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8-4-2006

## 8th Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2006

Department of Attorney General, State of Rhode Island

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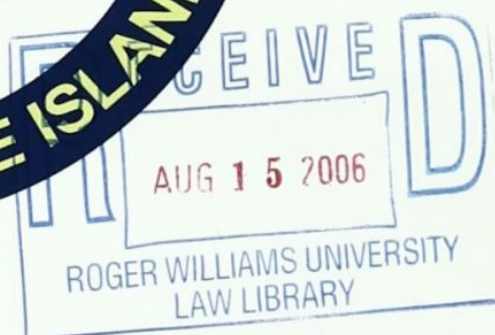
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**DEPARTMENT OF ATTORNEY GENERAL**

*Patrick C. Lynch, Attorney General*

**8<sup>TH</sup> ANNUAL**

**OPEN GOVERNMENT SUMMIT**



**ROGER WILLIAMS UNIVERSITY  
RALPH R. PAPITTO SCHOOL OF LAW  
FRIDAY, AUGUST 4, 2006**

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



Patrick C. Lynch, Attorney General  
DEPARTMENT OF ATTORNEY GENERAL

*hosts the*

## 8<sup>th</sup> Annual Open Government Summit



Friday, August 4, 2006  
8:30 a.m. *Registration*  
9:00 a.m. - 12:30 p.m. *Summit*

Roger Williams University  
Ralph R. Papitto  
School of Law

*3.5 CLE Credits*  
*(.5 Ethics)*

Open Meetings Act and Access  
to Public Records Act Overview

- Open Government Manual
- Recent Developments
- Question & Answer Session
- Ethics Commission Presentation

RSVP to (401) 274-4400 Ext. 2101 or e-mail: [agsummit@riag.ri.gov](mailto:agsummit@riag.ri.gov)

Co-sponsored by Roger Williams University Law Alumni Association.

For a detailed agenda, please visit <http://law.rwu.edu/news/events/>





State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

TDD (401) 453-0410

*Patrick C. Lynch, Attorney General*

August 4, 2006

Dear Open Government Summit Attendee:

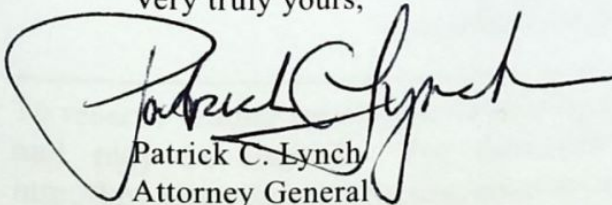
I would like to take this opportunity to thank you for attending the 8th Open Government Summit and to thank the Roger Williams University Law Alumni Association for its continued co-sponsorship of this important event.

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](http://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.

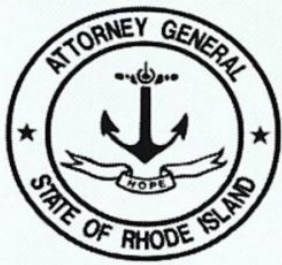
I am extremely proud of this Department's mission and I hope you will join me in ensuring that Rhode Island state and local government remains open and accountable to the public. Much has already been accomplished to make state and local government open and accessible to the public. I look forward to 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 4, 2006**  
**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 2005-2006 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 2005-2006 case law/legislative update will also be reviewed. Hot topics of the year will be highlighted.*
- 10:35 – 11:15 a.m. Access to Public Records Act and Open Meetings Act Questions  
and Answers  
*Questions posed in advance and asked at the Summit will be addressed.*
- 11:15 – 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](mailto:agsummit@riag.ri.gov) or contact 274-4400 ext 2101. Seating in the main lecture hall may be limited. For directions to the Roger Williams University School of Law visit <http://law.rwu.edu/sites/visiting/maps/default.aspx>. This Program is co-sponsored by the Roger Williams University Law Alumni Association and has been certified for 3.5 Continuing Legal Education Credits (includes .5 ethics credit), free of charge.

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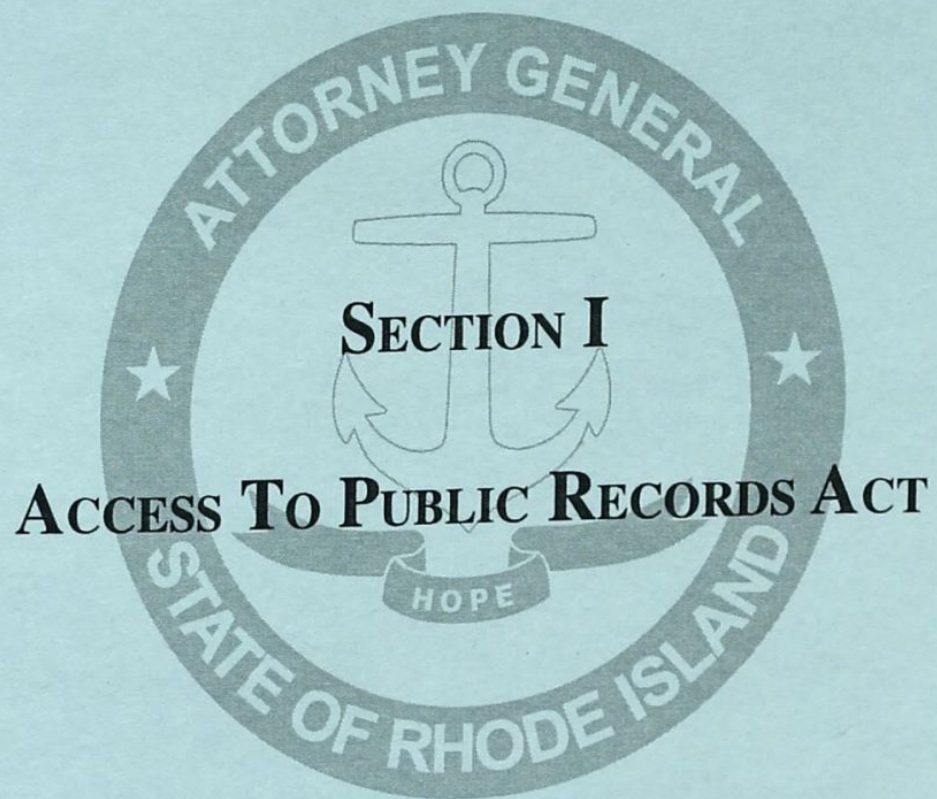
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**SECTION I**

**ACCESS TO PUBLIC RECORDS ACT**



## **ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2006**

PR 06-01

### **Chappell v. Rhode Island State Police**

The State Police did not violate the APRA by failing to provide requested documents which the State Police maintain they do not retain. The APRA states that a public body is not required 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." R.I. Gen. Laws § 38-2-3(f). Further, the State Police provided a response, as required by the APRA, within ten (10) business days of your request.

*Issued: January 9, 2006.*

PR 06-02

### **Casoli v. Providence Animal Control Center**

The Animal Control Center violated the APRA when it failed to respond to a document request within the ten (10) day period allotted by the APRA. Further, subject to certain redactions to protect an individual's privacy, the requested adoption records are public records. Hogan v. East Providence Animal Shelter, PR 98-12.

VIOLATION FOUND.

