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7-26-2024

**Office Of Attorney General: Peter F. Neronha, Attorney General:  
Access To Public Records Act ; Open Meetings Act (PowerPoint  
Presentation)**

Office of the Attorney General of Rhode Island

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# Office of Attorney General

*Peter F. Neronha, Attorney General*



**ACCESS TO PUBLIC RECORDS ACT**

**OPEN MEETINGS ACT**

# ACCESS TO PUBLIC RECORDS ACT



Questions during the Summit?

Submit via email: [agsummit@riag.ri.gov](mailto:agsummit@riag.ri.gov) or X/Twitter  
**@AGNeronha**

# What is the APRA?

**“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.”**

*R.I. Gen. Laws § 38-2-1*



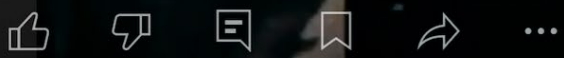


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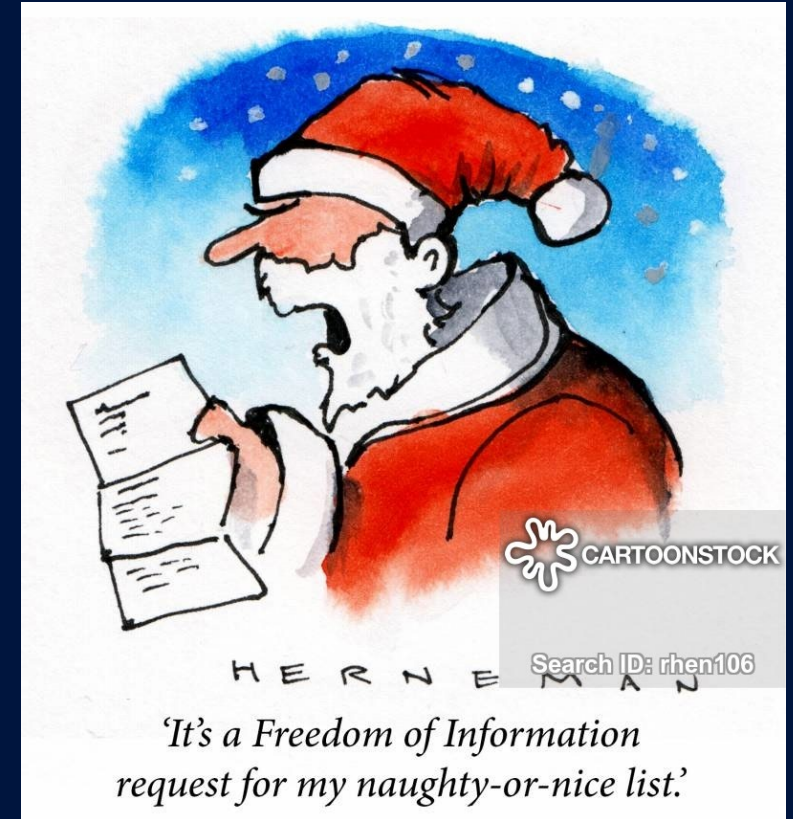
More videos  
Tap or swipe up to see all



# Is it a Public Body?

Any department or agency of RI state or local government “or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.”

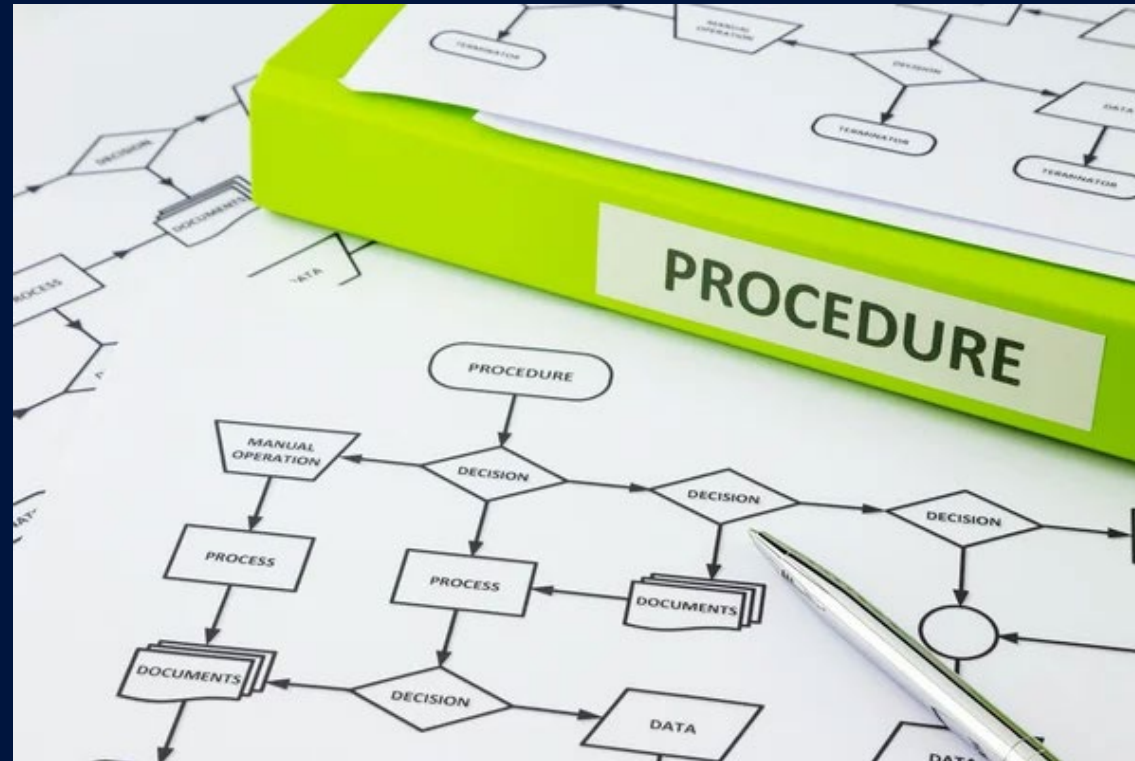
*R.I. Gen. Laws § 38-2-2(1)*



In re: North Scituate Volunteer Fire Dept, ADV PR 20-01;  
DePault v. RI High School Football Coaches Assoc., PR 20-14  
Providence Journal v. RICCA, PR 21-11



# APRA Procedures



- “Each public body shall establish written procedures regarding access to public records.”
- No written request required if available per APA or prepared for/readily available to the public.

*R.I. Gen. Laws § 38-2-3(d)*

Solas v. Town of South Kingstown, PR 23-03



# Procedures Must Include

- Identification of designated public records officer or unit
- How to make a request
- Where to make a request
- No requirement that request be made on public body's form, provided identifiable as request
- Accept requests via email/electronic portal (See ADV PR 23-01)

*R.I. Gen. Laws § 38-2-3(d)*



# Procedures

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

If you are seeking public documents maintained by the Office of the Attorney General, you can submit an Access to Public Records Act request by following the guidelines below. Note: Our response will only pertain to documents maintained by the Office of the Attorney General. If you are seeking documents from a different state entity or public body, you should submit your request directly to that entity or public body.

