8-6-2004

6th Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2004

Department of Attorney General, State of Rhode Island

DEPARTMENT OF ATTORNEY GENERAL

Patrick C. Lynch, Attorney General

6TH ANNUAL OPEN GOVERNMENT SUMMIT

ROGER WILLIAMS UNIVERSITY
RALPH R. PAPITTO SCHOOL OF LAW
FRIDAY, AUGUST 6, 2004

Co-Sponsored by the Roger Williams University Law Alumni Association

State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400
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Patrick C. Lynch, Attorney General

August 6, 2004

Dear Open Government Summit Attendee:

I would like to take this opportunity to thank you for attending the 6th 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.state.ri.us. 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 6, 2004
9:00 A.M. – 12:30 P.M.

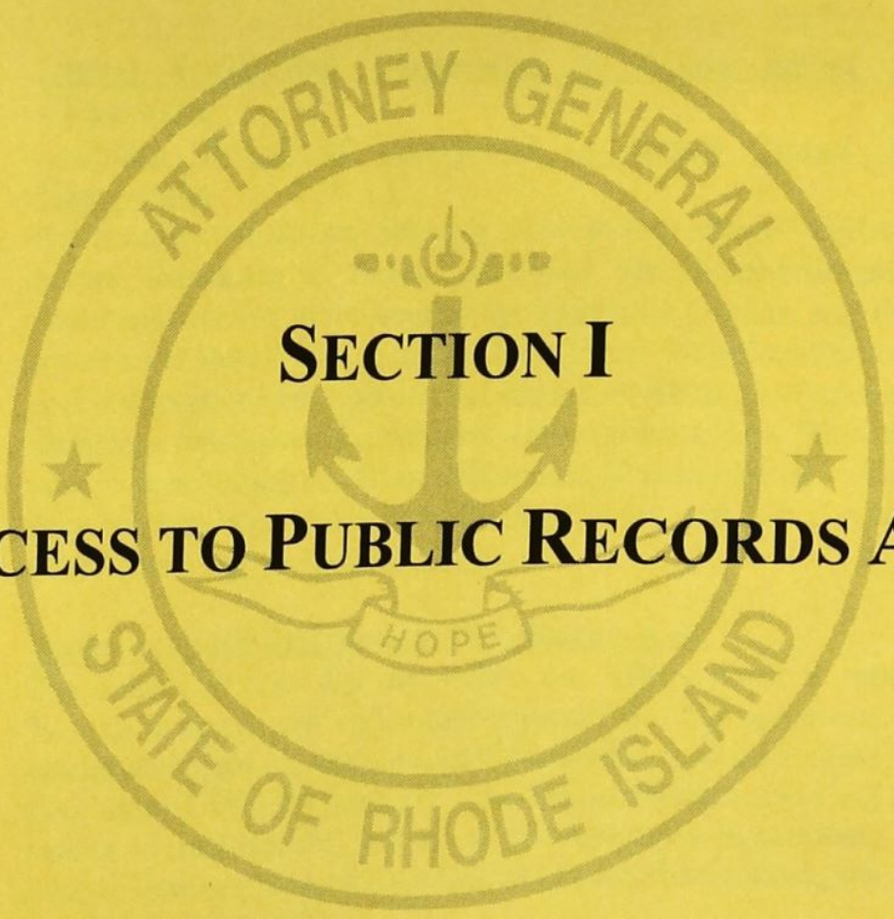
8:30 – 9:00 a.m.	Check-in/Distribution of Material
9:00 – 9:05 a.m.	Welcoming by David A. Logan, Dean, Roger Williams University Ralph R. Papitto School of Law
9:05 – 9:15 a.m.	Opening Remarks by Patrick C. Lynch, Attorney General *The Philosophy and Mission of the Department of Attorney General.*
9:15 – 10:15 a.m.	Access to Public Records Act Presentation by Michael W. Field, 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 2003-2004 case law/legislative update will be provided. Frequent trouble areas and advanced planning tips will also be reviewed.*
10:15 – 10:25 a.m.	Break
10:25 – 11:40 a.m.	Open Meetings Act Presentation by Michael W. Field, 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 notices, amending school committee and non-school committee agendas, and maintaining minutes will be discussed. Frequent trouble areas and a 2003-2004 case law/legislative update will also be reviewed. Presentation will also include an explanation and demonstration concerning how to electronically upload annual and supplemental notices to the Secretary of State for internet posting pursuant to R.I. Gen. Laws § 42-46-6. (Effective July 17, 2004).*
11:40 – 12:30 p.m.	Ethics Commission Presentation by Jason Gramitt, Rhode Island Ethics Commission *Current issues of importance to attorneys for public bodies, including Ethics Code highlights, financial disclosure, gift disclosure, hearing procedure, complaints, advisory opinions, hypothetical examples, and use of the internet for research. Qualifies for one ethics CLE.*

To reserve seating email agsummit@riag.state.ri.us 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/About+the+School/Visiting/New+Directions.htm. This Program is co-sponsored by the Roger Williams University Law Alumni Association and has been certified for 3 Continuing Legal Education Credits, 1 of which is ethics, free of charge.

Index

Section I – The Access to Public Records Act

Section II – The Open Meetings Act



SECTION I

ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS-2003

PR 03-01 **Zarella v. Town of East Greenwich**

The Town did not violate the APRA when it failed to answer completely questions propounded by complainant to Town. The APRA does not govern the conduct of public bodies with respect to answering oral or written questions. See Setera v. City of Providence, PR 95-20; Schmidt v. Ashaway Volunteer Fire Association and Ashaway Fire District, PR 97-23. The Town did not violate the APRA when it failed to provide copies of soil testing reports, because the town did not yet possess the documents. Issued: January 6, 2003.

PR 03-02 **Digital Engineering Corporation v. Rhode Island Reapportionment Commission**

PR 03-03 **Johnston Board of Canvassers v. Rhode Island Reapportionment Commission**

An investigation by the Attorney General into alleged APRA violations would violate Separation of Powers principles. The Reapportionment Commission's documents related to the core of the legislative process, and thus fell within the Speech and Debate Clause of the Rhode Island State Constitution. The Legislature and Reapportionment Commission did not waive its privileges and immunities by defining a public body for purposes of the APRA to be a "legislative…body of the state," or requiring the Reapportionment Commission to adhere to the APRA. Any remedy must come from the legislature, and not a coordinate branch of government. Issued: January 6, 2003.

PR 03-04 **Henley v. South Kingstown School District et al.**

The School District did not violate the APRA when it refused to release a "severance agreement" with a former employee. The agreement was exempt from disclosure because it was a record "identifiable to an individual…employee." R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). The School District could not use the APRA to violate a confidentiality clause in the severance agreement. Nothing in the APRA, however, prevented the School District from making the document public. Issued: January 6, 2003.

PR 03-05 **Langseth v. Buttonwoods Fire District**

The Fire District did not violate the APRA when requested documents were sent to the wrong address. The Fire District complied with the requirement the documents be made available within 10 business days. Nothing in the APRA required a public body to deliver personally or to mail documents to those who request them. Issued: January 16, 2003.

PR 03-06
(OM 03-04) **Mcclurg v. Rhode Island School for the Deaf**
Evidence established the School did maintain minutes of its meetings, therefore it did not violate the OMA. However, School violated the Access to Public Records Act by failing to respond to requests for minutes of board meetings in a timely manner. See R.I. Gen. Laws § 42-46-8(d). VIOLATION FOUND. Issued: February 18, 2003.

