2010

12th Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2010

Department of Attorney General, State of Rhode Island

DEPARTMENT OF ATTORNEY GENERAL

Patrick C. Lynch, Attorney General

OPEN GOVERNMENT SUMMIT

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

Patrick C. Lynch, Attorney General

Dear Open Government Summit Attendee:

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

During the past eight (8) years, my Administration has been committed to public outreach and education on the requirements of the Open Meetings and Access to Public Records Acts. This Summit is one of several services the Department of Attorney General provides to legal counsel, members of public bodies, and concerned citizens, to promote compliance with these important laws. Upon request from legal counsel for public bodies, we will issue advisory opinions concerning any pending matter that may implicate either the Open Meetings or Access to Public Records Acts. The Department issues two types of advisory opinions: 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. The Department of Attorney General is also available to provide training sessions for members of public bodies. By providing advice and training, we hope to continue to reduce the number of complaints received by the Department of Attorney General and prevent violations before they occur.

I encourage you to take advantage of the resources we have available on the Department of Attorney General website, www.riag.ri.gov. Our popular *Guide to Open Government in Rhode Island* is located in the "Reports" section and can be printed for distribution. In addition, the Department's website has links to findings and advisory opinions issued from 2001 to the present. These findings and advisory opinions may provide guidance on specific questions that you encounter under the Open Meetings and Access to Public Records Acts.

I am extremely proud of this Department's mission and I hope you will join me in ensuring that Rhode Island state and local government remains open and accountable to the public. Much has already been accomplished to make state and local government open and accessible to the public. I look forward to working with you on this important matter. If either I or my Department can assist you to accomplish our common goals, do not hesitate to contact us.

Very truly yours,

Patrick C. Lynch
Attorney General

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SECTION I

ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2010

PR 10-01 **AVCORR Management, LLC v. Central Falls Detention Facility Corp.**
The CFDF violated the APRA by failing to respond to an APRA request in writing within ten (10) business days. See R.I. Gen. Laws § 38-2-7.
VIOLATION FOUND.
Issued January 12, 2010.

PR 10-02 **Caranci v. City of North Providence**
The City violated the APRA when it failed to timely respond to an APRA request. Although the City initially responded to the APRA request within ten (10) business days by extending the response time an additional twenty (20) business days, the City still did not comply with the request within this time frame. See R.I. Gen. Laws § 38-2-7. Instead, the City made several written assurances to Complainant that the requested records would be provided. This Department found that the City violated the APRA by failing to provide any documents in response to Complainant's APRA request within the time period prescribed under the APRA. This Department allowed the City ten (10) business days from the date of its finding to respond to Complainant's APRA request and provide this Department an explanation for its failure to provide any documents in response to Complainant's request.
VIOLATION FOUND.
Issued January 22, 2010.

PR 10-02B **Caranci v. City of North Providence**
In Caranci v. City of North Providence, PR 10-02, this Department found that the City violated the APRA when it failed to provide any documents in response to Complainant's APRA request within the thirty (30) business day time period mandated under the APRA. This Department allowed the City ten (10) business days from the date of the finding in Caranci to respond to this Department's inquiry concerning whether the violation was willful and knowing pursuant to R.I. Gen. Laws § 38-2-9(d). The additional evidence, which was previously available to the Complainant and the City but not submitted to this Department until after our finding in Caranci, revealed that the City attempted to arrange a schedule for the Complainant to inspect and copy the

requested records, albeit beyond the thirty (30) business day time period. Accordingly, the violation was not willful and knowing.
VIOLATION FOUND.
Issued April 9, 2010.

PR 10-03 **Racquier v. City of Central Falls**

The City violated the APRA when it failed to provide records within ten (10) business days of an APRA request. See R.I. Gen. Laws § 38-2-7. The City subsequently provided the records, however, the Complainant alleged that the document specifically requested was not provided. The City asserted that it provided the documents it maintained related to the APRA request and that the specific document requested did not exist. See R.I. Gen. Laws § 38-2-3(f). The Complainant provided no evidence to contradict the City's assertion and, thus, this Department determined the City violated the APRA by failing to respond to the Complainant's APRA request within the time period prescribed under the APRA.
VIOLATION FOUND.
Issued February 2, 2010.