 [apra request guideline form.pdf](#)  
PDF file, less than 1mb



[Make a public records request here.](#)

## How to File a Complaint

If you believe a public body has violated the OMA or the APRA, you can submit a complaint by sending a brief statement, along with any relevant information and documents, to [✉ opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov), or mail to:

Attn: Open Government Unit  
Rhode Island Office of the Attorney General  
150 South Main Street  
Providence, RI 02903





# Reason or Identity of Person Making Request

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



*R.I. Gen. Laws § 38-2-3(j)*





OFFICE OF THE ATTORNEY GENERAL  
*PETER F. NERONHA, ATTORNEY GENERAL*  
150 South Main Street - Providence RI 02903



PUBLIC RECORDS REQUEST FORM  
UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date \_\_\_\_\_ Request Number \_\_\_\_\_

Name (optional) \_\_\_\_\_

Address (optional) \_\_\_\_\_

\_\_\_\_\_

Telephone (optional) \_\_\_\_\_

Requested Records: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

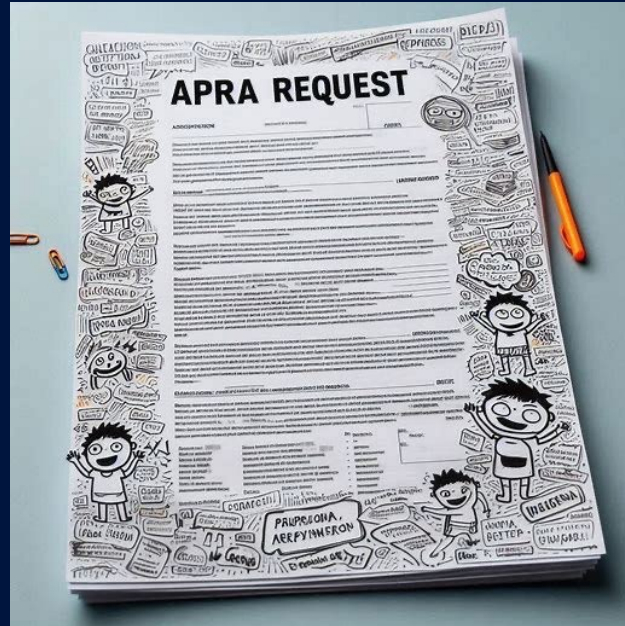
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\_\_\_\_\_



# Is it an APRA Request?



Provide Documents  
Not Narratives/Summaries

Lyssikatos v. City of Pawtucket, PR 20-29



# Within 10 Business Days After Receiving a Request

- **EXTEND:** extend the time period for an additional twenty (20) business days, or
- **DENY:** deny access to records within ten (10) business days, or
- **GRANT:** provide the records within ten (10) business days.

*R.I. Gen. Laws § 38-2-7*



# Calculating 10 Business Days

- When calculating response time, the date of receipt does not count:
  - Date of receipt = Day 0
- Requests sent outside of normal business hours, on weekends or state holidays shall be deemed received on the next business day.

Gifford et al. v. City of Woonsocket PR 24-03



# Extension:

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

*R.I. Gen. Laws § 38-2-3(e)*



## 2 Key Steps When Responding to an APRA Request

**1. Does public body maintain responsive records?**

**2. If public body does maintain responsive records, are those records public in whole or in part (i.e., redacted)?**

- Documents maintained by public body are presumed to be public unless fit within one of the 27 APRA exemptions.

# Are Records Subject to APRA?

“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.”

*R.I. Gen. Laws* § 38-2-2(4)

Pontarelli v. Rhode Island Dept. of Education, 176 A.3d 472 (R.I. 2018)



# Are the Records Maintained?

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

*R.I. Gen. Laws § 38-2-3(a)*

Caldwell v. Rhode Island College, PR 24-05



# Duty to Conduct a Reasonable Search



J.H. Lynch & Sons v. RI Dept. of Transportation, PR 19-06, PR 20-22







- No requirement to reorganize, consolidate, or compile data not maintained in the requested form.
- **Exception:** data in an electronic format and not unduly burdensome.

*R.I. Gen. Laws § 38-2-3(h)*

Hoff Stephen v. Town of Charlestown, PR 22-07



# Scenarios

1. Public body member's private email.



2. Public body delegates its functions to a company and request seeks records maintained by company.

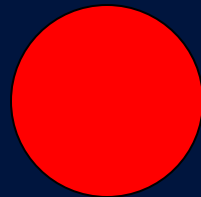
Providence Journal v. RICCA, PR 21-11

Filippi v. New Shoreham Tourism Council, PR 21-21

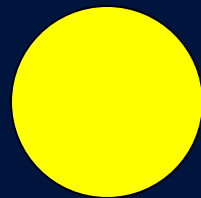


# The Exemptions: R.I. Gen. Laws § 38-2-2(4)

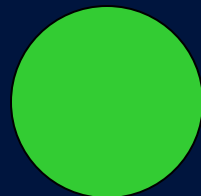
## 27 Exemptions



Confidential



Exempt



Public







Any reasonably segregable portion  
of a public record shall be available.



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

*R.I. Gen. Laws § 38-2-3(b)*

Lamendola v. E.G. School Committee, PR 20-20



# Exemption (A)(I)(a)

“All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files.”

Angelo v. Town of Westerly, PR 20-59, PR 20-59B;  
East Bay Media Group v. Barrington School Department, PR 20-61



# Exemption (B)

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



Providence Journal Co. v. Convention Center Authority, PR 21-11;  
Food Marketing Institute v. Argus Leader Media, 139 S.Ct. 2356 (2019);  
Providence Journal Co. v. Covention Center Authority, 774 A.2d 40 (R.I. 2001)





# Exemption (E)

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

Amaral v. BHDDH, DOA PR 24-13;

Providence Journal v. Office of the Governor, PR 20-08



# Exemption (E)

Deliberative Process Privilege

Law Enforcement Privilege

Work Product Privilege

Attorney/Client Privilege

*\*Non-exhaustive list*



# Exemption (K)

“Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical or scholarly issues, whether in electronic or other format.”

Providence Journal v. Office of the Governor, PR 20-08



# Exemption (K)

## Exception:

above listed documents submitted at a public meeting shall be public

Finnegan v. Town of Scituate, PR 20-40

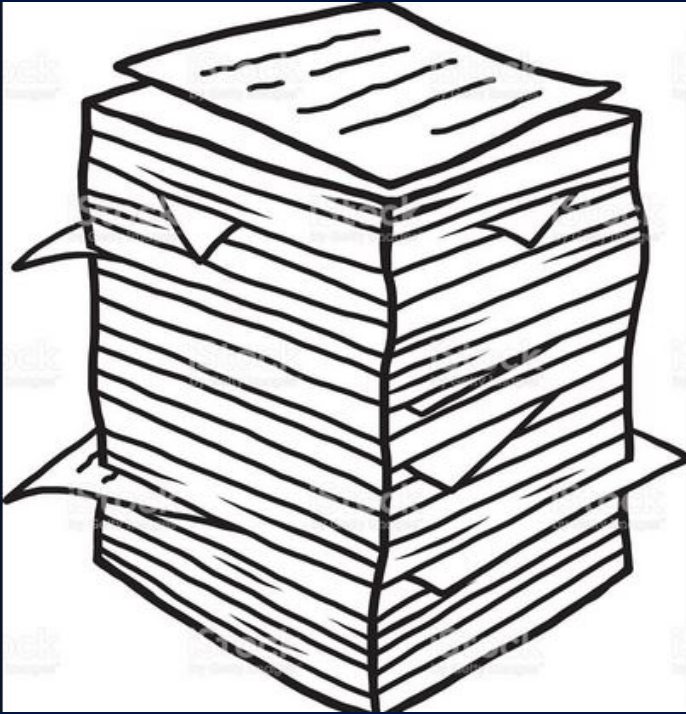


## Exemption (M)

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



# Exemption (P)



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

Miech v. South Kingstown School Department, PR 20-28



# Exemption (S)



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



# Exemption (S)



Examples:

R.I. Gen. Laws § 14-1-64: All police records relating to the arrest of a minor

R.I. Gen. Laws § 39-21.1-4, 17: 911 Telephone calls and records

R.I. Gen. Laws § 5-37.3-3: Health Care Information

R.I. Gen. Laws § 12-1-4: BCI Records





# Exemption (Z)

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



# Exemption (A)(I)(b)

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



# Exemption (A)(I)(b)

## Public Employee Information

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



# Exemption (A)(I)(b) 2021 Update



- For the purposes of this section, the city or town of residence shall not be deemed public for peace officers, and shall not be released.
- Peace Officers include:
  - Police Officers
  - Rhode Island Conservation Officers
  - Department of Environmental Management Officers
  - Fire Marshalls
  - Correctional Investigators/Officers
  - Any Federal Law Enforcement

*R.I. Gen. Laws § 12-7-21*



# Balancing Test

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

DARE v. Gannon, 713 A.2d 218, 225 (R.I. 1998)