*Issued: January 13, 2006.*

PR 06-03

### **DiLorenzo v. Cranston School Department**

The School Department violated the APRA by failing to disclose upon request the total number of hours and total amount billed by legal counsel on a per case basis. This information is not exempt from disclosure under the attorney/client privilege exception of the APRA. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Further, to the extent that such information exists, it must be disclosed. R.I. Gen. Laws § 38-2-3 (f).

VIOLATION FOUND.

*Issued: January 18, 2006.*

PR 06-04

(OM 06-02)

### **East Bay Newspapers v. Bristol County Water Authority**

The authority violated the OMA by improperly convening into executive session to discuss the sale of property and violated the APRA by improperly withholding public information, specifically the identity of the highest bidder and the sale price. R.I. Gen. Laws § 42-46-5(a)(5) permits a public body to convene into executive session to discuss the acquisition, lease or disposition of publicly held property, "wherein advanced public information would be detrimental to the interest of the public." However, in violation of the OMA, the open and closed session minutes fail to state the reason for holding a closed meeting or a statement specifying the nature of the business to be discussed. The authority violated the APRA by failing to provide specific reasons for the denial of the right to inspect the bidding information and by failing to indicate the procedures for appealing the denial.

VIOLATIONS FOUND.

*Issued: January 18, 2006.*



- PR 06-05      **Shalvey v. Pawtucket Housing Authority**  
The Housing Authority violated the APRA by failing to respond to requests for certified payroll records within the ten (10) business day timeframe set forth in the APRA. R.I. Gen. Laws § 38-2-7. There is no evidence that the Authority willfully or knowingly violated the APRA.  
VIOLATION FOUND.  
*Issued: January 17, 2006.*
- PR 06-06      **Extra Space of Johnston LLC v. Johnston Zoning Review Board and Building Operations Department**  
The Zoning Review Board and Building Operations Department violated the APRA by failing to respond in a timely manner to an APRA document request. The APRA states that a public body must respond to a records request in some capacity within ten (10) business days, either by denying the request with a reason, extending the time necessary to comply or producing the requested documents. R.I. Gen. Laws § 38-2-7.  
VIOLATION FOUND.  
*Issued: January 20, 2006.*
- PR 06-07      **McGreavy v. Middletown Public Schools**  
Middletown Public Schools did not violate the APRA when it provided documents in response to a records request for documents pertaining to an email policy within the ten (10) business day timeframe set forth in the APRA. R.I. Gen. Laws § 38-2-7.  
*Issued: January 23, 2006.*
- PR 06-08      **Oliveira v. Bristol Police Department**  
The Police Department did not violate the APRA. The evidence presented suggests that the request in question was never received by the Bristol Police Department. Furthermore, when similar records were requested on two subsequent occasions the Police Department provided these records in accordance with the APRA.  
*Issued: January 24, 2006.*
- PR 06-09      **Matais v. Portsmouth School Department**  
The School Department did not violate the APRA by failing to release employment contracts for the present and immediate past Superintendent. Under the APRA, employment contracts are exempt from public disclosure since the records are identifiable to an individual employee. The public is entitled to the contracts with the information redacted that is identifiable to an individual employee, subject to the exceptions set forth in the APRA. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).  
*Issued: January 31, 2006.*



PR 06-10

**Carlin v Newport County Convention and Visitors Bureau**

The Bureau did not violate the APRA. The Bureau responded to the APRA request for travel information pertaining to the number and cost of trips taken by Bureau members within the ten (10) business day timeframe set forth in the APRA. R.I. Gen. Laws § 38-2-7.

*Issued: January 31, 2006.*

PR 06-11

**Rivet v. Lime Rock Fire District**

(OM 06-11)

**Rivet v. Lime Rock Fire District Board of Commissioners**

The Board did not violate the OMA when it convened in executive session to discuss a letter from a district employee claiming that he had been chosen by a majority of firefighters to act as their Collective Bargaining Agent and its legal ramifications. The Board's discussions fall within R.I. Gen. Laws § 42-46-5(a)(2), which provides that sessions pertaining to collective bargaining may be held in closed/executive session. Further, the Board did not violate the APRA by requiring prepayment for the search, retrieval, and photocopying of public records, nor does this requirement constitute a denial of access to the public records.

*Issued: February 1, 2006.*

PR 06-12

**Perrotti v. Johnston Department of Building Operations**

The Department of Building Operations violated the APRA by failing to respond to duplicate records requests for documents pertaining to a property within ten (10) business days of their receipt. Under the APRA, public records shall not be withheld based on the purpose for which the records are sought. R.I. Gen. Laws § 38-2-3(h). Further, the Department violated the APRA by requiring that the requester alone submit his APRA requests to the Town Solicitor – APRA does not permit treating requesters differently without sufficient cause.

VIOLATIONS FOUND.

*Issued: February 3, 2006.*

PR 06-13

**Klimko v. Pawtucket Housing Authority**

(OM 06-13)

The Authority's failure to provide a copy of the executive session minutes did not violate the APRA since the executive session minutes were sealed, and therefore, are exempt from public disclosure. In addition, there is no information that the Authority maintains information relating to the Secretary of State's website posting. Consequently, the Authority's failure to disclose such information is not a violation of the APRA. The Authority violated the OMA by failing to enter into the minutes a statement identifying the matter to be discussed in the executive session, a statement that any persons to be discussed had been so notified and provided the opportunity to have the executive session discussion held in open session and by failing to post notice with the Secretary of State's website in violation of R.I. Gen. Laws § 42-46-6(a).

VIOLATIONS FOUND.

*Issued: February 3, 2006.*



- PR 06-14  
(OM 06-14) **Crowell v. Little Compton School Committee et al.**  
The School Committee violated the APRA by failing to respond to a document request within ten (10) business days, though the evidence indicates that the information requested did not exist. The School Committee did not violate the OMA. There is no evidence that the School Committee discussed or acted upon the salaries of its new employees except for the matters set forth in its minutes.  
VIOLATION FOUND.  
*Issued: February 6, 2006.*
- PR 06-15 **Kelley v. Rhode Island Family Court**  
The Family Court did not violate the APRA when it failed to provide "Divorce Data" that is not maintained by the Court. The APRA states that a public body is not required, "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." R.I. Gen. Laws § 38-2-3(f). Further, there is no evidence that the Court failed to respond to the request within the ten (10) business day timeframe set forth in the APRA.  
*Issued: February 14, 2006.*
- PR 06-16  
(OM 06-20) **Parks v. Cumberland School Committee**  
The School Committee's Personnel Sub-Committee's agenda violated the OMA by failing to provide an adequate statement specifying the nature of the business to be discussed. In addition, a requested copy of the meeting agenda was not provided until well after the ten (10) business day timeframe in violation of the APRA. R.I. Gen. Laws § 38-2-7. Also in violation of the OMA, the unofficial minutes requested were provided 44 days after the request was made, well past the thirty five (35) days allocated in the OMA. The School Committee was not in violation of the OMA when it published a revised agenda prior to the scheduled meeting in accordance within the required timeframe set forth in the OMA.  
VIOLATIONS FOUND.  
*Issued: February 16, 2006.*
- PR 06-17 **The Westerly Sun v. Town of Hopkinton**  
The Town of Hopkinton did not violate the APRA when two records requests made to view building permits were responded to by the Town within six hours and 1 day respectively. The Town's responses fall within the ten (10) business day timeframe set forth by the APRA. R.I. Gen. Laws § 38-2-7.  
*Issued: February 17, 2006.*
- PR 06-18 **Mattos v. East Greenwich School Department**  
The School Department did not violate the APRA by providing salary/benefits and health insurance premium information which may have contained some inaccuracies since there is no evidence that the Department willfully provided inaccurate or incomplete information. The Department did also not violate the APRA by providing the "total projected cost" instead of the requested "per pupil tuition rates," which was considered identifiable to a student and



therefore not public record under R.I. Gen. Laws § 38-2-2. Finally, since the Department indicated within ten (10) business days that they would need an extension in order to respond and the requested documents were provided within thirty (30) business days, the Department did not violate the APRA.

