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DEPARTMENT OF ATTORNEY GENERAL

Patrick C. Lynch, Attorney General

7TH ANNUAL

OPEN GOVERNMENT SUMMIT



ROGER WILLIAMS UNIVERSITY

RALPH R. PAPITTO SCHOOL OF LAW

FRIDAY, AUGUST 5, 2005

*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

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Patrick C. Lynch, Attorney General

August 5, 2005

Dear Open Government Summit Attendee:

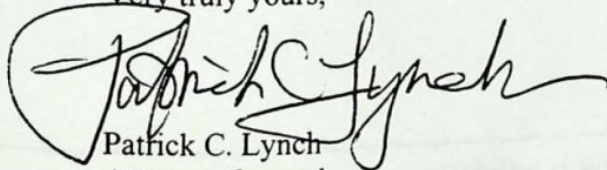
I would like to take this opportunity to thank you for attending the 7th Open Government Summit and to thank the Roger Williams University Law Alumni Association for its continued co-sponsorship of this important event.

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 5, 2005
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 2004-2005 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 2004-2005 case law/legislative update will also be reviewed.
- 10:35 – 11:15 a.m. Access to Public Records Act and Open Meetings Act Questions
and Answers
- 11:15 – 11:30 a.m. Break
- 11:30 – 12:30 p.m. Ethics Commission Presentation by Jason Gramitt, Rhode Island
Ethics Commission
Identifying and avoiding conflicts of interests under the Code of Ethics, guidelines for filing financial disclosure forms, and your questions.

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/AboutTSL/visits.html>. This Program is co-sponsored by the Roger Williams University Law Alumni Association and has been certified for 3 Continuing Legal Education Credits, free of charge.

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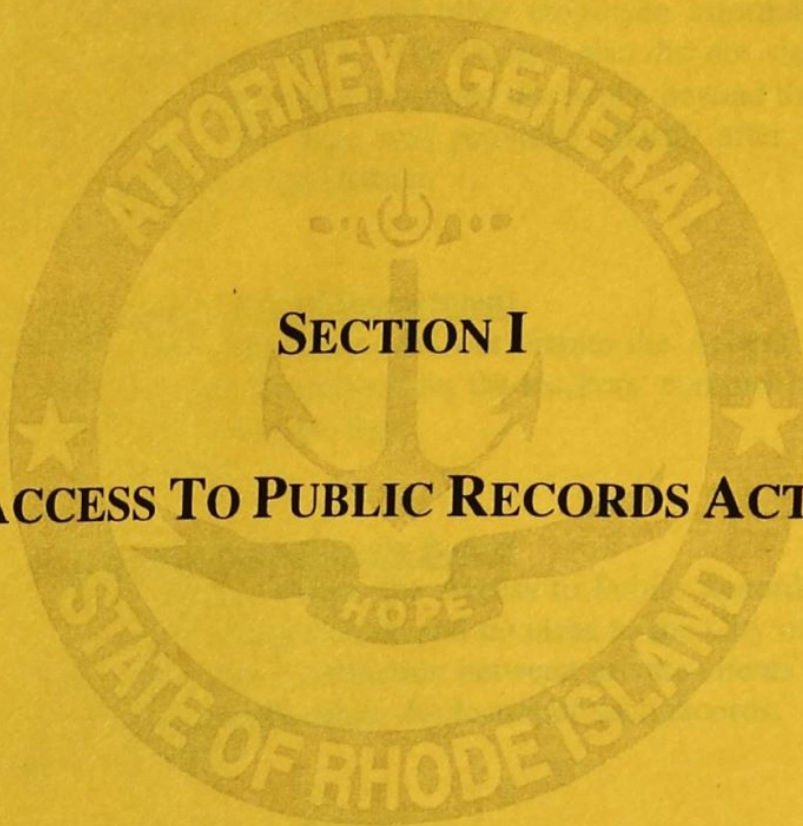
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SECTION I

ACCESS TO PUBLIC RECORDS ACT



ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2004

PR 04-01

Faerber v. City of Newport

The City of Newport was not obligated under the Access to Public Records Act (APRA) to provide records allegedly maintained by the Newport School Department, a distinct public body. The City did not violate the APRA when it denied another aspect of the request because the requested documents and the requested written bid opinion did not exist.

Issued: January 9, 2004.

PR 04-02

Calci v. Coventry Fire Department

The Coventry Fire District did not violate the Access to Public Records Act (APRA) by redacting certain entries appearing on its annual ledger. The redacted information concerned medical and other employee information not expressly deemed public under the APRA. The District also did not violate the APRA by providing a page missing from a requested document beyond the 10 business days required by statute. The page was provided shortly after the omission was brought to the attention of the District.

Issued: March 5, 2004.

PR 04-03

Schuttert v. Coventry School Department

The Coventry School Department did not violate the Access to Public Records Act (APRA) with regard to a request for the teachers' contract because the request was fulfilled within 10 business days.

Issued: March 12, 2004.

PR 04-04

Fahey v. Providence Water Supply Board

Providence Water did not violate the Access to Public Records Act (APRA) by denying a request for billing records and invoices to the City of East Providence. The APRA does not make a distinction between private clients and public clients and, in neither case, compels public disclosure of such records.

Issued: March 17, 2004.