Yolken, et al. v. City of Providence, PR 21-09

Anderson v. Town of Jamestown, PR 23-54





# Privacy Interest

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

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





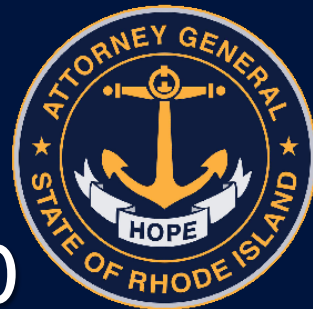
# Public Interest

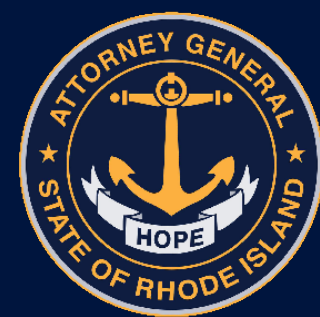
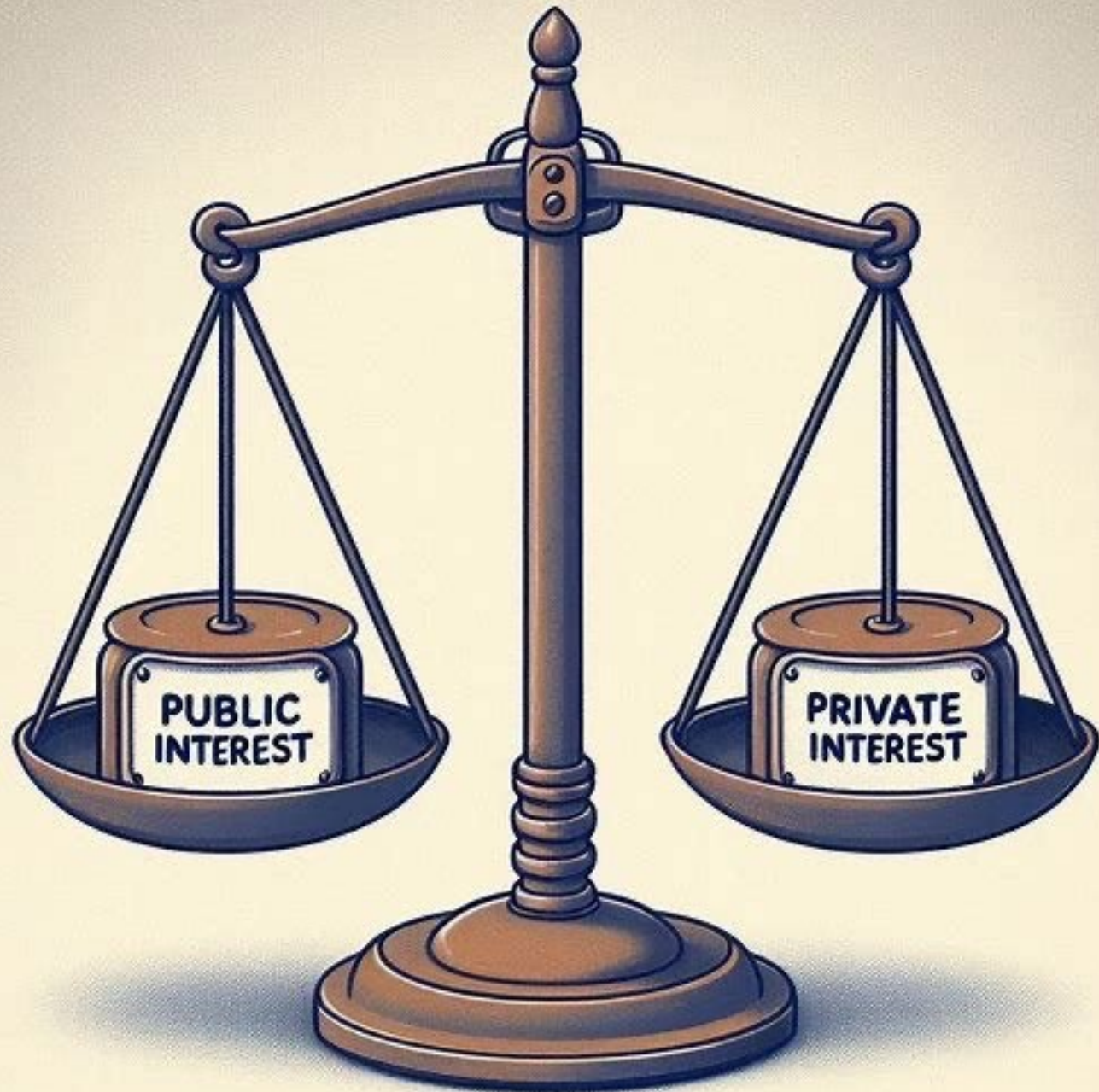
“Official information that sheds light on an agency’s performance of its statutory duties.”



Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)

Gregg and Sherman v. Office of the Governor, 23-50





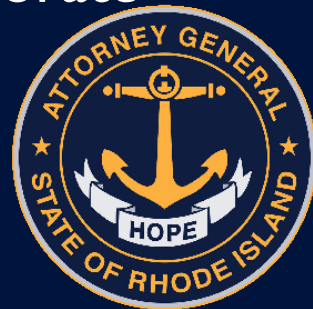
# Internal Affairs Reports

When considering whether a report is exempt under the APRA, each report must be reviewed on a **case-by-case basis**, applying the balancing test. \*Example factors to consider that may be helpful when conducting the balancing test may include:

- Whether report(s) are likely to shed light on overall government functions
- Whether allegations of misconduct were determined to be founded
- Rank and positions of official(s) investigated
- Nature and severity of alleged misconduct
- Any particular public interest in disclosure apparent or identified by requestor
- Any evidence of government impropriety in investigating the allegations
- Whether redaction can ameliorate any privacy concerns

*\*This is a non-exhaustive list of considerations that may be relevant when conducting the balancing test.*

Lyssikatos v. Pawtucket, PR 21-12;  
Farinelli v. City of Pawtucket, PR 20-47



# Exemption (D) Law Enforcement

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



- (a) reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings
- (b) deprive a person of the right to a fair trial
- (c) reasonably be expected to constitute an unwarranted invasion of personal privacy
- (d) reasonably be expected to identify a confidential source
- (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions or
- (f) reasonably be expected to endanger the life or physical safety of any individual

Gagliano v. Narragansett Police Department, PR 21-14;  
Providence Journal v. Dept. of Public Safety, 136 A.3d 1168 (R.I. 2016)



# Body-worn Camera Recordings

- Normal APRA process and potential exemptions apply
- Must redact rather than withhold if possible
- May assess costs for review and redaction

Real World Media LLC v. Providence Police Department, PR 21-07

White v. Providence Police Department, PR 21-02

Farinelli v. City of Pawtucket, PR 21-06 (not BWC but similar)





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



*R.I. Gen. Laws § 38-2-2(4)(D)*

Damon v. City of Newport, PR 21-26





# Adult Arrest Logs

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

*R.I. Gen. Laws § 38-2-3.2*



# Adult Arrest Logs

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

*R.I. Gen. Laws* § 38-2-3.2



# Scenarios

I. Requester seeks father's case file.



St. Louis v. Cranston Police Department; PR 24-14



# Scenarios

2. Request seeks incident report, not involving an arrest

Incident Report Form	
<i>To be completed by staff within _____ hours of incident/accident</i>	
Venue: _____	
Date of Incident: _____	Time of Incident: _____
Brief Description of Incident: _____ _____ _____ _____ _____ _____ _____ _____	
Person to Be Excluded: Name: _____ Date of Birth: _____ Address: _____ Postal Code: _____	
Police Records: Police Incident No: _____ Police Attended: Yes _____ No _____ Police Officer Name and Collar No: _____	
Witnesses: (Names and Contact Numbers) _____ _____ _____	

Incident Report Template

Lee v. Cranston Police Department, PR 2415;  
Milkovits v. City of Pawtucket, PR 24-09;  
Yolken, et al. v. City of Providence, PR 21-09



# Cost and Delivery Procedures

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

*R.I. Gen. Laws § 38-2-4*

White v. Providence Police Department, PR 21-02



# Cost and Delivery Procedures

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

*R.I. Gen. Laws § 38-2-3(k)*

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

*R.I. Gen. Laws § 38-2-4(a)*

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



# Cost and Delivery Procedures

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

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





# Cost and Delivery Procedures

- For purposes of calculating search and retrieval time, multiple requests from same person or entity during a 30 day time period shall be considered one request.