PR 10-04 **Beagan v. Albion Fire District**

By three (3) separate complaints, Complainant alleged that the District committed multiple OMA and APRA violations. With respect to the APRA allegations, we concluded that the District committed the following five (5) APRA violations: 1) not providing the executive session minutes to the June 9, 2009 meeting when there was no evidence demonstrating that the minutes were sealed at the time of the request; 2) failing to respond and/or denying the July 29, 2009 records request; 3) failing to provide all responsive documents to an August 5, 2009 records request; 4) failing to respond to an appeal and; 5) charging an unreasonable amount for search and retrieval of documents. We instructed the Fire District to provide the unsealed executive session minutes to the June 9, 2009 meeting to the Complainant within ten (10) business days of the issuance of the finding. The Fire District must also respond to the petition for review dated August 20, 2009 within ten (10) business days of this finding. Lastly, the Fire District must also return $7.50 for charging an unreasonable amount for providing copies of minutes.
VIOLATION FOUND.
Issued February 26, 2010.

PR 10-04 B **Beagan v. Albion Fire District**

After concluding that the Fire District violated the APRA in Beagan v. Albion Fire District, PR 10-04, the Fire District requested that this Department reconsider its determination. The Fire District presented no additional arguments, so the finding was affirmed.
VIOLATION FOUND.
Issued April 22, 2010.

PR 10-05 **Giacobbe v. Rhode Island Department of Public Safety**

The Department of Public Safety did not violate the APRA when it denied reports about an individual that did not result in an arrest.
Issued April 5, 2010.

PR 10-06 **Kossin v. Providence School Department**

The Providence School Department violated the APRA by failing to respond to Complainant's request within ten (10) business days. Although the PSD contended it timely responded because it had an APRA policy in place and Complainant did not follow it, this policy did not prohibit APRA requests from being submitted on a non-PSD form. Additionally, when the PSD did respond to the Complaintant's APRA request its response to several categories was inadequate and did not comply with the APRA.
VIOLATION FOUND.
Issued May 5, 2010.

PR 10-07 **Black v. Town of Barrington and Barrington Tax Assessor**

The Town violated the APRA when it did not respond to Complainant's APRA request in a timely manner. Although the Town eventually provided the documents, the Town additionally violated the APRA when it continued to insist that copies of the documents must be paid for and denied the Complainant the right to inspect the requested documents.
VIOLATION FOUND.
Issued May 10, 2010.

PR 10-08 **Doe v. Nasonville Fire District**
OM 10-16 **In Re: Nasonville Fire District**

Nasonville Fire District violated the OMA by failing to post supplemental notice on the secretary of state's website in a timely manner for its April 14, 2009, May 12, 2009, and June 9, 2009 meetings. Because evidence demonstrated that Complainant attended or had actual knowledge of the Fire District's July 14, 2009, September 8, 2009, and October 13, 2009 meetings, the

Complainant was not "aggrieved" within the scope of the OMA. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). The Fire District also violated the OMA for all the above-referenced meetings since its notice did not provide a statement specifying the nature of the business to be discussed, i.e., indicating "new business" and "old business." The Fire District did not violate the OMA since the evidence suggested that it posted its notice in a second prominent location within the governmental unit, nor did the Fire District violate the OMA by denying a request for C.A.R.T. interpreter services at the Fire District's September 8, 2009 and October 13, 2009 meetings since there was no evidence that explained or demonstrated how the requested accommodation was linked to some disability or that the Fire District's existing assisted listening accommodations were insufficient. The Fire District did not violate the APRA by extending the time to respond to a request seeking various records over a nine (9) month period of time and there was no evidence that the costs assessed violated the APRA. The Fire District did violate the APRA since there was no evidence that the Fire District had promulaged established procedures on the date of the APRA request, although the evidence established that the Fire District does presently have established APRA procedures. This Department declined to respond to the Fire District's request for an advisory opinion since the request concerned the same subject matter as the pending complaints. Fire District instructed to re-consider and re-vote on the OMA violations discussed above.
VIOLATION FOUND.
Issued May 14, 2010.

PR 10-09 **Thurber v. Town of North Smithfield**

Although the Department of Attorney General questioned whether requests for records were made under the Access to Public Records Act, no argument was made that records were not requested pursuant to the Access to Public Records Act. Since the Town did not respond in a timely manner or in accordance with R.I. Gen. Laws § 38-2-7, the Town violated the APRA. Two "requests" sought answers to questions and did not seek documents, accordingly, the Town's failure to respond to these inquiries did not violate the APRA. Evidence revealed that documents subsequently made available.
VIOLTATION FOUND.
Issued June 4, 2010.

PR 10-10 **Rogers v. Foster Town Council**

The Town did not violate the APRA when it denied a request for "Vacation days (or weeks) allowed for the position [of] Foster Town Treasurer." In particular, we found that the Town could have reasonably read the request to conclude the records sought pertained to a particular and identifiable employee. The request did nothing to distinguish that it sought the date of hire and salary for a particular and identifiable employee, but sought the vacation time allowed only for the position of the Town Treasurer. The Town's response - providing the information delineated in R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) as public, but denying the information not delineated in R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) - was consistent with this interpretation.

