaiting receipt of

payment.” R.I. Gen. Laws § 38-2-7(b). No argument or evidence was presented that the estimated fee was improperly charged. Additionally, we cannot conclude the Division violated the APRA when it decided not to grant a fee waiver, and also observe that the APRA allows a court to reduce or waive the costs to fulfill an APRA request.

Issued March 9, 2015.

PR 15-11 Paiva v. Rhode Island Department of Corrections

The Complainant submitted an APRA request for copies of employment applications and the name and contact information for the doctors’ medical insurance carriers. The Department of Corrections (“DOC”) denied Complainant’s request on the basis that disclosure would constitute a “clearly unwarranted invasion of personal privacy.” See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). With respect to one employment application (our investigation revealed that the second employment application did not exist), we concluded that the public interest outweighed the privacy interest asserted by DOC, and that disclosure of the employment application, after redacting the information contained in the employment application that would constitute a “clearly unwarranted invasion of personal privacy,” would advance that interest. See Jackson v. Town of Coventry, PR 14-35. With respect to the name and contact information of the doctors’ medical insurance carriers, we concluded that the insurance information sought would “reveal[] little or nothing about [DOC’s] own conduct,” and that even the most minimal privacy interest outweighed the non-existent “public interest.” See Reporters Comm., 489 U.S. at 749, 109 S.Ct. at 1481-82. Therefore, we found that DOC violated the APRA when it denied access to the employment application en toto.

VIOLATION FOUND.

Issued March 13, 2015.

**PR 15-12 Smith v. RI Dept. of Education (August 15, 2013 APRA Request)
Smith v. RI Dept. of Education (September 25, 2013 APRA Request)
Smith v. RI Dept. of Education (May 5, 2014 APRA Request)**

The Complainant filed three (3) APRA complaints against the Rhode Island Department of Education (“RIDE”) regarding various documents pertaining to the West Bay Collaborative (“WBC”). As such, we consolidated all three complaints into a single finding. Although all three complaints raised several allegations, based on the evidence presented, we concluded RIDE violated the APRA on two occasions. First, we concluded that RIDE violated the APRA when it

failed to provide Complainant with the redacted source documents responsive to Complainant's request. Second, we found that RIDE violated the APRA when it "granted" Complainant's request for responsive documents that did not exist.

VIOLATION FOUND.

Issued March 13, 2015.

PR 15-13 Smith v. Warwick Public School Department

The Complainant alleged that the School Department violated the APRA when it failed to provide notice of the appeal process in its denial. Under the APRA, "[a]ny denial of the right to inspect or copy records...shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial." See R.I. Gen. Laws § 38-2-7(a). Based on the evidence presented, we found that by not providing Complainant with documents responsive to the request because the School Department did not maintain such documents, Complainant's request was denied. Therefore, we concluded that the School Department violated the APRA when it failed to indicate the appeal procedure in its denial letter.

VIOLATION FOUND.

Issued March 16, 2014.

PR 15-14 Bicki v. City of Woonsocket

The City did not violate the APRA when it did not produce documents not within the City's possession as of the date of Complainant's APRA request and/or not responsive to the plain language of the request. Specifically, Rhode Island General Laws § 38-2-3(h) provides, in pertinent part, that "[n]othing 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."

Issued March 27, 2015.

PR 15-15 The Providence Journal v. Rhode Island Department of Health

The Providence Journal filed an APRA complaint because the Department of Health created a document that listed the number and location of drug overdose deaths, but did not list the number of overdose deaths in municipalities that had five (5) or less deaths, and otherwise listed "unknown location" in situations where the location of death was undetermined. The Department of Health did not maintain a single document responsive to the APRA request and the

APRA did not require the Department of Health to create a document for purposes of fulfilling an APRA request. See R.I. Gen. Laws § 38-2-3(h). Moreover, R.I. Gen. Laws § 23-3-23 provides that “it shall be unlawful for any person to permit inspection of, or to disclose information contained in, vital records, or to copy, or issue a copy, of all or part of any vital record[.]” The term “vital records” includes records relating to death, and “data related to those records.” R.I. Gen. Laws § 23-3-1(18). Lastly, the Department of Health’s records were not susceptible of determining the number of opioid related overdose deaths, as requested, and also could not further breakdown the location of the “unknown” deaths.

Issued April 24, 2015.

PR 15-16

Bath v. Rhode Island Office of Health and Human Services

The Complainant alleged that EOHHS failed to comply with R.I. Gen. Laws § 38-2-3(e) when it extended the time to respond to the two (2) APRA requests without providing a “particularized” explanation, and that EOHSS did not have “good cause” to extend the time to respond to a December 10, 2014 APRA request.

While not determinative, there is no dispute that the December 18, 2014 correspondence did reference the subject-matter of the December 5, 2014 and December 10, 2014 APRA requests, and indicated additional time was required to allow staff to complete its search, retrieval, and production. Considering the volume, breadth, and sequence of the APRA requests, we have no doubt that this extension fell within the scope of the APRA.

Issued April 30, 2015.

PR 15-17

Farinelli v. City of Pawtucket

The Complainants sought access to a Pawtucket Police Department internal affairs report. The City denied the request on the grounds that disclosure would constitute a clearly unwarranted invasion of personal privacy. After reviewing the internal affairs report in camera, using case law for guidance, and based on the unique facts and evidence presented, we concluded that disclosure of the internal affairs report in a redacted manner would not constitute a “clearly unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Accordingly, we found that the City of Pawtucket violated the APRA when it denied Complainants access to the internal affairs report in its entirety.

VIOLATION FOUND.

Issued May 14, 2015.

PR 15-18 In Re: Albion Fire District

This Department initiated an APRA investigation against the Fire District for failure to timely comply with R.I. Gen. Laws § 38-2-3.16. See R.I. Gen. Laws § 38-2-8(d). The evidence showed that despite repeated notice from this Department and despite the District's assurances that the certifications were "forthcoming," no certifications were received until March 3, after the Fire District received notice of the present investigation. Therefore, we concluded that the Fire District violated the APRA when it failed to timely comply with R.I. Gen. Laws § 38-2-3.16. Based on the totality of the circumstances, we had concerns that the District's failure to timely comply with R.I. Gen. Laws § 38-2-3.16 was knowing and willful, or, alternatively, a reckless violation. The District shall have ten (10) business days to provide us with a supplemental explanation as to why its failure to timely comply with R.I. Gen. Laws § 38-2-3.16 should not be considered knowing and willful, or reckless, in light of its recognition of the APRA and this Department's repeated requests to comply with its requirements. A supplemental finding will follow.

VIOLATION FOUND.

Issued May 18, 2015.

PR 15-19 Save the Bay v. Department of Environmental Management

The Department of Environmental Management ("DEM") did not violate the APRA when it withheld from disclosure a document prepared within a client/attorney relationship, and therefore, not deemed public pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). Based upon case law from the Rhode Island and United States Supreme Courts, we must conclude that the document requested, which was created by DEM's legal counsel and sent to various DEM employees relative to their legal inquiries, is exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(i)(E). See also R.I. Gen. Laws § 38-2-2(4)(i)(A)(I)(exempting "all records relating to a client/attorney relationship"). Even the Complainant's September 24, 2014 APRA complaint seems to acknowledge that "[t]he requested document [was] prepared with advice of counsel." With respect to the allegation that the DEM's APRA procedures were not on DEM's website, the Complainant presented no evidence to dispute the assertion that DEM's APRA procedures have been on its website since 2012.

Issued May 18, 2015.

PR 15-20 Higgins v. Lonsdale Fire District

The Lonsdale Fire District violated the APRA when it failed to timely respond to an APRA request and failed to identify the specific reasons

for the denial. The Fire District was directed to respond to the APRA requests in a manner consistent with the APRA and this Department's finding, and was further instructed that it could not charge for the search, retrieval, or copying costs regarding the pending APRA requests. See R.I. Gen. Laws § 38-2-7(b).

VIOLATION FOUND.

Issued May 21, 2015.

PR 15-21 Banna v. Pawtucket Police Department

The Complainant alleged the Pawtucket Police Department violated the APRA when it improperly redacted portions of its response to her APRA request dated December 3, 2014. The Complainant had requested an incident report that described the circumstances involving her being bitten by a dog. The Complainant alleged the redacted portions, including a home address and other identifying information, are public records. Based on the evidence submitted, we concluded the redacted information sought would "reveal[] little or nothing about [the Police Department's] own conduct." See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press 489 U.S. at 749, 109 S.Ct. at 1481-82. Therefore, because there is little to no public interest in disclosing the home address, date of birth, license number and telephone number in this case, we conclude that the privacy interests outweigh the public interest and the redacted records are exempt.

Issued May 22, 2015.

PR 15-22 Flaherty v. Rhode Island Department of Transportation

The Complainant alleged the Rhode Island Department of Transportation ("RIDOT") violated the APRA when it denied her APRA request seeking documents regarding the "Draft Feasibility Study for Phase 4 Canonchet Farm Bike Path." The RIDOT denied the request pursuant to R.I. Gen Laws § 38-2-2(4)(K) as a "draft." Rhode Island General Laws § 38-2-2(4)(i)(K) exempts from public disclosure, "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any document submitted at a public meeting of a public body shall be deemed public." As no evidence was submitted that this draft was submitted at a public meeting, we found no violation.

Issued June 2, 2015.

PR 15-23 Olawuyi v. Pawtucket Police Department

The Pawtucket Police Department did not violate the APRA when it withheld from disclosure an incident report that did not lead to an

arrest. This Department has consistently held that where an arrest has not taken place, there is a presumption that incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). While the foregoing principles may not apply in a situation where an incident report could be redacted to protect any privacy rights, in the present matter, this Department found that the privacy interests outweighed any interest the public may have in disclosure of such a report and that disclosure of the requested record could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Issued June 8, 2015.