*R.I. Gen. Laws § 38-2-4(b)*

- All fees waived if fail to produce requested records in a timely manner.

*R.I. Gen. Laws § 38-2-7(b)*



# Cost and Delivery Procedures

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

*R.I. Gen. Laws § 38-2-7*



# Cost and Delivery Procedures: Detailed Itemization of Costs

“Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.”

*R.I. Gen. Laws* § 38-2-4(d)

White v. Providence Police Department, PR 21-02



# Cost and Delivery Procedures

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

Real World Media, LLC v. Providence Police Department PR 21-07;  
*R.I. Gen. Laws § 38-2-3(k)*



# Cost and Delivery Procedures

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



*R.I. Gen. Laws § 38-2-3(g)*



# What Constitutes a Denial?

- Failing to timely respond or assess prepayment
- Withholding documents in whole
- Withholding documents in part (i.e. redacted)
- Stating responsive documents are not maintained or that no responsive documents exist

\*Non-exhaustive list of example denials.



# Procedures for Denying Access to Records

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

*R.I. Gen. Laws § 38-2-7*

Lyssikatos v. City of Pawtucket, PR 21-04

Angelo v. Town of Westerly, PR 21-05





# Procedures for Denying Access to Records

“A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall \*\*\* state that it does not have or maintain the requested records.”

*R.I. Gen. Laws § 38-2-7(c)*

Barrett v. Forster Gloucester Regional School District, PR 24-11

Caldwell v. Rhode Island College, PR 24-05



# Sample Appeal Procedures Language

This decision can be appealed pursuant to R.I. Gen. Laws § 38-2-8(a), which provides that “[a]ny person or entity denied the right to inspect the record of a public body may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate.” Any appeal may be submitted to this Office in the same manner as APRA requests may be submitted to this Office pursuant to this Office’s APRA procedures and should be directed to the “Open Government Unit.”

\*Modify this language as needed for your public body’s procedures.



# Procedures for Appealing a Denial

- Appeal to the chief administrative officer of the public body.
- The chief administrative officer shall review the record and make a final determination whether or not to allow public inspection within ten (10) business days after receipt of appeal.

*R.I. Gen. Laws § 38-2-8(a), (b)*

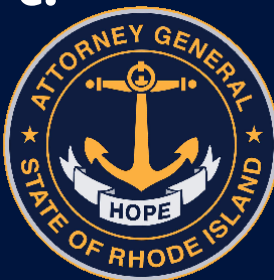
Grenier v. Town of Hopkinton, PR 21-13



# Complaints

- The Attorney General investigates alleged violations of the APRA.
- Submit complaints to: [opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)
- The Attorney General will investigate the complaint and issue a finding.
- If the Attorney General determines that the allegations are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court.
- A complainant may also file a complaint in the Superior Court.

*R.I. Gen. Laws § 38-2-8(b)*



# Superior Court Remedies

- **\$2,000** for a willful and knowing violation
- **\$1,000** for a reckless violation
- Injunctive relief
- Attorney fees and costs

*R.I. Gen. Laws § 38-2-9(d)*



# Communication is Key

**Communication with Requester  
Can Often Promote Understanding  
and Resolve Disputes**



# Training

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

*R.I. Gen. Laws § 38-2-3.16*





# Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
  - Findings
  - Video presentation of Open Government Summit
  - Open Government Summit Digital Booklet
  - APRA Law
- Attorney General's Office
  - 401 274 4400
  - [opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)
- APRA Checklist





# Questions during the Summit?

Email: [agsummit@riag.ri.gov](mailto:agsummit@riag.ri.gov)

X/Twitter: @AGNeronha

We will be back after a 10 minute break.



PLEASE STAND BY



The Summit will return momentarily.

# OPEN MEETINGS ACT



Questions during the Summit?

Submit via email: [agsummit@riag.ri.gov](mailto:agsummit@riag.ri.gov) or X/Twitter  
**@AGNeronha**

# What is the OMA?

“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.”

*R.I. Gen. Laws § 42-46-1*

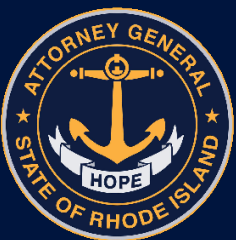


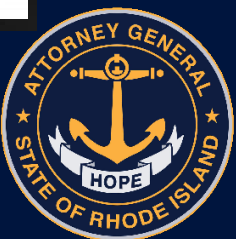
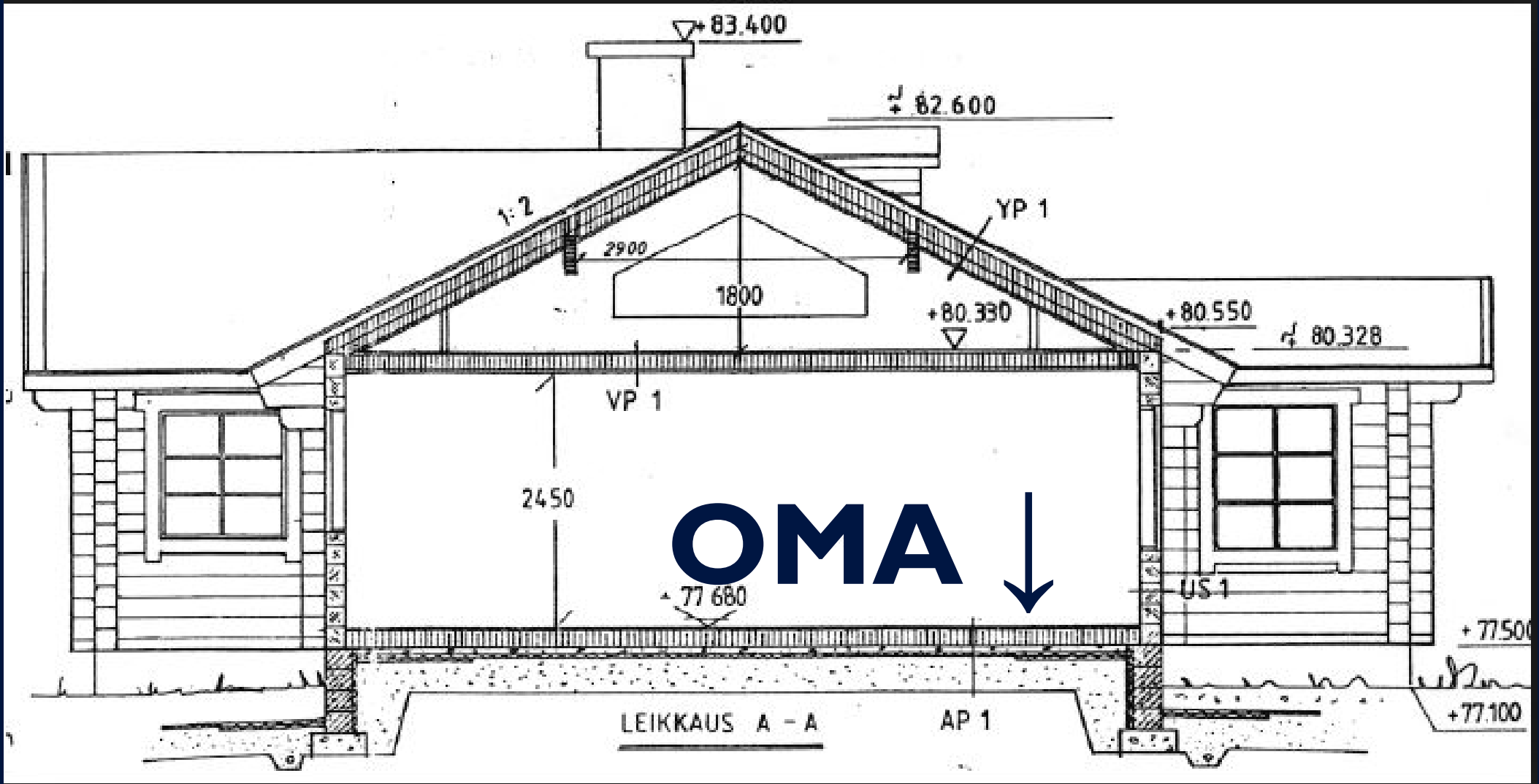