Issued June 14, 2010.

PR 10-11 **Riley v. Town of Narragansett**

Complainant alleged that the Town of Narragansett violated the APRA when it failed to provide several documents responsive to an APRA request. This Department determined that the Town did not violate the APRA because the documents in question were not responsive to the APRA request and at least one of those documents were not maintained by the Town. See R.I. Gen. Laws § 38-2-3(f). Complainant also contended that the Town violated the APRA because the Town Manager responded to a records request instead of the three Town officials to whom the APRA requests were directed. This Department found nothing within the APRA that prohibits a Town Manager from responding to a records request made to an individual Town employee or official. Nonetheless, this Department determined that the Town had violated the APRA when it failed to timely respond to the records request in writing within ten (10) business days. See R.I. Gen. Laws § 38-2-7.

VIOLATION FOUND.

Issued June 25, 2010.

PR 10-12 **Snow v. Dept. of Public Safety**

The Department of Public Safety did not violate the APRA by denying a request for an incident report that did not culminate in an arrest. The report was exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(D), as well as R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) since the report concerned an investigation into a particular officer. Moreover, even though the requested records pertained to the Complainant, under the APRA an interested party

has no greater interest in documents than any member of the public.
Issued June 25, 2010.

PR 10-13 **Orabona v. Scituate School Department**
The Scituate School Department violated the APRA by failing to respond within ten (10) business days of a request. Even if the School Department did not maintain the requested documents, the School Department was required to provide a response within ten (10) business days of receipt. No evidence that a private architect was "acting on behalf of and/or in place of any public agency."
VIOLATION FOUND.
Issued June 25, 2010.

PR 10-14 **South County Independent v. South Kingstown School Dept.**
Because none of the teachers who received layoff notices had been separated from employment at the time of the request, the School Department did not violate the APRA by denying a request for "the names and positions of 99 teachers who have received notices of intent to lay off." See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I); Edward A. Sherman Pub. Co. v. Carpender, 659 A.2d 1117 (R.I. 1995).
Issued June 30, 2010.

PR 10-15 **International Brotherhood of Electrical Workers Local 99 v. University of Rhode Island**
The University did not violate the APRA when it denied a request for a copy of a subcontract between its general contractor and a private subcontractor for the construction of the NBC Pell Library. In particular, we found that the University had no obligation to obtain and provide access to the subcontract since the University was not a party to the subcontract and did not have it in its possession.
Issued July 1, 2010.

PR 10-16 **Kent v. RI Office of Energy Resources**
The OER violated the APRA by failing to provide applications in an electronic format. Based upon the evidence presented, to the extent that the OER maintained applications in an electronic format, a citizen has the right to request the documents in any format maintained by the public body. See R.I. Gen. Laws § 38-2-3(e).
VIOLATION FOUND.
Issued July 9, 2010.

PR 10-17 **D'Amario v. Judicial Nominating Commission**
D'Amario v. Rhode Island Superior Court

Inmate incarcerated in Texas federal prison sought records from the Judicial Nominating Commission and the Rhode Island Superior Court. Evidence demonstrated that Judicial Nominating Commission provided requested records within ten (10) business days of receipt of request, and accordingly, there was no violation. With respect to the Superior Court, request sought a copy of transcript. Since judicial bodies are included within the APRA only with respect to their administrative functions, and since a copy of a transcript was outside the Court's administrative function, there was no violation. See R.I. Gen. Laws § 38-2-2(4)(i)(T).
Issued July 9, 2010.

PR 10-18 **Kooloian v. Town of North Providence**

The Town violated the APRA by failing to respond to a public records request within ten (10) business days. See R.I. Gen. Laws § 38-2-7. Evidence demonstrated that the Town did respond to the request and that the delay in responding was due to factors relating to the March 2010 flooding. Although the Department of Attorney General had previously cited the Town for failing to respond to a public records request within ten (10) business days, see Caranci v. Town of North Providence, PR 10-02, due to these mitigating factors, this Department did not find a willful or knowing violation. Town was advised that under these circumstances it could have avoided a violation if it extended the time to respond for an additional twenty (20) business days pursuant to R.I. Gen. Laws § 38-2-7(b). Evidence also established that the Town provided all responsive documents it maintained.
VIOLATION FOUND.
Issued July 9, 2010.

APRA ADVISORY OPINIONS - 2010

ADV PR 10-01 **In Re: Relationship between the Public Records and Open**
ADV OM 10-02 **Meeting Laws on Sealed Minutes**

The New Shoreham Sewer District sought an advisory opinion on the relationship between the OMA and APRA with respect to sealed executive session minutes and the person discussed in executive session. Because sealed executive session minutes are not deemed public records under the APRA, a public body is not required to disclose sealed executive session minutes to any person, including an affected employee discussed pursuant to R.I. Gen.

