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DEPARTMENT OF ATTORNEY GENERAL

Patrick C. Lynch, Attorney General

9TH ANNUAL

OPEN GOVERNMENT SUMMIT



ROGER WILLIAMS UNIVERSITY

SCHOOL OF LAW

FRIDAY, AUGUST 3, 2007

*Co-Sponsored by the Roger Williams University
Law Alumni Association*



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

TDD (401) 453-0410

Patrick C. Lynch, Attorney General

August 3, 2007

Dear Open Government Summit Attendee:

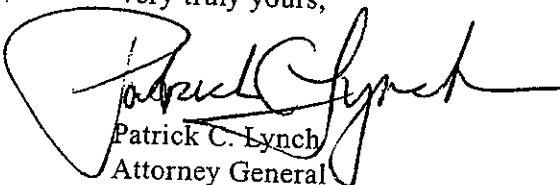
I would like to take this opportunity to thank you for attending the 9th Open Government Summit and to thank the Roger Williams University Law Alumni Association for its continued co-sponsorship of this important event.

My Administration is committed to public outreach and education on the requirements of the Open Meetings and Access to Public Records Acts. This Summit is one of several services the Department of Attorney General provides to legal counsel, members of public bodies, and concerned citizens, to promote compliance with these important laws. We 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. The Department issues two types of advisory opinions: oral/telephonic advisory opinions, which are not binding upon the Department of Attorney General, and written advisory opinions, which express the opinion of this Department. The Department of Attorney General is also available to provide training sessions for members of public bodies upon request. By providing advice and training, we hope to continue to reduce the number of complaints received by the Department of Attorney General and prevent violations before they occur.

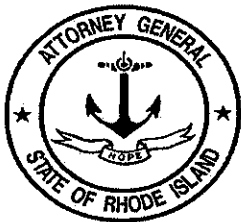
I encourage you to take advantage of the resources we have available at the Department of Attorney General website, www.riag.ri.gov. Our popular *Guide to Open Government in Rhode Island* is located in the "Reports and Publications" section and can be printed for distribution. In addition, the Department's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

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

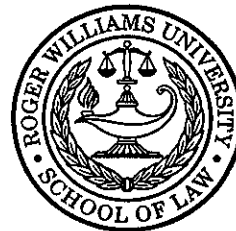
Very truly yours,



Patrick C. Lynch
Attorney General



OPEN GOVERNMENT SUMMIT
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW
AUGUST 3, 2007
9:00 A.M. – 12:30 P.M.



- 8:30 – 9:00 a.m. Check-in/Distribution of Material
- 9:00 – 9:05 a.m. Welcoming by David A. Logan, Dean, Roger Williams University
Ralph R. Papitto School of Law
- 9:05 – 9:15 a.m. Opening Remarks by Patrick C. Lynch, Attorney General
The Philosophy and Mission of the Department of Attorney General.
- 9:15 – 9:55 a.m. Access to Public Records Act Presentation by Christy Hetherington,
Special Assistant Attorney General
Presentation will highlight how to determine whether a document is a public record and how to respond to a citizen's request. Other statutory requirements will be discussed and a 2006-2007 case law/legislative update will be provided. Frequent trouble areas and advanced planning tips will also be reviewed.
- 9:55 – 10:35 a.m. Open Meetings Act Presentation by Christy Hetherington, Special
Assistant Attorney General
Presentation will highlight how to determine when the Open Meetings Act applies and when an executive session is appropriate. Other statutory requirements, such as posting notice, amending school committee and non-school committee agendas, and maintaining minutes will be discussed. Frequent trouble areas and a 2006-2007 case law/legislative update will also be reviewed. Hot topics of the year will be highlighted.
- 10:35 – 10:50 a.m. Break
- 10:50 – 11:30 a.m. Access to Public Records Act and Open Meetings Act Questions
and Answers
Questions posed in advance and asked at the Summit will be addressed.
- 11:30 – 12:30 p.m. Ethics Commission Presentation by Jason Gramitt, Rhode Island
Ethics Commission
Identifying and avoiding conflicts of interest under the Code of Ethics and discussion of guidelines for filing financial disclosure forms. For the Solicitors and Legal Practitioners in the audience, focus on ethical issues that emerge when advising public bodies and discuss strategy for handling these situations.