PR 03-07 **Bauer v. Department of Health**
The DOH violated the APRA when it failed to respond to a request for documents in a timely manner. However, many of the documents not provided were exempt from the APRA because they pertained to possible violations of statute, rule, or regulation. See R.I. Gen. Laws § 38-2-2-(4)(i)(P). VIOLATION FOUND. Issued: February 18, 2003.

PR 03-08 **Zarrilli v. Town of Hopkinton**
The Town did not violate the APRA by requiring a citizen to visit the Building and Zoning Office in person to search records himself. The APRA does not require members of the public body to search and retrieve documents when the public already has access. Issued: February 18, 2003.

PR 03-09 **Fease v. Town of Portsmouth**
Town did not violate the APRA when its Finance Director and Fire Chief did not provide records requested from the Town Administrator. Evidence establishes that complainant only submitted an APRA request to the Town Administrator, who responded to complainant in a timely manner and forwarded the request to other town officials. Complainant has no standing to bring a complaint against other town officials because he did not make an APRA request of them. Issued: February 20, 2003.

PR 03-10 **Preston v. State Fire Marshal's Office**
State Fire Marshal's Office violated the APRA when it failed to respond to request for documents in a timely manner. The Fire Marshal's Office could have extended the ten business day time period to respond for good cause, but failed to do so. VIOLATION FOUND. Issued: February 20, 2003.

PR 03-11 **Dubis v. East Greenwich Fire District**
The Fire District did not violate the APRA when it did not respond to complainant's request. There was no evidence that the Fire District actually received a letter requesting documents from Mr. Dubis. The letter purportedly sent to the Fire District contains no address, and an investigation reveals no employees had ever seen or heard from Mr. Dubis. Issued: March 25, 2003.

PR 03-12 **Allen v. City of Providence**
The School Department did not violate the APRA when it failed to produce the results of a November 27, 2001, air quality test because no test was conducted on

that date. Because there was no document responsive to complainant's request, the City did not violate the APRA. Issued: April 14, 2003.

PR 03-13 **East Bay Newspapers v. Barrington Police Department**

The Police Department did not violate the APRA by redacting from police reports the identity of a crime victim and the victim's numerical street address. The APRA exempts such information as "could reasonably be expected to constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(4)(i)(D)(c). The Police Department properly applied a balancing test, weighing the public interest in disclosure versus the privacy of the victim. Here, the privacy interests in the name and street address of a crime victim were significant and were not outweighed by the public interests in disclosure. Issued: May 1, 2003.

PR 03-14 **East Bay Newspapers v. Bristol Police Department**

The Bristol Police Department violated the APRA when it failed to release within ten business days of an APRA request the names of individuals who had been arrested. The APRA requires disclosure of "records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult...." R.I. Gen. Laws § 38-2-2(4)(i)(D). The Police Department's blanket policy of withholding from public disclosure the names of arrestees until after arraignment was not justified by exceptions to the rule requiring disclosure of law enforcement records in situations that could "reasonably be expected to interfere with investigation of criminal activity" or "would deprive a person of a right to a fair trial or impartial adjudication." See R. I. Gen. Laws 38-2-2(4)(i)(D)(a)&(b). VIOLATION FOUND. Issued: May 1, 2003.

PR 03-15 **Calci v. Coventry Fire District**

The Fire District did not violate the APRA by requiring pre-payment of costs for copying and search and retrieval, and the District responded to APRA request in a timely manner after requesting an additional 20 business days for good cause. See R.I. Gen. Laws § 38-2-7(b). Issued: October 3, 2003.

PR 03-16 **Coloian v. Newport Police Department**

Time provisions of the APRA, R.I. Gen. Laws § 38-2-7(b), did not apply to request for a list of personnel between 1980 and 1985 because the Department did not maintain such a list in the form requested at the time requested. The Department's response therefore could not be considered untimely under the APRA. Issued: October 3, 2003.

PR 03-17 **Montanari v. Board of Governors for Higher Education**

APRA does not require a public body to answer questions, though the public body may provide answers and/or responsive documents. Responses to questions are not governed by the APRA. Board violated the APRA by failing to respond to request for public records within ten business days. Evidence established that despite the violation, records had been provided to complainant making further relief unnecessary. VIOLATION FOUND. Issued October 3, 2003.

PR 03-18 **Hayden v. City of Warwick**

The APRA does not provide a public employee with access to complaints maintained in that employee's file. The only information about public employees that is a public record is specifically enumerated at R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). The right of an employee to inspect his or her employee file, see R.I. Gen. Laws § 28-6.4-1, is not affected by the APRA. Issued October 3, 2003.

PR 03-19 **May v. Town of Foster**
(OM 03-08)

Town did not violate the OMA or APRA by not having copies of minutes from previous Town Council meeting available at the Council's next meeting. The OMA only requires minutes to be available at the office of the public body during business hours. Issued October 17, 2003.

PR 03-20 **Moriarty v. Town of Middletown**

Town did not violate the APRA because it answered complainant's public record request within ten business days. When calculating the time period under the APRA, the day the request was received by the public body is not counted. Issued October 17, 2003.

PR 03-21 **Matais v. Rhode Island State Police**

The State Police properly redacted from its "operational and threat assessment" for the raid on the Narragansett Indian smokeshop that information describing contingency plans and communication signals for the action. The redacted information concerned "techniques and procedures for law enforcement investigations or prosecutions" the disclosure of which "could reasonably be expected to endanger the life or physical safety of any individual." R.I. Gen. Laws § 38-2-2(4)(D)(e) & (f). Such information is specifically exempt from public disclosure under the APRA. Issued October 27, 2003.

PR 03-22 **Sorkin v. RIHMFC**

RIHMFC did not violate the APRA when it responded to complainant's May 19, 2003, request on or about July 2, 2003, and July 9, 2003. RIHMFC requested an extension for good cause within ten business days of complainant's request, so production of records on July 2, 2003, was timely. See R.I. Gen. Laws § 38-2-7(b). Records produced on July 9, 2003, were not governed by the APRA's time provisions because they were not maintained by the public body at the time of the request. Issued November 3, 2003.

PR 03-23 **Tedeschi v. Smithfield School Department**

The School Department properly denied complainant's APRA request for a teacher's "previous teaching and work experience" because employment records are not specifically deemed public. See R.I. Gen. Laws § 38-2-2(4)(1)(A)(I). Issued November 6, 2003.

PR 03-24 **Calci v. Coventry Fire District**

The Fire District violated the APRA's cost provisions by including the cost of copying time in its assessment of fees. The APRA does not authorize fees for copying time, only for "copies" and "search and retrieval." See R.I. Gen. Laws § 38-2-4. VIOLATION FOUND. Issued December 3, 2003.

PR 03-25 **NEARI v. East Greenwich School Department**

Bid documents submitted by private contractors are not subject to public disclosure under the APRA while bids are being reviewed by the public body. See R.I. Gen. Laws § 38-2-2(4)(i)(B); Cahill v. Housing Authority of the City of Pawtucket, PR 00-09. Department warned that denial of an APRA request must be done within the period set by statute and must include the reasons for the denial, or the reasons shall be waived, except for good cause. R.I. Gen. Laws § 38-2-7(b). Issued December 9, 2003.

PR 03-26 **Orabona v. Town of North Providence**

Because the Town did not maintain "certified payroll records" of a contractor at the time of complainant's request, it was not obliged under the APRA to provide them. A public body may choose to compile records to respond to a request, but it does so outside the time requirements of the APRA. Issued December 9, 2003.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS-2003

ADV PR 03-01

Home telephone numbers in dog license database

The APRA does not require public disclosure of home telephone numbers of individuals listed in the City of Cranston's dog license database. The APRA exempts from public disclosure such information as "could reasonably be expected to constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(4)(i)(D)(c). The APRA requires the weighing of personal privacy against the public interest. The privacy interests in the home telephone numbers outweighs the public interest. See Hogan v. East Providence Animal Shelter, PR 98-12. Issued: May 7, 2003.