*Issued: February 18, 2006.*

PR 06-19  
(OM 06-25)

**Lefebvre v. Gloucester Zoning Board et al.**

The Zoning Board, Planning Board, and Town Council did not violate the OMA by posting the topic of discussion for meetings as "Application for Zoning Map Amendment." In accordance with R.I. Gen. Laws § 42-46-6, the matter for discussion was sufficiently specific and not misleading. The Planning Board did violate the OMA by failing to make unofficial minutes available no later than thirty-five (35) days after its meeting. R.I. Gen. Laws § 42-46-7(b). The Planning Board did not violate the OMA or the APRA because the minutes made available were incomplete. Nothing within the OMA or APRA requires a public body to approve its minutes. Bernard v. Foster School Committee, OM 03-05.

VIOLATION FOUND.

*Issued: February 28, 2006.*

PR 06-20

**The Narragansett Bay Commission v. Public Utilities Commission**

Information contained within a letter/report was properly redacted prior to production based on its status as preliminary observation within a work in progress. No record of final action/decision had yet been created/determined, therefore, no additional records should have been produced. It was unnecessary to determine whether or not certain request for proposal/bid information was public record or exempt under the APRA because the PUC had already committed to releasing these records when it previously informed parties that responses to requests for proposals (RFP's) "would be considered public records."

*Issued: March 2, 2006.*

PR 06-21

**Shannahan v. City of Central Falls**

Based on a narrow request for records reflecting "how many city employees had a particular day off and when they applied for it," and based on complainant's specification that he did not seek information identifiable to an individual employee, it was determined that the requested records should not have been summarily denied, but instead should have been provided in a redacted form. Pursuant to R.I. Gen. Laws § 38-2-2(4)(ii), any reasonably segregable portion of a public record excluded by the APRA shall be available after deletion of exempt information. In this case, the city should have handed over vacation/personal/sick day request forms providing only the date of request with signature/date of the authorizing supervisor(s), having redacted all other portions of the forms.

VIOLATION FOUND.

*Issued: March 14, 2006.*



PR 06-22

**O'Neil v. Town of South Kingstown**

The town did not violate the APRA when it failed to provide access to certified payroll reports on work performed for the town by a painting company because no invoices had been submitted to the town and the town was not in possession of responsive documents. A public body is not required to reorganize, consolidate or compile data not maintained by the public body in the form requested at the time the request was made. See R.I. Gen. Laws § 38-2-3(f).

*Issued: March 22, 2006.*

PR 06-23

**Perrotti v. Department of Elderly Affairs**

Records concerning a complaint filed with and investigation done by the DEA pertaining to alleged abuse were exempt from disclosure based on state law requiring that said records remain confidential (R.I. Gen. Laws § 46-66-10). Records exempt from disclosure by state law are not public records pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(S), and records may also be considered exempt under the investigatory records exemption of the APRA. See R.I. Gen. Laws § 38-2-2(4)(i)(P). Hence, the DEA did not violate the APRA by withholding these records, however it violated the APRA by failing to timely respond to the records request.

VIOLATION FOUND.

*Issued: March 30, 2006.*

PR 06-24

(OM 06-35)

**Gartland v. Nasonville Fire District**

The Operating Committee and an advisory subcommittee of the fire district violated the OMA on various occasions by failing to post proper notice and maintain minutes. The Committee violated the OMA when it conducted a vote by telephone, thereby creating a rolling quorum that met outside the public purview and also by voting on a matter at a public meeting that was not advertised 48 hours in advance. The fire district failed to make publicly available in a timely manner unofficial minutes of its meetings in violation of R.I. Gen. Laws § 42-46-7(b). The fire district did not violate the APRA when it did not provide certain audio recordings of meetings because the tapes were not public records, but were recorded by a clerk-in-training for her own use and the public body was never in possession of the tapes.

VIOLATION FOUND.

*Issued: April 3, 2006.*

PR 06-25

**Mudge v. North Kingstown School Department 2**

Based on the specific facts and circumstances of this case, a request for a copy of a legal contract was found not to be made pursuant to the APRA but instead was made pursuant to complainant's authority as a school committee member. The Department of Attorney General has limited jurisdiction to pursue an APRA complaint only when a request for a public record has been made pursuant to the APRA and when access to the record has been denied. Complaint was not pursued because the Department was without jurisdiction in this case.

*Issued: April 7, 2006.*



PR 06-26

**Lincoln Democratic Town Committee v. Town of Lincoln**

The Town violated the APRA when it failed to provide access to, or timely respond to, the LDTC's request for public records related to a land sale entered into by the town.

VIOLATION FOUND.

*Issued: April 10, 2006.*

PR 06-27

**Horton v. Portsmouth Police Department**

The police department did not violate the APRA when it denied a request for records related to complainant's arrest. The department properly asserted that the documents must be sought through discovery channels because allowing a criminal defendant access to certain documents relating to a pending case would circumvent discovery process and could reasonably be expected to interfere with the investigation of criminal activity or enforcement proceedings, as recognized in R.I. Gen. Laws § 38-2-2(4)(i)(D)(a). Hydron Laboratories, Inc. v. Department of Attorney General, 492 A.2d 135, 139 (R.I. 1985), gives guidance, stating that the APRA is not designed to provide an alternative method of discovery for litigants. A defendant in a criminal proceeding is entitled to no greater access to public documents than any other citizen.

*Issued: April 17, 2006.*

PR 06-28

(OM 06-40)

**Pitochelli v. Johnston Town Council and Town of Johnston**

The town council violated the OMA when a quorum of the members convened outside the public purview prior to the start of a public meeting and violated the OMA at the meeting when it discussed a matter neither listed on the agenda nor added to the agenda by majority vote. The town violated the APRA when it provided an incomplete response to a request for records related to legal fees incurred by the town. Although general ledger details and a general description of legal services rendered were provided, no evidence was presented to refute allegation that portions of request were not fulfilled. Typically similar requests for records related to legal services result in the production of the name of the attorney, the total hours billed, and the total hours billed on a per case basis, when available and applicable.

VIOLATION FOUND.

*Issued: April 20, 2006.*

PR 06-29

**Mageau v. Town of Charlestown**

The Town properly denied a request for a "copy of all the applicants [and names of the individuals] that applied for the job [of building inspector]" based on R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). Resumes/applications from job applicants and individual employee contracts are exempt from public disclosure because said records are identifiable to an individual.