PR 04-05

Couture v. Coventry Police Department

The Coventry Police Department violated the Access to Public Records Act (APRA) when it did not disclose information concerning a fatal traffic accident that occurred in 2001. Certain police reports, witness statements, and an accident scene sketch were deemed public in light of the fact that the investigation into the accident was complete. Accident scene photos depicting the deceased, that were taken by the Police Department, and license and social security numbers were determined not public because their release would constitute an unwarranted invasion of privacy. VIOLATION FOUND.

Issued: March 19, 2004.

PR 04-06

Hofstetter v. Cranston School Department

The Cranston School Department violated the Access to Public Records Act (APRA) by failing to respond to a request for certain financial information within 10 business days. The School Department could have requested an additional 20 days in which to comply with the request for good cause, but it did not.
VIOLATION FOUND.

Issued: March 25, 2004.

PR 04-07

Jackson v. Charlestown Police Department

The Charlestown Police Department did not violate the Access to Public Records Act (APRA) in its response to a July 2003 request for various information related to an ongoing felony investigation of the complainant's husband. Disclosure of requested information could reasonably be expected to interfere with the investigation of criminal activity. Other information requested was either provided, or does not exist.

Issued: March 31, 2004.

PR 04-08

Muldowney v. City of Newport

A copy of a letter sent by an attorney to the City Manager indicating an intention to file a sexual harassment lawsuit against a specifically named individual was exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I)(records identifiable to individual employees). Also exempt as privacy interest outweighs public interest as allegations have yet to be found meritorious.

Issued: April 22, 2004.

PR 04-09

Wilson v. City of Central Falls

The City did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, the City did not have to compile or create records.

Issued: June 21, 2004.

PR 04-10

Jones v. Town of West Warwick

The Town did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, the Town did not have to compile or create records.

Issued: June 21, 2004.

PR 04-11

Schwarz v. Public Utilities Commission

A public body that requires pre-payment for search and retrieval fees does not violate the Access to Public Records Act. See Smith v. Watch Hill Fire District, PR 99-15.

Issued: June 21, 2004.

- PR 04-12 **Berger v. Board of Governors for Higher Education et al.**
The Board of Governors did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, the Board of Governors did not have to compile or create records.
Issued: June 30, 2004.
- PR 04-13 **Grey2K USA v. Department of Business Regulations**
The Department of Business Regulations did not violate the Access to Public Records Act since the evidence demonstrated that a request for records was never received. Additionally, evidence demonstrated that requested records did not exist. See R.I. Gen. Laws § 38-2-3(f).
Issued: June 30, 2004.
- PR 04-14 **Ethier v. Pawtucket Police Department**
Request to the Pawtucket Police Department for a copy of a will and a police report. Evidence showed that requested police report was disclosed and that the Police Department did not maintain a copy of the requested will. Since the requested will did not exist, the Police Department did not have to compile or create records.
Issued: June 30, 2004.
- PR 04-15 **Chrabaszcz v. Johnston School Department**
The School Department did not violate the Access to Public Records Act by exempting a copy of the Superintendent's contract, which had been submitted at a public meeting. Rhode Island General Laws § 38-2-2(4)(i)(K) exempts from public disclosure "[p]reliminary 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." Since the Superintendent's contract did not constitute "[p]reliminary drafts, notes, impressions, memoranda, working papers, [or] work products," the second clause providing that documents submitted at a public meeting are public records was not applicable and the Superintendent's contract was exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I)(records identifiable to individual employee).
Issued: June 30, 2004.
- PR 04-16 **Loebenberg v. Rhode Island Resource Recovery Corporation**
Resource Recovery did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, Resource Recovery did not have to compile or create records.
Issued: June 21, 2004.

- PR 04-17 **Tel Comm v. City of Warwick**
The City violated the Access to Public Records Act by failing to respond to this request within ten (10) business days.
VIOLATION FOUND.
Issued: June 30, 2004.
- PR 04-18 **Chappell v. Rhode Island State Police**
The State Police did not violate the Access to Public Records Act by exempting from public disclosure the home addresses of the Superintendent of the State Police and one of its Inspectors. The privacy interests in one's home address outweighs any public interest.
Issued: June 30, 2004.
- PR 04-19 **Doyle v. Town of Tiverton**
The Town violated the Access to Public Records Act by failing to provide public inspection to Voter Registration Cards, although portions of these cards may be redacted. Pursuant to R.I. Gen. Laws § 17-9.1-6, voter registration cards are public records and the information required to be compiled by Chapter 9.1 must be disclosed.
VIOLATION FOUND.
Issued: June 30, 2004.
- PR 04-20 **Siegmund v. Town of Jamestown**
The Town did not violate the APRA when it provided requested documents within thirty business days. The Town responded within ten business days of receipt of the request indicating that the records sought were not maintained at the Town Hall and that additional time was required in keeping with the "good cause" extension provided in R.I. Gen. Laws § 38-2-7(b). Although the Town was not required to compile the records, see R.I. Gen. Laws § 38-2-3(f), and hence the records fell outside the ambit of the APRA's time provisions, the Town nevertheless timely produced the documents in accordance with the "good cause" time allowance.
Issued: December 13, 2004.

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2005

PR 05-01

Yeahquo v. R.I. Department of Administration

The Department of Administration violated the APRA when it failed to respond to a written records request within ten business days of receipt of the request. The Department admitted that the lack of response was an oversight and due in part to the form in which the request came – located at the bottom of a two-page letter. The Department timely produced responsive documents when it became aware of the request by way of this complaint filed with the Attorney General's office. The evidence did not demonstrate a willful or knowing violation.