# What does the OMA require?

- Open meetings
- Limited circumstances for closed meetings
- Notice
  - Annual
  - Supplemental
- Meeting minutes



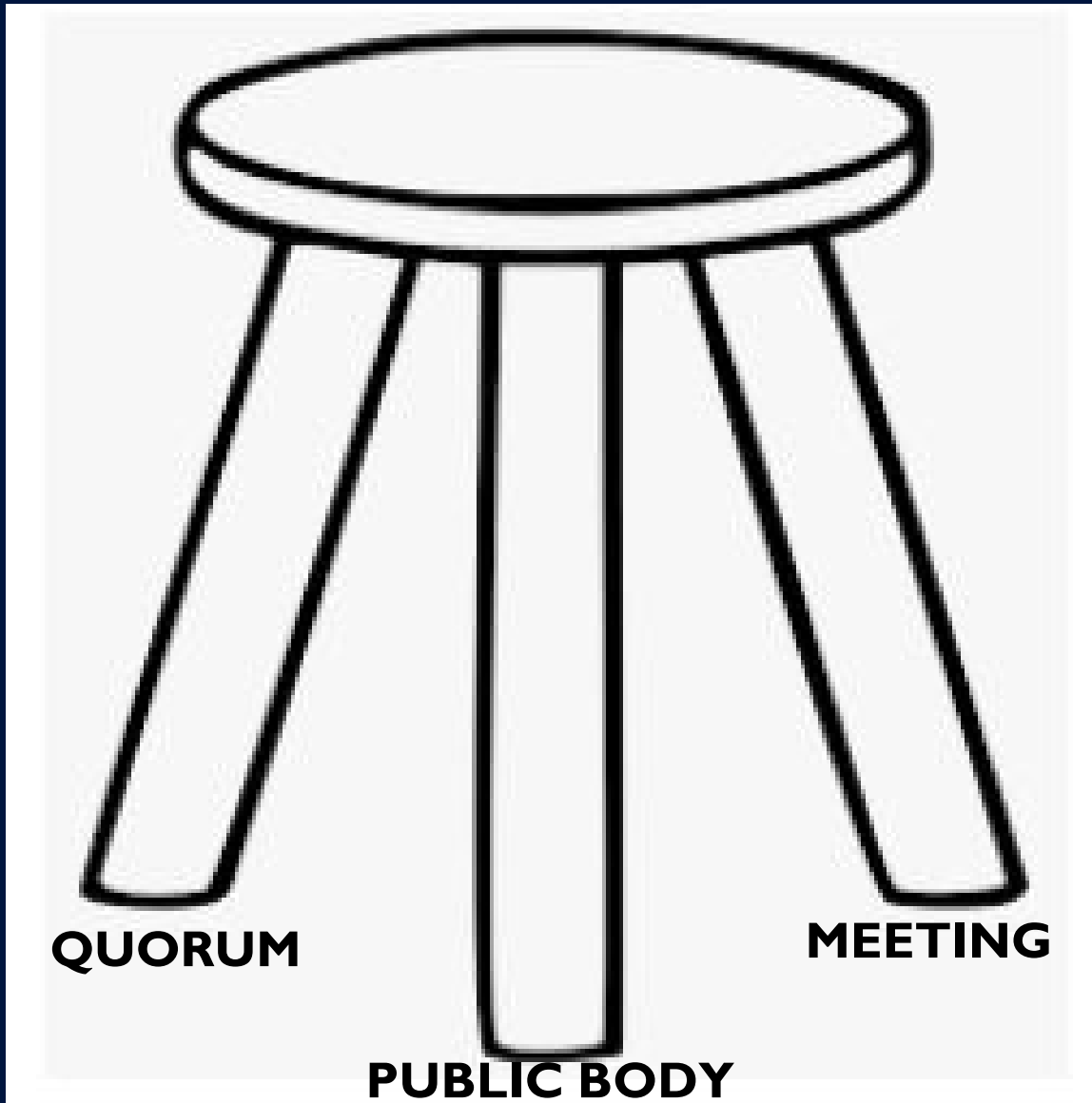






## Three Threshold Elements that Trigger OMA

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



# What is a Public Body?

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

*R.I. Gen. Laws § 42-46-2(c)*

Howard v. Portsmouth Senior Center Focus Group OM 21-22;  
Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016);  
Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001)



# What is a Public Body?

- There is no bright-line test
- We consider a number of factors, including:
  - The authority that created the entity
  - If the entity has set membership
  - If the entity has regular meetings
  - Any powers or decision-making authority that have been delegated to the entity

Arditi v. Governor's State Equity Council, OM 21-32;  
Pontarelli v. RI Council on Elem/Second Ed., 151  
A.3d 301 (R.I. 2016)



# What is a Quorum?



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

*R.I. Gen. Laws § 42-46-2(d)*

GoLocalProv v. Providence City Council, OM 20-15



# “Rolling” or “Walking” Quorum

- A series of meetings each less than a “quorum,” but that collectively represent a “quorum.”
- Quorums can be created not only by members of a public body, but through a third person.

Finnegan v. Scituate Town Council OM 20-22;

Drix v. Providence City Council, OM 23-08



“Listserve” (email distribution lists through which subscribers receive information on a particular topic) do not per se violate the OMA.

Keegan/Silva v. Burrillville Town Council OM 17-07



ALL THOSE IN FAVOR  
OF WHAT WE DISCUSSED  
IN OUR E-MAIL THREAD  
AND AT LARRY'S SON'S  
BIRTHDAY PARTY SAY 'AYE'

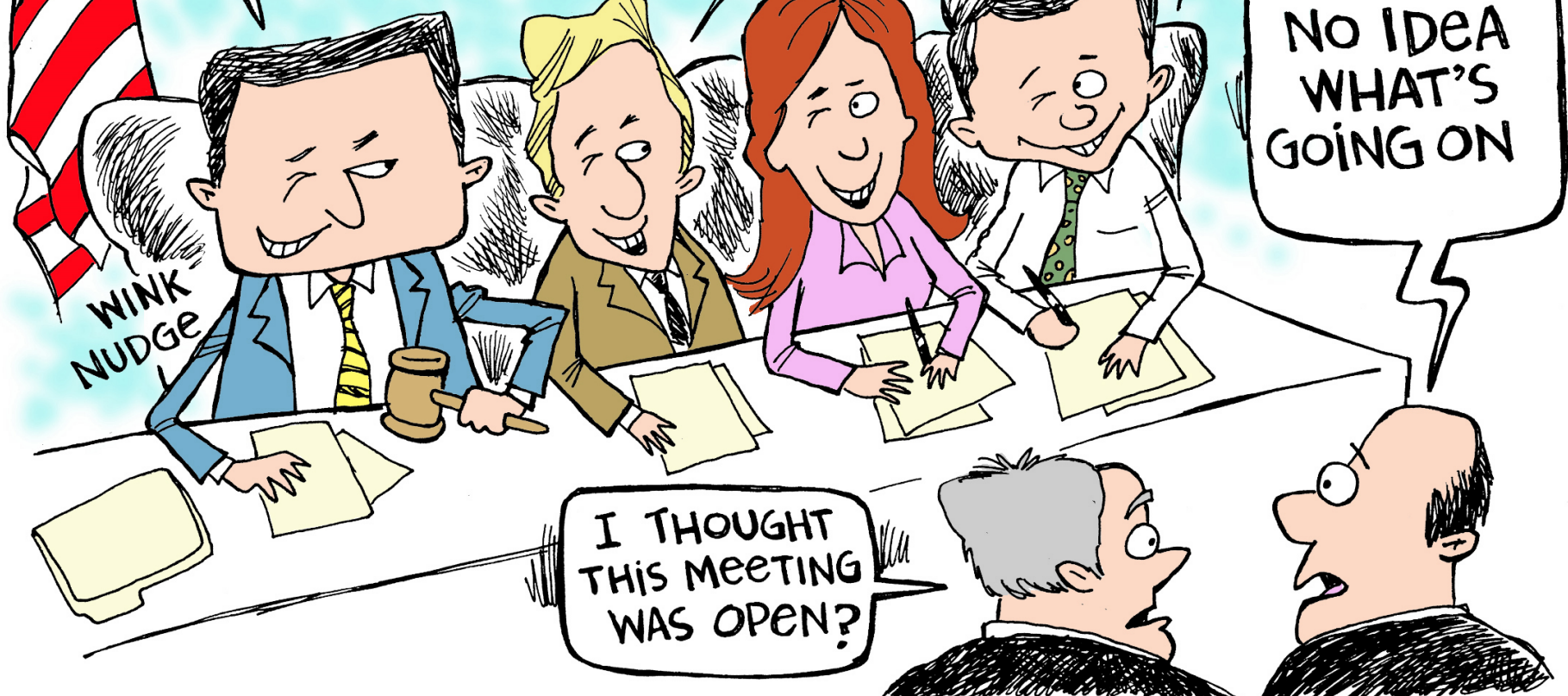
'Aye'