ADV PR 03-02

In re: Cumberland Police Department

The APRA does not compel disclosure of a police department report concerning an incident that did not lead to an arrest. The APRA does compel disclosure of the initial arrest of an adult, which implies a finding by the police of probable cause. Disclosure of incident reports where police conclude probable cause did not exist can be reasonably expected, in most cases, to constitute an unwarranted invasion of personal privacy. Also weighing against disclosure was the fact that the incident took place five years before the APRA request. Issued September 23, 2003.

ADV PR 03-03

In re: City of Cranston (cellular telephone numbers)

The APRA does not compel disclosure of telephone numbers dialed from cellular telephones issued to members of the City Administration.

ADV PR 03-04

In re: Town of West Warwick

Information pertaining to the "gross amount received in overtime" by a public employee, R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), should be disclosed in time increments that could not lead to a disclosure of an employee's work schedule, or any other information not specifically deemed public under this section. Disclosure of "hours of overtime worked" by a public employee is not also compelled because it is not one of the 14 categories of public information pertaining to public employees specifically enumerated under R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

ADV PR 03-05

In re: Department of Business Regulation

The APRA does not compel public disclosure of home addresses of individuals who have licenses issued by a public body, but the home town of licensees is a public record. Although the APRA does not specifically address licensee information, we conclude that records of licensees are due the same privacy protections as comparable records of public employees as established at R.I. Gen. Laws § 38-2-2(4)(i)(A).

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2004

PR 04-01, Faerber v. City of Newport
The City of Newport was not obligated under the Access to Public Records Act (APRA) to provide records allegedly maintained by the Newport School Department, a distinct public body. The City did not violate the APRA when it denied another aspect of the request because the requested documents and the requested written bid opinion did not exist.
Issued January 9, 2004.

PR 04-02, Calci v. Coventry Fire Department
The Coventry Fire District did not violate the Access to Public Records Act (APRA) by redacting certain entries appearing on its annual ledger. The redacted information concerned medical and other employee information not expressly deemed public under the APRA. The District also did not violate the APRA by providing a page missing from a requested document beyond the 10 business days required by statute. The page was provided shortly after the omission was brought to the attention of the District.
Issued March 5, 2004.

PR 04-03, Schuttert v. Coventry School Department
The Coventry School Department did not violate the Access to Public Records Act (APRA) with regard to a request for the teachers' contract because the request was filled within 10 business days.
Issued March 12, 2004.

PR 04-04, Fahey v. Providence Water Supply Board
Providence Water did not violate the Access to Public Records Act (APRA) by denying a request for billing records and invoices to the City of East Providence. The APRA does not make a distinction between private clients and public clients and, in neither case, compels public disclosure of such records.
Issued March 17, 2004.

PR 04-05, Couture v. Coventry Police Department
The Coventry Police Department violated the Access to Public Records Act (APRA) when it did not disclose information concerning a fatal traffic accident that occurred in 2001. Certain police reports, witness statements, and an accident scene sketch were deemed public in light of the fact that the investigation into the accident was complete. Accident scene photos depicting the deceased, that were taken by the Police Department, and license and social security numbers were determined not public because their release would constitute an unwarranted invasion of privacy. VIOLATION FOUND.
Issued March 19, 2004.

PR 04-06, Hofstetter v. Cranston School Department
The Cranston School Department violated the Access to Public Records Act (APRA) by failing to respond to a request for certain financial information within 10 business days. The School Department could have requested an additional 20 days in which to comply with the request for good cause, but it did not. VIOLATION FOUND.
Issued March 25, 2004.

PR 04-07, Jackson v. Charlestown Police Department
The Charlestown Police Department did not violate the Access to Public Records Act (APRA) in its response to a July 2003 request for various information related to an ongoing felony investigation of the complainant's husband. Disclosure of requested information could reasonably be expected to interfere with the investigation of criminal activity. Other information requested was either provided, or does not exist.
Issued March 31, 2004.

PR 04-08, Mullowney v. City of Newport
A copy of a letter sent by an attorney to the City Manager indicating an intention to file a sexual harassment lawsuit against a specifically named individual was exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I)(records identifiable to individual employees). Also exempt as privacy interest outweighs public interest as allegations have yet to be found meritorious.
Issued April 22, 2004.

PR 04-09, Wilson v. City of Central Falls
The City did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, the City did not have to compile or create records.
Issued June 21, 2004.

PR 04-10, Jones v. Town of West Warwick
The Town did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, the Town did not have to compile or create records.
Issued June 21, 2004.

PR 04-11, Schwarz v. Public Utilities Commission
A public body that requires pre-payment for search and retrieval fees does not violate the Access to Public Records Act. See Smith v. Watch Hill Fire District, PR 99-15.
Issued June 21, 2004.

PR 04-12, Berger v. Board of Governors for Higher Education et al.
The Board of Governors did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, the Board of Governors did not have to compile or create records.
Issued June 30, 2004.

PR 04-13, Grey2K USA v. Department of Business Regulations
The Department of Business Regulations did not violate the Access to Public Records Act since the evidence demonstrated that a request for records was never received. Additionally, evidence demonstrated that requested records did not exist. See R.I. Gen. Laws § 38-2-3(f).

PR 04-14, Ethier v. Pawtucket Police Department
Request to the Pawtucket Police Department for a copy of a will and a police report. Evidence showed that requested police report was disclosed and that the Police Department did not maintain a copy of the requested will. Since the requested will did not exist, the Police Department did not have to compile or create records.
Issued June 30, 2004.

PR 04-15, Chrabaszcz v. Johnston School Department
The School Department did not violate the Access to Public Records Act by exempting a copy of the Superintendent's contract, which had been submitted at a public meeting. Rhode Island General Laws § 38-2-2(4)(i)(K) exempts from public disclosure "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public." Since the Superintendent's contract did not constitute "[p]reliminary drafts, notes, impressions, memoranda, working papers, [or] work products," the second clause providing that documents submitted at a public meeting are public records was not applicable and the Superintendent's contract was exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I)(records identifiable to individual employee).
Issued June 30, 2004.

PR 04-16, Loebenberg v. Rhode Island Resource Recovery Corporation
Resource Recovery did not violate the Access to Public Records Act since the requested records did not exist. See R.I. Gen. Laws § 38-2-3(f). Since the requested records did not exist, Resource Recovery did not have to compile or create records.
Issued June 21, 2004.

PR 04-17, Tel Comm v. City of Warwick
The City violated the Access to Public Records Act by failing to respond to this request within ten (10) business days. VIOLATION FOUND.
Issued June 30, 2004.

PR 04-18, Chappell v. Rhode Island State Police
The State Police did not violate the Access to Public Records Act by exempting from public disclosure the home addresses of the Superintendent of the State Police and one of its Inspectors. The privacy interests in one's home address outweighs any public interest.
June 30, 2004.

PR 04-19, Doyle v. Town of Tiverton
The Town violated the Access to Public Records Act by failing to provide public inspection to Voter Registration Cards, although portions of these cards may be redacted. Pursuant to R.I. Gen. Laws § 17-9.1-6, voter registration cards are public records and the information required to be compiled by Chapter 9.1 must be disclosed. VIOLATION FOUND.
Issued June 30, 2004.