PR 15-24

Access/Rhode Island v. West Warwick School Department

Access/Rhode Island hired a third-party named MuckRock from Boston, Massachusetts to conduct an Access to Public Records Act ("APRA") survey regarding various state and local government APRA compliance within Rhode Island. After considering the facts and applicable case law, this Department concluded that since the APRA requests and inquiries were all made by MuckRock, and provided no indication that any APRA request or inquiry was made by or on behalf of Access/Rhode Island, Access/Rhode Island lacked legal standing to file the instant complaint or a lawsuit. See e.g. Fieger v. Federal Election Commission, 690 F.Supp.2d 644 (E.D. Mich. 2010). Nonetheless, after considering numerous factors, this Department concluded that it would review all the Access/Rhode Island APRA complaints pursuant to the Attorney General's independent statutory authority to advance the public interest. See R.I. Gen. Laws § 38-2-8(d). In doing so, this Department determined that the School Department failed to submit a timely APRA certification pursuant to R.I. Gen. Laws § 38-2-3.16, although the evidence suggested that a School Department employee received APRA training in January 2014, yet failed to submit the appropriate form to this Department; and the School Department also violated the APRA when it failed to maintain and post APRA procedures on its website, although the evidence revealed that at the time of the MuckRock APRA requests, the School Department's website was under construction. All of these violations were remedied prior to the filing of the December 2014 APRA complaint. The School Department also violated the APRA on three (3) occasions by failing to respond to MuckRock's APRA requests in a timely manner and this Department directed the School Department to provide a supplemental response concerning these untimely responses

to determine whether such a violation was willful and knowing, or reckless, which would subject the School Department to civil fines.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-25 Access/Rhode Island v. West Greenwich Police Department

Access/Rhode Island charged that the Police Department violated the APRA on four (4) occasions when it failed to respond in a timely manner to MuckRock's APRA requests. The evidence demonstrated that during the time in question, the Police Department was undergoing major communication upgrades and that its telecommunications system was interrupted. No evidence was produced that MuckRock's four (4) APRA requests sent by facsimile were ever received by the Police Department, and no facsimile confirmation was ever produced by MuckRock or Access/Rhode Island to support the Police Department's receipt of the facsimile APRA requests. Notwithstanding the lack of evidence supporting the receipt of a facsimile APRA request, because the Police Department did not rebut MuckRock's assertion that it had subsequently sent a follow-up e-mail APRA request – after not having received an acknowledgment by facsimile – this Department determined that the failure to timely respond to this follow-up e-mail APRA request violated the APRA.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-26 Access/Rhode Island v. New Shoreham Police Department

Access/Rhode Island contended that the Police Department violated the APRA on six (6) occasions, when it failed to submit an APRA certification form to this Department pursuant to R.I. Gen. Laws § 38-2-3.16, when it failed to maintain/post APRA procedures on its website, and when it failed to respond timely to four (4) separate APRA requests. The evidence revealed that the Town of New Shoreham promulgated an APRA procedure and that this APRA procedure was posted on the Town's website "since April 1, 2014." The Town's APRA procedure required all APRA requests made to any Town department, including the Police Department, be made to the Town Clerk. Here, the four (4) APRA requests that Access/Rhode Island claimed where responded to in an untimely manner were all made after April 1, 2014, and were all made to persons or entities other than the Town Clerk, typically, the Police Chief. Because the APRA mandates that public bodies provide notice to the public and post on its website the manner in which APRA requests should be made, see

R.I. Gen. Laws § 38-2-3(d), because the Town complied with this requirement for all post-April 1, 2014 APRA requests, and because MuckRock failed to follow the posted Town APRA procedures, we found that the Police Department did not violate the APRA when it failed to respond in a timely manner to MuckRock's four (4) post April 1, 2014 APRA requests, none of which were not made in accordance with Town's APRA procedures. See Rosenfield v. North Kingstown School Department, PR 14-02 ("This Department has previously determined that an APRA request must first comport with a public body's APRA policy before we can decide whether a violation has occurred"). Moreover, since R.I. Gen. Laws § 38-2-3.16 mandates that a public employee receive APRA training when that employee has "the authority to grant or deny persons or entities access to records under this [APRA]," and since the evidence demonstrated that the Town Clerk and not the Police Chief had this authority according to the Town's APRA procedures, we also found that the Police Department did not violate the APRA when the Police Department did not submit an APRA certification form to this Department. Lastly, we found that because the Town promulgated and posted APRA procedures, and these APRA procedures expressly included all town departments including the Police Department, the Police Department did not violate the APRA when it did not independently promulgate and post APRA procedures.

Issued June 12, 2015.

PR 15-27 Access/Rhode Island v. Department of Corrections

Access/Rhode Island contended that the Department of Corrections violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to respond in a timely manner to two (2) MuckRock APRA requests. The evidence demonstrated that although two (2) DOC attorneys had attended and received appropriate APRA training in August 2013, which would have qualified for calendar year 2014 in accordance with R.I. Gen. Laws § 38-2-3.16, no evidence was submitted that the certification forms had been submitted to this Department, and accordingly, this omission violated the APRA. With respect to the allegations that the DOC had responded in an untimely manner to two (2) MuckRock APRA requests, we found that one of these instances violated the APRA. In particular, MuckRock had made an APRA request to the DOC e-mail account, but unbeknownst to the employee who monitored the DOC e-mail account, information technology changes had been made and she was no longer permitted access. This issue was corrected. With

respect to the second untimely response allegation, Access/Rhode Island alleged that the DOC responded one (1) day late to MuckRock's APRA request seeking "[c]ontracts for the ten (10) employees with the highest salaries," which was made on April 29, 2014. The evidence revealed that on May 7, 2014, within the ten (10) business day statutory time period, DOC responded that its staff employees were not hired under a contract agreement, at which point MuckRock responded by indicating that "[i]f no staff of Department of Corrections is under contract, then you can consider this request closed." Although MuckRock sought further confirmation, as of May 8, 2014, the DOC had related that it did not maintain staff contracts and MuckRock had indicated that if no DOC staff were under contract, the APRA request could be considered "closed." All of these events occurred within ten (10) business days.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-28 Access/Rhode Island v. Town of Warren

Access/Rhode Island alleged that the Town violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to promulgate and post APRA procedures to its website. These violations have since been remedied. The Town provided no substantive response to the underlying allegations, and therefore, we found the allegations meritorious. Because the Town did not provide a substantive response or explanation concerning the violations, we deemed it appropriate to direct the Town to provide a supplemental response addressing the underlying violations so that this Department could determine whether the violations were willful and knowing, or reckless, which would subject the Town to civil fines.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-29 Access/Rhode Island v. Charlestown Police Department

Access/Rhode Island alleged that the Police Department violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to promulgate and post APRA procedures to its website. These violations have since been remedied, and accordingly, injunctive relief would be ineffective. Additionally, based upon the totality of the evidence and circumstances, we found

insufficient evidence to demonstrate a willful and knowing, or reckless, violation.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-30 Access/Rhode Island v. Newport School Department

Access/Rhode Island alleged that the School Department violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, when it failed to promulgate and post APRA procedures to its website, and when it failed to respond timely to a MuckRock APRA request. The evidence demonstrated that a School Department employee had received APRA training in January 2014, yet had not submitted an APRA certification form to the Department of Attorney General, and the evidence also revealed that the School Department failed to promulgate and post its APRA procedures to its website. These violations have since been remedied. With respect to Access/Rhode Island's allegation that the School Department responded to MuckRock's APRA request in an untimely manner, the evidence demonstrated that the School Department timely asserted an extension of time pursuant to R.I. Gen. Laws §§ 38-2-3(e) and 38-2-7(b), and subsequently timely denied access to the requested records since the School Department did not maintain the requested records. R.I. Gen. Laws § 38-2-3(h).

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-31 Access/Rhode Island v. East Greenwich School Department

Access/Rhode Island alleged that the School Department violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, when it failed to post its promulgated APRA procedures on its website, and when it failed to respond in a timely manner to two (2) MuckRock APRA requests. The School Department acknowledged that it failed to timely provide APRA certification forms to this Department and that it failed to appropriately post its promulgated APRA procedures to its website. Both violations have since been remedied. Access/Rhode Island further alleged that the School Department failed to respond in a timely manner to MuckRock's APRA request seeking written procedures for access to an agency's public records, but the evidence established that the School Department did provide a timely reply to this request and even Access/Rhode Island's rebuttal acknowledged that "[t]he [School]

Department did provide a reply in a timely manner.” The School Department did not timely respond to MuckRock’s June 27, 2014 APRA request seeking documents relating to teacher layoffs – despite not having any responsive documents. The School Department’s failure to timely respond to this request violated the APRA and this Department directed the School Department to provide a supplemental response concerning whether such a failure should be considered willful and knowing, or reckless, which would subject the School Department to civil fines.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-32 Access/Rhode Island v. Cumberland Police Department

Access/Rhode Island sent a staff member from a third party (MuckRock) to the Cumberland Police Department to request in-person records deemed public pursuant to R.I. Gen. Laws § 38-2-3.2, which provides that certain delineated information concerning an arrested adult “shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours[.]” The foregoing time constraints apply only to “arrests made within five (5) days prior to the request.” R.I. Gen. Laws § 38-2-3.2(b). Here, the Cumberland Police Department timely provided the required information for “arrests made within five (5) days prior to the request” and timely provided the additional adult arrest logs concerning arrests made more than five (5) days after the request.

Issued June 12, 2015.

PR 15-33 Access/Rhode Island v. Providence Police Department

In its complaint, Access/Rhode Island alleged that the Police Department violated the APRA when it responded to a MuckRock APRA request in an untimely manner. Upon receiving the Police Department’s response to Access/Rhode Island’s complaint and supporting evidence, Access/Rhode Island requested that it be allowed to “withdraw” the APRA allegation against the Police Department and this Department permitted its withdrawal.