'Aye'

'Aye'

I

... HAVE  
NO IDEA  
WHAT'S  
GOING ON



WINK  
NUDGE

I THOUGHT  
THIS MEETING  
WAS OPEN?



# What is a Meeting?

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

*R.I. Gen. Laws § 42-46-2(a)*

Cook v. Tiverton Town Council, OM 20-23







# Pop Quiz

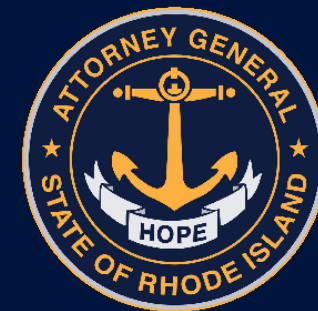
## Scenario #1

A member of a five-person school committee sends an email to all members about how they intend to vote to approve the budget at an upcoming meeting. Two members respond reply all and say why they also intend to vote to approve.

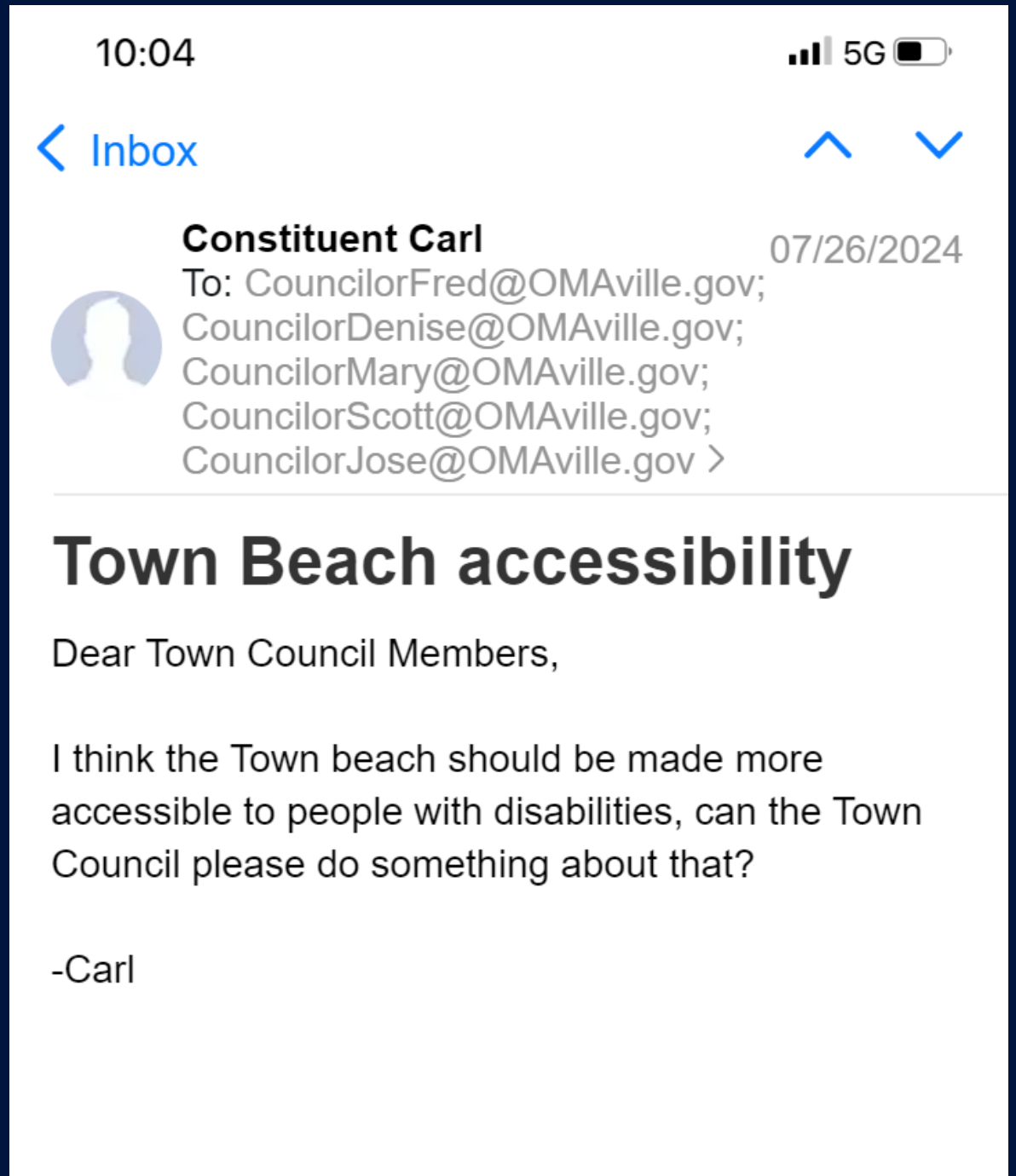


## Scenario #2

The Chair of a five-person school committee sends an email informing the members that the superintendent will be sending out budget proposals at the end of the week. They request in the email that no one reply all.



# The dangers of replying all



10:04

5G

< Inbox



**Constituent Carl**

07/26/2024



To: CouncilorFred@OMAville.gov;  
CouncilorDenise@OMAville.gov;  
CouncilorMary@OMAville.gov;  
CouncilorScott@OMAville.gov;  
CouncilorJose@OMAville.gov >

## Town Beach accessibility

Dear Town Council Members,

I think the Town beach should be made more accessible to people with disabilities, can the Town Council please do something about that?

-Carl

# The dangers of replying all



# The dangers of replying all



# The dangers of replying all



10:11

5G

< Inbox



**Councilor Mary**

07/26/2024



To: Councilor Denise@OMAville.gov;  
CouncilorFred@OMAville.gov;  
ConstituentCarl@gmail.com;  
CouncilorScott@OMAville.gov;  
CouncilorJose@OMAville.gov >

## Re: Town Beach accessibility

I like the idea of installing a mat, totally on board with that!

-Councilor Mary

# The dangers of replying all



# The dangers of replying all



10:24

5G

< Inbox



**Councilor Fred**

07/26/2024



To: ConstituentCarl@gmail.com;  
CouncilorMary@OMAville.gov;  
CouncilorDenise@OMAville.gov;  
CouncilorScott@OMAville.gov;  
CouncilorJose@OMAville.gov >

## Re: Town Beach accessibility

Ok, seems we all agree putting a mat in place makes sense. Let's add this to the agenda for our next meeting.