*Issued: May 9, 2006.*



PR 06-30

**Zendran v. Providence Police Department**

No finding of a violation from allegation of failure to timely respond to a request for records because request was for purposes of discovery in an ongoing federal lawsuit. The APRA is not designed to provide an alternative method of discovery for litigants. In this case, the court, and not the Department of Attorney General, should review any disputes regarding discovery of the records request.

*Issued: May 11, 2006.*

PR 06-31

**Pagliarini v. Town of Coventry**

No violation for failing to produce documents when there was no evidence that the town and/or its agents or representatives are in possession of the requested records, even though the town attempted to assist requesting party by referring him to a third party thought to possibly have possession of the records.

*Issued June 16, 2006.*

PR 06-32

**Scotti v. Town of Johnston**

APRA complaint not pursued by Department of Attorney General upon determination that the APRA was not applicable to the case at hand because the requesting party did not seek a public record, but instead sought verbal/oral information (status of legal use and issuance of building permits) from town officials regarding a building located in the town. Nevertheless, the town's failure to respond to the allegations would have resulted in adverse inferences drawn against the town had the case proceeded.

*Issued June 22, 2006.*

PR 06-33

**Chappell v. Rhode Island State Police**

No violation for failure to provide access to a detailed accident reconstruction analysis or report allegedly prepared by the State Police because there was no evidence to indicate that the police were ever in possession of said document, that said document was ever generated and/or that police refused to release it. A public body is not required to reorganize, consolidate, or compile data no maintained by the public body in the form requested at the time the request is made. See R.I. Gen. Laws § 38-2-3(f).

*Issued June 26, 2006.*

**ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS - 2006**

**NONE**

**END OF APRA SUMMARIES**

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**NOTE:**

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

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



# ACCESS TO PUBLIC RECORDS ACT FINDINGS

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### ARREST RECORDS

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### COLLECTIVE BARGAINING/LABOR NEGOTIATIONS

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WHICH DOES NOT EXIST (NOT REQUIRED)**

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PR97-02	PR99-15	PR03-12
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(See Personnel)

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Updated: July 13, 2006

## CHAPTER 2

### ACCESS TO PUBLIC RECORDS

SECTION.		SECTION.	
38-2-1.	Purpose.	38-2-4.	Cost.
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 access-	38-2-8.	Administrative appeals.
		38-2-9.	Jurisdiction of superior court.
38-2-3.1.	Records required.	38-2-14.	Information relating to settlement of legal claims.
		38-2-15.	Reported violations.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

(O) All tax returns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

(c) Each public body shall establish procedures regarding access to public records but shall not require written requests for public information available pursuant to R.L.G.L. § 42-35-2 or for other documents prepared for or readily available to the public.

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

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

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

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

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

**38-2-3.1. Records required.** — All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a “real-time translation reporter.”

**History of Section.**

PL. 2000, ch. 430, § 1.

**38-2-4. Cost.** —

(a) Subject to the provisions of § 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body shall provide an estimate of the costs of a request for documents prior to providing copies.

(d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

(e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

**38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings.** — Nothing in this chapter shall be:

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or



(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

**38-2-6. Commercial use of public records.** — No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one year.

**38-2-7. Denial of access.** —

(a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person or entity requesting the right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

**History of Section.**

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

**Collateral References.** Use of affidavits

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

**38-2-8. Administrative appeals.** —

(a) Any person or entity denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

(d) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

**38-2.9. Jurisdiction of superior court.** —

(a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

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



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

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

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

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

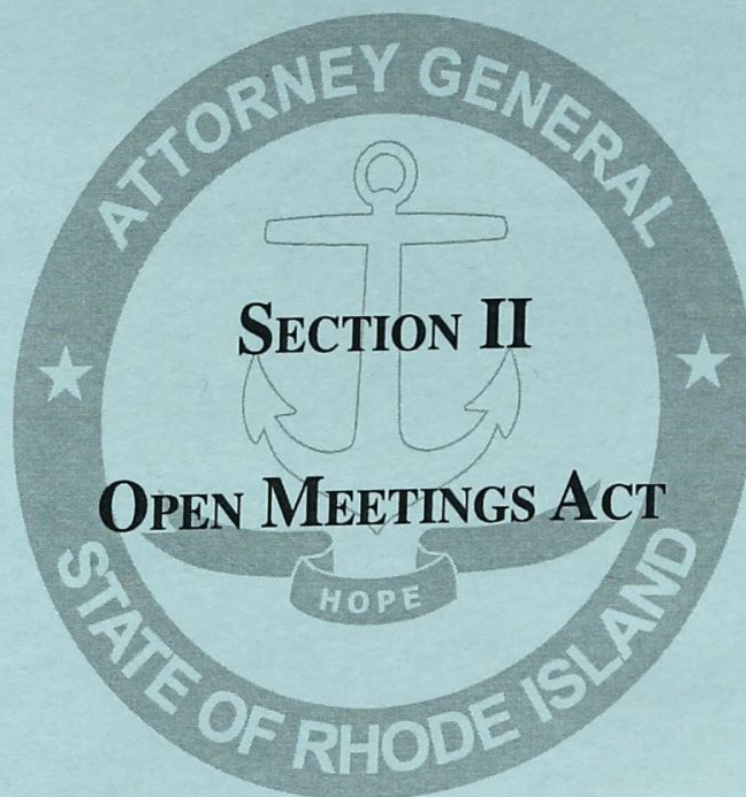
**38-2-12. Severability.** — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

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

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

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





**SECTION II**

**OPEN MEETINGS ACT**



## **OPEN MEETINGS ACT FINDINGS – 2006**

OM 06-01

### **Chomka v. Woonsocket Planning Board**

The Board violated the OMA when it failed to file electronic notices with the Secretary of State for five meetings pursuant to R.I. Gen. Laws § 42-46-6(e) as amended in July 2004. The evidence presented suggests that the Planning Board's failure to file the electronic notices did not constitute a knowing or willful violation. Specifically, the Board did post notices for the meetings as the OMA required prior to its July 2004 amendment.

**VIOLATION FOUND.**

*Issued: January 13, 2006.*

OM 06-02

(PR 06-04)

### **East Bay Newspapers v. Bristol County Water Authority**

The authority violated the OMA by improperly convening into executive session to discuss the sale of property and violated the APRA by improperly withholding public information, specifically the identity of the highest bidder and the sale price. RI. Gen. Laws § 42-46-5(a)(5) permits a public body to convene into executive session to discuss the acquisition, lease or disposition of publicly held property, "wherein advanced public information would be detrimental to the interest of the public." However, in violation of the OMA the open and closed session minutes fail to state the reason for holding a closed meeting nor a statement specifying the nature of the business to be discussed. The authority violated the APRA by failing to provide specific reasons for the denial of the right to inspect the bidding information and by failing to indicate the procedures for appealing the denial.

**VIOLATIONS FOUND.**

*Issued: January 18, 2006.*

OM 06-03

### **Cullen v. Lincoln Town Council**

The Town Council did not violate the OMA by convening a meeting in a private home and did not convene in a location that was not handicap accessible. In accordance with the OMA, members-elect of a public body must properly notice a meeting, maintain minutes, and ensure the meeting is accessible to persons with disabilities. Further, the OMA does not identify specific locations where meetings may be held as long as the facility is accessible to persons with disabilities. The evidence suggests that a portable ramp was available at the home to provide wheelchair access. In addition, there is no evidence that the Council-Elect attempted to circumvent, hinder or prohibit public access to this meeting.