Issued June 12, 2015.

PR 15-34 Access/Rhode Island v. Town of Scituate

Access/Rhode Island alleged that the Town violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and

when it failed to promulgate and post APRA procedures on its website. The evidence suggested that the Town Clerk may have had prior APRA training, yet failed to submit an APRA training certification form to this Department. Moreover, although the evidence demonstrated that the Town had promulgated an APRA form and procedure, and that the Town's APRA form was posted to its website, the Town acknowledged that its APRA procedures were not posted to its website. As best as could be determined, this omission appeared to be the result of an information technology error since the APRA form had been posted, but not the APRA procedures. These violations were remedied.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-35

Access/Rhode Island v. Office of Auditor General

In this complaint, Access/Rhode Island alleged that the Office of Auditor General violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, failed to timely respond to a MuckRock APRA request, and failed to promulgate and post on its website APRA procedures. The Office of Auditor General acknowledged the instant violations and has since remedied its violations by submitting its APRA certification, promulgating and posting its APRA procedures, and providing MuckRock the requested documents. Nonetheless, based upon the Office's failure to timely respond to MuckRock's APRA request, this Department directed the Office of Auditor General to provide a supplemental response presenting evidence concerning whether its failure to timely respond should be considered willful and knowing, or reckless, and thus subject the Office of Auditor General to civil fines.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-36

Access/Rhode Island v. Department of Labor and Training

Access/Rhode Island alleged that the Department of Labor and Training ("DLT") violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, and when it failed to respond in a timely manner to two (2) MuckRock APRA requests. Although the evidence demonstrated that the designated DLT public records officer received APRA training in 2013, which would have been applicable for calendar year 2014, no evidence was submitted that an APRA certification form had been submitted for this training. Accordingly,

this violated the APRA. Additionally, the evidence indicated that the DLT failed to respond in a timely manner to MuckRock's APRA request by one (1) day. Based upon the evidence presented, it appears this omission was the result of, as Access/Rhode Island phrased it, an "imprecise email sent by" another agency that DLT believed was responding on its behalf. Regarding Access/Rhode Island's allegation that a second APRA request had not been timely responded to by DLT, we found no violation. The evidence indicated that MuckRock had sent this APRA request via facsimile and the evidence presented by DLT established that it had not received this facsimile APRA request. Access/Rhode Island attempted to rebut the DLT's position that it never received this APRA request by presenting a facsimile confirmation sheet, but this confirmation sheet pertained to MuckRock's first APRA request (made on April 29, 2014) and did not pertain to MuckRock's second APRA request, which was at issue (allegedly made on June 9, 2014). Because neither Access/Rhode Island nor MuckRock was able to present evidence to rebut the DLT's position, we found that the DLT received this second APRA request on June 24, 2014 and timely responded to this second APRA request on July 3, 2014.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-37

Access/Rhode Island v. Warren Police Department

Access/Rhode Island alleged that the Police Department violated the APRA when it maintained APRA procedures, but when it failed to post these maintained APRA procedures on its website. Additionally, Access/Rhode Island alleged that the Police Department violated the APRA when it failed to timely respond to four (4) APRA requests made by MuckRock. The Police Department did not contest that it failed to post its promulgated/maintained APRA procedures on its website, and accordingly, this allegation violated the APRA. With respect to the allegations that the Police Department failed to timely respond to MuckRock's APRA requests, on two (2) of these occasions, the Police Department violated the APRA. In both situations, MuckRock sent by facsimile APRA requests to a machine that was not regularly monitored by the Police Department. In the other two (2) situations, we found no violations. In one situation, the Police Department required pre-payment from MuckRock for the cost of the APRA request. In such a situation, the time for a public body to respond to the APRA request is tolled, pending pre-payment. See R.I. Gen. Laws § 38-2-7(b) ("production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs

properly charged under section 38-2-4"). Because the time from MuckRock's APRA request to the Police Department providing responsive documents totaled ten (10) business days, exclusive of the time awaiting payment, the Police Department's response was timely. Additionally, even though R.I. Gen. Laws § 38-2-3.2 provides that certain delineated adult arrest log information be provided within "forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours," the evidence established that MuckRock's APRA request expressly requested such information be provided by the Police Department within "10 business days," thus waiving the time frame set forth in R.I. Gen. Laws § 38-2-3.2. See Gallucci v. Brindamour, 477 A.2d 617, 618 (R.I. 1984)("Generally, a party or parties for whose benefit a right is provided by constitution, by statute, or by principles of common law may waive such right, regardless of the plain and unambiguous terms by which such right is expressed."). Accordingly, the Police Department's response was also timely with respect to this request. Based upon the prior two (2) violations for failing to respond in a timely manner, this Department directed the Police Department to provide a supplemental response concerning whether such a violation should be considered willful and knowing, or reckless, which would subject the Police Department to a civil fine.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-38

Access/Rhode Island v. Rhode Island State Police

In this case, Access/Rhode Island alleged that the State Police failed to respond in a timely manner to two (2) MuckRock APRA requests. The first sought adult arrest log records delineated within R.I. Gen. Laws § 38-2-3.2, which in pertinent part, requires that such records "shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours." Construing the evidence in the light least-favorable to the State Police, the evidence demonstrated that MuckRock made an in-person APRA request on May 19, 2014 and the State Police provided a mailed response (at MuckRock's request) on May 21, 2014. The State Police violated the APRA when it failed to timely respond to MuckRock's APRA request for other arrest log information. In particular, the evidence established that after receiving MuckRock's APRA request on June 9, 2014, the State Police responded on June 20, 2014 by requiring prepayment. This period of time - nine (9) business days - was a

timely response and tolled the time for the State Police to respond pending pre-payment. See R.I. Gen. Laws § 38-2-7(b) (“the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under § 38-2-4”). On June 30, 2014, MuckRock provided pre-payment, and the time for the State Police to timely respond within ten (10) business days – nine (9) of which had already expired – once again began to expire. While the State Police argued that the ten (10) business days started anew upon MuckRock’s June 30, 2014 pre-payment, no authority supported this position and instead, the time that had been tolled effective June 20, 2014 once again began to run effective June 30, 2014. Accordingly, the ten (10) business day period expired one (1) day after MuckRock provided its payment. The State Police did provide the requested documents.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-39 Shapiro v. Town of Warren

This Department found that the Town of Warren did not violate the APRA when it failed to respond to an APRA request within ten (10) business days. The Town had a properly promulgated and posted APRA procedure requiring all requests to be made to the Town Clerk. Since this APRA request was made to the Town Manager, and not the Town Clerk, the failure to timely respond did not violate the APRA.

Issued June 18, 2015.

ACCESS TO PUBLIC RECORDS ACT
ADVISORY OPINIONS – 2015

ADV PR 15-01 In Re Computer Aided Dispatch System

The Department of Public Safety requested an advisory opinion concerning whether its computer aided dispatch system report was a public record. Because of the various different types of information contained within the report, this Department advised that whether any particular entry is or is not a public record can only be determined on a case-by-case basis after review.

Issued February 17, 2015.

ADV PR 15-02 In Re Department Business Regulation

The Department of Business Regulation (“DBR”) sought this Department’s advice concerning whether a video tape submitted at a regulatory enforcement hearing being conducted

pursuant to the Administrative Procedures Act is exempt from disclosure under the APRA. It is this Department's practice/policy to issue Advisory Opinions only on pending matters, and not actions that have been already taken. See Chrabaszcz v. Johnston School Department, PR 04-15. In this case, we were advised that the DBR has already denied the APRA requests for copies of the video tape. Considering our practice/policy and the fact that the DBR has already denied access to the record requested, it is far more appropriate that if this matter is to come before this Department that it take the form of a complaint where both sides can present evidence and argument to support their respective positions, rather than through a request for an Advisory Opinion that contains only the DBR's conclusion that the videotape at issue is not a public record. For these reasons, we respectfully decline to issue an Advisory Opinion.

Issued February 27, 2015.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

38-2-1. Purpose. — The public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

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

(1) "Agency" or "public body" means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in section 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

(2) "Chief administrative officer" means the highest authority of the public body.

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

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) (I) (a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files;

(b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name,

gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of any public retirement systems as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.

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

(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would

disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

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

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and

licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

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

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(V) Printouts from TELE -TEXT devices used by people who are deaf or hard of hearing or speech impaired.

(W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country; at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.

(X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.

(Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island General Law § 9-1.1-6.

(Z) Any Individually identifiable evaluations of public school teachers made pursuant to state or federal law or regulation.

(AA) All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

38-2-3. Right to inspect and copy records – Duty to maintain minutes of meetings – Procedures for access. –

(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of

the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

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

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

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

(e) A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

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

(g) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. Any public body which maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, as requested.

(h) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made

except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

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

(j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.

(k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

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

38-2-3.2. Arrest logs. - (a) Notwithstanding the provisions of subsection 38-2-3(e), the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the public body:

- (1) Full name of the arrested adult;
 - (2) Home address of the arrested adult, unless doing so would identify a crime victim;
 - (3) Year of birth of the arrested adult;
 - (4) Charge or charges;
 - (5) Date of the arrest;
 - (6) Time of the arrest;
 - (7) Gender of the arrested adult;
 - (8) Race of the arrested adult; and
 - (9) Name of the arresting officer unless doing so would identify an undercover officer.
- (b) The provisions of this section shall apply to arrests made within five (5) days prior to the request.

38-2-3.16. Compliance by agencies and public bodies. - Not later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access

to records under this chapter have been provided orientation and training regarding this chapter. The attorney general may, in accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements of this section.

38-2-4. Cost. — (a) Subject to the provisions of section 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records or retrieving records from storage where the public body is assessed a retrieval fee.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body upon request, shall provide an estimate of the costs of a request for documents prior to providing copies.

