

8-5-2011

13th Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2011

Department of Attorney General, State of Rhode Island

Follow this and additional works at: http://docs.rwu.edu/law_pubs_conf

 Part of the [Administrative Law Commons](#), [Civil Procedure Commons](#), [Law and Society Commons](#), [Legislation Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Department of Attorney General, State of Rhode Island, "13th Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2011" (2011). *School of Law Conferences, Lectures & Events*. Paper 87.
http://docs.rwu.edu/law_pubs_conf/87

This Document is brought to you for free and open access by the School of Law Publications at DOCS@RWU. It has been accepted for inclusion in School of Law Conferences, Lectures & Events by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

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

August 5, 2011

Dear Open Government Summit Attendee:

I would like to thank you for attending the 13th annual Open Government Summit and I would also like to thank Roger Williams University School of Law for hosting such an important event.

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 of ensuring that government remains open and accountable to the public. In the past twelve (12) years, significant strides have been made with respect to open government in Rhode Island and with your help, we can continue this advancement.

To this end, the Department of Attorney General is committed to public outreach and education concerning the requirements of the Open Meetings Act and Access to Public Records Act. While today's event represents a large state-wide audience, members of the Attorney General's Office are available upon request to conduct smaller open government trainings on a town or regional basis and I encourage you to take advantage of this opportunity. Additionally, this Department will continue to issue, upon request from legal counsel for public bodies, advisory opinions concerning any pending matter that may implicate either the Open Meetings or Access to Public Records Acts.

I also encourage you to take advantage of the resources available at the Department of Attorney General website, www.riag.ri.gov. Our popular Guide to Open Government in Rhode Island is located in the "Open Government" 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. Lastly, a video copy of the 13th annual Open Government Summit will be archived on our website for future viewing.

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

INDEX

Section I — The Access to Public Records Act

Findings – (2011) 1

Advisory Opinions – (2011)..... 7

Access to Public Records Act Statute 8

Section II — The Open Meeting Act

Findings – (2011)..... 15

Advisory Opinions – (2011)..... 20

Open Meetings Act Statute..... 22

Section III — Access to Public Records Act Procedures

Guidelines 30

Request Form for Records 31

SECTION I



ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS – 2011

- PR 11-01** **Calise v. City of Pawtucket**
Complainant alleged that the City violated the APRA when it denied her records request. Complainant's legal counsel subsequently filed a complaint on her behalf against the City of Pawtucket in the Rhode Island Superior Court. The Superior Court complaint contained the same allegations that the Complainant made in the APRA complaint filed with this Department. This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegations, this Department's investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court's jurisdiction. See e.g. Graziano v. Personnel Appeals Board, OM 97-21; Blais v. Revens, PR 01-01. Therefore, this Department will take no action on this matter and will yield to the Superior Court's jurisdiction in this matter.
Issued January 26, 2011.
- PR 11-02** **McBurney v. City of Pawtucket**
Complainant alleged that the City violated the APRA when it failed to provide all of the documents responsive to his records request. Complainant subsequently filed a complaint against the City of Pawtucket in the Rhode Island Superior Court. The Superior Court complaint contained the same allegations that the Complainant made in the APRA complaint filed with this Department. This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegations, this Department's investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court's jurisdiction. See e.g. Graziano v. Personnel Appeals Board, OM 97-21; Blais v. Revens, PR 01-01. Therefore, this Department will take no action on this matter and will yield to the Superior Court's jurisdiction in this matter.
Issued January 26, 2011.
- PR 11-03** **Beagan v. Town of Lincoln**
Town violated the APRA by failing to respond to request within ten (10) business days and failing to respond to administrative appeal within ten (10) business days. Town advised to respond to request and this Department's inquiry concerning whether failure to timely respond constituted a willful and knowing violation.
VIOLATION FOUND.
Issued January 27, 2011.