*Issued: January 17, 2006.*

OM 06-04

### **Concerned Citizens of North Providence v. North Providence Town Council**

There is no evidence that a quorum or any members of the Council violated the OMA by meeting privately prior to a scheduled meeting. All seven councilors state under oath that his or her decision was made at the scheduled meeting after hearing all the evidence presented. In addition, the Council complied with the OMA's supplemental notice requirements as required by



R.I. Gen. Laws § 42-46-6(b) and (c). Although the evidence shows that there was incorrect information circulated in a letter of "Notice" sent to an abutting property owner, the OMA does not require that individual notice of a public meeting be provided.

*Issued: January 24, 2006.*

OM 06-05

**Pezzi v. Warwick Zoning Board**

The Board failed to comply with the OMA notice requirements. Although the Board posted notice of its meeting in a newspaper, at the City Hall Annex, and with the Secretary of State's Office, there is no evidence that the Zoning Board posted public notice in a second governmental location as required by the OMA. R.I. Gen. Laws § 42-46-6(c).

**VIOLATION FOUND.**

*Issued: January 23, 2006.*

OM 06-06

**Johnson v. Exeter Town Council**

The presence of a "quorum" of the Council members at an event sponsored by the Housing Network of Rhode Island ("HNRI") did not constitute a "meeting" as defined by the OMA. There is no evidence that a quorum of members of the Council collectively discussed or took any action regarding a matter that they had supervision, control, jurisdiction, or advisory power over.

*Issued: January 23, 2006.*

OM 06-07

**Rogers v. Town of Foster**

The Town did not violate the OMA when a meeting held on April 13<sup>th</sup>, was advertised in the April 14<sup>th</sup> edition of the *Providence Journal*. By posting notice of the April 13<sup>th</sup> Council meeting on April 9<sup>th</sup> at the Town Hall and Police Department, the Town met the notice requirements of the OMA as set forth in R.I. Gen. Laws § 42-46-6. In addition, there is no newspaper advertising requirement for town councils under the OMA.

*Issued: January 31, 2006.*

OM 06-08

**Cournover v. Town of North Smithfield Water Authority**

The Authority did not violate the OMA by failing to make minutes available at the "office of the public body" or by failing to post notice of the meeting at the principal office of the public body since the Authority does not have an "office of the public body". Finally, the Authority's failure to keep agendas on file with the Town Clerk does not violate the OMA. Only the public body is required to maintain copies of the agenda.

*Issued: January 31, 2006.*



OM 06-09

**Mageau v. Charlestown Town Council**

The Council did not violate the OMA by failing to record in its minutes the vote of individual members to deny a request for public comment or the vote concerning the make-up of the monthly agenda. Nothing in the OMA requires a public body to take a vote on any particular matter. The final minutes indicated that the council members unanimously approved the agenda, as well as indicated that all council members were present.

*Issued: February 1, 2006.*

OM 06-10

**Grew v. Foster Glocester School Committee**

A public body may convene in a closed session in order to discuss the job performance of an individual provided that such person is notified in accordance with the OMA. R.I. Gen. Laws § 42-46-5(a). In this instance, since the superintendent's job performance was not the purpose for which executive session was convened, nor did the school committee discuss the superintendent's job performance, the requirement of notifying the superintendent in writing in advance, and giving him the option of holding an open meeting is not applicable.

*Issued: February 1, 2006.*

OM 06-11

**Rivet v. Lime Rock Fire District**

(PR 06-11)

**Rivet v. Lime Rock Fire District Board of Commissioners**

The Board did not violate the OMA when it convened in executive session to discuss a letter from a district employee claiming that he had been chosen by a majority of firefighters to act as their Collective Bargaining Agent and its legal ramifications. The Board's discussions fall within R.I. Gen. Laws § 42-46-5(a)(2), which provides that sessions pertaining to collective bargaining may be held in closed/executive session. Further, the Board did not violate the APRA by requiring prepayment for the search, retrieval, and photocopying of public records, nor does this requirement constitute a denial of access to the public records.

*Issued: February 1, 2006.*

OM 06-12

**Audette v. Town of North Kingstown Zoning Review Board**

The Board's failure to correctly identify the street address in the posted agenda for a meeting of a landowner applying for a special use permit violated the OMA. The OMA requires all public bodies give supplemental notice of meetings including a statement specifying the nature of the business to be discussed which reasonably describes the purpose of the meeting or action proposed to be taken. Tanner v. Town Council of East Greenwich, 880 A.2d 784, 797-798 (R.I. 2005).

**VIOLATION FOUND.**

*Issued: February 3, 2006.*



- OM 06-13  
(PR 06-13) **Klimko v. Pawtucket Housing Authority**  
The Authority's failure to provide a copy of the executive session minutes did not violate the APRA since the executive session minutes were sealed, and therefore, are exempt from public disclosure. In addition, there is no information that the Authority maintains information relating to the Secretary of State's website posting. Consequently, the Authority's failure to disclose such information is not a violation of the APRA. The Authority violated the OMA by failing to enter into the minutes a statement identifying the matter to be discussed in the executive session, a statement that any persons to be discussed had been so notified and provided the opportunity to have the executive session discussion held in open session and by failing to post notice with the Secretary of State's website in violation of R.I. Gen. Laws § 42-46-6(a).  
VIOLATIONS FOUND.  
*Issued: February 3, 2006.*
- OM 06-14  
(PR 06-14) **Crowell v. Little Compton School Committee et al.**  
The School Committee violated the APRA by failing to respond to a document request within ten (10) business days, though the evidence indicates that the information requested did not exist. The School Committee did not violate the OMA. There is no evidence that the School Committee discussed or acted upon the salaries of its new employees except for the matters set forth in its minutes.  
VIOLATION FOUND.  
*Issued: February 6, 2006.*
- OM 06-15 **DelPonte v. Johnston School Committee**  
The School Committee did not violate the OMA by convening into executive session for legal advice concerning a school accreditation show-cause hearing before a private board. A public body may hold an executive session to discuss legal strategy, receive "frank appraisals" from legal counsel and discuss a "reasonably anticipated...threat of imminent litigation." Cole et al v. Westerly Town Council, OM 99-18.  
*Issued: February 6, 2006.*
- OM 06-16 **Levesque v. Portsmouth Town Council**  
No evidence was presented to substantiate the claim that members of the Town Council met privately in violation of the OMA to discuss the resignation of a school committee member. Although the town clerk and president of the Town Council discussed the resignation privately with regard to placing the matter on the meeting agenda, the OMA only applies when a quorum, defined as "a simple majority of the membership of a public body," meet. R.I. Gen. Laws § 42-46-2(d).  
*Issued: February 7, 2006.*



OM 06-17

**Fry v. North Kingstown School Committee**

The School Committee did not violate the OMA when five of the seven Committee members attended and actively participated in an Educational Summit during which items presently on the Committee's agenda were discussed. There is no evidence that a quorum of the School Committee collectively discussed or took any action regarding a matter that they had supervision, control, jurisdiction, or advisory power over. R.I. Gen. Laws § 42-46-2(a).