Laws § 42-46-5(a)(1), regardless of the subject matter of the closed session. See R.I. Gen. Laws § 38-2-2(4)(i)(J). The APRA itself does not prohibit public bodies from disclosing exempted records, such as sealed executive session minutes, see In re: New England Gas Company, 842 A.2d 545, 551 (R.I. 2004), although disclosing exempted records, which are also deemed confidential, may violate some other non-APRA law.
Issued May 14, 2010.

NOTE: The full text of all findings and advisory opinions can be found at the Attorney General's website at www.riag.ri.gov (then proceed to the link entitled "Civil & Criminal Divisions" and then the link entitled "Open Government"). Findings/advisories issued before 2001 may be accessed by contacting our office at (401) 274-4400.

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

(2) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

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

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

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

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary; the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 36, title 42, and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase

retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries.

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

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

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

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

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

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

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

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

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

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

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

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

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

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement

agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

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

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

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

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

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

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

(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.

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

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

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

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

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

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

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

(d) If a public record is in active use or in storage and, therefore, not available at the time a person requests access, the custodian shall so inform the person and make an

appointment for the citizen to examine such records as expeditiously as they may be made available.

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

(f) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

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

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

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."

38-2-4. Cost. —

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

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.

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

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

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

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.

38-2-6. Commercial use of public records. — No person or business entity shall use information obtained from public records pursuant to this chapter [~~to solicit for commercial purposes~~] or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of

not more than five hundred dollars ($500) and/or imprisonment for no longer than one year.

38-2-7. Denial of access. —

(a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person or entity requesting the right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial, Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

38-2-8. Administrative appeals. —

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

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

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

(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 one thousand dollars ($1,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant.

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.

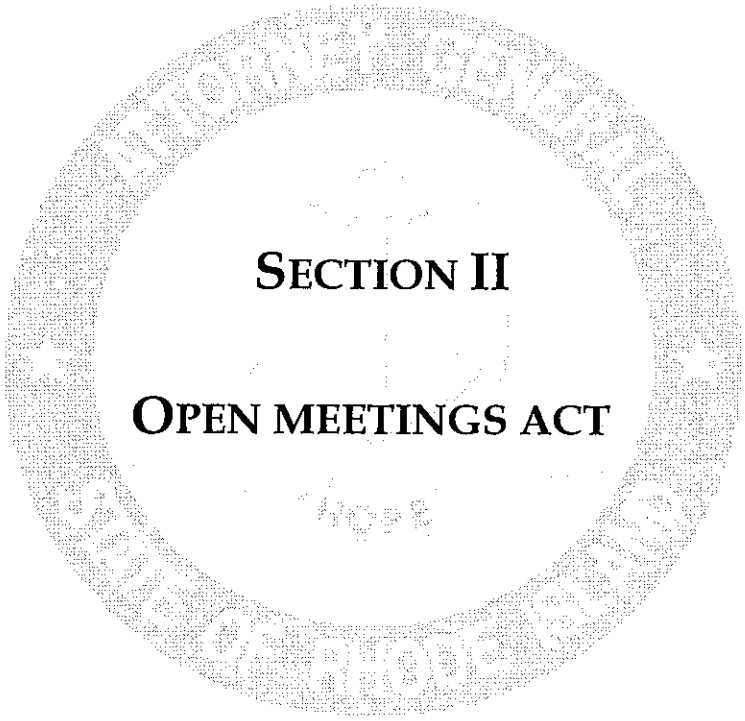
38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

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 - 2010

OM 10-01 **EPEA v. East Providence School Committee**

Allegation charging that the East Providence School Committee violated R.I. Gen. Laws § 42-46-4(b) by failing to disclose a vote taken in executive session on December 30, 2008. The executive session vote was disclosed on January 13, 2009, and a complaint was filed by the East Providence Education Association on September 22, 2009. Because the statute of limitations for this Department to file a complaint in the Superior Court had expired on or about August 10, 2009, this Department was unable to address the substantive issue presented by the complaint. See R.I. Gen. Laws § 42-46-8. Since the statute of limitations expired prior to receipt of the OMA complaint, there was no violation.
Issued February 18, 2010.