-Councilor Fred



# Scenarios



1. Members of the School Committee attend a Taylor Swift concert together



2. Two members of Town Council meet with two members of School Committee



# Scenarios



3. Planning Board goes on a site visit



4. Social Media Comments

Mosher v. South Kingstown School Committee, PR 20-19  
Clem v. N Smithfield Planning Board & Conservation Com., PR 20-53



# Virtual/Telephone

- Can a public body use virtual platforms or telephone conferencing to conduct a meeting?
  - § 42-46-5(b)(1): Discussions of a public body via electronic communication, including telephone, are permitted **only** to schedule a meeting

Jones v. Kingston Hill Academy Board of Trustees, OM 20-26



# Virtual/Telephone

- A member of a public body may participate by use of electronic communication or telephone if:
  - on **active duty in the armed services**
  - has a **disability** and cannot otherwise participate
- Subject to rules/regulations and waiver process governed by Governor's Commission on Disabilities

*R.I. Gen. Laws § 42-46-5(b)(2),(3) & (4)*



# Hybrid and Virtual Meetings

- Executive orders pertaining to open meetings, which allowed virtual and hybrid meetings, expired on March 31, 2022.
- This means that all members of public bodies must be physically present for meetings, unless they meet a specific exemption set forth in the OMA
- Further, members of the public must be permitted to attend meetings of public bodies in person and observe the conducting of those meetings





# Hybrid and Virtual Meetings

- While the OMA requires that members of public bodies must be physically present, public bodies may livestream their meetings to the public
- Public bodies may permit members of the public to participate remotely in open meetings, so long as such remote participation can be heard/observed by everyone in attendance of the in-person meeting
- The University of Rhode Island Board of Trustees have slightly different rules, set out in RIGL §42-46-5(b)(5)





**Executive Session**





# Executive Session

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

*R.I. Gen. Laws § 42-46-3*

- Purposes for which may be closed.

*R.I. Gen. Laws § 42-46-5(a)(1)-(10)*



# Convening in and out of Executive Session

- During open session: Motion to convene into executive session, pursuant to R.I. Gen. Laws § [appropriate section here], to [repeat whatever is on the agenda here]
- During closed session, at conclusion of substantive closed session business: Motion to reconvene into open session
- During open session: report out any votes taken; motion to seal the executive session minutes (optional)

*R.I. Gen. Laws § 42-46-4(a), (b)*



**Remember:** the  
invitation into  
executive session lies  
with the public body

*R.I. Gen. Laws* § 42-46-5(a)(1)

McFadden v. Exeter-West Greenwich School Committee, OM 19-13



# R.I. Gen. Laws § 42-46-5(a)(1)



- **Discussions** of job performance, character, or physical or mental health of affected person or persons
  - advanced written notice
  - advised that the person may require the discussion to be held at an open meeting
  - state in open call and open minutes that notice provided

Driggs v. Tiverton Town Council, OM 20-47

Sullivan v. Coventry School Committee, OM 21-05



# R.I. Gen. Laws § 42-46-5(a)(2)



Sessions or work sessions pertaining  
to collective bargaining or litigation

Zonfrillo v. Narragansett Town Council, OM 21-20



# R.I. Gen. Laws § 42-46-5(a)(4)

Investigative  
proceedings  
regarding  
allegations of civil  
or criminal  
misconduct

*R.I. Gen. Laws § 42-46-5(a)(4)*





# R.I. Gen. Laws § 42-46-5(a)(8)

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



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







# Two Types of Notice



- **Annual Notice:** at the beginning of each calendar year
- **Supplemental Notice:** a minimum of 48 hours, excluding weekends & state holidays



# Supplemental Notice Posting Requirements

- Principal office of public body
- One other prominent location within the governmental unit
- Secretary of State (electronic)

*R.I. Gen. Laws § 42-46-6(c)*

Dubois v. Woonsocket City Council, OM 23-04



# Notice Requirements

## Annual

- Dates, times and location of regularly scheduled meetings
- Available to public upon request
- Posted with the Secretary of State

*R.I. Gen. Laws § 42-46-6(a), (b)*

## Supplemental

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



# Supplemental Notice Requirements

“Statement specifying business to be discussed” means:

- “whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted.”

Fact-specific inquiry, taking into account:

- Specificity of the agenda item
- Relation between agenda item and topics of discussion
- Whether notice is given of any action (votes, discussion) taken

Ford v. Barrington School Committee, OM 21-21

Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016);

Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I.2013)







# Pop Quiz

1. “Interviews for Potential Boards and Commission Appointments”

- Where Town Council conducted interviews and voted on appointments



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

2. “IV. Communications:

Request for Extension from Turner Scott received 11/30/08 Re: Petition of Congregation Jeshuat Israel”

- Extension was granted



*Anolik v. Zoning Board of Review of the City of Newport*, 64 A.3d 1171 (R.I. 2013)





# Pop Quiz

3. “7.b. Approval of RIDE’s Executive Pay Plan and Organizations Chart. Enclosure 7b.”

- Multiple pay plans considered
- Enclosure not on SOS website



*Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al.*, 151 A.3d 301 (R.I. 2016)

4. “The Board may discuss and vote upon the recall election process pertaining to Town of Tiverton Councilors Robert D. Coulter and Justin P. Katz.”

- Discussed recall election process with Tiverton Town Clerk and Board of Canvassers members



*Katz v. Rhode Island Board of Elections*, OM 20-27



# Executive Session Notice

- No boilerplate language
- Identify number of items to be discussed
- Statement of each item to be discussed

*R.I. Gen. Laws § 42-46-4(a)*

Straus v. Westerly Town Council, OM 21-10



# Executive Session Notice Examples\*

1. R.I. Gen. Laws § 42-46-5(a)(1)  
(Town Manager performance review)
2. R.I. Gen. Laws § 42-46-5(a)(2)  
(Police Union Negotiation)
3. R.I. Gen. Laws § 42-46-5(a)(2)  
(potential litigation – land dispute)
4. R.I. Gen. Laws § 42-46-5(a)(2)  
(litigation – Plaintiff v. Public Body, PC-2018-1234)

\*The necessary notice information will depend on the specific circumstances and must be evaluated on a case-by-case basis.



# Amending the Agenda (Not School Committees)

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



*R.I. Gen. Laws § 42-46-6(b)*



# Amending the Agenda

No vote may be taken, except:

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

*R.I. Gen. Laws § 42-46-6(b)*

Novak v. Western Coventry Fire District, OM 20-08



# Amending the Agenda School Committees

Pursuant to a request:

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

*R.I. Gen. Laws § 42-46-6(b), (e)*







# Emergency Meetings

“where the meeting is deemed necessary to address an **unexpected occurrence that requires immediate action to protect the public**”

*R.I. Gen. Laws § 42-46-6(c)*

- notice and agenda shall be posted **as soon as is practicable** and shall be electronically filed with the secretary of state
- 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.



# PUBLIC COMMENT



- “Nothing contained in [the OMA] 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.”

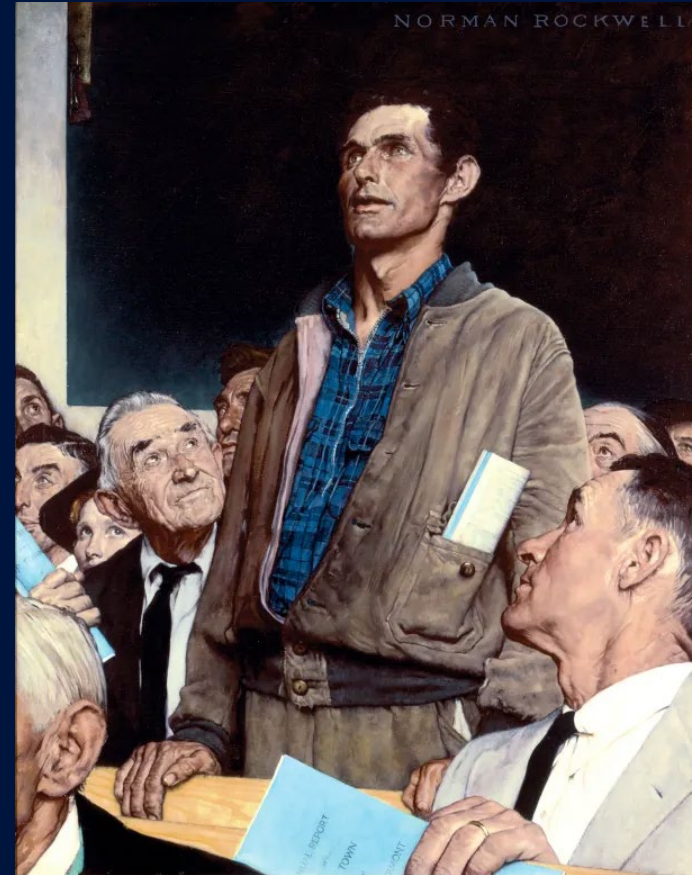
*R.I. Gen. Laws § 42-46-6(d)*

- Public participation may be required by other applicable laws or regulations.