VIOLATION FOUND.

Issued: January 31, 2005.

PR 05-02

Moriarty v. City of Newport

The City failed to respond to a records request addressed to the city's Purchasing Agent and again failed to respond to an appeal of this "denial" addressed to the City Manager. The City explained that the failure of the City Manager to respond was due to an inadvertent misfiling of correspondence, however, offered no explanation for its failure as to the initial request. Although the City has violated previously, see Faerber v. City of Newport, PR 02-07, the former violation was by a different department within the city. The City was ordered to produce all responsive documents at no cost to the requesting party.

VIOLATION FOUND.

Issued: February 25, 2005.

PR 05-03

Young v. Town of Hopkinton

The Town of Hopkinton violated the APRA for failing to timely respond to two records requests made to the Town Council. Despite the voluminous nature of the request, seeking documents spanning a period of four years, the Town was under an obligation to respond to the requests within ten business days and not merely within a "reasonable time." The Town would have been justified to extend the time to respond to this request to thirty business days. As to the later request, the Town did respond within thirty business days, but without seeking such an extension.

VIOLATION FOUND.

February 25, 2005.

PR 05-04

Mudge v. North Kingstown School Department

The School Department violated the APRA when it failed to respond to a records request directed to School's Superintendent via email. Although the request was made at an inopportune time for the school department and a request made by email may lend itself to being misplaced amongst other incoming messages, the APRA requires a timely response regardless of the circumstances and it does not dictate the method by which a request must be made. Hence, in this case, a timely response was due and email was an appropriate method of request. No violation for three other requests made.

VIOLATION FOUND.

Issued: March 18, 2005.

PR 05-05

(OM 05-04)

Black v. Barrington Board of Tax Assessment Review et al.

The Board violated the OMA when it failed to maintain written minutes of its meetings, however, it did not violate the APRA when it kept and maintained tape recorded minutes, as allowed by R.I. Gen. Laws § 38-2-3(b). The Board violated several other provisions of the APRA, however, including that it overcharged complainants for APRA requests by failing to provide the first hour for search and retrieval, for each separate request, at no cost; the Board overcharged for the time taken to tape record a requested copy of taped minutes; the Board willfully and knowingly denied access to a public "Manual," provided incomplete responses to various records requests, and failed to timely respond to several APRA requests; the Board failed to establish additional procedures to ensure access to public records pursuant to R.I. Gen. Laws § 38-2-3(c). No evidence to show that the Board convened in closed session to discuss, deliberate and/or vote. No violation of R.I. Gen. Laws § 38-2-4 for photocopy machine in Town Hall that charges \$1.00 per copy since no evidence that complainant ever informed town employee that s/he wished to photocopy a public record.

VIOLATION FOUND. LAWSUIT FILED.

Issued: March 28, 2005.

PR 05-06

Shalvey v. Rhode Island College

Rhode Island College violated the APRA when it failed to respond within ten business days to a request made to the Director of Capital Projects or to a second request (or appeal) made to the President of the College. A response is required by law, even assuming no responsive documents exist.

VIOLATION FOUND.

Issued: May 13, 2005.

PR 05-07

(OM 05-07)

Clarke v. South County Tourism Council, Inc.

The South County Tourism Council did not violate the APRA when it failed to produce/include the minutes for a scheduled Executive Board meeting with other minutes provided. The evidence demonstrates that the meeting in question never took place. Further, as later determined in In re South County Tourism Council, ADV OM 05-03, the Council is not a public body and not subject to the OMA. Although an entity not subject to the OMA may still be subject to the APRA, no determination was made in this case as to whether or not the Council is subject to the APRA since there is no obligation to provide documents not maintained by a "public body". R.I. Gen. Laws § 38-2-3(f).

Issued: June 28, 2005.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS - 2005

ADV PR
05-01

In Re Motor Vehicle Tax Information

The tax toll database maintained by the City of Pawtucket for all motor vehicles and trailers is a public record insofar as it contains the same data routinely published in the tax rolls that are available to the public on site at the Tax Assessor's office in bound paper format. This Department can find no reason why the same information already provided in bound tax rolls should not also be provided in a computer-readable format, to the extent that the City would not be unduly burdened. See R.I. Gen. Laws § 38-2-3(f).

Issued: May 6, 2005.

ACCESS TO PUBLIC RECORDS ACT FINDINGS

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Updated: July 15, 2005

CHAPTER 2

ACCESS TO PUBLIC RECORDS

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38-2-2.	Definitions.	38-2-7.	Denial of access.
38-2-3.	Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for ac- cess.	38-2-8.	Administrative appeals.
		38-2-9.	Jurisdiction of superior court.
		38-2-14.	Information relating to settle- ment of legal claims.
38-2-3.1.	Records required.	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.I.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.
P.L. 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.

P.L. 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.

38-2-9. Jurisdiction of superior court. — (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of any party, or sua sponte by the court made in accordance with the rules of civil procedure of the superior court.

(d) The court shall impose a civil fine not exceeding one thousand dollars (\$1,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant.