OM 10-02 **Blais v. Nasonville Fire District**

Complainant alleged that the Fire District violated the OMA when it: 1.) failed to properly post notice for its August 11, 2009 meeting; 2.) informed him that the Fire District had cancelled the August 11, 2009 meeting but then subsequently convened a meeting on August 11, 2009 after he left the location and; 3.) not providing a proper assistive listening device for the August 11, 2009 meeting. With respect to the first allegation, we concluded that the Complainant was not aggrieved because he appeared to attend the August 11, 2009 meeting. As to the second allegation, we concluded that the Fire District violated the OMA when it informed the Complainant that the meeting was cancelled and then held the meeting after he left the location. Lastly, with respect to the third allegation, we concluded that the issue was moot and/or the Complainant was not aggrieved. Specifically, because the Complainant left the August 11, 2009 meeting, the Complainant was not denied access to an assistive listening device for that meeting.
VIOLATION FOUND.
Issued January 6, 2010.

OM 10-03 **Green v. Nasonville Fire District**

Complainant alleged that the Fire District violated the OMA when it: 1.) informed her that the Fire District had cancelled the August 11, 2009 meeting but then subsequently convened a meeting on August 11, 2009 after she left the location and; 2.) improperly provided notice for the October 13, 2009 meeting. With respect to

the first allegation, we concluded that the Fire District violated the OMA when it informed the Complainant that the August 11, 2009 meeting was cancelled and then held the meeting after she left the location. With respect to the second allegation, we concluded that the Complainant was not aggrieved because she was personally aware of the correct time for the October 13, 2009 meeting.
VIOLATION FOUND.
Issued January 6, 2010.

OM 10-04 **VanDyke v. Chariho Building Committee**
Complainant alleged that the CBC violated the OMA when it failed to properly post notice that a Project Manager would be discussed and voted on at the August 11, 2009 meeting. This Department concluded that the CBC did not properly notice this appointment. Additionally, we found that the violation at the August 11, 2009 meeting was not rendered moot by the CBC's voluntarily providing proper notice and re-voting at a second meeting. See Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005).
VIOLATION FOUND.
Issued January 11, 2010.

OM 10-05 **Kenney v. Hopkinton Town Council**
The Town Council did not violate the OMA when two of the Town Council's five members discussed an appointment to the Chariho Building Committee prior to the November 2, 2009 meeting. This Department found that the evidence demonstrated that there was no discussion of this matter prior to November 2, 2009 between/among the Town Council other than one member informing the President of her intention to introduce this matter. Moreover, the fact that the candidate knew (or believed) she would be appointed at the November 2, 2009 meeting based upon her discussions with one Town Council member does not violate the OMA. The Town Council violated the OMA when it did not post adequate public notice that the appointment to the CBC would be discussed and voted upon at the November 2, 2009 meeting.
VIOLATION FOUND.
Issued January 25, 2010.

OM 10-06 **Langseth v. Economic Development Corporation Review Panel**
The Economic Development Corporation Review Panel was a "public body" within the meaning of R.I. Gen. Laws § 42-46-2(c),

and therefore, violated the OMA by convening meetings without proper notice.
VIOLATION FOUND.
Issued February 17, 2010.

OM 10-07 **Langseth v. Economic Development Corporation**

Complainant alleged that the EDC violated the OMA when it entered into executive session on April 20, 2009 under R.I. Gen. Laws §§ 42-46-5(a)(1) and (a)(7). In particular, Complainant contended that neither subsection of the OMA was appropriate for entering into executive session. The EDC argued that it was discussing the job performance of the Executive Director of the EDC and the Governor of the State of Rhode Island, who serves in his official capacity as Chairperson of the EDC and, therefore, the discussion was appropriate under R.I. Gen. Laws § 42-46-5(a)(1). The EDC conceded that the discussion was not proper under R.I. Gen. Laws § 42-46-5(a)(7), but insisted that citing to another subsection, when the underlying discussion is appropriate for executive session, is not a violation of the OMA. Based on the evidence presented, we concluded that the EDC violated the OMA because the executive session was used as a work session in which EDC members could give input as to the criteria that the EDC should employ when it selects a future Executive Director. This discussion was not appropriate under R.I. Gen. Laws §§ 42-46-5(a)(1) or (a)(7).
VIOLATION FOUND.
Issued February 17, 2010.

OM 10-08 **Beagan v. Albion Fire District**

By three (3) separate complaints, Complainant alleged that the District committed multiple OMA and APRA violations. With respect to the OMA allegations, we concluded that the District committed the following five (5) OMA violations: 1) at its June 9, 2009 and July 14, 2009 meetings by not properly disclosing in the open call the reason for holding a closed meeting, by citation to the subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed; 2) at its June 9, 2009 and July 14, 2009 meetings by not stating for the record that the person being discussed was notified of the closed session; 3) at its June 9, 2009 meeting when it entered into executive session under R.I. Gen. Laws § 42-46-5(a)(1) to discuss Legal Matters; 4) at its August 11, 2009 meeting when it did not provide an adequate open call to enter into executive session or a statement that the person to be

discussed had been notified, and; 5) at its August 11, 2009 meeting when it entered into executive session under R.I. Gen. Laws § 42-46-5(a)(1) to discuss Legal Matters.
VIOLATION FOUND.
Issued February 26, 2010.