- PR 11-04 Beagan v. Albion Fire District
OM 11-03 Beagan v. Albion Fire District (May 26th Complaint)
 Beagan v. Albion Fire District (Custody and Protection)
The Albion Fire District violated the APRA when it assessed an unreasonable search and retrieval charge that was not supported by evidence. The Fire District also violated the OMA and the APRA by failing to maintain designated open and closed session minutes from October 2007 through January 2008. The Fire District did not violate the APRA when it extended the time to respond for “good cause” and did not violate the APRA with respect to various other allegations. This Department has no jurisdiction to review allegations of Chapter 1 of Title 38.
VIOLATION FOUND.
Issued February 7, 2011.
- PR 11-05 Chase v. Department of Corrections
The Department of Corrections violated the APRA when it responded to an APRA request by providing written answers and not documents responsive to the records request.
VIOLATION FOUND.
Issued March 10, 2011.
- PR 11-05B Chase v. Department of Corrections
In Chase v. Department of Corrections, PR 11-05, this Department found that the Department of Corrections violated the APRA when it responded to an APRA request by providing written responses, instead of responsive documents. This Department allowed the Department of Corrections ten (10) business days from the date of the finding in Chase to provide the Complainant with responsive documents or an otherwise appropriate response under the APRA. The Department of Corrections responded by providing the Complainant with the only responsive documents that exist and indicating that it does not possess other responsive documents. Accordingly, the Department of Corrections complied with this Department’s directive in Chase.
Issued July 1, 2011.
- PR 11-06 Beagan v. Albion Fire District
OM 11-06 The Albion Fire District violated the APRA by: (1) failing to respond to two APRA requests within ten (10) business days; (2) failing to provide the appeal procedure in an APRA denial; and (3) failing to maintain certain meeting minutes. This Department also

determined that the Albion Fire District violated the OMA with respect to agendas for two of its meetings. Specifically, we found that the agendas for the August 10, 2010 and September 21, 2010 meetings failed to adequately appraise the public of the nature of the business to be discussed and the agenda item “New Business” does not “fairly inform the public of the nature of the business to be discussed or acted upon.” Tanner v. The Town Council of East Greenwich, 880 A.2d 784, 796 (R.I. 2006). On multiple occasions, this Department had previously warned the Fire District that similarly broad agenda items violated the OMA. See Albion Fire District Taxpayers Assoc. v. Albion Fire District, OM 08-12; Beagan v. Albion Fire District, OM 09-20. Because the Albion Fire District had been found in violation of the OMA by posting an insufficient agenda for items such as “New Business” and “Old Business” in 2008 and 2009, the Fire District’s August 10, 2010 and September 21, 2010 agendas that listed “New Business” willfully or knowing violated the OMA. Accordingly, this Department filed a lawsuit against the Fire District seeking civil fines.

LAWSUIT FILED.

VIOLATION FOUND.

Issued March 21, 2011.

PR 11-07

Pagliari v. Town of East Greenwich

The Town violated the APRA when it charged the complainant \$1.50 for a copy of an Assessor’s Plat and Lot map, and not the appropriate fee of \$0.15 under the APRA.

VIOLATION FOUND.

Issued March 25, 2011.

PR 11-08

Warwick Public Schools v. Department of Education

The Department of Education (“DOE”) violated the procedural requirements of the APRA by failing to respond to the administrative appeal within ten (10) business days. The DOE did not violate the substantive requirements of the APRA when it failed to disclose the requested records because the records were identifiable to an individual student and an individual parent and therefore exempt. See R.I. Gen. Laws §38-2-2(4)(i)(A)(I).

VIOLATION FOUND.

Issued March 30, 2011.

PR 11-09

Reilly v. Providence Economic Development Partnership

Complainant alleged that the Providence Economic Development Partnership (“PEDP”) improperly denied access to a Portfolio Loan

List, which contained certain information about its loans to borrowers. The PEDP acknowledged that no APRA provision (or other state and/or federal law) exempts the Portfolio Loan List from public disclosure. This Department agreed and concluded that the Portfolio Loan List is not exempt from public disclosure under the APRA since the information contained in the Portfolio Loan List is not of a privileged or confidential nature under R.I. Gen. Laws § 38-2-2(4)(i)(B). See The Providence Journal Company v. Convention Center Authority, 774 A.2d 40, 47 (R.I. 2001). We also concluded that the Portfolio Loan List is not exempt under R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) since PEDP borrowers are primarily businesses and/or organizations, and not individuals. Lastly, this Department concluded that the PEDP violated the APRA when it failed to respond to the APRA request to access the Portfolio Loan List within ten (10) business days.

VIOLATION FOUND.

Issued May 5, 2011.

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

The Department of Public Safety violated the APRA when it denied a request in total for the raw electronic accident data for June 2010. Although this Department acknowledged that the requested electronic data may contain non-public information and that the process for reviewing and redacting these records may be time consuming, the cost associated with this review should be borne by the person seeking the documents. See Direct Action for Rights and Equality v. Gannon, 819 A.2d 651, 661 (R.I. 2003). The Department of Public Safety should have advised the requesting party concerning the cost to review and redact the requested documents and allowed the requesting party to determine whether he still sought the records.