To reserve seating email agsummit@riag.ri.gov or contact 274-4400 ext 2101. Seating in the main lecture hall may be limited. For directions to the Roger Williams University School of Law visit <http://law.rwu.edu/sites/visiting/maps/default.aspx>. This Program is co-sponsored by the Roger Williams University Law Alumni Association and has been certified for 3.5 Continuing Legal Education Credits (includes 1 ethics credit), free of charge.

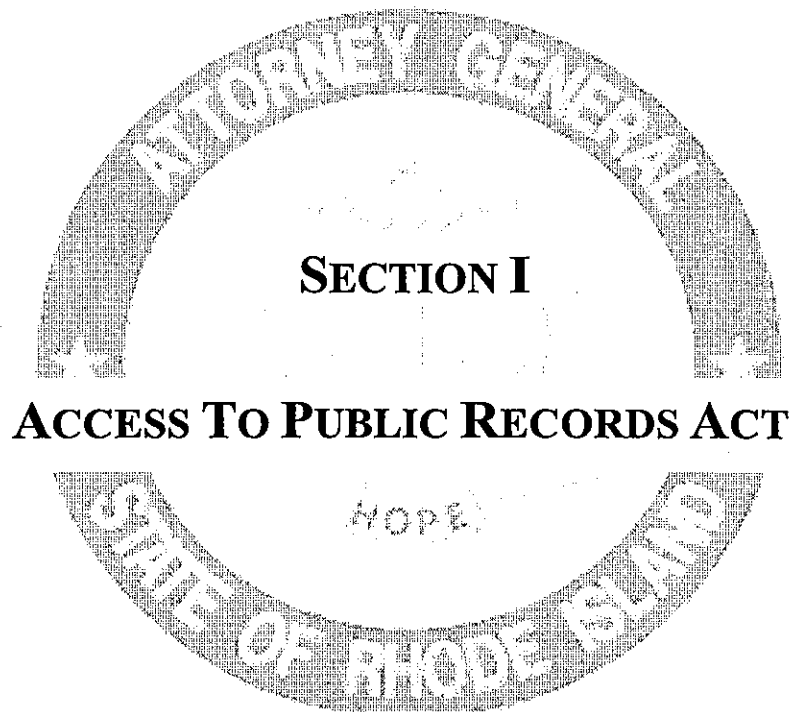
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ACCESS TO PUBLIC RECORDS ACT FINDINGS – (2006-2007)

PR 06-34 Callahan v. City of Cranston

(OM 06-55) No violation of the APRA when the City's Insurance/Risk Commission provided general street addresses and not individual names and addresses of those properties/individuals affected by a sewerage backup. The public interest reasons advanced for disclosure do not further the purposes for which the APRA was promulgated and the privacy interests are significant. Technical violation of the OMA found for Commission's failure to keep adequate records of a meeting. Minutes must clearly include the record by individual member of votes taken. See R.I. Gen. Laws § 42-46-7.
Issued August 30, 2006.

PR 06-35 Quinn, et al. v. Providence City Council

(OM 06-56) No APRA violation for failing to make available minutes from a political caucus meeting because a political caucus does not fall within the purview of the OMA and no minutes were required. See R.I. Gen. Laws § 38-2-3(f). No violation of the OMA when a majority of the members of the City Council gathered for a political caucus and had an impromptu, 1 to 2 minute colloquy concerning a nominee for chairmanship of a City Board. This discussion, without more, was not a "meeting" by a "public body," as defined by the OMA, nor did the caucus meet to circumvent the requirements of the OMA. See R.I. Gen. Laws § 42-46- 2(a) and (c).
Issued September 8, 2006.