38-2-10. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

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

38-2-12. Severability. — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

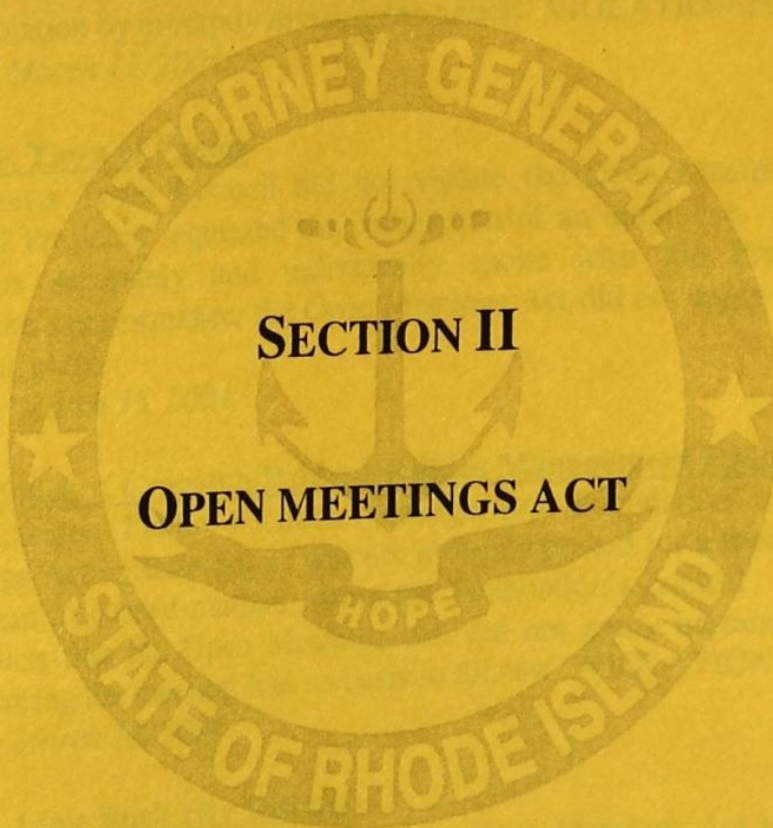
38-2-13. Records access continuing. — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

38-2-14. Information relating to settlement of legal claims. — Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

38-2-15. Reported violations. — Every year the attorney general shall prepare a report summarizing all the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

SECTION II

OPEN MEETINGS ACT



OPEN MEETINGS ACT FINDINGS-2004

OM 04-01

DiModica v. Cumberland Fire District

The Cumberland Fire District violated the Open Meetings Act by failing to indicate in its public notice that elections would be conducted at a July, 2003 meeting. The District remedied its own violation by promptly holding an election at a meeting for which proper notice was given. VIOLATION FOUND.
Issued: March 5, 2004.

OM 04-02

Toste v. Cumberland Fire District

The Cumberland Fire District violated the Open Meetings Act by failing to include the times and places of meetings in its notice of annual meetings as required by Rhode Island General Laws § 42-46-6(a). The District remedied its own violation by promptly revising the notice. VIOLATION FOUND.
Issued: March 12, 2004.

OM 04-03

Cross v. Town of Exeter

The Exeter Town Council did not violate the Open Meetings Act when the Council President requested the resignation of an employee. Although Council members separately and individually spoke with the President about the employee's performance, the Open Meetings Act did not apply to any discussions that took place.
Issued: March 15, 2004.

OM 04-04

McCormick v. Cranston Public Facilities Management Foundation

The Cranston Public Facilities Management Foundation violated the Open Meetings Act because notice was not properly posted for a meeting during which a quorum discussed matters within the Foundation's control. The Foundation's contention that the Open Meetings Act did not apply because no actions were taken during the meeting had no basis in the law. VIOLATION FOUND.
Issued: March 18, 2004.

OM 04-05

Dale v. Lime Rock Fire District

The Lime Rock Fire District violated the Open Meetings Act at its December 17, 2002 meeting by holding a meeting on the second floor of the fire station, which was not accessible to the disabled. The OMA, under Rhode Island General Laws § 42-46-13 (c), states that "...all meetings required to be open to the public...[be] held in accessible facilities." The actions taken at the meeting in question were re-approved at a subsequent meeting that provided accessibility to the disabled. VIOLATION FOUND.
Issued: March 23, 2004.

OM 04-06

Perry v. Coventry Fire District

The Coventry Fire District did not violate the Open Meetings Act when its Board of Engineers convened in closed session on October 28, 2003 and allowed commissioners not on the Board to attend that closed session. The Open

Meetings Act does not prohibit interested parties from attending closed sessions as long as its actions do not amount to permitting and excluding members of the public in a way that would circumvent the spirit or requirements of the Open Meeting Act.

Issued: March 25, 2004.

OM 04-07

Sposato v. Ashaway Fire District

The Ashaway Fire District violated the Open Meetings Act at its November 21, 2003 meeting by failing to provide advance notice, in writing, to a person whose job performance would be discussed in closed session, and by failing to indicate the proposed closed session in the supplemental notice of the meeting.

VIOLATION FOUND.

Issued: March 25, 2004.

OM 04-08

Garon v. Cumberland Fire District

The Cumberland Fire District violated the Open Meetings Act at its September 19, 2003 meeting by convening a meeting of its Personnel Subcommittee without public notice. Because the Subcommittee consisted of three people, a meeting of two members constituted a quorum under the Open Meetings Act.

VIOLATION FOUND.