ACCESS TO PUBLIC RECORDS ACT FINDINGS

CUMULATIVE INDEX (1993-2004)

Updated: January 12, 2004

CHAPTER 2

ACCESS TO PUBLIC RECORDS

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.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1998, ch. 378, § 1.

Collateral References. What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)). 153 A.L.R. Fed. 571.

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.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1980, ch. 269, § 1; P.L. 1981, ch. 353, § 5; P.L. 1982, ch. 416, § 1; P.L. 1984, ch. 372, § 2; P.L. 1986, ch. 203, § 1; P.L. 1991, ch. 208, § 1; P.L. 1991, ch. 263, § 1; P.L. 1995, ch. 112, § 1; P.L. 1998, ch. 378, § 1; P.L. 1999, ch. 83, § 85; P.L. 1999, ch. 130, § 85; P.L. 2002, ch. 65, art. 13, § 29.

Compiler's Notes. In 1998, the compiler inserted "or" preceding "administrative" and inserted a comma following "functions" in paragraph (1), substituted "client" for "clients" and the fifth comma for a semicolon, deleted a dash after "any files" and inserted "with" before "respect" in subparagraph (4)(i)(A)(I), substituted "those retirement" for "that retirement" in subparagraph (4)(i)(A)(II), deleted a comma following "submitted" in subparagraph (4)(i)(K), and inserted a comma following "agencies" in subparagraph (4)(i)(P).

P.L. 1999, ch. 83, § 85, and P.L. 1999, ch. 130, § 85, enacted identical amendments to this section.

38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. — (a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

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

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

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

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

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

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

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

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1984, ch. 372, § 2; P.L. 1997, ch. 326, § 168; P.L. 1998, ch. 378, § 1.

Collateral References. What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)). 153 A.L.R. Fed. 571.

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

History of Section.
P.L. 2000, ch. 430, § 1.

38-2-4. Cost. — (a) Subject to the provisions of § 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents ($.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records.

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

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

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

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

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1986, ch. 416, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subdivisions.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person or entity requesting the right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

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

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1981, ch. 279, § 2; P.L. 1998, ch. 378, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1988, ch. 87, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

Compiler's Notes. In 1998, the compiler substituted "further" for "futher" in two places in subsection (d).

The first clause of the second sentence in subsection (d) is set out as it appears in P.L. 1998, ch. 378, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

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.

History of Section.
P.L. 1979, ch. 202, § 1.

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.

History of Section.
P.L. 1986, ch. 345, § 1.

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.

History of Section.
P.L. 1991, ch. 263, § 2; P.L. 1998, ch. 378, § 1.

Compiler's Notes. In 1998, the compiler deleted "of any legal claims against a governmental entity shall be deemed public records" from the end of the section as duplicative.

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.

History of Section.
P.L. 1998, ch. 378, § 2.

SECTION II

OPEN MEETINGS ACT

OPEN MEETINGS ACT FINDINGS-2003

OM 03-01 **Staven v. Portsmouth Town Council**

Town Council violated the OMA by voting on items included on an agenda amended less than 48 hours before the meeting. Public body did not present sufficient evidence establishing that the amended agenda items required a vote within forty-eight hours to protect the public, bringing it within the emergency provisions of the OMA. See R. I. Gen. Laws § 42-46-6(b). VIOLATION FOUND. Issued: January 6, 2003.

OM 03-02 **Zarella v. East Greenwich Town Planning Board**

Discussion of proposed subdivision did not violate the Open Meetings Act. OMA did not apply because there was not a quorum, which requires a majority of members. See Fisher v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). Also conduct did not constitute a "meeting" because the Board did not engage in a "collective discussion" and no votes or actions were taken. See In re Providence School Board, OM 99-08. Issued: January 6, 2003.

OM 03-03 **The Children First Coalition v. Providence School Board**

The School Board did not violate the Open Meetings Act when it discussed the search for a new Superintendent in executive session. Executive sessions may be convened to discuss "the job performance, character, or physical or mental health of a person or persons." R.I. Gen. Laws § 42-46-5(a)(1). Consideration in executive session of the Board's appointment policy, including advice given to the Board by its counsel, also did not violate the OMA because it did not amount to a collective discussion or action by the Board. Evidence did not establish that the Board convened a subcommittee to revise its policy, but only that two Board members discussed and exchanged comments on an amended policy, which was then forwarded to the full Board for consideration at an open meeting. Accordingly, these discussions did not constitute a "meeting" under the OMA. Issued: January 6, 2003.

OM 03-04
(PR 03-06) **Mcclurg v. Rhode Island School for the Deaf**

Evidence established that School maintained minutes of its meetings, therefore it did not violate the OMA. However, School violated the Access to Public Records Act by failing to respond to requests for minutes of board meetings in a timely manner. See R.I. Gen. Laws § 42-46-8(d). VIOLATION FOUND. Issued: February 18, 2003.

OM 03-05 **Bernard v. Foster School Committee**

School Committee violated the Open Meetings Act when it failed to make available publicly unofficial minutes at its next regularly scheduled meeting. See R.I. Gen. Laws § 42-46-8(d). VIOLATION FOUND. Issued: February 18, 2003.

OM 03-06 **Calci v. Coventry Fire District**

The annual meeting of the Coventry Fire District is not subject to the OMA pursuant to Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997). The District's annual meeting is analogous to a financial town meeting, which the Rhode Island Supreme Court found in McGreavy to be outside the auspices of the OMA. Issued: October 3, 2003.

OM 03-07 **Natale v. Johnston School Committee**

Committee violated the OMA by failing to make public minutes available within time requirements established by R.I. Gen. Laws § 42-46-7(b), and when it failed to disclose a vote after the threat by disclosure to ongoing or potential litigation had passed. The OMA does not address the right of a member of a public body to address that public body. VIOLATION FOUND. Issued: October 3, 2003.

OM 03-08 (PR03-19) **May v. Town of Foster**

Town did not violate the OMA by not having copies of minutes from previous Town Council meeting available at the Council's next meeting. The OMA only requires minutes to be available at the office of the public body during business hours. Issued October 17, 2003.

OPEN MEETINGS ACT ADVISORY OPINIONS – 2003

ADV OM
03-01 **In re: New Shoreham Tourism Council**

New Shoreham Tourist Council is a "public body" for the purposes of the OMA. R.I. Gen. Laws § 42-46-2(c). Council was created by statute, is funded by public money, and a majority of its membership is either public officials or appointed by public officials.

OPEN MEETINGS ACT FINDINGS - 2004

OM 04-01, DiModica v. Cumberland Fire District
The Cumberland Fire District violated the Open Meetings Act by failing to indicate in its public notice that elections would be conducted at a July, 2003 meeting. The District remedied its own violation by promptly holding an election at a meeting for which proper notice was given. VIOLATION FOUND.
Issued March 5, 2004.

OM 04-02, Toste v. Cumberland Fire District
The Cumberland Fire District violated the Open Meetings Act by failing to include the times and places of meetings in its notice of annual meetings as required by Rhode Island General Laws § 42-46-6(a). The District remedied its own violation by promptly revising the notice. VIOLATION FOUND.
Issued March 12, 2004.

OM 04-03, Cross v. Town of Exeter
The Exeter Town Council did not violate the Open Meetings Act when the Council President requested the resignation of an employee. Although Council members separately and individually spoke with the President about the employee's performance, the Open Meetings Act did not apply to any discussions that took place.
Issued March 15, 2004.

OM 04-04, McCormick v. Cranston Public Facilities Management Foundation
The Cranston Public Facilities Management Foundation violated the Open Meetings Act because notice was not properly posted for a meeting during which a quorum discussed matters within the Foundation's control. The Foundation's contention that the Open Meetings Act did not apply because no actions were taken during the meeting had no basis in the law. VIOLATION FOUND.
Issued March 18, 2004.