PR 06-36 Goodinson v. Department of Education

Technical violation for exceeding by two days the ten business day time frame during which a public body may extend for "good cause" the production of records. Nevertheless, an extension was appropriate and the evidence suggests that the Department mistakenly believed it had responded within time. See R.I. Gen. Laws § 38-2-7(a) and (b).
VIOLATION FOUND.
Issued September 8, 2006.

PR 06-37 Gordon v. Beacon Charter School & Northern R.I. Council for the Arts

Requests to Charter School for records in connection with an ongoing employment hearing and appeal process found not made pursuant to the APRA and therefore not subject to the APRA. Pending matters, including records requested in conjunction with such matters, before a court of law or before an administrative hearing officer are subject to the rules and procedures set forth by the judicial entity. However, a request for records to NORICA found subject to the APRA and found to have gone unanswered in violation of the APRA.
VIOLATION FOUND.
Issued September 8, 2006.

- PR 06-38 **O'Neil v. Town of Westerly**
 The Town did not violate the APRA when it did not provide records that it did not possess. The requesting party was informed of the private contracting company in possession of the documents.
Issued September 27, 2006.
- PR 06-39 **Rogers v. East Providence School Department**
 Violation for failure to timely respond within ten business days to a request for records. Although at the time of the request the public body had no responsive documents, a response was nevertheless required. Responsive documents have subsequently been created and provided.
 VIOLATION FOUND.
Issued October 13, 2006.
- PR 06-40 **Perrotti v. Town of Johnston**
 Town violated the APRA for failing to timely respond to a request for contracts. Based on apparent recent and continuing pattern of such violations by the Town, despite repeated warnings from the Department of Attorney General, Department filed lawsuit seeking monetary fine and injunctive relief.
 VIOLATION FOUND. LAWSUIT FILED.
Issued October 12, 2006.
- PR 06-41 **Langseth v. Buttonwoods Fire District (APRA)**
 Fire District violated the APRA when it failed to timely respond to a request for records.
 VIOLATION FOUND.
Issued November 3, 2006.
- 2007**
- PR 07-01 **Palazzo v. Town of West Warwick**
 The Town of West Warwick violated the APRA by failing to provide the segregable portions of a letter and attached document concerning the Town Council's resolution on an employee's pension authorization. The Town's Pension Plan was not established pursuant to the General Laws and therefore the R.I. Gen. Laws § 38-2-2(4)(i)(A)(II) is not applicable in this situation. However, the letter and attached document fall within the purview of the "total cost of paid fringe benefits" as delineated in R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) and is therefore a public record under APRA.
 VIOLATION FOUND.
Issued: February 15, 2007.
- PR 07-02 **Garceau v. Narragansett Town Council/Narragansett Planning Board**
 The Narragansett Town Council did not violate the APRA by failing to answer questions during a meeting concerning applications received or reviewed for the appointment of an individual to the Planning Board. The APRA is not applicable in this situation because it does not govern the conduct of public bodies with respect to answering oral or written questions.
Issued: March 30, 2007.

PR 07-03

Young v. Rhode Island Department of Environmental Management

The Rhode Island Department of Environmental Management violated the APRA by failing to respond to a request for records within the ten (10) business day timeframe set forth in the APRA. R.I. Gen. Laws § 38-2-7. There is no evidence that the DEM willfully or knowingly violated the APRA. VIOLATION FOUND.

Issued: April 18, 2007.

PR 07-04

Almeida v. Department of Health

The Department of Health violated the APRA when it failed to respond to a records request within the ten (10) day period allotted by the APRA. R.I. Gen. Laws § 38-2-7. If a public body needs additional time to respond to an APRA request, the APRA provides that a public body, "for good cause," may extend the response time an additional twenty (20) business days to a total of thirty (30) business days. R.I. Gen. Laws § 38-2-7(b). However, the "APRA requires that a response to an APRA request be made within ten (10) business days of receipt of request, even if the purpose of the request is to assert the 'good cause' extension for an additional twenty business days." See Goodinson v. Department of Education, PR 06-36.