(d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

(e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

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

(c) A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the request in accordance with this chapter, state that it does not have or maintain the requested records.

38-2-8. Administrative appeals. — (a) Any person or entity denied the right to inspect a record of a public body may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

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

38-2-9. Jurisdiction of superior court. —

(a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of any party, or sua sponte by the court made in accordance with the rules of civil procedure of the superior court.

(d) The court shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or costs if the court determines that the defendant's case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

38-2-10. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

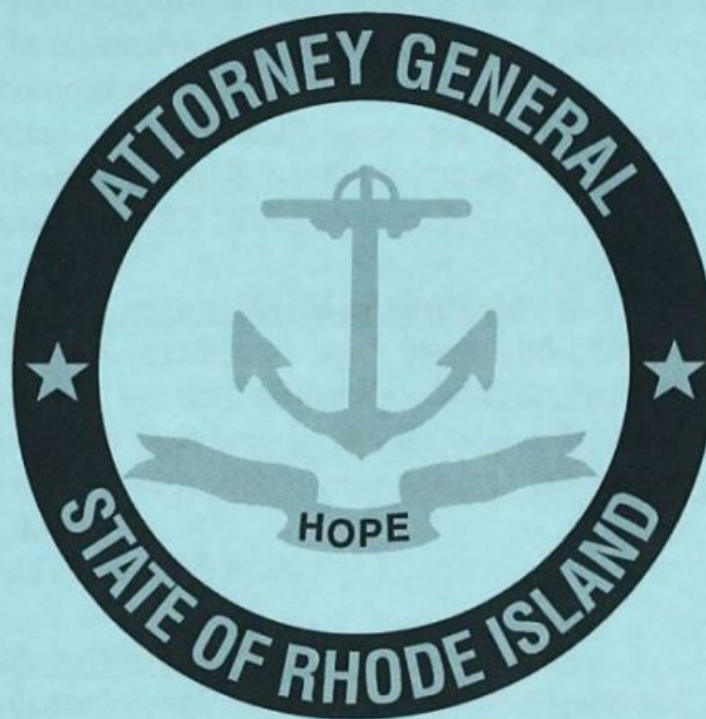
38-2-12. Severability. — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

38-2-13. Records access continuing. — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

38-2-14. Information relating to settlement of legal claims. — Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

38-2-15. Reported violations. — Every year the attorney general shall prepare a report summarizing all the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

SECTION II



OPEN MEETINGS ACT

OPEN MEETINGS ACT FINDINGS - 2015

OM 15-01 Alix v. Harrisville Fire District

The Complainant alleged that the Harrisville Fire District ("Fire District") violated the OMA when its Fire Subcommittee held a meeting in March 2014 without notice to the public. In order for the OMA to apply, a "quorum" of a "public body" must convene for a "meeting" as these terms are defined by the OMA. Because the evidence is undisputed that two (2) members of the Subcommittee gathered, this Department needed to determine whether the Subcommittee is composed of three (3) members, or whether the Subcommittee is composed of four (4) members, which would include the ex officio member. We saw no reason, nor were we presented with any legal argument, why an ex officio member of a public body would not be counted towards a quorum. Since two (2) of the four (4) Subcommittee members were present for this unnoticed March 2014 meeting, a "quorum" was not present and the OMA was not implicated. As such, we found no violation.

Issued January 27, 2015.

OM 15-02 Common Cause v. Board of Elections

Insufficient evidence was presented that the Complainant was aggrieved by the allegedly deficient public notice. Accordingly, pursuant to Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), the Complainant lacked standing to bring this complaint.

Issued February 27, 2015.

OM 15-03 Novak v. Western Coventry Fire District

The Complainant alleged the Western Coventry Fire District ("Fire District") violated the OMA when it failed to timely post its meeting minutes on the Secretary of State's website for eleven (11) of its meetings. See R.I. Gen. Laws § 42-46-7(b)(2). On June 11, 2014, this Department issued Novak v. Western Coventry Fire District, OM 14-24, wherein this Department found that the Fire District violated the OMA by failing to timely post its unofficial minutes on the Secretary of State's website for seven (7) meetings. Notwithstanding this actual notice, previously, by letter dated November 4, 2013, the Attorney General advised all Fire Districts that the OMA had been amended, effective July 2013, to include R.I. Gen. Laws § 42-46-7(b)(2)'s posting requirement - the precise requirement that we find the Fire District has violated. The Fire District shall have ten (10) business days to respond

to this Department's concern that the violations are "willful or knowing." A supplemental finding will be issued.

VIOLATION FOUND.

Issued March 9, 2015.

OM 15-03B Novak v. Western Coventry Fire District

The Western Coventry Fire District violated the OMA when it failed to timely post the unofficial minutes for its September 18, 2014 meeting. The OMA requires that "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2). (Emphases added). This section of the statute was enacted into law on June 15, 2013, and became effective upon passage. The Fire District filed the minutes for its September 18, 2014 meeting on October 14, 2014 when they should have been posted by October 9, 2014. Accordingly, this Department will file a civil lawsuit against the Fire District.

LAWSUIT FILED.

Issued April 13, 2015.

OM 15-04 The Valley Breeze v. Cumberland Fire Committee

The Cumberland Fire Committee ("CFC") violated the Open Meetings Act ("OMA") on November 6, 2014, when a quorum of the CFC met outside of a properly noticed open meeting and collectively discussed public business, *i.e.*, the future chair and vice-chair of the CFC. *See* R.I. Gen. Laws § 42-46-2(1). While, at the time in question, the members of the CFC had not been officially sworn in, this Department has repeatedly held that members-elect are subject to the OMA. *See Offer v. Newport City Council*, OM 95-31. *See also Schanck v. Glocester Town Council*, OM 97-03. Other aspects of the November 6, 2014 meeting did not implicate the OMA, and accordingly, these discussions did not violate the OMA.

VIOLATION FOUND.

Issued April 13, 2015.

OM 15-05 Cushman v. Warwick Retirement Board

The Warwick Retirement Board violated the OMA when it held a meeting on less than forty-eight (48) hours notice, *see* R.I. Gen. Laws § 42-46-6(b), and when it discussed matters not appropriate for closed

session in executive session at its March 18 meeting. See R.I. Gen. Laws § 42-46-5(7). Based on the totality of the circumstances, we have concerns that the violations found may be willful or knowing. Before reaching a conclusion on whether the Board knowingly or willfully violated the OMA by holding its March 4, 2015 meeting on less than forty-eight (48) hours notice and by discussing matters in closed session that were not appropriate under the exemption cited, we will allow the Board ten (10) business days from the receipt of this finding to address these issues. A supplemental finding will follow.

VIOLATION FOUND.

Issued April 27, 2015.

OM 15-05B Cushman v. Warwick Retirement Board

After viewing all the evidence presented, this Department determined sufficient evidence to conclude that the Warwick Retirement Board knowingly or willfully violated the OMA when it posted notice and convened its March 4, 2015 meeting on less than forty-eight (48) hours notice and when it discussed matters in executive session not appropriate under the exemption cited at its March 18, 2015 meeting. Accordingly, this Department filed a lawsuit against the Warwick Retirement Board seeking civil fines. See R.I. Gen. Laws § 42-46-8.

LAWSUIT FILED.

Issued May 12, 2015.

OM 15-06 Appolonia v. West Warwick Board of Canvassers

The West Warwick Board of Canvassers ("Board") violated the OMA during its October 27, 2014 meeting when it discussed an item not listed on the agenda. More specifically, the Board discussed and voted on procedures regarding poll worker contact, yet that item was not listed on the agenda. During the Board's October 27, 2014 meeting, under the agenda item "General Discussion," the Board began a rather lengthy discussion on poll worker contact. The Board decided, through a motion and a vote, to send the Complainant a correspondence indicating that the clerk of the Board would not be contacting poll workers for either the Democratic or Republican Party - it was the responsibility of both the Democratic and Republican Parties to contact their respective poll workers. As such, the Board violated the OMA when it took a vote during the public forum portion of the meeting, yet that item was not advertised.

VIOLATION FOUND.

Issued May 15, 2015.

OM 15-07 Novak v. Western Coventry Fire District

The Western Coventry Fire District ("Fire District") violated the OMA when it untimely posted on the Secretary of State's website approved minutes of seven (7) of its meetings. The Fire District also violated the OMA when the evidence revealed that it failed to post official and/or approved minutes for two (2) other meetings. Rhode Island General Laws § 42-46-7(d) requires "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not" to "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." R.I. Gen. Laws § 42-46-7(d).

VIOLATION FOUND.

Issued May 15, 2015.

OM 15-08 Higgins v. Lonsdale Fire District

The Lonsdale Fire District violated the OMA when it failed to articulate a proper open call by omitting the subdivision of R.I. Gen. Laws § 42-46-5 upon which the executive session was convened.

VIOLATION FOUND.

Issued May 21, 2015.

OM 15-09 Thibeault v. Smithfield Town Council

The Complainant alleged that she was prevented from taking notes at the Town Council's March 19, 2015 meeting. Specifically, Complainant alleged that the Town Manager "informed [her] that the rest of the meeting was 'off the record' and that [she] could not report on anything that was said." In Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997), the Rhode Island Supreme Court was confronted with a situation where a moderator of a financial town meeting caused a reporter to be ejected. The Court held that "the moderator is only the presiding officer of the financial town meeting and cannot in and of himself or herself constitute a public body." Id. In the present matter, the evidence showed that Complainant's allegations pertained specifically (and only) to the Town Manager and no argument or evidence was presented that the Town Council, or its members, precluded Complainant from taking notes at the March 19 meeting. Therefore, following the Supreme Court's reasoning in Pine, we concluded that the Town Manager's alleged actions did not constitute an OMA violation on behalf of the Town Council.

Issued June 18, 2015.