VIOLATION FOUND.

Issued May 20, 2011.

PR 11-11 **Palumbo v. Coastal Resources Management Council**

The Coastal Resources Management Council did not violate the APRA when it failed to respond to an APRA request since the evidence did not establish that the request was ever received.

Issued May 23, 2011.

- PR 11-12 North East Independent v. East Greenwich School District
Elizabeth McNamara v. East Greenwich School Department
The School District violated the APRA by failing to provide certain responsive documents to Complainants. The School District contended that the requested documents were work product and therefore exempt from public disclosure under the APRA. See R.I. Gen. Laws § 38-2-2(4)(i)(K). Because the School District previously provided some of the requested documents to potential adversaries it waived its work product privilege with respect to the disclosed documents. Johnson v. C.G. Sargeant's Sons Corporation, 1979 WL 200311, * 3 (R.I. Super., Feb. 13, 1979). Accordingly, the disclosed documents were not work product, but public records subject to disclosure under the APRA.
VIOLATION FOUND.
Issued May 31, 2011.
- PR 11-13 Stafford v. Rhode Island Family Court
The Rhode Island Family Court did not violate the APRA when it failed to respond to an APRA request since there was no evidence that the request was made to the proper person pursuant to Judiciary procedures.
Issued June 9, 2011.
- PR 11-14 Johnson v. Rhode Island Family Court
The Rhode Island Family Court did not violate the APRA when it failed to respond to an APRA request since there was no evidence that the request was made to the proper person pursuant to Judiciary procedures.
Issued June 9, 2011.
- PR 11-15 Beagan v. Albion Fire District (September 2010)
OM 11-15 The Albion Fire District did not violate the APRA when it conducted a reasonable search for a requested record, even though the search did not produce the requested record. The Fire District violated the APRA by failing to maintain minutes to various meetings in March 2006 and April 2006, and violated the APRA by failing to indicate the procedure for appealing the denial of records. See R.I. Gen. Laws § 38-2-7. Because the statute of limitations had expired prior to the filing of this complaint, this Department did not review whether the Fire District violated the OMA when certain minutes from 2008 failed to indicate the subsection that the executive session was convened.
VIOLATION FOUND.
Issued June 22, 2011.

- PR 11-16 Ives v. Town of New Shoreham & Electric Utilities Task Group
OM 11-16 The Electric Utility Task Group violated the OMA when it discussed by e-mail public business among all the members of the Task Group. The Town of New Shoreham violated the APRA when it failed to provide certain e-mails that this Department concluded were responsive to an APRA request. The Town did not violate the APRA in responding to a subsequent APRA request since the evidence established that the Town conducted a reasonable search for responsive records and no evidence established that other responsive records had not been provided. Nothing within the APRA requires that a particular Town official respond to the APRA request, provided that all responsive documents are provided.
VIOLATION FOUND.
Issued June 22, 2011.
- PR 11-17 Waltonen v. Town of West Greenwich
The Town of West Greenwich violated the APRA by failing to establish an APRA procedure pursuant to R.I. Gen. Laws § 38-2-3(c).
VIOLATION FOUND.
Issued June 28, 2011.
- PR 11-18 Miller v. City of East Providence
The City of East Providence did not violate the APRA since the evidence established that the requested records were made available within ten (10) business days of the receipt of the request.
Issued July 1, 2011.
- PR 11-19 Silvia v. Town of Warren
Complainant alleged that the Town violated the APRA when it failed to provide a copy of the Town Manager's annual written performance. This Department concluded that the Town Manager's annual written performance evaluation was not a public record under the APRA since it related to the work performance evaluation of an identifiable individual employee. See R.I. Gen. Laws § 38-2-2(4)(i)(A)-(Y).
Issued July 1, 2011.
- PR 11-20 Fitzmorris v. Portsmouth Town Council
The Town violated the APRA when it failed to respond to complainant's request within ten (10) business days. See R.I. Gen. Laws § 38-2-7. The Town also violated the APRA by failing to

establish an APRA procedure pursuant to R.I. Gen. Laws § 38-2-3(c).

VIOLATION FOUND.

Issued July 13, 2011.

ACCESS TO PUBLIC RECORDS ACT
ADVISORY OPINIONS – 2011

ADV PR 11-01 In Re Request from the Office of the Treasurer (Pension Board)

The names of beneficiaries receiving state pensions are public record and must be disclosed even if the beneficiary is/was not a state employee and is receiving a so-called “survivor pension.”