OM 04-05, Dale v. Lime Rock Fire District
The Lime Rock Fire District violated the Open Meetings Act at its December 17, 2002 meeting by holding a meeting on the second floor of the fire station, which was not accessible to the disabled. The OMA, under Rhode Island General Laws § 42-46-13 (c) states that "...all meetings required to be open to the public...[be] held in accessible facilities." The actions taken at the meeting in question were re-approved at a subsequent meeting that provided accessibility to the disabled. VIOLATION FOUND.
Issued March 23, 2004.

OM 04-06, Perry v. Coventry Fire District
The Coventry Fire District did not violate the Open Meetings Act when its Board of Engineers convened in closed session on October 28, 2003 and allowed commissioners not on the Board to attend that closed session. The Open Meetings Act does not prohibit interested parties from attending closed sessions as long as its actions do not amount to permitting and excluding members of the public in a way that would circumvent the spirit or requirements of the Open Meeting Act.
Issued March 25, 2004.

OM 04-07, Sposato v. Ashaway Fire District

The Ashaway Fire District violated the Open Meetings Act at its November 21, 2003 meeting by failing to provide advance notice, in writing, to a person whose job performance would be discussed in closed session, and by failing to indicate the proposed closed session in the supplemental notice of the meeting. VIOLATION FOUND.
Issued March 25, 2004.

OM 04-08, Garon v. Cumberland Fire District

The Cumberland Fire District violated the Open Meetings Act at its September 19, 2003 meeting by convening a meeting of its Personnel Subcommittee without public notice. Because the Subcommittee consisted of three people, a meeting of two members constituted a quorum under the Open Meetings Act. VIOLATION FOUND.
Issued March 25, 2004.

OM 04-09, Cervasio v. Town of Foster

The Town of Foster did not violate the Open Meetings Act in the Town Council's appointment process. The Open Meetings Act does not require a public body to specifically identify all positions on which a vote is expected. The evidence did not support the conclusion that a quorum of the Council discussed and/or acted upon particular appointments outside a public meeting.
Issued March 25, 2004.

OM 04-10, Oliveira v. Independent Review Committee

The Independent Review Committee appointed by the Governor to investigate the Narragansett Indian Smoke Shop raid violated the Open Meetings Act by failing to follow the requirements of the Act. A group of individuals appointed to perform a task under a public official's jurisdiction is bound by the provisions of the Open Meetings Act. The Committee was requested by the Attorney General to complete, within 60 days of the finding, minutes for each of its meetings, including closed sessions, and containing a record of all votes taken by the Committee. VIOLATION FOUND.
Issued March 26, 2004.

OM 04-11, Spiratos Family Limited Partnership v. Town of Middletown Beach Commission

The Town of Middletown's Beach Commission's Right of Way Working Committee was not subject to the Open Meetings Act. Because the Committee did not have a fixed membership and any number of people could attend meetings, it would be impossible to determine if a quorum were ever present. The Town's Beach Commission, however, did violate the Open Meetings Act because a quorum met on October 24, 2002 without posting public notice. VIOLATION FOUND.
Issued March 26, 2004.

OM 04-12, Parks v. Cumberland School Department

The Cumberland School Committee did not violate the Open Meetings Act by failing to post a notice that its Committee members would hold a social gathering with student government leaders. The gathering was not a meeting of the Committee, as defined under the Open Meetings Act. The School Committee did, however, violate the Open Meetings Act by failing to provide, upon request, minutes of its meeting of April 3, 2001.
Issued March 31, 2004.

OM 04-13, Powers v. Barrington Town Council

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

Issued May 6, 2004.

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

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

Issued May 12, 2004.

OM 04-15, Conley v. Bristol School Department

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

Issued May 27, 2004.

OM 04-16, Hobson v. Coventry Town Council

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

Issued June 30, 2004.

OM 04-17, McNamara v. R.I. Airport Corporation

Complaint filed that Rhode Island Airport Corporation violated the Open Meetings Act by posting one of its notices in a location inaccessible to the public, specifically, in a secured location at T.F. Green airport where a fee had to be paid to park. Since the Open Meetings Act requires a public body to post one of its notices at the principal office of the public body, and since location was accessible to the public, posting did not violate the Open Meetings Act.

Issued June 30, 2004.

OPEN MEETINGS ACT ADVISORY OPINIONS - 2004

ADV OM 04-01, In re South Kingstown School Committee
Advisory opinion concerning the use of e-mail amongst School Committee members. School Committee advised to avoid situations that could implicate a "rolling" quorum of the School Committee.
Issued March 5, 2004.

ADV OM 04-02, In re East Greenwich School Committee
A subcommittee appointed by the East Greenwich School Committee that consists of a quorum of the School Committee does not have to post its meetings as a School Committee meeting, but must only post as a meeting of the subcommittee. Subcommittee must take care that stated purpose of meeting is appropriate for the subcommittee only and does not stray into School Committee matters.
Issued March 26, 2004.

ADV OM 04-03, In re Greater Providence-Warwick Convention and Visitors' Bureau
Visitors' Bureau not a public body for purposes of the Open Meetings Act because the enabling statute provides that the Bureau has a distinct legal existence from the state and does not constitute a department of state government. See R.I. Gen. Laws § 42-63.1-11(a).
Issued April 14, 2004.

ADV OM 04-04, In re Cranston City Council
A series of one on one discussions with individual council members conferring with an outside consultant will not violate the Open Meetings Act in the specific facts proposed because council members will not be having a collective discussion amongst themselves, nor avoiding the Open Meetings Act requirements through a "rolling" quorum. Discussion of consultant study of police and fire departments is not appropriate for executive session.
Issued April 16, 2004.

ADV OM 04-05, In re Portsmouth School Committee
The Open Meetings Act does not require that an entity be certified as the bargaining representative by the Rhode Island Labor Relations Board in order to convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) for collective bargaining. The collective bargaining exception requires that the executive session concern a representative for a group of employees, rather than an individual(s) who represents their own interest.
Issued April 30, 2004

ADV OM 04-06, In re Woonsocket School Committee
The Open Meetings Act permits discussion of the Superintendent's contract in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) anytime the discussion concerns job performance, character, or physical or mental health, not only when in doubt. Notice that School Committee will seek to convene into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) for "Job Performance/Superintendent's Contract" was appropriate.
Issued June 1, 2004.