VIOLATION FOUND.

ISSUED: JUNE 18, 2007.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS – (2007)

NONE

END OF APRA SUMMARIES

NOTE: Looking for the full text of a finding/advisory or the most recently issued finding/advisory?????

Visit our website at www.riag.ri.gov (then proceed to the link entitled “I’m looking for.....Open Government Findings” or visit the Open Government page accessible within the Civil Division site). Findings/advisories issued before 2001 may be accessed by visiting the State Law Library, or by contacting our office at (401)-274-4400.

ACCESS TO PUBLIC RECORDS ACT FINDINGS

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Updated: July 24, 2007

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.

- 38-2-1. Purpose.
- 38-2-2. Definitions.
- 38-2-3. Right to inspect and copy records
 - Duty to maintain minutes of meetings — Procedures for access-
- 38-2-3.1. Records required.

SECTION.

- 38-2-4. Cost.
- 38-2-7. Denial of access.
- 38-2-8. Administrative appeals.
- 38-2-9. Jurisdiction of superior court.
- 38-2-14. Information relating to settlement of legal claims.
- 38-2-15. Reported violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(O) All tax returns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Each public body shall establish procedures regarding access to public records but shall not require written requests for public information available pursuant to R.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.”

History of Section.

PL. 2000, ch. 430, § 1.

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.

History of Section.

PL. 1979, ch. 202, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

Collateral References. Use of affidavits

to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. § 552). 187 A.L.R. Fed. 1.

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.

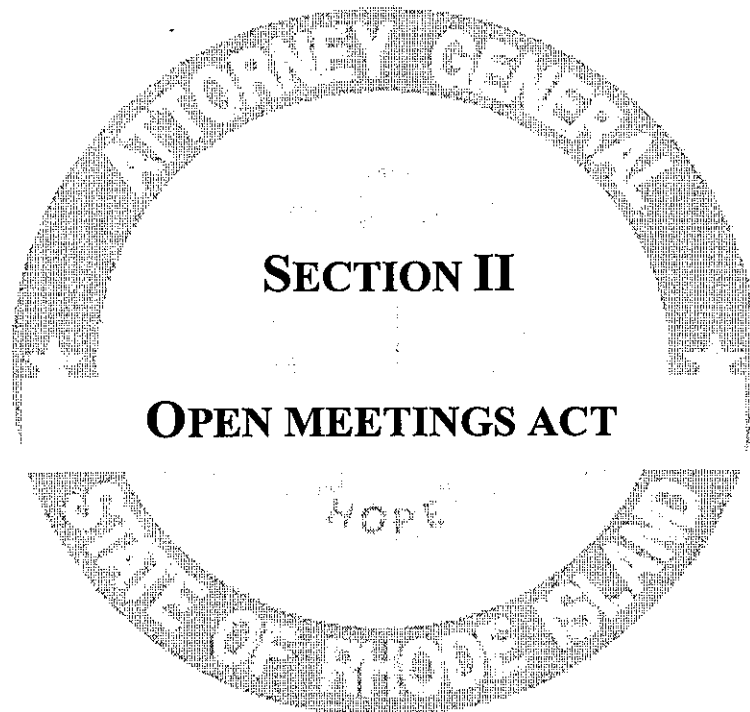
38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

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.