OM 15-10 Pitochelli v. Town of Johnston

The Johnston Town Council did not violate the OMA since the evidence established that the Town Council articulated its open call in open session and disclosed any votes taken in open session at the conclusion of the executive session. The evidence also established that the executive session was properly noticed, and in any event, the Complainant was present at the time the executive session convened. Accordingly, the Complainant was not aggrieved.

Issued June 23, 2015.

OM 15-11 Fuller v. Westerly Town Council

The Complainant alleged the Town Council violated the OMA during its December 8, 2014 meeting, when it improperly met with the School Committee Chairperson in executive session. The Complainant also alleged the Town Council met in executive session for the improper purpose of developing interview questions, establishing qualifications and obtaining advice regarding municipal positions, including the position of Assistant Solicitor for Schools. The OMA does not expressly govern who may attend executive or closed sessions and we found nothing within the OMA, nor were we directed to any provision, that would enable us to conclude that the Town Council violated the OMA by including the School Committee Chairperson during the portion of the executive session where the Town Council was interviewing candidates for the position of Assistant Solicitor for Schools. Our in camera review of the executive session minutes and audio recording also revealed that the School Committee Chairperson exited the executive session prior to the start of the interviews and that the executive session did not consist of establishing qualifications nor developing general interview questions. As such, we found no violation with respect to that allegation.

Issued June 25, 2015.

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2015

NONE

CHAPTER 46

OPEN MEETINGS

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

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

(1) "Meeting" means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term "meeting" expressly include, without limiting the generality of the foregoing, so-called "workshop," "working," or "work" sessions.

(2) "Open call" means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of § 42-46-5 is being involved.

(3) "Public body" means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.

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

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

(6) "Open forum" means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.

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

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

referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.

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

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

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

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

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

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

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

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

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

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

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

(8) Any executive sessions of a local school committee exclusively for the purposes (i) of conducting student disciplinary hearings or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

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

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

(10) Any discussion of the personal finances of a prospective donor to a library.

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

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) any waiver decisions shall be a matter of public record.

(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

42-46-6. Notice. —

(a) All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the secretary of state at the beginning of each calendar year in accordance with subsection (f).

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. School committees may, however, add items for informational purposes only, pursuant to a request, submitted in writing, by a member of the public during the public comment session of the school committee's meetings. Said informational items may not be voted upon unless they have been posted in accordance with the provisions of this section. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.

(c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (f); however, nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (e) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

(d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any

public body from limiting comment on any topic at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

(e) A school committee may add agenda items not appearing in the published notice required by this section under the following conditions:

(1) The revised agenda is electronically filed with the secretary of state pursuant to subsection (f), and is posted on the school district's website and the two (2) public locations required by this section at least forty-eight (48) hours in advance of the meeting;

(2) The new agenda items were unexpected and could not have been added in time for newspaper publication;

(3) Upon meeting, the public body states for the record and minutes why the agenda items could not have been added in time for newspaper publication and need to be addressed at the meeting;

(4) A formal process is available to provide timely notice of the revised agenda to any person who has requested that notice, and the school district has taken reasonable steps to make the public aware of this process; and

(5) The published notice shall include a statement that any changes in the agenda will be posted on the school district's web site and the two (2) public locations required by this section and will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of the meeting.

(f) All notices required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of notices with the secretary of state shall take effect one (1) year after this subsection takes effect.

(g) If a public body fails to transmit notices in accordance with this section, then any aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

42-46-7. Minutes. —

(a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:

(1) The date, time, and place of the meeting;

(2) The members of the public body recorded as either present or absent;

(3) A record by individual members of any vote taken; and

(4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.

(b) (1) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where

the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

(2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website.

(c) The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5.

(d) All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations, and those public bodies set forth in subdivision (b)(2), shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.

(e) All minutes and unofficial minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. If a public body fails to transmit minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may file a complaint with the attorney general in accordance with §42-46-8.

42-46-8. Remedies available to aggrieved persons or entities. —

(a) Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.

(b) No complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred, or, in the case of an unannounced or improperly closed meeting, after one hundred eighty (180) days from the public action of a public body revealing the alleged violation, whichever is greater.

(c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the

complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.

(d) The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust.

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

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

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

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

42-46-9. Other applicable law. — The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29, which has been expressly repealed.

42-46-10. Severability. — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the remaining provisions or the other applications of this chapter.

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

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

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

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

that all open meetings of said public bodies are accessible to persons with disabilities.

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

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

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

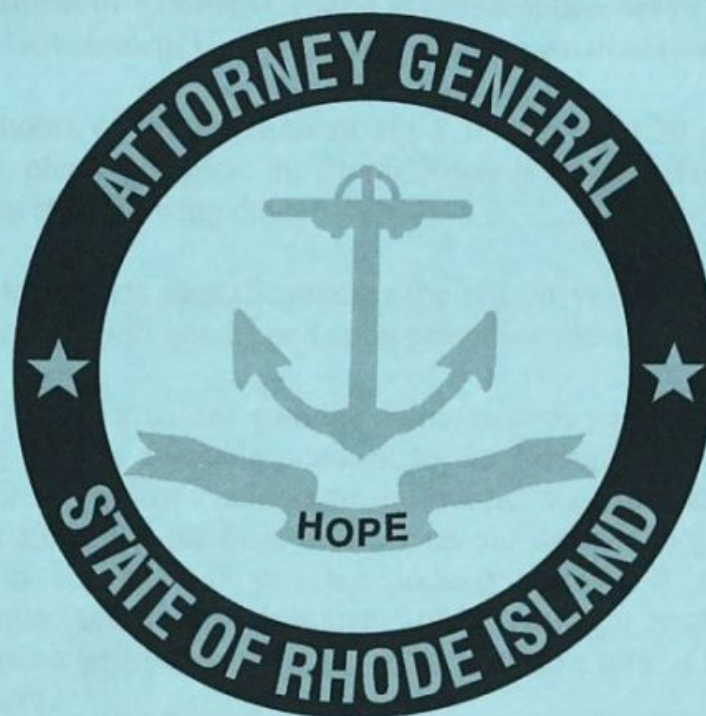
(e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.

(f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor's commission on disabilities for review and approval. The governor's commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.

(g) The provisions of §§ 45-13-7 – 45-13-10, inclusive, shall not apply to this section.

42-46-14. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.

SECTION III



PROCEDURES & FORMS



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



PUBLIC RECORDS REQUEST GUIDELINES

OPEN GOVERNMENT UNIT

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

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



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



PUBLIC RECORDS REQUEST FORM
UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date _____ Request Number _____

Name (optional) _____

Address (optional) _____

Telephone (optional) _____

Requested Records: _____

OFFICE USE ONLY

Request taken by: _____ Request Number _____

Date: _____ Time: _____

Records to be available on: _____ Mail _____ Pick Up _____

Records provided: _____

Costs: _____ copies _____ search and retrieval

Forward this Document to the Open Government Unit

Department of Attorney General - Public Records Request Receipt

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

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

Thank you.



DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL
150 South Main Street - Providence RI 02903
(401) 274-4400 – TDD (401) 453-0410



Rules and Regulations Regarding Training under the Access to Public Records Act

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



DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL
150 South Main Street - Providence RI 02903
(401) 274-4400 – TDD (401) 453-0410



5. Certification may be e-mailed to agsummit@riag.ri.gov, or mailed to the Department of Attorney General, Attn: Public Records Unit, 150 South Main Street, Providence, Rhode Island 02903. Certification forms are available on the Department of Attorney General Website.
6. The Attorney General may annually prepare and post a list of all certifications received by the office by public bodies.
7. The Department of Attorney General may assess a reasonable charge for the certification required by R.I. Gen. Laws § 38-2-3.16, is to defray the cost of such training and related materials.



State of Rhode Island
Department of the Attorney General

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

SECTION A – TO BE COMPLETED BY CHIEF ADMINISTRATOR

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

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

Chief Administrator

Department/Entity

Dated

SECTION B – TO BE COMPLETED BY CERTIFIED PERSONNEL

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

Date of Training: _____

Signed: _____

Email Address: _____

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

****Please List ANY and ALL Entities for which you are certifying compliance. For instance, the Clerk's Office, the Police Department, the School Department, the entire City/Town/Department.**

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



DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL



OPEN MEETINGS ACT CHECKLIST
OPEN GOVERNMENT UNIT

NOTICE REQUIREMENTS

Have you posted:

- ☐ annual notice (beginning of each calendar year only)
 - ☐ notice include:
 - the date(s), time(s), and location(s) of the meetings.
 - ☐ notice posted:
 - electronically with the Secretary of State; and
 - provided to a member of the public upon request. *R.I. Gen. Laws § 42-46-6(a)*.
- ☐ supplemental notice (minimum 48 hours before the date of the scheduled meeting)
 - ☐ notice include:
 - the date notice was posted;
 - the date(s), time(s), and location(s) of the meetings; and
 - a statement specifying the nature of the business for each matter to be discussed.
 - ☐ notice posted:
 - at the principal office of the public body holding the meeting, **or** if no principal office exists, at the building where the meeting is to be held;
 - in at least one other prominent location within the governmental unit; and
 - electronically with the Secretary of State. *R.I. Gen. Laws § 42-46-6(b) & (c)*.

CONVENING INTO EXECUTIVE SESSION

Does the open call contain for each matter to be discussed in executive session:

- ☐ vote by a majority of the members to convene in executive session;
- ☐ record in the open session minutes the vote of each member on the question of holding a meeting closed to the public;
- ☐ state in the open call **and** record in the open session minutes the specific subsection of R.I. Gen. Laws § 42-46-5(a)(1)-(10) upon which each executive session discussion has been convened; and
- ☐ state in the open call **and** record in the open session minutes a statement specifying the nature of the business for each matter to be discussed. *R.I. Gen. Laws § 42-46-4(a)*.