Issued: March 25, 2004.

OM 04-09

Cervasio v. Town of Foster

The Town of Foster did not violate the Open Meetings Act in the Town Council's appointment process. The Open Meetings Act does not require a public body to specifically identify all positions on which a vote is expected. The evidence did not support the conclusion that a quorum of the Council discussed and/or acted upon particular appointments outside a public meeting.

Issued: March 25, 2004.

OM 04-10

Oliveira v. Independent Review Committee

The Independent Review Committee appointed by the Governor to investigate the Narragansett Indian Smoke Shop raid violated the Open Meetings Act by failing to follow the requirements of the Act. A group of individuals appointed to perform a task under a public official's jurisdiction is bound by the provisions of the Open Meetings Act. The Committee was instructed by the Attorney General to complete, within 60 days of the finding, minutes for each of its meetings, including closed sessions, and containing a record of all votes taken by the Committee. VIOLATION FOUND.

Issued: March 26, 2004

OM 04-11

Spiratos Family Limited Partnership v. Town of Middletown Beach Commission

The Town of Middletown's Beach Commission's Right of Way Working Committee was not subject to the Open Meetings Act. Because the Committee did not have a fixed membership and any number of people could attend

meetings, it would be impossible to determine if a quorum were ever present. The Town's Beach Commission, however, did violate the Open Meetings Act because a quorum met on October 24, 2002 without posting public notice.
VIOLATION FOUND.

Issued: March 26, 2004.

OM 04-12 **Parks v. Cumberland School Department**

The Cumberland School Committee did not violate the Open Meetings Act by failing to post a notice that its Committee members would hold a social gathering with student government leaders. The gathering was not a meeting of the Committee, as defined under the Open Meetings Act. The School Committee did, however, violate the Open Meetings Act by failing to provide, upon request, minutes of its meeting of April 3, 2001.

Issued: March 31, 2004.

OM 04-13 **Powers v. Barrington Town Council**

The Barrington Town Council violated the Open Meetings Act by failing to disclose an executive session vote authorizing the Town Solicitor to speak with the Town Manager, failing to provide adequate public notice for the executive session, and failing to provide the Town Manager with written, as opposed to oral, notice of the right to have the executive session convened in open session.

VIOLATION FOUND.

Issued: May 6, 2004.

OM 04-14 **McFadden v. Exeter-West Greenwich School Committee**

The School Committee violated the Open Meetings Act by failing to provide adequate public notice of the nature of the business to be discussed in executive session. The public notice only indicated "C. Executive Session."

VIOLATION FOUND.

Issued: May 12, 2004.

OM 04-15 **Conley v. Bristol School Department**

The lack of documentation evincing a vote to retain private legal counsel did not violate the Open Meetings Act. The Superintendent had authority to retain counsel, accordingly, no vote was taken and no vote was recorded.

Issued: May 27, 2004.

OM 04-16 **Hobson v. Coventry Town Council**

The Town Council violated the Open Meetings Act by failing to post the required public notices a full forty-eight (48) hours prior to its meeting. The fact that notice was also posted in a newspaper of general circulation did not cure the violation. The scheduling of a meeting during "Holy Week" did not implicate the Open Meetings Act.

VIOLATION FOUND.

Issued: June 30, 2004.

- OM 04-17 **McNamara v. R.I. Airport Corporation**
Complaint filed that Rhode Island Airport Corporation violated the Open Meetings Act by posting one of its notices in a location inaccessible to the public, specifically, in a secured location at T.F. Green airport where a fee had to be paid to park. Since the Open Meetings Act requires a public body to post one of its notices at the principal office of the public body, and since location was accessible to the public, posting did not violate the Open Meetings Act.
Issued: June 30, 2004.
- OM 04-18 **Ursillo v. North Providence School Committee**
The Department of Attorney General discontinued its investigation into complainant's allegations that her job performance and character were discussed in executive session without personal or public notice as required by R.I. Gen. Laws §§ 42-46-4, 42-46-5(a)(1) & 42-46-6(b) because she simultaneously filed a civil suit in Superior Court alleging the same. Based on an interpretation of the Open Meetings Act and this Department's precedent, the Department yielded to the court's jurisdiction and took no further action.
Issued: August 18, 2004.
- OM 04-19 **Wrona et al. v. Woonsocket School Committee**
The Woonsocket School Committee violated the Open Meetings Act when it met behind closed doors prior to properly commencing a meeting in open session and convening/conducting an executive session as required by R.I. Gen. Laws § 42-46-4.
VIOLATION FOUND.
Issued: October 5, 2004.
- OM 04-20 **Mageau v. Charlestown Economic Improvement Commission**
Complainant alleged a failure to make available to the public in a timely manner minutes for 19 specified meeting dates in violation of R.I. Gen. Laws § 42-46-7. The Charlestown Economic Improvement Commission was found to have violated the Open Meetings Act because the evidence demonstrated that no minutes were provided "within thirty five (35) days of [each respective] meeting or at the next regularly scheduled meeting, whichever [was] earlier" as required by R.I. Gen. Laws § 42-46-7(b). VIOLATION FOUND.
Issued: October 5, 2004.
- OM 04-21 **Mageau v. Charlestown Conservation Commission**
The Charlestown Conservation Commission violated the Open Meetings Act when it failed to make available to the public in a timely manner the unofficial minutes of two meetings. See R.I. Gen. Laws § 42-46-7(b). No evidence was provided to suggest that the Commission "by majority vote extend[ed] the time period for the filing of the minutes and publicly state[d] the reason" as allowed by this statutory provision.
VIOLATION FOUND.
Issued: October 5, 2004.