Issued June 27, 2011.

Note:

The full text of recent findings and advisory opinions can be found on the Attorney General’s website at <http://www.riag.ri.gov/civil/opengovernment>. 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) “Prevailing plaintiff” means and shall include those persons and entities deemed prevailing parties pursuant to 42 U.S.C. § 1988.

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

(5)(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.

(6) "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.

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(5), 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.L.G.L. § 42-35-2 or for other documents prepared for or readily available to the public.

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

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

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

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

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

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 – 2011

- OM 11-01 Berry v. Cumberland Fire District
The Cumberland Fire District violated the OMA because its meeting was not open to the public as required. Based upon the evidence presented, the Complainant was unable to access the building where the Fire District held its meeting since the entrance door to the building was locked to access from the outside. See R.I. Gen. Laws § 42-46-3.
VIOLATION FOUND.
Issued January 31, 2011.
- OM 11-02 Charette v. Foster-Glocester Regional School Committee
Complainant alleged that the School Committee violated the OMA when he was unable to hear the discussions during a meeting. This Department determined that there was no violation since there was no evidence presented that the Complainant requested any communication assistance or otherwise indicated that members of the School Committee or attendees needed to speak more loudly.
Issued February 1, 2011.
- OM 11-03 Beagan v. Albion Fire District
PR 11-04 Beagan v. Albion Fire District (May 26th Complaint)
Beagan v. Albion Fire District (Custody and Protection)
The Albion Fire District violated the APRA when it assessed an unreasonable search and retrieval charge that was not supported by evidence. The Fire District also violated the OMA and the APRA by failing to maintain designated open and closed session minutes from October 2007 through January 2008. The Fire District did not violate the APRA when it extended the time to respond for “good cause” and did not violate the APRA with respect to various other allegations. This Department has no jurisdiction to review allegations of Chapter 1 of Title 38.
VIOLATION FOUND.
Issued February 7, 2011.
- OM 11-04 McFadden v. Exeter Board of Canvassers
The Exeter Board of Canvassers violated the OMA when it held a meeting to discuss the issue of polling place availability for the 2011-2012 Exeter/West Greenwich school budget all day referendum when the agenda item only cited that the Board of Canvassers would “discuss any new business brought before the Board.” The level of specificity that must be detailed for each

agenda item depends on the facts and circumstances surrounding each item. See Tanner v. The Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005). The Board of Canvassers' public notice citing "new business" was insufficient since it did not contain "a statement specifying the nature of the business to be discussed." R.I. Gen. Laws § 42-46-6(b).

VIOLATION FOUND.

Issued February 15, 2011.

OM 11-05 **Ward v. Woonsocket School Committee**

Complainant alleged the School Committee violated the OMA when it convened in executive session under the item "Litigation (City of Woonsocket vs. WED)" and voted on the payment of legal fees to its attorney. Complainant also alleged the School Committee failed to publicly disclose the vote during the open session and that the issue was not appropriate for executive session. Based on the evidence presented to this Department, we found that the agenda item was sufficient as advertised to include a discussion concerning the increased compensation for the School Committee's attorney. We also concluded that a discussion about the attorney's compensation with respect to the litigation was appropriate for executive session in this instance. Lastly, this Department found that the School Committee did not violate the OMA by withholding the executive session vote. Here, the evidence was clear that the disclosure of the vote in open session would have jeopardized the School Committee's litigation strategy.

Issued February 18, 2011.

OM 11-06 **Beagan v. Albion Fire District**

PR 11-06 The Albion Fire District violated the APRA by: (1) failing to respond to two APRA requests within ten (10) business days; (2) failing to provide the appeal procedure in an APRA denial; and (3) failing to maintain certain meeting minutes. This Department also determined that the Albion Fire District violated the OMA with respect to agendas for two of its meetings. Specifically, we found that the agendas for the August 10, 2010 and September 21, 2010 meetings failed to adequately appraise the public of the nature of the business to be discussed and the agenda item "New Business" does not "fairly inform the public of the nature of the business to be discussed or acted upon." Tanner v. The Town Council of East Greenwich, 880 A.2d 784, 796 (R.I. 2006). On multiple occasions, this Department had previously warned the Fire District that similarly broad agenda items violated the OMA. See Albion Fire

District Taxpayers Assoc. v. Albion Fire District, OM 08-12; Beagan v. Albion Fire District, OM 09-20. Because the Albion Fire District had been found in violation of the OMA by posting an insufficient agenda for items such as “New Business” and “Old Business” in 2008 and 2009, the Fire District’s August 10, 2010 and September 21, 2010 agendas that listed “New Business” willfully or knowing violated the OMA. Accordingly, this Department will file a lawsuit against the Fire District seeking civil fines.