Does the executive session concern:

- ☐ discussion of the job performance, character, or physical or mental health of a person(s), provided:
 - ☐ person(s) affected shall be notified in advance in writing;
 - ☐ person(s) advised they may require discussion held in open session; and
 - ☐ during open call, state in open session **and** record in open session minutes that person(s) have been notified. *R.I. Gen. Laws § 42-46-5(a)(1).*
- ☐ sessions pertaining to collective bargaining or litigation. *R.I. Gen. Laws § 42-46-5(a)(2).*
- ☐ discussion regarding the matter of security. *R.I. Gen. Laws § 42-46-5(a)(3).*
- ☐ any investigative proceedings regarding allegations of civil or criminal misconduct. *R.I. Gen. Laws § 42-46-5(a)(4).*
- ☐ 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 public interest. *R.I. Gen. Laws § 42-46-5(a)(5).*
- ☐ any discussions related to or concerning a prospective business or industry locating in Rhode Island when an open meeting would have a detrimental effect on the interest of the public. *R.I. Gen. Laws § 42-46-5(a)(6).*
- ☐ a matter related to the question of the investment of public funds, which includes any investment plan or matter related thereto, where the premature disclosure would adversely affect the public interest. *R.I. Gen. Laws § 42-46-5(a)(7).*
- ☐ school committee sessions to conduct student disciplinary hearings or to review other matters that relate to the privacy of students and their records, provided in either case:
 - ☐ any affected student(s) shall be notified in advance in writing;
 - ☐ student(s) advised they may require discussion held in open session; and
 - ☐ during open call, state in open session **and** record in open session minutes that student(s) have been notified. *R.I. Gen. Laws § 42-46-5(a)(8).*
- ☐ any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement. *R.I. Gen. Laws § 42-46-5(a)(9).*
- ☐ any discussion of the personal finances of a prospective donor to a library. *R.I. Gen. Laws § 42-46-5(a)(10).*

MINUTES

Open and closed session minutes must be maintained and contain:

- ☐ the date, time, and place of the meeting;
- ☐ the members of the public body recorded as either present or absent;
- ☐ a record by individual member of any vote taken; and

- ☐ any other information relevant to the business of the public body that a member of the public body requests included. *R.I. Gen. Laws § 42-46-7(a).*

MAKING MINUTES AVAILABLE

For all public bodies:

- ☐ *Unofficial (unapproved) open and closed session minutes* must be available at the principal office of the public body within thirty-five (35) days of the meeting, **or** at the next regularly scheduled meeting, whichever is earlier. *R.I. Gen. Laws § 42-46-7(b).*

EXCEPTIONS

- when a closed session meeting has been properly convened and a majority of the members vote to seal the minutes, or
- where a majority of the members vote to extend the time period for filing minutes and publicly state the reason for the extension. *R.I. Gen. Laws § 42-46-7(b).*

For all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:

- ☐ must post *unofficial minutes* on the Secretary of State's website within 21 days of the meeting, **but not later than 7 days prior** to the next regularly scheduled meeting, whichever is earlier. *R.I. Gen. Laws § 42-46-7(b)(2).*

For all State Executive branch public bodies; all State and quasi-public boards, agencies, and corporations; and all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:

- ☐ must maintain *official/approved minutes* **and** electronically file a copy of such minutes with the Secretary of State within 35 days of the meeting. *R.I. Gen. Laws § 42-46-7(d).*

EXCEPTION

- not applicable to public bodies whose responsibilities are advisory in nature. *R.I. Gen. Laws § 42-46-7(d).*

DISCLOSING VOTES

- ☐ all votes listing how each member voted on each issue shall be available at the office of the public body within two (2) weeks of the vote, *R.I. Gen. Laws § 42-46-7(b);* and
- ☐ if a vote is cast during executive session, the vote must be disclosed once the open session is reopened. *R.I. Gen. Laws § 42-46-4(b).*

EXCEPTION

- a vote taken in executive session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to a properly closed meeting. *R.I. Gen. Laws § 42-46-4(b).*



DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL

ACCESS TO PUBLIC RECORDS ACT CHECKLIST
OPEN GOVERNMENT UNIT



PROCEDURES

- ☐ All public bodies must establish written procedures regarding access to public records

EXCEPTIONS

- No written request for public information available pursuant to Administrative Procedures Act, and
- No written request for documents prepared for or readily available to the public. *R.I. Gen. Laws § 38-2-3(d).*

- ☐ Procedures must include:

- ☐ Identification of a designated public records officer or unit;
- ☐ How to make a public records request; and
- ☐ Where to make a public records request. *R.I. Gen. Laws § 38-2-3(d).*

EXCEPTION

- Written request for records cannot be on a form established by a public body if the request is readily identifiable as a request for public records, *R.I. Gen. Laws § 38-2-3(d).*
- ☐ Procedures must be posted on the public body's website, if such a website is maintained, and be made otherwise readily available to the public. *R.I. Gen. Laws § 38-2-3(d).*

CERTIFICATION

- ☐ No later than every January 1, every public body and Chief Administrative Officer must certify (using Attorney General forms) that all officers and employees who have the authority to grant or deny persons or entities access to records have been provided orientation and training during the prior year. *R.I. Gen. Laws § 38-2-3.16.*

REQUESTED DOCUMENTS

Requested documents are presumed to be public records and must be disclosed, unless:

- ☐ the document (in whole or in part) is exempt pursuant to one or more exemption, *R.I. Gen. Laws § 38-2-2(A)-(AA)*; or
- ☐ the privacy interest in a document (in whole or in part) outweighs the public interest in disclosure.

If a document is exempt, any reasonable segregable portion shall be available after the deletion or redaction of the information that is the basis of the exclusion. *R.I. Gen. Laws § 38-2-3(b).*

- ☐ If an entire document is exempt, must state in denial letter that no reasonable portion of the document contains segregable information. *R.I. Gen. Laws § 38-2-3(b)*.

RESPONDING TO REQUEST¹

Upon receipt of a request, you must provide one of the following responses:

Access

- ☐ provide access to the requested documents within 10 business days of receipt of request. *R.I. Gen. Laws § 38-2-3(e)*.
- Must provide document in any media capable of providing, *R.I. Gen. Laws § 38-2-3(g); and*
 - Must provide copies electronically, by facsimile, or by mail pursuant to requester's choice, unless doing so would be unduly burdensome due to the volume of records requested or the costs incurred. Person requesting delivery responsible for costs, if any. *R.I. Gen. Laws § 38-2-3(k)*.

Deny

- ☐ deny access to the requested documents within 10 business days of receipt of request. *R.I. Gen. Laws § 38-2-7(a)*.
- In writing;
 - Provide specific reason(s) for denial; and
 - Identify procedure for appealing denial. *R.I. Gen. Laws § 38-2-7(a)*.

Extension

- ☐ assert extension within 10 business days of receipt of request (for additional 20 business days).
- In writing;
 - Must be particularized to specific request; and
 - Must be able to demonstrate extension necessary due to voluminous nature of the request, the number of requests pending, or the difficulty in searching for and retrieving or copying requested records. *R.I. Gen. Laws § 38-2-3(e)*.

COSTS

Any cost assessed must fall within one of the following categories:

- ☐ Maximum \$.15 per document copied on a common or legal size paper;
- ☐ Maximum \$15.00 per hour for search and retrieval, with no charge for the first hour;
- Multiple requests from any person/entity within 30 day time period shall be considered one request for purposes of determining no charge for the first hour.
- ☐ No more than the reasonable actual cost for providing electronic records;

¹ This section should not be used for requests seeking adult arrest logs, which require a law enforcement agency to provide a response within 48 hours after receipt of a request, unless a request is made on a weekend or a holiday, in which case the records shall be made available within 72 hours. *R.I. Gen. Laws § 38-2-3.2*.

- ☐ No more than the reasonable actual cost for retrieving records from storage, but only where the public body is assessed a retrieval fee; and
- ☐ Any other cost provision specifically authorized by law.

For all costs, an estimate must be provided upon request; and a detailed itemization of the search and retrieval costs must be provided upon request. *R.I. Gen. Laws § 38-2-4.*

NOTE:

This checklist is intended to assist public bodies and provide guidance concerning the Access to Public Records Act's requirements. This checklist does not list all Access to Public Records Act requirements and is not intended to replace the Access to Public Records Act. Revised July 2015.

Department of Attorney General

Peter F. Kilmartin, Attorney General



Co-sponsored by the Roger Williams
University Law Alumni Association

The Basics

Is this an APRA request?
Presume Public Document
Who is making the
request?

The Purpose

The right to access public
records and the right to dignity
and privacy are both
recognized to be of the utmost
importance.

R.I.G.L. § 38-2-1

IS IT AN APRA REQUEST?

Provide Source Documents
Not Narrative/Compilation
No Duty Under APRA to
Answer Questions

IBPO Local 302 v. Town of Portsmouth, PR 14-34

Document Requests



IS IT A PUBLIC BODY?

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

R.I.G.L. § 38-2-2(1)

NEARI v. Newport Public Library, PR 14-30
In re: Newport Public Library, ADV PR 14-04

“all records maintained or kept ¹
on file by any public body ***
shall be public records and
every person or entity shall
have the right to inspect and/or
copy those records”

R.I.G.L. § 38-2-3(a)

Procedures Must Include

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

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

R.I.G.L. § 38-2-3(d)

Iafrate v. Town of North Providence, PR 14-36

APRA

A PROACTIVE APPROACH

REQUIREMENTS **BEFORE** A
REQUEST IS EVEN MADE

Procedures

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

“Each public body shall establish
written procedures regarding ¹
access to public records”

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

R.I.G.L. § 38-2-3(d)

Shapiro v. Town of Warren, PR 15-39;
Access/RI v. New Shoreham Police Dept., PR 15-26

Department of Attorney General

“unless you are seeking records
available pursuant to the [APA]
or other documents prepared for
or readily available to the public,
we ask that you complete the
Public Records Request Form”

Training

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

R.I.G.L. § 38-2-3.16

*In re: Albion Fire District, PR 15-18;
Access/RI v. New Shoreham Police Dept., PR 15-26*

Any reasonably segregable portion of a public record shall be available

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

R.I.G.L. § 38-2-3(b);

d'Oliveira v. Department of Public Safety, PR 11-10

APRA

REQUIREMENTS WHEN A
REQUEST IS MADE

Is It a Public Record?