OM 04-22

Langseth v. Buttonwoods Fire District

A phone conversation between two of the three-member Board of Supervisors, during which brief mention was made that one member sent a letter to complainant, was not a "meeting" for purposes of the Open Meetings Act. See R.I. Gen. Laws § 42-46-2(a). No collective discussion or vote was taken, and no violation was found. This finding was consistent with Metivier v. Pawtucket Zoning Board of Appeals, 711 A.2d 647 (R.I. 1998) (mem.).

Issued: October 5, 2004.

OM 04-23

Pallasch v. Town of Tiverton

The Tiverton Town Council did not violate the Open Meetings Act when its members, and two invitees, convened in executive session to discuss with the Town Solicitor anticipated litigation in reaction to a vote taken at a recent financial town meeting. Minutes from the closed session indicate that the Town Council received a frank appraisal from the Solicitor concerning the legal dilemma facing the town, that a vote in open session was subsequently held allowing appropriate legal action to be taken, and that a civil lawsuit subsequently was filed by the town days after the meeting. Hence, executive session was properly convened under the "collective bargaining or litigation" purpose provided by R.I. Gen. Laws §42-46-5(a)(2). No violation for including the Chairs of the School Committee and Budget Committee at the closed portion of the meeting since each was acting in his/her official capacity, and there was no evidence that the Town Council selectively permitted or excluded members of the public from the executive session in a way that would circumvent the spirit or requirements of the Open Meetings Act.

Issued: November 30, 2004.

OM 04-24

Crowell v. Little Compton School Committee

No violation when two of the five-member Little Compton School Committee met in the superintendent's office prior to a scheduled Committee meeting because no quorum had assembled. Two members were out of town, however, a quorum is defined as "a simple majority of the membership of a public body." R.I. Gen. Laws § 42-46-2(d). Since the Committee has five members, three is a quorum for purposes of the Open Meetings Act regardless of the membership present on any given night.

Issued: December 10, 2004.

OPEN MEETINGS ACT ADVISORY OPINIONS – 2004

ADV OM
04-01

In re South Kingstown School Committee

Advisory opinion concerning the use of e-mail amongst School Committee members. School Committee advised to avoid situations that could implicate a “rolling” quorum of the School Committee.

Issued: March 5, 2004.

ADV OM
04-02

In re East Greenwich School Committee

A subcommittee appointed by the East Greenwich School Committee that consists of a quorum of the School Committee does not have to post its meetings as a School Committee meeting, but must only post as a meeting of the subcommittee. Subcommittee must take care that stated purpose of meeting is appropriate for the subcommittee only and does not stray into School Committee matters.

Issued: March 26, 2004.

ADV OM
04-03

In re Greater Providence-Warwick Convention and Visitors' Bureau

Visitors' Bureau not a public body for purposes of the Open Meetings Act because the enabling statute provides that the Bureau has a distinct legal existence from the state and does not constitute a department of state government. See R.I. Gen. Laws § 42-63.1-11(a).

Issued: April 14, 2004.

ADV OM
04-04

In re Cranston City Council

A series of one on one discussions with individual council members conferring with an outside consultant will not violate the Open Meetings Act in the specific facts proposed because council members will not be having a collective discussion amongst themselves, nor avoiding the Open Meetings Act requirements through a “rolling” quorum. Discussion of consultant study of police and fire departments is not appropriate for executive session.

Issued: April 16, 2004.

ADV OM
04-05

In re Portsmouth School Committee

The Open Meetings Act does not require that an entity be certified as the bargaining representative by the Rhode Island Labor Relations Board in order to convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) for collective bargaining. The collective bargaining exception requires that the executive session concern a representative for a group of employees, rather than an individual(s) who represents their own interest.

Issued: April 30, 2004

ADV OM
04-06

In re Woonsocket School Committee

The Open Meetings Act permits discussion of the Superintendent's contract in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) anytime the discussion concerns job performance, character, or physical or mental health, not only when in doubt. Notice that School Committee will seek to convene into

Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) for "Job Performance/Superintendent's Contract" was appropriate.

Issued: June 1, 2004.

ADV OM
04-07

In re: Governmental Health Trust of Rhode Island, Inc.

Governmental Health Trust of Rhode Island is a "public body" for purposes of the Open Meetings Act, see R.I. Gen. Laws § 42-46-2(c), based upon the language of this entity's enabling statute stating that the Trust "will be deemed to be exercising public and essential governmental functions of the state...." R.I. Gen. Laws § 45-5-20.1(e). This analysis is consistent with this Department's finding in In re: New Shoreham Tourism Council, ADV OM 03-01.

Issued: October 5, 2004.

ADV OM
04-08

In re: Public Utilities Commission

The Public Utilities Commission, comprised of three voting members, asked specifically whether it could engage in a meeting under two scenarios without violating the Open Meetings Act: (1) two commissioners are present at the open meeting site and one commissioner is calling in to participate via telephone conference call; and (2) one commissioner is present at the open meeting site and two commissioners are participating by telephone conference call. This Department opined that the PUC would not be in violation of the Open Meetings Act if engaging in either of these two scenarios. This conclusion was based on an interpretation of the definition of "electronic communication" found in the language added by the General Assembly in 1998 limiting use of "electronic communication ... only to schedule a meeting[.]" R.I. Gen. Laws § 42-46-5(b), and a determination that telephonic communication is not a means of electronic communication. Although there exists no legislative prohibition against teleconference calls, this Department cautions that the PUC should not use this method so as to circumvent the spirit or requirements of the OMA.