OPEN MEETINGS ACT FINDINGS

CUMULATIVE INDEX
(1993 - 2004)

ACQUISITION OR LEASE OF REAL PROPERTY (§ 42-46-5(a)(5))

U93-44
OM94-12
OM95-22
OM96-07
OM97-04
OM99-17
OM99-26
ADV OM00-04
OM02-13

ADVERTISEMENT OF MEETINGS / NEWSPAPER ADVERTISEMENT

OM95-04
OM95-09
OM95-15
OM96-06
OM97-16
OM97-16B
OM98-03
OM98-20
OM98-23
OM99-02
OM00-20
OM00-28
OM01-04
OM02-07

AGENDA AMENDMENTS (§ 42-46-6(b))

U93-02
U93-03
U93-45
OM95-25
OM96-07
OM96-08
OM96-33
OM98-24
OM99-36
OM03-01

ANNUAL MEETINGS

OM03-06

APPROVAL OF MINUTES

OM96-28

BIDS, PUBLIC

OM94-03

BURDEN OF PROOF

OM00-22

BUSINESS TO BE DISCUSSED, STATEMENT OF

OM96-04
OM96-01
OM96-02
OM96-03
OM96-04
OM96-08
OM98-02
OM98-12
OM98-17
OM98-20
OM98-23
OM98-24
OM00-27
OM01-04
OM01-05
OM02-05

OM96-27
OM96-28
OM96-33
OM97-01
OM97-01
OM97-04
OM97-11
OM97-13
OM97-16
OM97-17
OM97-28
OM98-31
OM98-34
OM99-01
OM99-02
OM99-06
OM99-12
OM99-36
OM00-06
OM00-18
OM00-19
OM00-26

CLOSED SESSION-METHOD TO CONVENE (§§ 42-46-2(b),42-46-4)

U93-20
U93-71
OM94-18
OM95-02
OM95-30B
OM96-16
OM96-23
OM96-27
OM96-28
OM96-34
OM97-01
OM97-02
OM97-04
OM97-07
OM97-11
OM97-19
OM98-06
OM98-12
OM98-17
OM98-30
OM99-02
OM99-32
OM02-05

CLOSED SESSIONS - NON-MEMBERS ATTENDING

U93-31
OM94-26
OM95-01
OM96-13
OM96-32
OM97-27
OM00-21
ADV OM01-02

COLLECTIVE BARGAINING (§ 42-46-(5)(a)(2)&(9))

U93-52
OM94-27
OM94-12-13
OM95-06
OM95-11
OM95-30A
OM96-19
OM96-22
OM96-27
OM00-03
ADV OM00-06
ADV OM02-01

U93-53
OM94-09
OM94-16
OM95-06
OM95-12
OM95-13
OM95-16
OM95-30A
Official OM96-01
OM96-25
OM96-33
OM97-06
OM97-15
OM97-19
OM99-18
OM99-23
OM00-10
OM00-21
OM01-01

LOCAL RULES OR PROCEDURES

U93-45
U93-52
U93-56
OM94-25
OM96-11
OM96-37

MEETINGS - WHAT CONSTITUTES (§ 42-46-2(a))

93-06-01
U93-08
U93-49
U93-62
U93-64
OM94-06
OM94-10
OM94-13
OM94-14
OM95-18
OM96-34
OM96-36
OM97-03
OM97-08
OM97-09
OM97-14
OM98-32
OM99-05
OM99-09
OM99-14
OM99-20
OM99-27
OM99-33
ADV OM99-01
ADV OM99-04
ADV OM99-05
ADV OM99-06
ADV OM99-08
ADV OM99-11
OM00-11
OM00-15
ADV OM00-03
OM00-23
OM00-29
ADV OM01-01
OM01-07
OM01-08
OM01-09
OM02-06
OM02-08
OM02-10

MEETINGS - TIME FOR SCHEDULING/ CANCELLING MEETINGS

U93-23
OM98-01
ADV 99-07

MINUTES (§ 42-46-7)

U93-20
OM94-02
OM94-11
OM97-24
OM97-25
OM98-29
OM02-18
OM02-20
OM03-01

OM94-24
OM95-02
OM95-03
OM95-11
OM95-25
Official OM96-03
Official OM96-04
OM96-03
OM96-06
OM96-09
OM96-29
OM96-30
OM96-33
Official OM97-01
OM97-08
OM97-10
OM97-16
OM99-12
OM99-13
OM99-17
OM99-22
OM99-25
OM99-39
OM00-02
OM00-07
OM00-08
OM00-12
OM00-19
OM00-24
OM01-04
OM02-05
OM02-09
OM02-11
OM02-14
OM03-05
OM03-07
OM03-08

NOTICE REQUIREMENTS (§ 42-46-6)

U93-01
U93-03
U93-20
U93-61
U93-71
OM94-07
OM94-20
OM94-21
OM94-24
OM95-02
OM95-03
OM95-05
OM95-10
OM95-11
OM95-15
OM95-16
OM95-19
OM95-21(2)
OM95-25
Official OM96-02
Official OM96-03
Official OM96-04
OM96-02
OM96-03
OM96-04
OM96-06
OM96-27
OM96-30
OM96-34
OM97-01
OM97-02
OM97-05
OM97-10
OM97-13
OM97-16
OM97-25
OM97-27
OM98-03
OM98-23
OM98-26
OM98-26B
OM98-31
OM99-07
OM99-10
OM99-13
OM99-23
OM99-28
OM99-29
OM99-30
OM00-07
OM00-17
OM00-18
OM00-25
OM02-05
OM02-15
OM02-21

PENDING COMPLAINT

OM97-21
OM97-22

PERSONNEL (§ 42-46-5(a)(1))

93-05-10
OM94-01
OM94-04
OM96-35
OM97-01
OM97-02
ADV OM02-01
OM03-03

OM94-05
OM94-23
OM95-26
OM95-27
OM96-03
OM96-05
OM96-13
OM96-14
OM96-17
OM96-21
OM96-22
OM96-23
OM96-25
OM96-27
OM96-33
OM96-34
OM97-05
OM97-11
OM97-20
OM98-17
OM99-03
OM99-06
OM99-08
OM99-11
OM99-19
ADV OM99-14
OM00-07
OM00-09
OM00-14
OM00-16
OM01-06
OM02-05

POLITICAL CAUCUS EXCEPTION (§ 42-46-2(c))

U93-07
U93-41
U93-57
OM94-10
OM96-24
OM97-18
ADV OM00-02

"PUBLIC BODY" - WHAT CONSTITUTES (§ 42-46-2(c))

U93-43
OM94-17
OM94-22
OM95-14
OM95-14B
OM95-31
Official OM96-03
OM96-04
OM96-06
OM96-18
OM96-24
OM96-36
OM97-05
OM97-09
OM97-16
OM97-25
OM98-05
OM98-07
OM98-10
OM98-14
OM98-25
OM98-28
OM98-33
OM99-04
OM99-15
OM99-21
ADV OM99-10
ADV OM99-13
ADV OM00-01
OM01-02
OM02-17
OM02-25
ADV OM03-01

PUBLIC COMMENTS

U93-53
U93-56
OM96-20
OM97-12
OM97-23
OM98-34
OM02-12
OM02-17

OM96-28
Official OM97-01
OM97-07
OM99-19
OM99-35
OM03-07 (litigation)

VOTES IN CLOSED SESSION / OPEN SESSION

OM95-22
OM95-23
OM96-21
OM97-07
OM98-17
OM99-07
ADV OM99-09
ADV OM99-12
OM02-05

Updated: January 12, 2004

CHAPTER 46

OPEN MEETINGS

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.

History of Section.
G.L. 1956, § 42-46-1; P.L. 1976, ch. 330, § 2.

42-46-2. Definitions. — As used in this chapter:

(a) "Meeting" means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term "meeting" shall expressly include, without limiting the generality of the foregoing, so-called "workshop," "working," or "work" sessions.

(b) "Open call" means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of § 42-46-5 is being involved.

(c) "Public body" means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, and shall include all authorities defined in § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.

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

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

History of Section.
G.L. 1956, § 42-46-2; P.L. 1976, ch. 330, § 2; P.L. 1982, ch. 352, § 1; P.L. 1984, ch. 372, § 1; P.L. 1995, ch. 297, § 1; P.L. 1998, ch. 379, § 1.

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.

History of Section.
G.L. 1956, § 42-46-3; P.L. 1976, ch. 330, § 2.

Reenactments. The 1984 Reenactment (P.L. 1984, ch. 81, § 1) deleted "of this chapter" following "§§ 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).