LAWSUIT FILED.

VIOLATION FOUND.

Issued March 21, 2011.

OM 11-07 Johnson v. West Greenwich Town Council

The Town Council did not violate the OMA when it denied Complainant’s request to have the executive session discussion concerning the job performance and character of the Town Administrator heard in open session. The executive session discussion was in response to complaints made by the Complainant against the Town Administrator. Even assuming the Complainant’s job performance and character were discussed in executive session, this Department had previously held that when the discussions regarding job performance and character of multiple people are discussed, such that the discussions cannot be segregated, a person who desires such discussion occur in closed session will be afforded that protection.

Issued March 25, 2011.

OM 11-08 Kammerer v. City of Newport

This Department concluded that the City did not violate the OMA since no meeting was convened for purposes of the OMA. Specifically, this Department determined that the communications and conversations between the City Solicitor and individual council members did not constitute a “quorum” of members of the City Council because those communications and conversations were unsolicited and occurred outside the presence of other City Council members. Moreover, this Department found that there were no collective discussions and/or action taken by a quorum of the members of the City Council.

Issued March 25, 2011.

OM 11-09 Ross v. East Providence City Council

The Complainant alleged that the City Council violated the OMA when a resolution, not advertised on the agenda, was initiated for

discussion. This Department concluded that, although the resolution was initially brought up, no substantive discussion concerning the topic occurred and it was thereafter withdrawn.
Issued April 21, 2011.

OM 11-10 Flanagan v. Coventry Town Council

The Coventry Town Council (“Town Council”) did not violate the OMA when three (3) members of the Town Council, who were also members of the Coventry Democratic Town Committee (“Town Committee”) met at a Town Committee meeting. There was no evidence that the members discussed anything over which the Town Council had supervision, control, jurisdiction, or advisory power.

Issued May 6, 2011.

OM 11-11 Mankofsky v. Middletown Town Council

Complainant alleged the Town Council violated the OMA when he was prohibited from commenting on an agenda docket item because he had not filled out a form and provided it to the town clerk prior to the discussion of that docket item. This Department found nothing within the OMA that requires a public body to hold an open forum session, to entertain or respond to any topic during an open session portion of a meeting.

Issued May 18, 2011.

OM 11-12 Duffy v. West Greenwich Town Council

The Town Council postponed its January 12, 2011 meeting to January 13, 2011 due to inclement weather. It posted its notice on January 13, 2011, which did not comply with the forty-eight (48) hour posting requirement. The Town Council violated the OMA when it convened its January 13, 2011 meeting on less than forty-eight (48) hours notice.

VIOLATION FOUND.

Issued May 24, 2011.

OM 11-13 Stewart et. al. v. West Greenwich Town Council

The West Greenwich Town Council violated the OMA when it posted notice on the Secretary of State’s website on April 6, 2011 for its April 7, 2011 meeting, notwithstanding the other public notices being timely and properly filed. The Department requested a supplemental response to determine whether the violation was

willful or knowing, thereby subjecting the Town Council to civil penalties.

VIOLATION FOUND.

Issued June 6, 2011.

OM 11-14 **Andrea v. West Greenwich Town Council**

The West Greenwich Town Council (“Town Council”) violated the OMA with respect to agendas for three of its meetings. Specifically, we found that none of the executive session agendas for the August 4, 2010, September 8, 2010 and November 17, 2010 meetings adequately apprised the public of the nature of the business to be discussed. The agenda item: “Executive Session – Pursuant to RIGL 42-46-5,A,1,2 – Personnel & Litigation & Collective Bargaining” did not “fairly inform the public of the nature of the business to be discussed or acted upon.” Tanner v. The Town Council of East Greenwich, 880 A.2d 784 (R.I. 2005). The executive session agenda also failed to indicate the number of executive session matters that would be discussed.

VIOLATION FOUND.

Issued June 16, 2011.