OM 10-08 B **Beagan v. Albion Fire District**
After concluding that the Fire District violated the OMA in Beagan v. Albion Fire District, OM 10-08, the Fire District requested that this Department reconsider its determination. The Fire District based its request on the fact that this Department had not received a copy of a supplemental response to the complaint that was dated prior to the issuance of the finding. The supplemental letter relied on Rhode Island Affiliate, American Civil Liberties Union, Inc. v. Bernasconi, 557 A.2d 1232 (R.I. 1989) for the proposition that a public body need not enter into executive session under the proper subsection so long as the subject matter of the executive session is appropriate for executive session. Based on this argument, we reconsidered the following two (2) OMA violations: 1.) the June 9, 2009 meeting when it entered into executive session under R.I. Gen. Laws § 42-46-5(a)(1) to discuss Legal Matters and, 2.) the August 11, 2009 meeting when it entered into executive session under R.I. Gen. Laws § 42-46-5(a)(1) to discuss Legal Matters. The remaining three (3) OMA violations were affirmed.
VIOLATION FOUND.
Issued April 22, 2010.

OM 10-09 **Black v. Barrington Town Council**
The Town violated the OMA when its agenda indicated that it would consider appointments/reappointments to specific boards and commissions, yet discussed whether it would interview future applicants to all boards and commissions. The Town further violated the OMA when the Town Council polled its members and reached a consensus regarding not interviewing all future board/commission applicants, but did not record its vote in the open session minutes. See R.I. Gen. Laws § 42-46-7.
VIOLATION FOUND.
Issued May 10, 2010.

OM 10-10 **Black v. Coastal Resources Management Council**
The notice for the November 24, 2009 meeting did not lack the specificity required under the OMA. The CRMC and CRMC ROW

violated the OMA by failing to post its minutes to the Secretary of State's website within thirty-five (35) days of the meeting.
VIOLATION FOUND.
Issued May 10, 2010.

OM 10-11 **Jenks v. Pascoag Board of Fire Commissioners**
Complainant alleged that the Board violated the OMA when it failed to list executive session on the Board's posted agenda in accordance with R.I. Gen. Laws § 42-46-6(b). Although the Board properly amended its agenda during open session to add an executive session pursuant to R.I. Gen. Laws § 42-46-6(b), it violated the OMA when it voted on the additional items during the executive session. See R.I. Gen. Laws § 42-46-6(b). Complainant further alleged that the Board violated the OMA when it discussed returning her to work from medical leave during executive session without proper notice pursuant to R.I. Gen. Laws § 42-46-5(a)(1). The Board violated the OMA when it discussed and voted on the possibility of returning Complainant to work from medical leave without providing Complainant proper notice pursuant to R.I. Gen. Laws § 42-46-5(a)(1). The Board also violated the OMA when it voted during the executive session. Graziano v. RI Lottery Commission, OM 99-06. Lastly, the Board violated the OMA by failing to maintain executive session minutes under R.I. Gen. Laws § 42-46-7.
VIOLATION FOUND.
Issued April 9, 2010.

OM 10-12 **Rogers v. Foster Ambulance Corps**
Because the evidence established that the Foster Ambulance Corps was not a "public body" for purposes of the OMA, it was not required to abide by the OMA at its meetings.
Issued April 21, 2010.

OM 10-13 **Hummel v. City of Central Falls**
The City violated the APRA by failing to make the requested open session minutes "available" within a reasonable time of the request. The APRA mandates that "[t]he attorney general shall consider all complaints filed under [the APRA] to have also been filed pursuant to [the Open Meetings Act], if applicable." Considering the statutory language, we concluded that with respect to open session minutes, the specific provisions of R.I. Gen. Laws § 42-46-7(b) that "[t]he 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" govern and a public body does not always have ten (10) business days to comply with a request. This Department determined that there is a "reasonable" timeframe inherent in any public records request. See R.I. Gen. Laws § 38-2-3(a)("every person shall have the right to inspect and/or copy those [public] records at such reasonable time as may be determined by the custodian thereof"). What is considered "reasonable" requires a case-by-case analysis based upon the facts of any given circumstance, including but not limited to, the number of documents requested, whether the requested documents are in storage, and other general demands upon office personnel. In this case, there was no reason provided to explain a six (6) business day timeframe between the request and availability.
VIOLATION FOUND.
Issued April 23, 2010.