OPEN MEETINGS ACT FINDINGS – (2006-2007)

- OM 06-52 **Griffiths v. Re-Development Agency of the City of Newport**
City Agency did not violate the OMA. The agenda was found to have adequately informed the public, under the totality of the circumstances, of the nature of the business to be conducted at the meeting in question. See R.I. Gen. Laws § 42-46-6(b); Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005).
Issued: June 30, 2006.
- OM 06-53 **Mudge v. North Kingstown School Committee**
The School Committee violated the OMA when it sealed all minutes from a meeting, including the open portion of the meeting. The OMA permits only the minutes of a properly called and conducted executive session to be sealed. See R.I. Gen. Laws § 42-46-7(c). Notwithstanding, the Committee appropriately met in closed session for the purpose of discussing pending litigation, and it adequately advertised by agenda the nature of the business to be discussed in executive session.
VIOLATION FOUND.
Issued: July 7, 2006.
- OM 06-54 **In Re Foster Town Council**
A majority of members-elect to the Town Council met privately on several occasions after being elected but before the first public meeting of the newly elected public body. Although the members-elect were considered members of a “public body” after the election, these gatherings were found not to involve collective discussion concerning town matters and hence were not considered “meetings” for purposes of the OMA. Members-elect were found to have had private discussions prior to the election, at which point the members were not subject to the OMA. Further, the one instance in which a discussion did take place post-election was found to have occurred between less than a quorum of members-elect – also not subject to the OMA. Informational sessions and colloquies with legal counsel properly may be held outside the public purview. The first public meeting of the newly elected public body was adequately advertised and the fact that agenda items were taken out of order, in this case, was not a violation of the OMA.
Issued: September 8, 2006.
- OM 06-55 **Callahan v. City of Cranston**
(PR 06-34) No violation of the APRA when the city’s insurance/risk commission provided general street addresses and not individual names and addresses of those properties/individuals affected by a sewerage backup. The public interest reasons advanced for disclosure do not further the purposes for which the APRA was promulgated and the privacy interests are significant. Technical violation of the OMA found for commission’s failure to keep

adequate records of a meeting. Minutes must clearly include the record by individual member of votes taken. See R.I. Gen. Laws § 42-46-7.

VIOLATION FOUND.

Issued August 30, 2006.

OM 06-56
(PR 06-35)

Quinn, et al. v. Providence City Council

No APRA violation for failing to make available minutes from a political caucus meeting because a political caucus does not fall within the purview of the OMA and no minutes were required. See R.I. Gen. Laws § 38-2-3(f). No violation of the OMA when a majority of the members of the City Council gathered for a political caucus and had an impromptu, 1 to 2 minute colloquy concerning a nominee for chairmanship of a City Board. This discussion, without more, was not a “meeting” by a “public body,” as defined by the OMA, nor did the caucus meet to circumvent the requirements of the OMA. See R.I. Gen. Laws § 42-46- 2(a) and (c).

Issued September 8, 2006.

OM 06-57

Carroll v. Foster Town Council

Mitchell v. Foster Town Council

Rider v. Foster Town Council

No evidence that the council met privately to suspend town employee. Emergency executive session meeting regarding the security of public funds found to have been properly called and properly advertised. See R.I. Gen. Laws § 42-46-6(c); § 42-46-5(a)(3).

Issued: September 8, 2006.

OM 06-58

Lemus v. Providence Zoning Board of Review

Violation of the OMA for disallowing a member of the public to videotape a meeting. An audio and/or video recording of the public portions of a meeting should be allowed, subject to any reasonable restrictions that may lawfully be imposed by the public body.

VIOLATION FOUND.

Issued: September 8, 2006.

OM 06-59

Riley v. East Providence Board of Canvassers

Based on the evidence then before the Department of Attorney General, no evidence that a quorum of members of the Board of Canvassers met in private to discuss and/or decide upon the transfer of a city employee. Although there were meetings held for this purpose, it was determined that none of the meetings comprised a quorum of the Board, but included only one member of the Board and other individuals that are not considered members of a “public body,” such as the clerk, solicitor, city manager and union steward. The Department of Attorney General examines only the actions of the members of the public body. But see Riley v. East Providence Board of Canvassers, OM 06-59(B) issued October 6, 2006.

Issued: September 8, 2006.