OM 11-15 **Beagan v. Albion Fire District (September 2010)**

PR 11-15 The Albion Fire District did not violate the APRA when it conducted a reasonable search for a requested record, even though the search did not produce the requested record. The Fire District violated the APRA by failing to maintain minutes to various meetings in March 2006 and April 2006, and violated the APRA by failing to indicate the procedure for appealing the denial of records. See R.I. Gen. Laws § 38-2-7. Because the statute of limitations had expired prior to the filing of this complaint, this Department did not review whether the Fire District violated the OMA when certain minutes from 2008 failed to indicate the subsection that the executive session was convened.

VIOLATION FOUND.

Issued June 22, 2011.

OM 11-16 **Ives v. Town of New Shoreham & Electric Utilities Task Group**

PR 11-16 The Electric Utility Task Group violated the OMA when it discussed by e-mail public business among all the members of the Task Group. The Town of New Shoreham violated the APRA when it failed to provide certain e-mails that this Department concluded were responsive to an APRA request. The Town did not violate the APRA in responding to a subsequent APRA request

since the evidence established that the Town conducted a reasonable search for responsive records and no evidence established that other responsive records had not been provided. Nothing within the APRA requires that a particular Town official respond to the APRA request, provided that all responsive documents are provided.

VIOLATION FOUND.

Issued June 22, 2011.

OM 11-17 Bozyan v. Middletown Town Council

The Town Council did not violate the OMA when it convened into executive session for the sole purpose of receiving a report from its legal counsel. The evidence demonstrated that the Town Council did not discuss the report, and in fact, discussed and voted on the contents of the report at a subsequent open session meeting.

Issued July 6, 2011.

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2011

ADV OM11-01 In Re Town of Jamestown

The Town of Jamestown sought an advisory opinion as to whether it would be a violation of the OMA if two members of a five member committee attended meetings with municipal staff persons. Based upon the facts presented it appears that less than a quorum of the committee members would meet on an ad hoc basis with municipal staff persons. Such a conglomeration of individuals would not constitute a quorum and the OMA is not triggered in the absence of a quorum. The Department cautions that, through their actions, the two committee members could effectively create a subcommittee or that even if less than a “quorum” of committee members meets with staff members, a “rolling” or “walking” quorum may be formed if these committee members subsequently discuss the same public business with other committee members outside the public purview.

Issued February 3, 2011.

ADV OM11-02 In Re Town of Charlestown

Pursuant to R.I. Gen. Laws § 42-46-5(a)(1), the Charlestown Town Council may discuss the Town Administrator’s performance evaluation in executive session since the evidence

established that the evaluation would include a discussion of the Town Administrator's "job performance, character, or physical or mental health."

Issued April 1, 2011.

ADV OM11-03 In Re Smithfield School Department

The Smithfield School Department sought an advisory opinion on whether it could advertise its school committee meeting notices in The Valley Breeze and comply with the requirements of R.I. Gen. Laws § 42-46-6(c), which requires school committees to publish notice in a newspaper of general circulation. This Department found that The Valley Breeze is a newspaper of general circulation since it is issued at regular intervals and has a paid subscription list. Our advisory opinion in In Re Cumberland School Committee, ADV OM 09-02 is no longer controlling with respect to The Valley Breeze.

Issued May 2, 2011.

ADV OM11-04 In Re Town of North Kingstown

This Department declined to provide an advisory opinion based upon the lack of clarity regarding the precise legal question upon which the Town sought advice. Nothing bars the Town from seeking another advisory opinion, whether verbally or in writing, based upon a concrete set of facts.

Issued June 23, 2011.

Note:

The full text of recent findings and advisory opinions can be found on the Attorney General's website at <http://www.riag.ri.gov/civil/opengovernment>. 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. — As Amended by Article 12 in the Fiscal Year 2012 State Budget. -

(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.

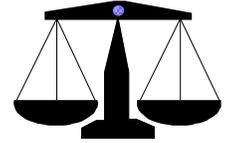
SECTION III



ACCESS TO PUBLIC RECORDS ACT PROCEDURES



DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL



PUBLIC RECORDS REQUEST GUIDELINES
OPEN GOVERNMENT UNIT

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

1. To reach us by telephone please call (401) 274-4400 and ask to be connected to the Open Government Unit.
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 Department the following day.
3. The Department may ask you the reason for your request, as its regular course of business. However, 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, we ask that you complete the Public Records Request Form located at the front desk, or on our website <http://www.riag.ri.gov/civil/opengovernment>.
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/civil/opengovernment>.
6. 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, 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. If you are still not satisfied, you may 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



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 Public Records Office

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 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.