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

The Exemptions: R.I.G.L. § 38-2-2(4)

27 Exemptions



Confidential



Exempt



Public

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

R.I.G.L. § 38-2-2(4)(A)(I)(b);

In re: Richmond & Portsmouth Police Depts, ADV PR 14-03;

Jackson v. Town of Coventry, PR 14-35;

Fusaro v. Westerly Police Dept., PR 15-09

Public Employee Information*

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

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

Law Enforcement

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

R.I.G.L. § 38-2-2(4)(D)

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

R.I.G.L. § 38-2-2(4)(D)

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

*Providence Journal v. Dept. of Public Safety,
No. PC12-5458 / Decision on April 1, 2014*

Adult Arrest Logs

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

R.I.G.L. § 38-2-3.2

Adult Arrest Logs

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

R.I.G.L. § 38-2-3.2

Preliminary drafts, notes, impressions, memoranda, working papers, and work products

Exception:

above documents submitted at a public meeting shall be public

R.I.G.L. § 38-2-2(4)(K)

Boss v. Woonsocket Superintendent's Office, PR 14-31;

Flaherty v. RIDOT, PR 15-22;

Felise v. East Bay Energy Consortium, PR 15-03

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

R.I.G.L. § 38-2-2(4)(E)

Hydron Laboratories, Inc. v. Attorney General,
492 A.2d 135 (R.I. 1985)

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

R.I.G.L. § 38-2-2(4)(M)

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

R.I.G.L. § 38-2-2(4)(J)

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

R.I.G.L. § 38-2-2(4)(P)

Pisaturo v. RI Department of Health, PR 14-27

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

R.I.G.L. § 38-2-2(4)(Z)

Balancing Test

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

DARE v. Gannon, 713 A.2d 218, 225 (R.I. 1998);
West Broadway Assoc. v. Portsmouth Police Dept., PR 14-26

All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

R.I.G.L. § 38-2-2(4)(AA)

Public Interest

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

Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989);
Nangle v. Town of No. Smithfield, PR 15-06

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

R.I.G.L. § 38-2-2(4)(S)
Providence Journal v. City of Providence, PR 14-39

Privacy Interest

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

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

**Reason or Identity of Person
Making Request**

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

R.I.G.L. § 38-2-3(j)

Procedures For "Good Cause"

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

R.I.G.L. § 38-2-3(e)

*Pitochelli v. Town of Johnston, PR 14-20;
CVDDI, LLC v. Town of Smithfield, PR 15-04*

**Timeframe to Respond After
Receiving a Request**

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

R.I.G.L. § 38-2-7

Procedures For "Good Cause"

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

R.I.G.L. § 38-2-3(d)

**Procedures for Denying Access
to Records**

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

R.I.G.L. § 38-2-7

Smith v. Warwick Public School Dept., PR 15-13

**Procedures Prior to
Providing Records**

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

RESPONDING TO AN APRA REQUEST

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

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

Cost and Delivery Procedures

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

R.I.G.L. § 38-2-4

Saunders v. RI Division of Lotteries, PR 15-10

Cost and Delivery Procedures

- For purposes of calculating search and retrieval time, multiple requests from same person or entity during a 30 day time period shall be considered one request.
R.I.G.L. § 38-2-4(b)
- All fees waived if fail to produce requested records in a timely manner.
R.I.G.L. § 38-2-7(b)

Public Body May Seek Pre-Payment

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

R.I.G.L. § 38-2-7

Cost and Delivery Procedures

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

R.I.G.L. § 38-2-3(k)

Cost and Delivery Procedures

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

R.I.G.L. § 38-2-3(k)

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

R.I.G.L. § 38-2-4(a)

Remedies

\$2,000 for a willful and knowing violation

\$1,000 for a reckless violation

Injunctive Relief

Attorney Fees

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

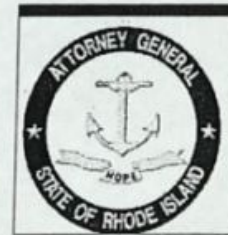
Exception: records in an electronic format and not unduly burdensome

R.I.G.L. § 38-2-3(h)

Bicki v. City of Woonsocket, PR 15-14

Department of Attorney General

Peter F. Kilmartin, Attorney General



Open Meetings Act

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

R.I.G.L. § 38-2-3(g)

OPEN MEETINGS ACT

A PROACTIVE APPROACH

REQUIREMENTS BEFORE A MEETING IS CONVENED

Three Threshold Elements that Trigger OMA

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

“Rolling” or “Walking” Quorum

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

What is a Public Body?

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

R.I.G.L. § 42-46-2(c)

Thibault v. Smithfield Town Council, OM 15-09;
Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997)

“Rolling” or “Walking” Quorum

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

What is a Quorum?

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

R.I.G.L. § 42-46-2(d)

Ryan v. Warren Housing Authority, OM 14-37;

Goldberg v. Warren Town Council, OM 14-39;

Alix v. Harrisville Fire District, OM 15-01;

Valley Breeze v. Cumberland Fire Comm., OM 15-04

What is a Meeting?

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

R.I.G.L. § 42-46-2(a)

Ward v. Woonsocket School Board, OM 14-29

Electronic Communication

Discussions of a public body via electronic communication is permitted **only** to schedule a meeting.

R.I.G.L § 42-46-5(b)(1)

Two Types of Notice

- Annual Notice: at the beginning of each calendar year
- Supplemental Notice: a minimum of 48 hours before every meeting

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

Notice Requirements

Annual

- Dates, times and location of regularly scheduled meetings

Supplemental

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

McCarthy/Ward v. Woonsocket School Board, OM 14-28

Members must be present to participate in meeting except:

- on active duty
- has a **disability** and cannot otherwise participate
- Subject to Governor’s Commission on Disabilities

R.I.G.L § 42-46-5(b)(2)(3) & (4)

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

“intended to establish a flexible standard aimed at providing fair notice to the public under the circumstances”

Anolik v. Zoning Bd. of Review of the

City of Newport,
64 A.3d 1171 (R.I. 2013)

“IV. Communications
Request for extension from
Turner Scott received 11/30/08
Re: Petition of Congregation
Jeshuat Israel.”

Improper Agenda Items

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

Executive Session Notice

- If publicly known, provide detailed statement – If not publicly known, may use more general language.
- “Anticipated Litigation”

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

8. Correspondence:

- Receive and act on resignation letters from Rebecca Ballard and Ruth Pefido of the Deer Task Force
- Receive Annual Report from Deer Task Force
- Receive and act on resignation letter from Michael Ballard of the Harbors Committee
- Receive and act on Notice of Public Hearing before Zoning Board for modification of special use permit for Payne 1614 Realty, LLC (Plat 5, Lot111)

Executive Session Notice

- Public body is required to individually label each item it intends to discuss in executive session.
- Identify the number of items to be discussed.
- No boiler plate language.

1. Request a motion for Executive Session

(closed session) Pursuant to 42-46-5 Sub

Section (a) (2) Litigation, Wells v. Town of

Warren, RICHR#15ESE144-37/37”

Executive session at 6:00 PM under R.I.G.L. 42-

46(a) Exception (3) Review of

District Safety Plan; and (8) Matter relating to
student privacy records.

Any matter appearing on this agenda may be voted
upon by the School Committee.

DISCLOSURE OF VOTES

- (All): "available, at the office of the public body, within two (2) weeks of the date of the vote." R.I. Gen. Laws § 42-46-7(b)(1)

- Note: No extension

Carney v. Charlestown Planning Comm., OM 14-31

28. Executive Session in Accordance with RIGL:

- Discuss and Approve Sealed Minutes of Executive Session on May 21 and 16, 2015 and June 1, 2015.
- 42-46-5 (a) (2) Litigation Re: North End Holdings, LLC and Morse Tax Appeal
- 42-46-(a) (6) Prospective Business
- 42-46-5 (a) (5) Acquisition
- 42-46-5 (a) (1) Personnel - Solicitor

DISCLOSURE OF VOTES

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

**No sunset provision
for Executive Session minutes**

Posting Requirements

- | <u>Annual</u> | <u>Supplemental</u> |
|------------------------------------|---|
| • Available to public upon request | • Principal office; if none, where meeting held |
| • Secretary of State | • One other prominent location within governmental unit |
| | • Secretary of State |

Minutes

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

R.I.G.L. § 42-46-7(a)

DISCLOSURE OF UNOFFICIAL MINUTES

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

Howard v. Portsmouth Agriculture Adv. Comm., OM 15-12

DISCLOSURE OF OFFICIAL/APPROVED MINUTES

Public bodies within the executive branch of state government, all state public and quasi-public boards, agencies, and corporations, and all fire companies shall:

DISCLOSURE OF UNOFFICIAL MINUTES

- Exceptions: Sealed executive session minutes

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

DISCLOSURE OF OFFICIAL/APPROVED MINUTES

“shall file a copy of the minutes of all open meetings with the secretary of state * * * within thirty-five (35) days of the meeting[.]” R.I. Gen. Laws § 42-46-7(d).