OM 06-59(B) **Riley v. East Providence Board of Canvassers**

Supplement to OM 06-59. Upon additional information provided by the City Solicitor, namely, that the Clerk of the Board is a member of the Board, it was determined that a majority, or quorum, of the three member Board did meet privately to discuss the transfer of a City employee in violation of the OMA.
VIOLATION FOUND.

Issued: October 6, 2006.

OM 06-60 **Rider v. Foster Town Council (2)**

Addition of an agenda matter and vote on the new item (to approve and send out a newsletter with clarification of location of financial town meeting) at a meeting found not necessary "to address an unexpected occurrence that requires immediate action to protect the public," see R.I. Gen Laws § 42-46-6(b), and therefore was in violation of the OMA. Matter need not have been addressed within forty-eight hours.

VIOLATION FOUND.

Issued: September 13, 2006.

OM 06-61 **Sanders v. Westerly Town Council et al.**

Under the totality of circumstances, the notice provided by the Town Council adequately informed the public of the nature of the business to be discussed and was not a violation of the OMA. The Economic Development Committee violated the OMA when it failed to keep written minutes of its meetings. No evidence to conclude that the Planning Advisory Committee violated the OMA by intentionally omitting from the minutes a recommendation made at a meeting and alleged to have been requested to be reflected in the minutes.

VIOLATION FOUND.

Issued: September 20, 2006.

OM 06-62 **Munroe v. Exeter/West Greenwich School Committee**

The School Committee violated the OMA when it failed to properly convene an emergency meeting by voting, articulating, and recording the matters set forth in R.I. Gen. Laws §42-46-6(c) when it met to discuss and take action on an alarm system contract. Despite attempts to widely advertise the meeting, failure to publish notice in a newspaper of general circulation cannot be excused by the fact that the meeting was emergent because the meeting was never properly convened as an emergency meeting.

VIOLATION FOUND.

Issued: October 6, 2006.

OM 06-63 **Nicholas DePetrillo vs. Block Island Planning Board**

No evidence that the notice for a Planning Board meeting was insufficient, or that the Board in any way violated the OMA when public discussions on an agenda matter continued uninterrupted and in order of the agenda after the land owner/applicant left the meeting.

Issued: October 12, 2006.

- OM 06-64 **Vaillancourt v. Rhode Island Airport Corporation**
Meeting notice adequately apprised the public of the nature of the business to be discussed and was timely and properly given. No evidence that the RIAC failed to post public notice for any of the meetings at issue.
Issued: October 13, 2006.
- OM 06-65 **Brackett v. Coventry Town Council (1)**
Brackett v. Coventry Town Council (2)
Town Council violated the OMA when it met in executive session on personnel matters without advertising that personnel matters, or what and how many matters, would be addressed. See R.I. Gen. Laws § 42-46-5(a)(1). Further, the Town Council failed to follow the strict procedural requirements imposed by the OMA to enter into executive session. On another occasion, Town Council properly advertised and convened into an executive session, and it maintained minutes of said session as required by the OMA.
VIOLATION FOUND.
Issued: October 17, 2006.
- OM 06-66 **Cerullo v. West Warwick Town Council**
No evidence that a quorum of council members met privately to discuss a reappointment position or a casino proposal. No evidence to support allegation that a quorum (or walking quorum) of the council directly participated in an email exchange for the purpose of discussing matters other than to schedule a meeting. See R.I. Gen. Laws § 42-46-5(b).
Issued: October 27, 2006.