*Issued: February 15, 2006.*

OM 06-18

**North Kingstown Educ. Alliance v. North Kingstown School Committee**

The School Committee did not violate the OMA when a majority of the Committee members voted by telephone to cancel a School Committee meeting. The OMA provides, "that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting." R.I. Gen. Laws § 42-46-5(b). To allow such communication to cancel meetings is an interpretation of the statute consistent with the General Assembly's intent that public business be discussed in accordance with the OMA.

*Issued: February 15, 2006.*

OM 06-19

**Parks v. Cumberland School Committee**

The School Committee did not violate the OMA when it discussed its policy for public comment during a meeting, and then subsequently voted to obtain a legal opinion on its policy. The discussion and vote did not amount to an improper amendment of the meeting agenda since "Comments from the Public-(Relevant to Agenda Items)," was listed on the agenda for the meeting providing the public with fair notice that this subject-matter could be discussed. Further, the OMA does not explicitly require a notice to identify that a public body intends to vote on an issue at a meeting. Tanner v. Town Council of East Greenwich, 880 A.2d 794, 796 (R.I. 2005).

*Issued: February 16, 2006.*

OM 06-20

(PR 06-16)

**Parks v. Cumberland School Committee**

The School Committee's Personnel Sub-Committee's agenda violated the OMA by failing to provide an adequate statement specifying the nature of the business to be discussed. In addition, a requested copy of the meeting agenda was not provided until well after the ten (10) business day timeframe in violation of the APRA. R.I. Gen. Laws § 38-2-7. Also in violation of the OMA, the unofficial minutes requested were provided 44 days after the request was made, well past the thirty five (35) days allocated in the OMA. The School Committee was not in violation of the OMA when it published a revised agenda prior to the scheduled meeting in accordance within the required timeframe set forth in the OMA.

**VIOLATIONS FOUND.**

*Issued: February 16, 2006.*



- OM 06-21     **Anderson v. Foster/Glocester Regional Building Committee**  
 The Committee violated the OMA by failing to articulate and record in the minutes of the open session a statement identifying the matters to be discussed in the executive session or the subdivision of R.I. Gen. Laws § 42-46-5(a) within which the matter must fall to enter into an executive session. Under R.I. Gen. Laws § 42-46-5(a)(7) a public body may properly convene into executive session when the matter relates, "to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." The Committee did not violate the OMA when it convened into executive session to discuss whom to award architectural/engineering and land surveying bids.  
 VIOLATION FOUND.  
*Issued: February 16, 2006.*
- OM 06-22     **Medley v. Prudence Island Planning Commission**  
 The Planning Commission violated the OMA by failing to adhere to the procedural notice requirements provided in R.I. Gen. Laws § 42-46-6(c). The Commission's failure to post a meeting notice and agenda as soon as practicable, file notice with the Secretary of State, and state for the record and minutes why a matter must be addressed in less than forty-eight (48) hours, violated the OMA requirements when taking action on an emergency situation.  
 VIOLATIONS FOUND.  
*Issued: February 16, 2006.*
- OM 06-23     **Duckworth v. Coventry Town Council**  
 The Town Council violated the OMA's notice provisions by failing to include any information in its notice advising that an executive session would convene, nor did it cite the appropriate Rhode Island General Law upon which the executive session would convene. The Council violated the OMA when it met behind closed doors by failing to adhere to the procedure required upon entering into and conducting a closed session. Finally, the Council failed to maintain minutes in compliance with the requirements set forth in R.I. Gen. Laws § 42-46-7(a)(1)-(4).  
 VIOLATIONS FOUND.  
*Issued: February 21, 2006.*
- OM 06-24     **Pagliarini v. Kent County Water Authority**  
 The Water Authority violated the OMA by failing to allow a member of the public to videotape a meeting. While a public body may enforce certain reasonable restrictions, lack of notice does not fall within the ambit of reasonable restrictions contemplated by the Court in Belcher v. Mansi, which ruled that allowing a member of the press or public to tape record a meeting is consistent with the policy set forth in the OMA. Belcher, 569 F.Supp. 379 (D.R.I. 1983).  
*Issued: February 23, 2006.*



- OM 06-25  
(PR 06-19) **Lefebvre v. Gloucester Zoning Board, et al.**  
The Zoning Board, Planning Board, and Town Council did not violate the OMA by posting the topic of discussion for meetings as "Application for Zoning Map Amendment." In accordance with R.I. Gen. Laws § 42-46-6, the matter for discussion was sufficiently specific and not misleading. The Planning Board did violate the OMA by failing to make unofficial minutes available no later than thirty-five (35) days after its meeting. The Planning Board did not violate the OMA or the APRA because the minutes made available were incomplete. Nothing within the OMA or APRA requires a public body to approve its minutes. Bernard v. Foster School Committee, OM 03-05.  
VIOLATION FOUND.  
*Issued: February 28, 2006.*
- OM 06-26 **Oliveira v. Newport City Council**  
The City Council's notice violated the OMA by failing to indicate the positions for which appointments were being considered. Public notice that appointments would be made to some board and commission is particularly general and does not sufficiently apprise the public, considering the number of positions associated with the City. The Council did not violate the OMA by posting notice that did not indicate that the "act of appointment" would occur at the scheduled meeting. The agenda listing that "Appointments to Boards and Commissions" would occur was sufficient notice.  
VIOLATION FOUND.  
*Issued: February 28, 2006.*
- OM 06-27 **Café Renaissance, Inc. v. Providence Board of Licenses**  
Sanctions against establishment were discussed and voted upon at a duly noticed and recorded open meeting, although complainant was not in attendance. Subsequent letter from the Board to complainant erroneously stated incorrect date of the Board's decision/sanctions, thereby prompting allegations of OMA violations, since the matter was not discussed or acted upon on the date erroneously referenced. No violation.  
*Issued: March 3, 2006.*
- OM 06-28 **Leeson v. Narragansett Town Council**  
**Garceau v. Narragansett Town Council**  
The town council violated the OMA when a quorum of its members engaged in collective discussion regarding candidates seeking appointment to the Zoning and Platting Board of Review. After the candidates were interviewed at a special meeting, but before the start of the regular meeting that same night, four of the five council members informally discussed the merits of individual candidates as they walked around the meeting hall amidst other holdover members of the public. Although the public was generally present and the conversations impromptu, the council conducted town business



without following the procedures of the OMA, such as advanced public notice of the “meeting.” A “walking quorum” was created by the collective actions of the council members as they met in revolving groups.

VIOLATION FOUND.

*Issued: March 3, 2006.*

OM 06-29     **Epke v. Tiverton Town Council**

Public notice for a special meeting adequately apprised the public that a hearing and discussion regarding ballot questions for proposed charter amendments would take place, in compliance with the requirements of R.I. Gen. Laws § 42-46-6(b). No violation for taking agenda matters out of order because there was no evidence to indicate that a member of the public missed a portion of the meeting based on a reliance on the agenda.

*Issued: March 3, 2006.*

OM 06-30     **Santilli v. Johnston School Committee**

No evidence to support allegation that three school committee members met privately on numerous occasions to discuss and create agendas for upcoming meetings or to decide on school committee matters. Notice and minutes for meetings called by these members were adequate, but for one meeting, which was called solely for the purpose of announcing that the meeting was canceled due to the insufficiency of notice. No violation.