History of Section.
G.L. 1956, § 42-46-4; P.L. 1976, ch. 330, § 2; P.L. 1988, ch. 84, § 29; P.L. 1988, ch. 659, § 1; P.L. 1990, ch. 201, § 1; P.L. 1998, ch. 379, § 1.

42-46-5. Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct. — (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History of Section.
G.L. 1956, § 42-46-5; P.L. 1976, ch. 330, § 2; P.L. 1982, ch. 352, § 1; P.L. 1988, ch. 659, § 1; P.L. 1995, ch. 265, § 1; P.L. 1998, ch. 379, § 1; P.L. 2000, ch. 330, § 1; P.L. 2000, ch. 463, § 1.

Compiler's Notes. P.L. 2000, ch. 330, § 1, and P.L. 2000, ch. 463, § 1 enacted identical amendments to this section.

42-46-6. Notice. — (a) All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the secretary of state at the beginning of each calendar year in accordance with subsection (e).

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. Such additional items shall be for informational purposes only and may not be voted on except where necessary to

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

(c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (e); provided, that in the case of school committees the required public notice shall be published in a newspaper of general circulation in the school district under the committee's jurisdiction; however, ad hoc committees, 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 (e) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

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

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

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

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

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

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

(e) All notices required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in

accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of notices with the secretary of state shall take effect one (1) year after this subsection takes effect.

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

History of Section.

G.L. 1956, § 42-46-6; P.L. 1976, ch. 330, § 2; P.L. 1981, ch. 182, § 1; P.L. 1984, ch. 372, § 1; P.L. 1988, ch. 659, § 1; P.L. 1998, ch. 379, § 1; P.L. 2001, ch. 360, § 1; P.L. 2003, ch. 305, § 1; P.L. 2003, ch. 362, § 1.

Compiler's Notes. In 1998, the compiler deleted a comma following "include" in the second sentence of subsection (b).

In 2001, the compiler substituted "that notice" for "such notice" in subdivision (d)(4).

P.L. 2003, ch. 305, § 1 and P.L. 2003, ch. 362, § 1 enacted identical amendments to this section.

NOTES TO DECISIONS

1. Good Faith.

Although the members of a school committee and a school superintendent conducted a meeting without full newspaper notification as required by this section in that their advertisement referred to a "work session" but did not contain an agenda, and at the meeting they voted to opt out of the early retirement program, since they did not act willfully or in bad faith since they did not attempt to keep the meeting secret nor to avoid meeting with those most affected by the retirement program, their action at the meeting was valid and should not have been declared null and void. Edwards v. State, 677 A.2d 1347 (R.I. 1996).

42-46-7. Minutes. — (a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:

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

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

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

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

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

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

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

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

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

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

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

42-46-8. Remedies available to aggrieved persons or entities. — (a) Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.

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

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

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

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

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

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

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

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

History of Section.
P.L. 1978, ch. 146, § 2; P.L. 1981, ch. 279, § 1; P.L. 1984, ch. 372, § 1; P.L. 1985, ch. 373, § 1; P.L. 1988, ch. 659, § 1; P.L. 1998, ch. 379, § 1.

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.

History of Section.
P.L. 1976, ch. 330, § 2; P.L. 1977, ch. 111, § 1.

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.

History of Section.
G.L. 1956, § 42-46-10; P.L. 1976, ch. 330, § 2.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "the decision" for "such decision" near the middle of the section; and made a minor punctuation change.

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.

History of Section.
P.L. 1988, ch. 659, § 2.

Reenactments. The 1993 Reenactment (P.L. 1993, ch. 422, § 1) substituted "Every year" for "Each and every year" at the beginning of the section.

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.

History of Section.
P.L. 1988, ch. 659, § 2.

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 the handicapped for review and approval. The governor's commission on the handicapped 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.

History of Section.
P.L. 1989, ch. 487, § 1.

Reenactments. The 1993 Reenactment (P.L. 1993, ch. 422, § 1) made stylistic, punctuation, and capitalization changes throughout the section; corrected a typographical error in the word "insurer" in subsection (a), which change was first made by the compiler in 1989; and corrected typographical errors in the words "handicapped" and "insuring" in subsection (b), which corrections were first made by the compiler in 1989.

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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.

History of Section.
P.L. 1998, ch. 379, § 2.

RULES AND REGULATIONS ADOPTED BY THE SECRETARY OF STATE PURSUANT TO TITLE 42, CHAPTER 46 OF THE RHODE ISLAND GENERAL LAWS ENTITLED "ELECTRONIC FILING OF MEETING MINUTES AND NOTICES - OPEN MEETINGS "

Rule 1. Purpose

These rules and regulations are drafted to ensure that **Public Bodies** are in compliance with the changes made to Rhode Island General Laws 42-46-6 and 42-46-7 requiring electronic filing of meeting notices and meeting minutes. This change was made to create a centralized electronic location for the public to retrieve meeting information at both the state and local levels.

Rule 2. Authority

The **Secretary of State** has promulgated the within rules and regulations relating to open meetings pursuant to and in accordance with the provisions of the **Open Meetings Law**. Said rules and regulations are established pursuant to the **Open Meetings Law** and are available for public inspection online at www.state.ri.us/cpi or at the Office of the Secretary of State, Civics and Public Information Division, State House, Room 38, Providence, Rhode Island, 02903.

Rule 3. Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the **Secretary of State** to effectuate the purposes of state law, goals, and policies.

Rule 4. Definitions

For the purpose of these rules and regulations the following terms will be defined as:

1. **"Annual Notice"** means pursuant to Rhode Island General Law 42-46-6 the notice of regularly scheduled meetings filed annually with the **Secretary of State**.

2. **"Filer"** means the individual or individuals designated by a **Public Body** to be the person or persons responsible for filing meeting notices or meeting notices and minutes with the **Secretary of State**.

3. **"Filing Coordinator"** means the person assigned by the **Overseeing Body** to:
    1. Maintain an accurate list of all **Public Bodies** and public contact information.

2. Identify the individual **Filers** designated by each **Public Body**.

4. **"Open Meetings Law"** means Rhode Island General Law 42-46, as amended.

5. **"Overseeing Body"** means the agency, municipality or quasi-public corporation which includes all **Public Bodies** that fall under that particular agency, municipality or quasi-public corporation, (i.e. the City of Providence is the Overseeing Body for the Providence Zoning Board, the Department of Administration is the Overseeing Body for the Rhode Island Library Board). Please note that an **Overseeing Body** is a **Public Body** with regards to filing meetings minutes and notices and in some cases a **Public Body** may be an **Overseeing Body**.

6. **"Public Body"** As defined by Rhode Island General Law 42-46-2(c), this is generally any department, agency, commission, committee, board, council, bureau or authority or any subdivision thereof of state or municipal government, and includes all authorities defined in Rhode Island General Law 42-35-1(b). 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 is used to circumvent the requirements of Rhode Island General Law 42-46-6 and 7.

7. **"Public Contact Information"** is the information for a **Public Body** provided by the **Filing Coordinator** to the **Secretary of State** that allows the public to contact the **Public Body**. The contact person may or may not be the **Filer** for that **Public Body**.

8. **"Secretary of State"** means the Office of the Secretary of State.

Rule 5A. Meeting notice requirements

1. All **Public Bodies** must file meeting notices and minutes pursuant to the **Open Meetings Law.**
2. **a.** Pursuant to the **Open Meetings Law** all **Public Bodies** shall file an **Annual Notice** at the beginning of each calendar year with the **Secretary of State** electronically.
   b. Supplemental written public notices and all addenda and amendments must be filed with the **Secretary of State** electronically at least forty-eight (48) hours in advance of the meeting.
   c. If an emergency meeting is called, a meeting notice and agenda shall be filed with the **Secretary of State** as soon as practicable.