Issued: December 3, 2004.

ADV OM
04-09

In re: Bristol Juvenile Hearing Board

The Bristol Juvenile Hearing Board is not subject to the Open Meetings Act. The OMA does not apply to proceedings of "the judicial branch of state government or probate court or municipal court proceedings in any city or town," R.I. Gen. Laws § 42-46-5(c), and a review of relevant statutory law leads to a conclusion that juvenile hearing boards in Rhode Island are an arm of the Family Court. Moreover, juvenile matters in the Family Court are confidential.

Issued: December 10, 2004.

OPEN MEETINGS ACT FINDINGS - 2005

OM 05-01

Anderson v. Jamestown Housing Authority

Complaint alleged a violation of the OMA when the Authority posted notice outside a community room where meeting was scheduled that room was closed during the time of the meeting. Complainant was in attendance at the open portion of the meeting, and hence not an aggrieved party for purposes of filing a complaint pursuant to R.I. Gen. Laws § 42-46-8. No evidence that any other member of the public sought to attend or was turned away. No violation.

Issued: February 25, 2005.

OM 05-02

Barber v. Burrillville Town Council

Newspaper printed erroneous information concerning location of Town Council meeting, however, there is no evidence that the Council initiated publication in the periodical with inaccurate information. Further, the evidence shows that the Council fully complied with the supplemental notice requirements provided in R.I. Gen. Laws § 42-46-6(b) & (c) and that such notices contained accurate information. Although the town noticed the meeting in several newspapers, it was not required to do so. Further, even were the inaccurate information provided by the town at the beginning of the calendar year, there is no evidence to infer that the Council sought to mislead the public, and hence, no violation.

Issued: March 18, 2005

OM 05-03

Medeiros v. East Providence Zoning Board of Review

Although notice adequately advised the general public that the Board would be hearing a matter in its appellate rather than ordinary capacity, the notice was not timely posted. Notice of the meeting was posted just four hours before the meeting, well under the forty-eight (48) hour requirement provided in R.I. Gen. Laws § 42-46-6(b).

VIOLATION FOUND.

Issued: March 28, 2005

OM 05-04
(PR 05-05)

Black v. Barrington Board of Tax Assessment Review et al.

The Board violated the OMA when it failed to maintain written minutes of its meetings, however, it did not violate the APRA when it kept and maintained tape recorded minutes, as allowed by R.I. Gen. Laws § 38-2-3(b). The Board violated several other provisions of the APRA, however, including that it overcharged complainants for APRA requests by failing to provide the first hour for search and retrieval, for each separate request, at no cost; the Board overcharged for the time taken to tape record a requested copy of taped minutes; the Board improperly denied access to a public "Manual," provided incomplete responses to various records requests, and failed to timely respond to several APRA requests; the Board failed to establish additional procedures to ensure access to public records pursuant to R.I. Gen. Laws § 38-2-3(c). No evidence to show that the Board convened in closed session to discuss, deliberate and/or vote. No violation of R.I. Gen. Laws § 38-2-4 for photocopy machine in Town Hall that charges \$1.00 per

copy since no evidence that complainant ever informed town employee that s/he wished to photocopy a public record.

VIOLATION FOUND. LAWSUIT FILED.

Issued: March 28, 2005.

OM 05-05

Mudge v. North Kingstown School Committee et al.

Eight OMA violations by the North Kingstown School Committee. The Committee improperly conducted executive sessions (procedurally flawed, improper notice to public as to nature of business to be discussed, failure to properly record minutes, inappropriate purpose for closed meeting), failed to properly notice upcoming meeting in local newspaper, failed to make minutes available in timely manner, illegally voted on matter via email outside the public purview, failed to include date notice was posted, and amended agenda within forty-eight hours of meeting without adhering to conditions specifically set forth for school committees in R.I. Gen. Laws § 42-46-6(d)(1)-(5).

VIOLATIONS FOUND.

Issued: June 24, 2005.

OM 05-06

Strahl v. Town of Hopkinton

Public notice stating "Executive Session under R.I.G.L. 42-46-5A(1) Personnel – Town Manager Performance Evaluation" adequately advised the general public of the nature of the business to be discussed for a meeting in which the town manager was terminated from his position. A public body need not indicate on its notice that it intends to vote on an item as long as the notice is not misleading. Further, as evidenced in part by a lawsuit filed by him in anticipation of the meeting, the town manager had actual notice, he was given personal notice, and he was not an "aggrieved" party within the meaning of R.I. Gen. Laws § 42-46-8.

Issued: June 28, 2005.

OM 05-07
(PR 05-07)

Clarke v. South County Tourism Council, Inc.

The South County Tourism Council did not violate the APRA when it failed to produce/include the minutes for a scheduled Executive Board meeting with other minutes provided. The evidence demonstrates that the meeting in question never took place. Further, as later determined in In re South County Tourism Council, ADV OM 05-03, the Council is not a public body and not subject to the OMA. Although an entity not subject to the OMA may still be subject to the APRA, no determination was made in this case as to whether or not the Council is subject to the APRA since there is no obligation to provide documents not maintained by a "public body". R.I. Gen. Laws § 38-2-3(f).