2007

- OM 07-01 **Benson v. North Kingstown School Committee**
The North Kingstown School Committee violated the OMA by failing to file notice of a meeting with the Secretary of State's Office forty-eight (48) hours in advance of the meeting. R.I. Gen. Laws § 42-46-6(c). This violation should be considered a knowing and willful violation of the OMA due to the Committee's knowledge twenty four (24) hours prior to the meeting that proper notice had not been posted pursuant to the OMA. The Committee's long, documented history of indifference towards R.I. Gen. Laws § 42-46-6(c) also weighed in the finding of a knowing and willful violation of the OMA.
VIOLATION FOUND. LAWSUIT FILED.
Issued: February 21, 2007.
- OM 07-02 **Gregson v. East Greenwich School Committee**
The East Greenwich School Committee did not violate the OMA by discussing budget issues during a meeting which was posted for teacher contract negotiations. A public body can hold a work session in which it discusses financial matters relating to upcoming collective bargaining negotiating sessions. R.I. Gen. Laws § 42-46-5(a)(2).
Issued: February 28, 2007.

OM 07-03 **DePatie v. Charlestown Town Council**

The Charlestown Town Council violated the OMA when three members-elect held a meeting outside the public purview to discuss and plan public business. Prior findings do not support the Town Councils' argument that although elected, the OMA does not apply to the members-elect until a seven (7) day appeal period has expired. Past findings and public policy make clear that the OMA applies to members-elect following an election. See R.I. Gen. Laws § 42-46-1.

VIOLATION FOUND.

Issued: March 8, 2007.

OM 07-04 **Blais v. Burrillville Library Building Committee**

The Burrillville Library Building Committee violated the OMA due to the inaccurate notice of a meeting at the principal office of the public body and another prominent place. R.I. Gen. Laws § 42-46-6(c). The Committee's meeting minutes were inaccurate and maybe in substantial error and therefore also found to be a violation of the OMA. R.I. Gen. Laws § 42-46-6(c).

Issued: March 21, 2007.

OM 07-05 **Blais v. Burrillville Town Council**

There is no evidence that the Burrillville Town Council discussed a pending political campaign during a meeting and therefore did not violate the OMA. However, the Council discussed more than one matter under the "litigation" exception set forth in R.I. Gen. Laws § 42-46-5(a)(2) and violated the OMA because its executive session agenda gave inadequate notice to the public of the number of "litigation matters" the Council intended to discuss during the meeting.

VIOLATION FOUND.

Issued: April 11, 2007.

OM 07-06 **Melvin v. Portsmouth School Committee**

The Portsmouth School Committee violated the OMA by failing to report, in open session, a vote taken in executive session. A public body is entitled to withhold public disclosure of a vote if it would potentially jeopardize any strategy, negotiation or investigation. R.I. Gen. Laws § 42-46-4. However, the Committee failed to make a subsequent disclosure of the executive session vote once the threat of public disclosure to its litigation strategy had ended.

VIOLATION FOUND.

Issued: April 18, 2007.

OM 07-07

Vanover v. Charlestown Town Council

The Charlestown Town Council violated the OMA when a quorum of the Council met or otherwise discussed, outside of a properly noticed public meeting, the appointment or nomination of a new Town Solicitor. Town Council's failure to provide certain responsive materials during the Department's investigation prompted a determination based on the record.

VIOLATION FOUND.

Issued: April 26, 2007.

OM 07-07(B) **Vanover v. Charlestown Town Council**

Supplement to OM 07-07. The Department of Attorney General declined to reconsider its finding of a violation in Vanover v. Charlestown Town Council, OM 07-07. After reviewing Town Council affidavits submitted after issuance of the original finding, however, it was determined that there was insufficient evidence to find the violation was willful or knowing. The Town Council was reminded and cautioned that a quorum (walking or rolling) may be found by a series of one-on-one conversations and that a discussion by a public body, even if during a political caucus event, on a matter over which the public body has supervision, control, jurisdiction or advisory power does fall within the OMA.

Issued: June 6, 2007.