OM 10-14 **Pena v. International Charter School of Pawtucket**
The International Charter School violated the OMA when it did not follow the procedural requirements to enter into executive session because its minutes did not reflect that the person to be discussed had been notified, there was no record by individual member of the votes taken, and because the agenda item "Executive Session: Personnel Issues" did not adequately advise of the nature of the business to be discussed. The ICS also violated the OMA by not having the minutes, or a record of the votes available to the public within the time period prescribed by the OMA and because closed session minutes were not created. The ICS did not violate the OMA by not posting its minutes on the Secretary of State's website.
VIOLATION FOUND.
Issued May 14, 2010.

OM 10-15 **Doe v. Burrillville Town Council (March 2009); Doe v. Burrillville Town Council (August 24, 2009); Doe v. Burrillville Town Council (August 26, 2009); Doe v. Burrillville Planning Board (August 3, 2009); Doe v. Burrillville Zoning Board (August 11, 2009)**
Since the Complainant was present at the March 11, 2009 Town Council meeting alleged to have been improperly noticed, the Complainant was not an "aggrieved" citizen within the scope of the OMA. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). All remaining complaints concerned allegation that various boards of the Town of Burrillville failed to

provide C.A.R.T. interpreter services to a person with a hearing disability. With regard to the March 2009 complaints, there was no evidence that the Complainant requested C.A.R.T. interpreter services, accordingly, there was no violation for the failure to provide C.A.R.T. interpreter services. With regard to the August 2009 complaints, there was evidence that a request for C.A.R.T. interpreter services was made, but evidence also demonstrated that the respective public bodies sought medical documentation to support the claimed hearing disability. As noted in an earlier correspondence by the Governor's Commission on Disabilities "[w]hen an employee requests an accommodation and the disability or need for accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has an ADA disability and needs the requested accommodation." Because no documentation was submitted supporting the claimed disability or the need for an accommodation, there was no violation for failing to provided the requested C.A.R.T. interpreter services.
Issued May 14, 2010.

OM 10-16 **Doe v. Nasonville Fire District**
PR 10-08 **In Re Nasonville Fire District**

Nasonville Fire District violated the OMA by failing to post supplemental notice on the secretary of state's website in a timely manner for its April 14, 2009, May 12, 2009, and June 9, 2009 meetings. Because evidence demonstrated that Complainant attended or had actual knowledge of the Fire District's July 14, 2009, September 8, 2009, and October 13, 2009 meetings, the Complainant was not "aggrieved" within the scope of the OMA. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). The Fire District also violated the OMA for all the above-referenced meetings since its notice did not provide a statement specifying the nature of the business to be discussed, i.e., indicating "new business" and "old business." The Fire District did not violate the OMA since the evidence suggested that it posted its notice in a second prominent location within the governmental unit, nor did the Fire District violate the OMA by denying a request for C.A.R.T. interpreter services at the Fire District's September 8, 2009 and October 13, 2009 meetings since there was no evidence that explained or demonstrated how the requested accommodation was linked to some disability or that the Fire District's existing assisted listening accommodations were insufficient. The Fire District did not violate the APRA by extending the time to respond

to a request seeking various records over a nine (9) month period of time and there was no evidence that the costs assessed violated the APRA. The Fire District did violate the APRA since there was no evidence that the Fire District had promulaged established procedures on the date of the APRA request, although the evidence established that the Fire District does presently have established APRA procedures. This Department declined to respond to the Fire District's request for an advisory opinion since the request concerned the same subject matter as the pending complaints. Fire District instructed to re-consider and re-vote on the OMA violations discussed above.
VIOLATION FOUND.
Issued May 14, 2010.

OM 10-17 **Kelly v. Rhode Island House of Representatives & Rhode Island Senate**

The Rhode Island General Assembly did not violate the OMA when House and Senate members gathered for a presentation by the Education Commissioner followed by questions and answers. Since no collective discussion and/or action was taken by House and Senate members, the OMA did not apply to the presentation and it was unnecessary to examine the constitutional separation of powers argument raised.
Issued May 28, 2010.

OM 10-18 **Rogers v. City of Pawtucket**

The Pawtucket Parks Commission violated the OMA by failing to post notice of its meeting on the Secretary of State's website.
VIOLATION FOUND.
Issued June 4, 2010.

OM 10-19 **Westerly Sun v. Hopkinton Town Council**

Having posted on its public notice that interviews would be conducted during the Town Council meeting, the Town Council could not deny that the interviews were a part of its "meeting." Because the Town Council did not follow the procedural requirements imposed by the OMA to enter into executive session in general, and also specifically under R.I. Gen. Laws § 42-46-5(a)(1), the Town Council violated the OMA. The Town Council did not violate the OMA by failing to indicate on its notice that they intended to hold the interviews in executive session.
VIOLATION FOUND.
Issued June 18, 2010.