Exception: Public bodies whose responsibilities are solely advisory in nature

- No extension

Buckley v. RI Turnpike & Bridge Authority, OM 14-33

DISCLOSURE OF UNOFFICIAL MINUTES

- (Fire Companies): “within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website.” R.I. Gen. Laws § 42-46-7(b)(2).
- No extension
- Post to Secretary of State website



WESTERN COVENTRY FIRE DISTRICT

1110 Victory Highway
Greene, Rhode Island 02827
Phone (401) 397-7520, Fax (401) 397-1864, www.wcfd.net
Standard Administrative Procedure (SAP) Committee Meeting
to be held at the above location
Thursday, 11 June, 2015, 7:30 p.m.
AGENDA
(posted 7 June, 2015)

14. Adjournment.*

Note: the unofficial minutes of this meeting must be posted on the SOS site prior to midnight, 11 June, 2015, i.e., the date of this meeting, seven days prior to the next regularly scheduled BOD meeting of 18 June, 2015.

*Voting by the committee on SAP matters may take place. When ever practical and at the discretion of the chair, the meeting or any part thereof may be conducted in an open forum.

Note: the unofficial minutes of this meeting must be posted on the SOS site prior to midnight, 11 June, 2015, i.e., the date of this meeting, seven days prior to the next regularly scheduled BOD meeting of 18 June, 2015.

AUDIO/VIDEOTAPING

- Subject to “reasonable restrictions” a public body must allow taping:
 - preserve orderly conduct of meeting
 - safeguard public facility against damage caused by recording equipment

Sheldon v. Warwick Min. Hous. Review Brd., OM 14-14;
Belcher v. Mansi, 569 F.Supp. 379 (D.R.I. 1983)

DISCLOSURE OF EXECUTIVE SESSION MINUTES

- (All): “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.” R.I. Gen. Laws § 42-46-7(c).
 - No extension

REQUIREMENTS AT THE MEETING

Ensure Accessibility to Persons with Disabilities R.I. Gen. Laws § 42-46-13

Aiello v. Westerly School Redesign Adv. Comm., OM 14-32

Convening Into Closed Session

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

R.I.G.L. § 42-46-4(a)
Graziano v. R.I. Lottery Comm., OM 99-06

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

Fuller v. Westerly Town Council, OM 15-11

R.I.G.L. § 42-46-5(a)(2)

Sessions or work sessions pertaining to collective bargaining or litigation

Fitzmorris v. Warren Housing Auth., OM 14-37

Executive Session

- Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5. *R.I.G.L. § 42-46-3*

- Ten (10) purposes for which meeting may be closed.
R.I.G.L. § 42-46-5(a)(1)-(10)

R.I.G.L. § 42-46-5(a)(4)

Investigative proceedings regarding allegations of civil or criminal misconduct

R.I.G.L. § 42-46-5(a)(4)

R.I.G.L. § 42-46-5(a)(1)

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

R.I.G.L. § 42-46-5(a)(8)

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

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

Amending the Agenda

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

R.I. Gen. Laws § 42-46-6(b)

Appolonia v. West Warwick Bd of Canvassers, OM 15-06

Amending Agenda School Committee (Cont.)

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

R.I.G.L. § 42-46-6(e)

Amending the Agenda

A vote may not be taken, except:

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

Public Comment (Not School Committee)

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

R.I.G.L. § 42-46-6(d)

Amending Agenda School Committee

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

Public Comment School Committee

Pursuant to a request:

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

R.I.G.L. § 42-46-6(b)

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

R.I.G.L. § 42-46-6(d)

Remedies

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

R.I.G.L. § 42-46-8

Emergency Meeting

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

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

R.I.G.L. § 42-46-6(c);

Kalunian v. Coventry Town Council, OM 09-14

Penalties

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

R.I.G.L. § 42-46-8(d)

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

R.I.G.L. § 42-46-8(a)

Graziano v. RI Lot. Comm., 810 A.2d 215 (RI 2002);

Common Cause v. Brd of Elections, OM 15-02;


Pitochelli v. Town of Johnston, OM 15-10

Department of Attorney General


Peter F. Kilmartin, Attorney General




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For State Agencies

Our Public Records Administration oversees records management functions within state government. We provide records management advice, assistance and consultation to all state agencies. We also work with agencies to develop records retention and disposition schedules, enabling timely disposal or retention as permanent records of the state. Comprehensive records management services encompass all records, regardless of format or media. We also publish guidelines about records and records issues.

Inactive records of state agencies are stored at the [State Records Center](#), which we administer. Inactive records are those records that agencies no longer require immediate access to, but that are not yet eligible for disposal because of administrative, fiscal or legal requirements. Access to these records is provided only through the expressed permission of the originating state agency.

The [Administrative Records Program](#) maintains the rules and regulations filed with the Office of the Secretary of State by state agencies, boards and commissions.

Reference


- [Records Laws](#)
- [Regulations, Guidelines & Publications](#)
- [Workshops](#)
- [Glossary](#)
- [Forms](#)
- [Cubic Foot Conversion](#)

Resources

- [General Records Schedules](#)
- [Agency Records Schedules](#)
- [Records Retention Schedule Development](#)
- [Records Destruction](#)

Contact Us

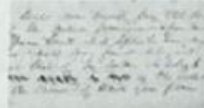
State Archives
337 Westminster Street
Providence, RI 02903
Phone: (401) 222-2353
Fax: (401) 222-3199
TTY: 711

 [Email](#)

Open to the public
Monday-Friday
8:30 a.m. to 4:30 p.m.

[Directions](#)


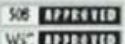
VIRTUAL EXHIBITS



Related Links

- [State Rules & Regs](#)
- [RI Historical Records Advisory Board](#)

[Contact Us](#) | [Privacy Policy](#) | [RI.gov](#)

Questions?

R. Gwenn Stearn

State Archivist, Public Records Administrator
& Director of Administrative Records

Office of the Secretary of State Nellie M. Gorbea

State Archives Division

337 Westminster Street

Providence, RI 02903

tel. (401) 222-2353

fax. (401) 222-3199

gstearn@sos.ri.gov

Records Retention Schedules

Agency specific retention schedules list and describe the records that are unique to a particular state agency and which they create or receive in the course of conducting business. These schedules indicate the minimum amount of time an agency must keep the records. The retention periods reflect the legal, administrative, fiscal, informational, and historical value of the records.

Agencies must submit a [Certificate of Records Destruction](#) to the State Archives/Public Records Administration before any records destruction takes place ([§38-1-10](#), [§38-3-6\(j\)](#) and [§42-8.1-10](#)). Certificates of Records Destruction authorize the disposal of records and act as the legal replacement for the actual records subsequently destroyed.

Select from an Alphabetical Index of state agencies with records retention schedules:


A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Search

Records Destruction

Before actual records destruction may take place, agencies must submit a Certificate of Records Destruction to the State Archives/Public Records Administration ([RIGL § 38-1-10](#), [RIGL § 38-3-6\(j\)](#), and [RIGL § 42-8.1-10](#)). Certificates of Records Destruction authorize the disposal of records and act as the legal replacement for the actual records subsequently destroyed.










Note: for records currently in storage at the State Records Center, the Public Records Administration prepares Certificates of Records Destruction for agencies' sign-off.

- [Instructions for Completing Certificate of Records Destruction](#) 
- [Certificate of Records Destruction](#)



General Records Schedules

General Records Schedules cover the types of records created or received by all state and local government agencies. They govern records retention and disposition—facilitating the management and timely disposal of records.

The Public Records Administration is preparing a new, more comprehensive General Records Schedule, which will ultimately replace General Schedule 1 and General Schedule 2 in their entirety. Eight sections of the new schedule have been completed and were approved by the Attorney General and the Auditor General, as required by law ([§38-3-6\(b\)](#) and [§42-8.1-10](#)). The eight sections are:

- [GRS1 Executive, High-Level, and Policy-Making Records](#)  (Amended)
- [GRS2 Legal Records](#)  (Amended)
- [GRS3 Safety and Security Records](#) 
- [GRS4 Facilities Records](#)  (Amended)
- [GRS5 Daily Operations Records](#)  (Amended)
- [GRS6 Records Management Records](#) 
- [GRS7 Information Management Records](#) 
- [GRS9 Personnel Records](#) 
- [GRS1-7 & GRS9 Compiled](#) 

One remaining section will be added: GRS8 Fiscal Records.

NOTE: The record series in GRS1 through GRS7 and GRS9 now supersede the same or similar series in General Schedule 1. State and local government agencies should continue to make use of [General Schedule 1](#)  (PDF Document) and [General Schedule 2](#)  (PDF Document) for record series not found within GRS1 through GRS7 and GRS9.

Retention periods shown in all schedules are minimum retention periods. Agencies may have need to retain records longer than these minimum retention periods—most notably if the records may be required in current or pending litigation, or for a current or pending request under the Access to Public Records Act (RIGL 38-2).

Before actual records destruction may take place, agencies must submit a [Certificate of Records Destruction](#) to the State Archives/Public Records Administration ([§38-1-10](#), [§38-3-6\(j\)](#), and [§42-8.1-10](#)). Certificates of Records Destruction authorize the disposal of records and act as the legal replacement for the actual records subsequently destroyed.

Finally, General Records Schedule/General Schedules should not be confused with agency specific schedules, which govern the retention and disposition of records unique to a particular agency's programs and statutory functions.

State of Rhode Island and Providence Plantations
Rhode Island State Archives & Public Records Administration

CERTIFICATION OF RECORDS DESTRUCTION

In accordance with the Authority granted by Title 38 of the Rhode Island General Laws these records have met the legal retention requirements and are eligible for destruction on date below.

Department:
Division/Unit:

Date:

Record Series Number	Record Series Title	Dates from/to	Volume

*Please sign this certificate and return to the RI State Archives, 337 Westminster Street, Providence RI, 02903
If faxing, please provide a return fax number.*

I certify that I have reviewed the above listed records and authorize their destruction.

Department Head or Records Custodian: _____ Date: _____
Signature

Print Name

State Archivist
& Public Records Administrator: _____ Date: _____

Signed and executed Certificate is a permanent record (RIGL §42-8.1-10)