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## Newsroom: Kilmartin '98 and Open Government

Roger Williams University School of Law

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# Newsroom

## Kilmartin '98 and Open Government

The ProJo's legal and political columnist Ed Fitzpatrick looks at the state of government transparency and Rhode Island, citing AG Peter Kilmartin '98 and the recent Open Government Summit at RWU Law.

**From the PROVIDENCE JOURNAL:** "[Edward Fitzpatrick: Consider new prism for open-government disputes](#)"

**August 14, 2011:** Too often, we Rhode Islanders live in a bubble. "It's a beautiful bubble," said Tim White, a Channel 12 investigative reporter and New England First Amendment Coalition board member. "But we lose context. We don't realize what it's like elsewhere. It's bad here when it comes to public records."

Given Rhode Island's reputation for corruption, access to public records and meetings is crucial. "The best thing that we could do to crack down on corruption is to make the state more transparent," White said. "Sunlight is the best disinfectant."

To increase that sunlight, we need to strengthen the Access to Public Records Act, which White describes as "a law designed to say 'no,' a law that does not err on the side of transparency."

We should also look at how other states handle disputes over government records and meetings. During my years as a reporter at The Hartford Courant and the Albany Times Union, I saw that Connecticut and New York had set up commissions to handle open-government matters rather than (as in Rhode Island) giving all of that responsibility to an attorney general's office, which must defend and work with the very agencies often entangled in open-government battles.

"It is a conflict," White said. "The attorney general's office works hand-in-hand with law enforcement and has to have a good working relationship with law enforcement. Then they're asked to decide on whether a police report is public. How objective can you be?"

The attorney general's office also serves as "the law firm for the State of Rhode Island," White said. "So that raises serious questions about whether they can be objective when it comes to weighing in on what should be public."

To be sure, **the Rhode Island attorney general's office, now headed by Peter F. Kilmartin ['98]**, former Democratic legislator and police captain, deserves credit for advising officials to release the names of state pension beneficiaries (to offer a recent example). And it deserves credit for educating officials through events such as **the Aug. 5 Open Government Summit at the Roger Williams University School of Law. (The live streaming online was must-see TV.)**

But just beyond the Rhode Island bubble, Connecticut and New York officials say there is a better way.

Robert J. Freeman, executive director of the New York State Committee on Open Government for the past 35 years, said systems such as Rhode Island's "make little sense because the attorney general represents government agencies in court. How can he issue an opinion that may conflict with his responsibility to represent the government in court?"

Freeman said his office cannot sue, as an attorney general can. But it can give advice to public officials, reporters and members of the public. "We are not here to support the government," he said. "We are here to give the right answer under the law irrespective of who raises the questions."

New York's governor and legislative leaders appoint members of the Committee on Open Government, which met just once last year. But, Freeman said, "The staff does the work." He said he has served under seven governors — including Republican George Pataki and Democrats such as Mario Cuomo and his son, Andrew Cuomo — and he has never been subject to political interference.

Mitchell W. Pearlman, who spent 30 years as executive director of Connecticut's Freedom of Information Commission, said the decisions of elected or appointed attorneys general can be perceived as political — meant to punish opponents or go easy on allies. To address that, Connecticut set up a bipartisan commission and gave most of the work to staff with civil-service protection.

In most states, attorneys general handle open-government matters, but a few states have "FOI counselors" such as Freeman, and Connecticut is the only state "with an independent FOI enforcement agency that really works," Pearlman said. "New Jersey had one on paper, but it doesn't work."

The Connecticut panel can hear complaints, render decisions and order the disclosure of records. It mediates many disputes and has built a reputation over 35 years. "Government officials will give up very embarrassing information without a fight in Connecticut because they know they are going to get their [rear end] kicked five different ways from Sunday if they don't," Pearlman said.

On Friday, **Kilmartin said**, "I am not going to get into a comparison with other states because I haven't studied them." But he said his office makes open-government decisions "based on facts and the law as it exists," and he knows of no appeals by public bodies of those decisions.

"Historically in Rhode Island, attorneys general were viewed as the neutral arbitrator," **he said**. And the office has a successful track record of handling open-government matters while representing state agencies and working with police departments, he said.

For example, Kilmartin said, his office "expressed our concerns" after Wednesday's *Providence Journal* quoted the state police as saying they've always considered witness statements exempt from disclosure. "That would be inaccurate and contrary to the law," he said. The law allows the police to withhold witness statements if, for example, disclosure would endanger a life, but there is no blanket exception, he said.

Also, Kilmartin said that, in May, his office found the state police violated the Open Records Law in rejecting a request for a month of electronic data on accident reports. “It’s enforcing the statute without fear or favor,” he said.

Kilmartin pointed out that the Connecticut and New York panels involve political appointments. And he noted that Assistant Attorney General Michael W. Field has handled open-government matters for 12 years under three attorneys general.

Kilmartin makes some good points and he has made some good decisions. But this is not a personal or personnel matter. It’s a matter of the institutional framework for resolving open-government disputes.

Kilmartin, who spent 24 years on the Pawtucket police force, has said he looks at most issues “through the prism of law enforcement.” And that’s what we should expect in any attorney general. But we should expect open-government decisions to be approached from a broader perspective. And we should see the value of viewing these issues through the prism of open-government panels such as those in Connecticut and New York.

*For full article, click [here](#).*