*Issued: March 16, 2006.*

OM 06-31     **Natale v. Johnston School Committee**

Attorney General’s office declined to pursue the complaint that a quorum of the school committee met in private to vote and act upon personnel contract extension or that any votes taken on the contract extension were not properly reported to the public pursuant to R.I. Gen. Laws § 42-46-7. Complaint was submitted well beyond the 180-day time period during which the Attorney General Department may file suit in Superior Court; the date of public approval of the minutes from the meeting (or discovery of) the alleged incident, occurred approximately one year prior to the filing of this complaint. See R.I. Gen. Laws § 42-46-8(b)

*Issued: March 16, 2006.*

OM 06-32     **The Newport Daily News v. Portsmouth School Committee**

An executive session in connection with an independent study of the school department’s financial operations was properly called pursuant to the “personnel” exception provided in R.I. Gen. Laws § 42-46-5(a)(1) because the discussion was limited to the job performance of the individual Director of Finance and Administration and did not amount to a generalized discussion about the administration as an entity.

*Issued: March 20, 2006.*



OM 06-33

**Palazzo v. Warwick School Committee**

The school committee violated R.I. Gen. Laws § 42-46-6(a) when it failed to electronically file a copy of its regularly scheduled meetings for the 2006 calendar year with the Secretary of State's office. The violation was not willful or knowing and the committee has since remedied the violation by promptly posting said notice.

**VIOLATION FOUND.**

*Issued: March 30, 2006.*

OM 06-34

**Mudge v. North Kingstown School Committee**

The school committee violated the OMA when it voted to appoint 2 individuals to personnel positions without sufficient notice to fairly notice the public of the nature of the business to be discussed at the meetings. Advanced notice simply stated "Personnel Items" without providing, at the very least, the positions being considered. An addendum to the agenda voted on at the meetings, although specific, could not be relied upon for notice because the addendum was introduced less than 48 hours in advance of the meeting. Pursuant to R.I. Gen. Laws § 42-46-7(a)(4), the minutes must contain information that a member of the public body requests to be included, however, the information must be limited to matters advertised in advance of the meeting and relevant to the meeting at issue. A public body should not summarily reject information requested by fellow member to be included in minutes, but instead should make determination whether or not the information is relevant.

**VIOLATION FOUND.**

*Issued: March 30, 2006.*

OM 06-35

(PR 06-24)

**Gartland v. Nasonville Fire District**

The Operating Committee and an advisory subcommittee of the fire district violated the OMA on various occasions by failing to post proper notice and maintain minutes. The Committee violated the OMA when it conducted a vote by telephone, thereby creating a rolling quorum that met outside the public purview and also by voting on a matter at a public meeting that was not advertised 48 hours in advance. The fire district failed to make publicly available in a timely manner unofficial minutes of its meetings in violation of R.I. Gen. Laws § 42-46-7(b). The fire district did not violate the APRA when it did not provide certain audio recordings of meetings because the tapes were not public records, but were recorded by a clerk-in-training for her own use and the public body was never in possession of the tapes.

**VIOLATION FOUND.**

*Issued: April 3, 2006.*



- OM 06-36      **Chretien v. Foster School Committee**  
The school committee violated R.I. Gen. Laws § 42-46-6(c) when the notice contained in the *Bargain Buyer*, although published 48 hours in advance of the meeting, was not circulated to the complainant 48 hours in advance of the meeting. The violation was inadvertent and corrective measures have been implemented.  
VIOLATION FOUND.  
*Issued: April 7, 2006.*
- OM 06-37      **Chretien v. Foster School Committee**  
**Fava v. Foster School Committee**  
The *Bargain Buyer* is not a newspaper of general circulation and therefore cannot be relied upon as the source for advertising school committee meetings as required by R.I. Gen. Laws § 42-46-6(c). The school committee did not violate the OMA or the APRA as alleged for failing to have timely available at a meeting the minutes from the previous meeting. Neither law requires that minutes be physically available at a subsequent meeting.  
VIOLATION FOUND.  
*Issued: April 7, 2006.*
- OM 06-38      **Mudge v. North Kingstown School Committee**  
The school committee violated the OMA when it added/corrected items to the agenda less than 48 hours before the meeting. The added agenda items related to contract bids that were not emergent in nature, therefore, the emergency meeting provision – which is limited in scope – was not appropriate in this circumstance. See R.I. Gen. Laws § 42-46-6(c).  
VIOLATION FOUND.  
*Issued: April 17, 2006.*
- OM 06-39      **Town of Johnston v. Johnston Zoning Board of Review**  
No evidence that a quorum of the members of the zoning board of review met in secret to sign an amended site plan. The evidence supports finding that the members signed the original site plan approximately two months after its approval at a public meeting but that none signed the amended plan, hence, allegations are unsupported and no violation found.  
*Issued: April 17, 2006.*
- OM 06-40      **Pitochelli v. Johnston Town Council and Town of Johnston**  
(PR 06-28) The town council violated the OMA when a quorum of the members convened outside the public purview prior to the start of a public meeting and violated the OMA at the meeting when it discussed a matter neither listed on the agenda nor added to the agenda by majority vote. The town violated the APRA when it provided an incomplete response to a request for records related to legal fees incurred by the town. Although general ledger details and a general description of legal services rendered were provided, no evidence was presented to refute allegation that portions of request were not fulfilled. Typically similar requests for records related to legal services result in the



production of the name of the attorney, the total hours billed, and the total hours billed on a per case basis, when available and applicable.

VIOLATION FOUND.

*Issued: April 20, 2006.*

OM 06-41 **Brown v. North Kingstown School Committee**

The school committee did not violate the OMA when it corrected a typographical error on the agenda. Under the facts and circumstances of this case, the corrected error did not amount to a revision of the agenda or a substantive change.

*Issued: April 20, 2006.*

OM 06-42 **RI Conservation Law Foundation v. Coastal Resources Management Council**

The CRMC violated R.I. Gen. Laws § 42-46-6(c) and (e), and R.I. Gen. Laws § 42-46-7(d) and (e), by failing to ever file electronically with the Secretary of State's office notice/agendas and minutes of meetings as required by an amendment to the OMA effective July 16, 2004.

VIOLATION FOUND.

*Issued: April 25, 2006.*

OM 06-43 **Oliveira v. Newport School Committee**

No evidence that the presence of members of the school committee at a public forum hosted by the Newport Public Education Foundation amounted to a school committee meeting because there was no collective discussion and/or action taken by a quorum of the school committee members. Individual committee members attended and participated as members of the public.

*Issued: April 27, 2006.*

OM 06-44 **Mageau v. Charlestown School Committee, et al.**

Although a quorum of the interim school committee and the town council, respectively, was present at a public forum, neither public body violated the OMA for failing to post notice and/or minutes for the event because the OMA did not apply to the event. Neither entity held a meeting subject to the requirements of the OMA because no members engaged in collective discussion and/or took action related to respective school/town business. Indeed, members of these bodies did not sit together at the event, a factor that contributed to this conclusion.