Issued: June 28, 2005.

OM 05-08

LeMay v. North Smithfield School Committee

The Committee properly and timely published notice of a meeting in accordance with R.I. Gen. Laws § 42-46-6(b) & (c). Although the agenda was at one time amended, the amended notice was posted well outside of forty-eight (48) hours prior to the meeting. Agenda item stating "2004-2005 Budget" adequately

apprised the public of the nature of the business to be discussed at the meeting, to include the possibility that cost cutting measures, including the vote to not renew the assistant superintendent position, may be undertaken. Publication of every budgetary item is not required under the OMA.

Issued: July 5, 2005.

ADV OM
03-01

ADV OM
03-02

Large River West Glenview Regional School District

The School Committee may not expand the parameters of the "open forum" (public comment) portion of its regular meetings. The Committee currently employs the practice at its meetings of allowing 15 minutes during the open forum for speakers to address the Committee about matters not on the agenda; members of the Committee are not allowed to respond. On behalf of the Committee, legal counsel reported whether inclusion of the Committee could enter into a dialogue, ask probing questions, and express opinions during this open forum without violating the OMA. This Department opined that the Act prohibits the verbal interactions proposed; the end result would be akin to an unrecorded collection of comments by a group of concerned citizens.

Issued: March 13, 2005.

ADV OM
03-03

South County Tourism Council, Inc.

The South County Tourism Council is not subject to the Open Meetings Act because the entity is not a public body for purposes of the Act. Whether or not an entity is a public body is a fact-intensive question, not subject to bright line rules. In this case, the determination was made based on a review of the membership and composition of the SCCTC, the nature of the business delegated to it, the manner in which it is established, its meeting structure, and other factors.

Issued: March 13, 2005.

OPEN MEETINGS ACT ADVISORY OPINIONS - 2005

ADV OM
05-01

In re Pawtucket City Council

The City Council may gather informally for breakfast meetings, but the provisions of the OMA will be implicated if at this gathering a quorum of its members conducts a "meeting" as defined by the Act. In other words, if a majority of the membership of the Council collectively discuss or act upon any matters over which the Council has "supervision, control, jurisdiction, or advisory power," see R.I. Gen. Laws § 42-46-2, then the Council will need to adhere to the requirements of the Act. A social event at which no "meeting" is convened will not implicate the OMA and need not be held open to the public.

Issued: January 7, 2005.

ADV OM
05-02

In re Exeter-West Greenwich Regional School District

The School Committee may not expand the parameters of the "open forum" (public comment) portion of its regular meetings. The Committee currently employs the practice at its meetings of allowing 15 minutes during the open forum for speakers to address the Committee about matters not on the agenda; members of the Committee are not allowed to respond. On behalf of the Committee, legal counsel inquired whether members of the Committee could enter into a dialogue, ask probing questions, and express opinion during this open forum without violating the OMA. This Department opined that the Act prohibits the verbal interactions proposed; the end result would be akin to an unnoticed collective discussion by a quorum of committee members.

Issued: March 18, 2005.

ADV OM
05-03

In re South County Tourism Council, Inc.

The South County Tourism Council is not subject to the Open Meetings Act because the entity is not a public body for purposes of the act. Whether or not an entity is a public body is a fact-intensive question not subject to bright line rules. In this case, the determination was made based on a review of the membership and composition of the SCTC, the nature of the business delegated to it, the text under which it is established, its funding sources, and other factors.

Issued: March 23, 2005.

ADV OM
05-04

In re Marine Fisheries Council

The Council inquired whether it would violate the OMA to conduct a special meeting outside the public purview for purposes of discussing the internal operating procedures employed by the Council to place items on the agenda and for consideration of how the procedure might be modified. This Department opined that the meeting as proposed would be subject to the OMA, in part, because it meets the definition of a "meeting" as defined by R.I. Gen. Laws § 42-46-2(a). The topic of discussion, procedural matters relating to the inner workings of a public body, concerns matters "over which the public body has supervision, control, jurisdiction, or advisory power," every bit as much as substantive matters do.

Issued: June 6, 2005.

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Updated: July 15, 2005

OPEN MEETINGS

SECTION.		SECTION.	
42-46-2.	Definitions.	42-46-6.	Notice.
42-46-4.	Closed meetings.	42-46-7.	Minutes.
42-46-5.	Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct.	42-46-8.	Remedies available to aggrieved persons or entities.
		42-46-13.	Accessibility for persons with disabilities.
		42-46-14.	Burden of proof.

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, 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.

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, 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.

(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.

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.

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 (e).

(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. 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 (e); 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, subcommittees 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 (e) 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) 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 (e), 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.

(e) 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.

(f) 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 § 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.

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

Compiler's Notes. P.L. 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.

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 section 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 a majority of its operational budget in the prior budget year with public funds. and shall include all authorities defined in section 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. section 1988.

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 section 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, 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.

(b) No meeting of members of a public body or use of electronic communication shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

Provided, further however, that discussions of a public body via electronic communication shall be permitted only to schedule a meeting.

(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 wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

(10) Any discussion of the personal finances of a prospective donor to a library.