# Public Comment

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



*R.I. Gen. Laws § 42-46-6(d)*

Castelli v. Coventry Town Council, OM 20-32





# Minutes: Contents



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

*R.I. Gen. Laws § 42-46-7(a)*

Morgan v. Central Coventry Fire District, OM 24-06







# Disclosure of Unofficial Minutes

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

\*Fire companies see *R.I. Gen. Laws § 42-46-7(b)(2)*.  
*Lisi v. Warwick School Committee*, OM 23-17



# Disclosure of Official/Approved Minutes

All public bodies shall keep official and/or approved minutes and file a copy of all open meetings with the Secretary of State within 35 days of a meeting

Exception: Advisory Public Bodies

*R.I. Gen. Laws § 42-46-7(d)*

Keep Metacomet Green v. East Providence City Council, OM 21-15

Solas v. South Kingstown School Committee Wellness Subcommittee, et al., OM 22-28



# Accessibility

All open meetings must  
be accessible to persons  
with disabilities

*R.I. Gen. Laws § 42-46-13*

Governor's Commission on Disabilities v. Board of Elections, OM 20-44



# Public's Right to Record

- Not specifically addressed in the OMA.
- Case law and this Office's prior findings have interpreted the OMA to permit audio or videotaping of meetings, subject to reasonable restrictions set forth by the public body.

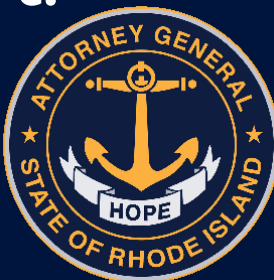
Sheldon v. Warwick Minimum Housing Review Board OM 14-14;  
Belcher v. Mansi, 569 F. Supp. 379, 382-83 (D.R.I. 1983)



# Complaints

- The Attorney General investigates alleged violations of the OMA.
- Submit complaints to: [opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)
- The Attorney General will investigate the complaint and issue a finding.
- If the Attorney General determines that the allegations are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court.
- A complainant may also file a complaint in the Superior Court.

*R.I. Gen. Laws 42-46-8(a)*



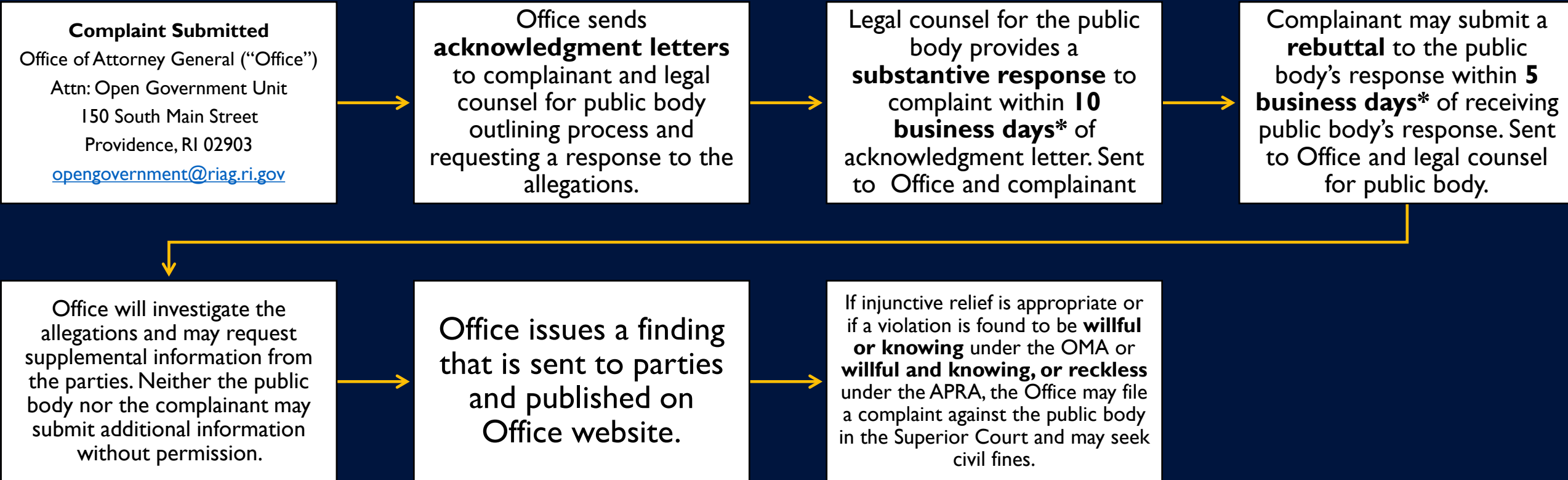
# Superior Court Remedies

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

*R.I. Gen. Laws § 42-46-8(d)*



# Open Meetings Act & Access to Public Records Act Complaint Process



**\*This process is subject to change at the discretion of the Office.  
Reasonable extensions may be granted upon a showing of good cause.**





# Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
  - Findings
  - Video presentation of Open Government Summit
  - Open Government Summit Digital Booklet
  - OMA Law
- Attorney General's Office
  - 401 274 4400
  - [opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)
- OMA Checklist





STATE OF RHODE ISLAND

Attorney General Peter F. Neronha



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Protect Rhode Island Consumers

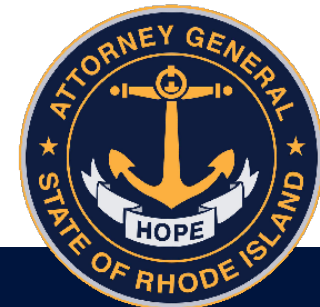
Stand Up for Rhode Island  
Workers

# Promote Open and Transparent Government

We value transparency in state and local government. When government decisions are debated in public and made open to inspection, the result is a more engaged citizenry that is invested in its community.

We see the public demanding transparency from their government in the record number of open government complaints our Office receives. Our expert attorneys apply the balancing test when conducting APRA and OMA reviews. In addition to asking whether information *could* be withheld, we consider whether it *should* be withheld.

[Visit our Open Government section to file a complaint, search recent open government findings, and find out more.](#)





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## Open Government

The [Open Meetings Act \(OMA\)](#) and the [Access to Public Records Act \(APRA\)](#) establish important requirements for ensuring that government in Rhode Island is carried out in an open and transparent manner. Our open government team:

- Investigates complaints against public bodies in Rhode Island for alleged violations of these statutes
- Issues findings and files lawsuits to enforce the statutes when appropriate
- Processes APRA requests to this Office for public documents
- Provides training and resources on the requirements of the OMA and the APRA, including at our signature event, the annual Open Government Summit

**+ Access and search open government findings**

**+ Access training resources and APRA certification**

**+ File a complaint with the RIAG alleging violation of APRA/OMA**







# Questions during the Summit?

Email: [agsummit@riag.ri.gov](mailto:agsummit@riag.ri.gov)

X/Twitter: [@AGNeronha](https://twitter.com/AGNeronha)

Please submit questions after the Summit to: [opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)



# Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
  - Findings
  - Video presentation of Open Government Summit
  - Open Government Summit Digital Booklet
  - APRA & OMA Law
- Clerkbase
- Attorney General's Office
  - 401 274 4400
  - [opengovernment@riag.ri.gov](mailto:opengovernment@riag.ri.gov)
- APRA & OMA Checklist