*Issued: May 1, 2006.*

OM 06-45 **Carlow/Perry v. Coventry Board of Engineers**

Allegations that discussions between three of the four members of the Board of Engineers continued after the public meeting had adjourned were unsupported by the evidence presented. Hence, no violation found.

*Issued: May 3, 2006.*



OM 06-46

**Langseth v. Rhode Island Airport Corporation**

Two matters discussed in executive session were appropriate for a closed meeting based on the litigation and security exceptions of the OMA. See R.I. Gen. Laws § 42-46-5(a)(2) and (3). However, the agenda gave insufficient notice to the public of these matters. All notices, including notices for matters to be held in executive session, to the extent possible, must clearly indicate each and every matter to be addressed to apprise the public of the nature of the business to be discussed. For example, if four litigation matters are planned for an executive session, the agenda should identify four separate matters.

**VIOLATION FOUND.**

*Issued: May 3, 2006.*

OM 06-47

**Loparto v. Lincoln Town Council**

The town council violated the OMA when four of the five council members engaged in a series of email exchanges in which they discussed a matter over which the council has supervision, control, jurisdiction or advisory power. The exchanges were not limited to the purpose of scheduling a meeting as governed by R.I. Gen. Laws § 42-46-5(b). A meeting convened by a "rolling quorum" even though the discussions were not held in a traditional forum and the exchanges were not simultaneous, but held over a two day period.

**VIOLATION FOUND.**

*Issued: May 19, 2006.*

OM 06-48

**McFadden v. Exeter/West Greenwich Regional School Committee**

The Exeter/West Greenwich Regional School Committee did not violate the Open Meetings Act when a topic involving the removal of a political leaflet by a School Committee member from a local was discussed under the agenda item identified as "School Committee/Teacher's Rights." This Department determined that the notice provided by the School Committee informed the public, under the totality of the circumstances, of the nature of the business that would be conducted at the meeting.

*Issued: June 6, 2006.*

OM 06-49

**McFadden v. Exeter/West Greenwich Regional School Committee**

A quorum of the Exeter/West Greenwich Regional School Committee did not collectively discuss or participate in an e-mail exchange when three (3) School Committee members out of seven (7) total School Committee members directly participated in the e-mail correspondence. Therefore, the OMA was inapplicable and the Exeter/West Greenwich Regional School Committee did not violate the Open Meetings Act.

*Issued: June 6, 2006.*

OM 06-50

**Redding v. RI School for the Deaf**

Board of Trustees for the RI School for the Deaf violated the OMA when it failed to make minutes from one meeting timely available to the public at its office and when it failed to file and/or make timely available at the Secretary of State's office the minutes for meetings held over the course of two months.



See R.I. Gen. Laws § 42-46-7(b) and (d). The Board also violated the open call requirement of R.I. Gen. Laws § 42-46-4 when it failed to record and enter into the minutes the statutory provision authorizing an executive session and failed to provide a statement specifying the nature of the business to be discussed.

**VIOLATION FOUND.**

*Issued: June 6, 2006.*

OM 06-51

**In Re: Washington Fire District of Coventry**

The Washington Fire District of Coventry did not violate the OMA when an assembly of taxpayers from Washington Fire District qualified to vote on Fire District matters held a meeting at the Fire District without posting electronic notice of the meeting with the Secretary of State's Office. Rhode Island case law supports the notion that the nature of this meeting was such that it could not be closed and could not be other than highly public.

*Issued: June 23, 2006.*



## **OPEN MEETINGS ACT ADVISORY OPINIONS - 2006**

ADV OM  
06-01

### **In Re: Office of Rehabilitation Services Advisory Council Meetings**

The participation by teleconference of individuals, with significant disabilities who cannot participate in Office of Rehabilitation Services Advisory Council meetings due to the functional limits of their disability, is in violation of the 2005 Amendment to the Open Meetings Law. Effective June 29, 2005, the OMA now allows a public body to use electronic, telephonic and telephone communication only for the purpose of scheduling a meeting. The only enumerated exception to this law allows for members of public bodies on active duty in the armed services to participate by these means. R.I. Gen. Laws § 42-46-5(b).

*Issued: March 7, 2006.*

## **END OF OMA SUMMARIES**

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## CHAPTER 46

### OPEN MEETINGS

SECTION.		SECTION.	
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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 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 § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.

(d) “Quorum,” unless otherwise defined by applicable law, means a simple majority of the membership of a public body.

(e) “Prevailing plaintiff” shall include those persons and entities deemed “prevailing parties” pursuant to 42 U.S.C. § 1988.

(f) “Open forum” means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.

**42-46-3. Open meetings.** — Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

**42-46-4. Closed meetings.** — By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by § 42-46-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting. No public body shall discuss in closed session any public matter which does not fall within the citations to § 42-46-5(a) referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.



All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).

**42-46-5. Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct. —**

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including but not limited to state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes (a) of conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

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

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

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.



(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of a public body, who has a disability as defined in Chapter 87 of Title 42; and

(i) cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as a reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) any waiver decisions shall be a matter of public record.

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

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

#### **42-46-6. Notice. —**

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

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



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

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

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

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

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

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

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

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



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

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

#### **42-46-7. Minutes. —**

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

- (1) The date, time, and place of the meeting;
- (2) The members of the public body recorded as either present or absent;
- (3) A record by individual members of any vote taken; and

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

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

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

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

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

#### **History of Section.**

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

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

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

#### **42-46-8. Remedies available to aggrieved persons or entities. —**

(a) Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.



(b) No complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred, or, in the case of an unannounced or improperly closed meeting, after one hundred eighty (180) days from the public action of a public body revealing the alleged violation, whichever is greater.

(c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.

(d) The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust.

The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter.

(e) [Deleted by P.L. 1988, ch. 659, § 1.]

(f) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

(g) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner.

(h) The attorney general shall consider all complaints filed under this chapter to have also been filed under § 38-2-8(b) if applicable.

**42-46-9. Other applicable law.** — The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29, which has been expressly repealed.

**42-46-10. Severability.** — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the remaining provisions or the other applications of this chapter.

**42-46-11. Reported violations.** — Every year the attorney general shall prepare a report summarizing the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

**42-46-12. Notice of citizen's rights under this chapter.** — The attorney general shall prepare a notice providing concise information explaining the requirements of this chapter and advising citizens of their right to file complaints for violations of this chapter. The notice shall be posted in a prominent location in each city and town hall in the state.



**42-46-13. Accessibility for persons with disabilities. —**

(a) All public bodies, to comply with the nondiscrimination on the basis of disability requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of title 11), shall develop a transition plan setting forth the steps necessary to ensure that all open meetings of said public bodies are accessible to persons with disabilities.

(b) The state building code standards committee shall, by September 1, 1989 adopt an accessibility of meetings for persons with disabilities standard that includes provisions ensuring that the meeting location is accessible to and usable by all persons with disabilities.

(c) This section does not require the public body to make each of its existing facilities accessible to and usable by persons with disabilities so long as all meetings required to be open to the public pursuant to chapter 46 of this title are held in accessible facilities by the dates specified in subsection (e).

(d) The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.

(f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their Jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor's commission on disabilities for review and approval. The governor's commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.

(g) The provisions of §§ 45-13-7 — 45-13-10, inclusive, shall not apply to this section.

**42-46-14. Burden of proof. —** In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.