OPEN MEETINGS ACT ADVISORY OPINIONS - 2010

ADVOM 10-01 **In Re: Request for Advisory Opinion**

Request was made concerning whether a particular subject-matter was appropriate for executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2). Because insufficient facts were submitted to determine the precise nature of the proposed executive session discussion, this Department could not determine whether or not an executive session was appropriate. Accordingly, no opinion was rendered.

Issued January 12, 2010.

ADV OM 10-02 **In Re: Relationship between the Public Records and**
ADV PR 10-01 **Open Meeting Laws on Sealed Minutes**

The New Shoreham Sewer District sought an advisory opinion on the relationship between the OMA and APRA with respect to sealed executive session minutes and the person discussed in executive session. Because sealed executive session minutes are not deemed public records under the APRA, a public body is not required to disclose sealed executive session minutes to any person, including an affected employee discussed pursuant to R.I. Gen. Laws § 42-46-5(a)(1), regardless of the subject matter of the closed session. See R.I. Gen. Laws § 38-2-2(4)(i)(J). The APRA itself does not prohibit public bodies from disclosing exempted records, such as sealed executive session minutes, see In re: New England Gas Company, 842 A.2d 545, 551 (R.I. 2004), although disclosing exempted records, which are also deemed confidential, may violate some other non-APRA law.

Issued May 14, 2010.

NOTE: The full text of all findings and advisory opinions can be found at the Attorney General's website at www.riag.ri.gov (then proceed to the link entitled "Civil & Criminal Divisions" and then the link entitled "Open Government"). Findings/advisories issued before 2001 may be accessed by contacting our office at (401) 274-4400.

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:

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

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

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

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

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

(f) "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 (a) of conducting student disciplinary hearings or (b) 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. 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); provided, that in the case of school

committees the required public notice shall be published in a newspaper of general circulation in the school district under the committee's jurisdiction; however, ad hoc committees, sub committees and advisory committees of school committees shall not be required to publish notice in a newspaper; however, nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (f) 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 section 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) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

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

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

(e) All 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. This requirement of the electronic transmission and filing of minutes with the secretary of state shall take effect one year after this subsection takes effect. If a public body fails to transmit 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) [Deleted by P.L. 1988, ch. 659, § 1.]

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

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

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

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

ACCESS TO PUBLIC RECORDS ACT PROCEDURES

PATRICK C. LYNCH, ATTORNEY GENERAL

DEPARTMENT OF ATTORNEY GENERAL
PUBLIC RECORDS REQUEST GUIDELINES

The Department of Attorney General has instituted the following procedure to help you obtain public records.

1. The contact person for Public Records is Special Assistant Attorney General Laura Ann Marasco, 274-4400 ext. 2297.

2. In order to request to inspect and/or to copy documents maintained by the Department of Attorney General, we ask that you complete the request form on the back side of this document or otherwise provide a written request for records that clearly identifies the records you seek and that your request is made pursuant to the Access to Public Records Act. A written request is not necessary for documents available pursuant to RI Gen. Laws § 42-35-2 or other documents prepared for or readily available to the public.

3. Requests to inspect public records can be mailed or dropped off at the Department of Attorney General, 150 South Main Street, Providence, Rhode Island 02903, and directed to Special Assistant Attorney General Laura Ann Marasco. To make a public records request by e-mail or facsimile, please contact Special Assistant Attorney General Laura Ann Marasco.

4. Additional copies of this form are available on the Attorney General's website. A copy of the Attorney General's Guide to Open Government can be found at http://www.riag.ri.gov/documents/reports/opengov.pdf.

5. There are times when the public records you seek are not available at the time of your request. Please be advised that the Access to Public Records Act allows a public body ten (10) business days to respond and, with "good cause," may extend the time to respond to thirty (30) business days.

6. If you feel that you have been denied access to public records, you have the right to file an appeal with the Attorney General. If you are still not satisfied, you may file a lawsuit in Superior Court. See R.I. Gen. Laws § 38-2-8.

7. The Department of Attorney General is committed to providing you with public records in an expeditious and courteous manner.

PATRICK C. LYNCH, ATTORNEY GENERAL

DEPARTMENT OF ATTORNEY GENERAL
REQUEST FORM FOR RECORDS
UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date _____ Request Number _____

Name (optional) _____

Address (optional) _____

_____

Telephone (optional) _____

E-mail address (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 Public Records Office

Department of Attorney General - Access to 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 R.I. Gen. Laws § 38-2-2(4)(i)(A) through (Y), 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.