OM 07-08

Pinning / Reilly v. Providence Board of Park Commissioners

The Providence Board of Park Commissioners violated the OMA by failing to post electronic notice for three meetings and agendas on the Secretary of State's website. R.I. Gen. Laws § 42-46-6(c). The Board also violated the OMA when they discussed a Councilman's letter addressed to the Board that was not on the agenda for that particular meeting. According to R.I. Gen. Laws § 42-46-6, a public body must provide a forty-eight (48) hour advanced notice of the matters discussed in a meeting. Although it is not necessary to advertise every nuance to be discussed in a meeting, the broad agenda item of a "Superintendent's Report" did not properly inform the public of the nature of business to be discussed.

VIOLATION FOUND.

Issued: April 25, 2007.

OM 07-09

Allen and Waterman v. Charlestown Town Council (2)

The Town Council violated the OMA when it inadequately advertised an executive session. The Town Council cited to and relied upon the statutory section governing "litigation" rather than "personnel" when a quorum of the Town Council met in executive session to discuss a personnel matter. See R.I. Gen. Laws § 42-46-5(a)(1) and (2). The personnel matter discussed was found to be appropriate for an executive session. The exact nature of the matter was not yet public, and therefore, the agenda's lack of detail as to the nature of the business that was discussed in executive session was not a violation of the OMA.

VIOLATION FOUND.

Issued: June 6, 2007.

OM 07-10

Pariseau v. Cranston Housing Authority

Varin v. Cranston Housing Authority

No evidence to support allegations that the Cranston Housing Authority violated the OMA. The late start of the meeting was attributed to the late arrival of members and delays caused by unrelated events; the late start was not a contrivance to dissuade the public from attending the meeting and members of the public were accommodated by being allowed to speak even though public comment was not scheduled. No evidence that members of the Authority collectively met to discuss Authority business prior to the late start of the meeting. Instead, the evidence showed that members simply gathered outside the meeting room and that, by happenstance, entered as a group.

Issued: June 11, 2007.

OPEN MEETINGS ACT ADVISORY OPINIONS – (2006-2007)

ADV OM
06-02

In Re: East Greenwich School Committee OMA Advisory Opinion

Rhode Island General Laws § 42-46-5(a)(1) that allows an executive session to discuss the job performance, character, or physical or mental health of a “person or persons” does not specifically define the term “person(s).” Therefore, based on the plain and ordinary language, the term “person(s)” should be construed as including the members of a public body itself. Hence, it may be appropriate for members of a school committee to conduct an executive session for purposes of discussing the job performance of a fellow member.

Issued: October 6, 2006.

ADV OM
06-03

In Re: Providence External Review Authority

The deliberations of a hearing panel could be held in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) because the PERA, which makes rulings and recommendations derived from allegations of misconduct by police officers, would be discussing an officer’s job performance during the deliberations. However, in order to comply with the OMA, strict procedural requirements must be met, including notification to the affected person in advance in writing to advise them that the deliberations may be held in open session at their option.

Issued: October 26, 2006.

2007

NONE

END OF OMA SUMMARIES

NOTE: Looking for the full text of a finding/advisory or the most recently issued finding/advisory?????

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CHAPTER 46

OPEN MEETINGS

SECTION.		SECTION.	
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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. — 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.

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.

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

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

42-46-6. Notice. —

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

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

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

(d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

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

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

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

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

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

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

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

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

42-46-7. Minutes. —

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

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

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

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

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

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

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

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

(e) All minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of minutes with the secretary of state shall take effect one year after this subsection takes effect. If a public body fails to transmit minutes in accordance with this subsection, then any aggrieved person may file a complaint with the attorney general in accordance with §42-46-8.

History of Section.

PL. 1976, ch. 330, § 2; P.L. 1984, ch. 372, § 1; PL. 1985, ch. 373, § 1; P.L. 1989, ch. 431, § 1; PL. 1995, ch. 165, § 1; PL. 2003, ch. 305, § 1; P.L. 2003, ch. 362, § 1.

Compiler's Notes. PL. 2003, ch. 305, § 1 and P.L. 2003, ch. 362, § 1 enacted identical amendments to this section.

In 2003, the compiler made a stylistic change in subsection (e).

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.