These filings shall include:

3. **Annual notice of regularly scheduled meetings**
For the purposes of these rules and regulations the following information is required in addition to the requirements of Rhode Island General Laws 42-46-6(a):
   a. Overseeing Body name
   b. Public Body name
   c. Public Contact Information

4. Supplemental written public notice

For the purposes of these rules and regulations the following information is required in addition to the requirements of Rhode Island General Laws 42-46-6(b):

a. Overseeing Body name
b. Public Body name
c. Public Contact Information
d. Posting date
e. Meeting date
f. Meeting time
g. Meeting Location

5. Emergency meeting notices

For the purposes of these rules and regulations the following information is required in addition to the requirements of Rhode Island General Laws 42-46-6(c):

a. Overseeing Body name
b. Public Body name
c. Public Contact Information
d. Posting date
e. Meeting date
f. Meeting time
g. Meeting location

Rule 5B. Meeting minutes requirements

1. All **Public Bodies** as defined by the Rhode Island General Laws 42-46-7 must file meeting minutes in compliance with the **Open Meetings Law**.

2. All **Public Bodies** required under Rhode Island General Law 42-46-7 shall electronically file meeting minutes and all addenda and amendments with the **Secretary of State**.

3. The time frame in which minutes shall be filed will be pursuant to the **Open Meetings Law**.

These filings shall include:

4. Meeting minutes

For the purposes of these rules and regulations the following information is required in addition to the requirements of Rhode Island General Laws 42-46-7(a):

a. Overseeing Body name
b. Public Body name
c. Public Contact Information
d. Meeting date
e. Meeting time

5. Emergency Meeting minutes

For the purposes of these rules and regulations the following information is required in addition to the requirements of Rhode Island General Laws 42-46-7(a):

a. Overseeing Body name
b. Public Body name
c. Public Contact Information
d. Meeting date
e. Meeting time

Rule 6. Designation of Filing Coordinator

1. The head of each **Overseeing Body** (i.e. director of state agency, city or town mayor or council president where no mayor exists) is responsible for designating a person to be the **Filing Coordinator** for that **Overseeing Body,** who will identify a **Filer(s)** for each **Public Body** that falls under that particular **Overseeing Body**.
2. The **Filing Coordinator** will be responsible for identifying **Filers** for all **Public Bodies**, which fall under each **Overseeing Body**. This **Filing Coordinator** shall serve as a liaison between the **Secretary of State** and each **Filer**.
3. The designation of the official **Filing Coordinator** must be submitted in writing on the *"Open Government Filing Coordinator Designation Form"* issued by the **Secretary of State**. This form must be resubmitted within thirty (30) days of a change in the designation of the **Filing Coordinator.** This form will be available online at the **Secretary of State's** website (www.state.ri.us). The designation must include the full name, mailing address, phone number and email address for the **Filing Coordinator.** The designation will be complete upon the confirmation of a valid email address by the **Secretary of State.** This information will need to be updated within ten (10) days of a change in email address.
4. The **Filing Coordinator** must provide a complete listing of all **Public Bodies** within the corresponding **Overseeing Body**. The **Filing Coordinator** shall provide the following information for each **Public Body** (which shall be updated within 30 days of a change):
   a. Public Body name
   b. Public contact name
   c. Email address of the public contact, if applicable
   d. Phone number of public contact
   e. Mailing address of **Public Body**
   f. Web address of **Public Body**, if applicable
   g. Authority under which the **Public Body** was created
5. An original of the *"Open Government Filing Coordinator Designation Form"*, printed on official letterhead, must be sent by July 9, 2004 and July 1 of every year thereafter, and within thirty (30) days of the creation of an **Overseeing Body**, to the Office of the Secretary of State, Civics and Public Information Division, State House, Room 38, Providence, Rhode Island 02903.
6. In the event that the designation of the **Filing Coordinator** cannot be completed by the July 9, 2004 deadline, a designation of an Interim **Filing Coordinator** will be accepted until the official ratification of **Filing Coordinator** can be completed by the head of the **Overseeing Body**, but a

Filing Coordinator shall be officially designated no later than October 8, 2004. The Secretary of State will provide an interim Filing Coordinator form.

7. It is the responsibility of the **Overseeing Body** to ensure the **Filing Coordinator's** information is up to date and accurate.
8. Upon the creation of a new **Public Body**, it is the responsibility of the **Filing Coordinator** to notify the **Secretary of State** and provide all pertinent contact information. Notification must be done through a form issued by the **Secretary of State**.

Rule 7. Web account setup for Filing Coordinator

1. Upon receipt of the original "*Open Government Filing Coordinator Designation Form*", the **Secretary of State** will issue to the newly designated **Filing Coordinator** an electronic message containing the username and initial password to enter the system. This initial message will also include detailed instructions on how to set up the **Filing Coordinator's** account and how to establish multiple designations for meeting notice and minutes **Filers**.
2. The **Filing Coordinator** will be responsible for initializing his or her own web account with the **Secretary of State** Open Meetings Website to facilitate the designation of **Filers** for each **Public Body**.

Rule 8. Designation of meeting notice and minutes Filer

1. Once the **Filing Coordinator** sets up accounts through the Open Meetings Website designating **Filer(s)** for each **Public Body**, the **Secretary of State** will be able to accept the submission of filings in the format provided for in the **Secretary of State** Open Meetings Website.
2. The **Filing Coordinator** must provide information for each **Public Body** (Rule 6.4) and its **Filers**. It is the responsibility of the **Filing Coordinator** to ensure that **Filers'** user information is up to date and accurate.
3. Upon the creation of a new **Public Body**, it is the responsibility of the **Filing Coordinator** for the corresponding **Overseeing Body** to identify a **Filer** through the **Secretary of State** Open Meetings Website and provide contact information for that person within thirty (30) days. The Filing Coordinator shall update the **Filer** information in the event there is a change in the **Filer**.

Rule 9. Filing format

Meeting notices and minutes must be filed in Portable Document Format (PDF) through the **Secretary of State** Open Meetings Website or as text submitted as provided for in the **Secretary of State** Open Meetings Website. Only file formats and mechanisms of electronic submission specified by these Rules and Regulations and the **Secretary of State** Open Meetings Website will be accepted.

Rule 10. Technical requirements

1. Designated **Filers** must have access to email and be able to access the **Secretary of State** Open Meetings Website through a web browser. In order to comply with the filing format, the **Filer** must have the ability to submit notices and minutes in the specified filing format through the **Secretary of State** Open Meetings Website.
2. The **Filer** must fill out all electronic fields as provided in the **Secretary of State** Open Meetings Website in order to submit meeting notices or meeting minutes to the Secretary of State electronically.

3. The **Filing Coordinator** shall provide the information required by Rule 6.4 for each **Public Body** in an electronic format indicated by the **Secretary of State**.

Rule 11. Accepting filings
The **Secretary of State** will start accepting the electronic filing of meeting notices and minutes beginning on July 17, 2004. All filings must comply with procedures established by the **Secretary of State** Open Meetings Website.

Rule 12. Proof of filing
Upon the successful electronic submission of a meeting notice or meeting minutes, the **Filer** will receive acknowledgement in the form of an electronic confirmation message from the **Secretary of State** indicating that the filing was successfully transmitted through the **Secretary of State** Open Meetings Website. In the absence of such electronic confirmation message, it is the responsibility of the **Filer** to verify that the **Secretary of State** has successfully received the notice or minutes. The electronic confirmation message is the **Filer's** record that the notice or minutes were filed with the **Secretary of State**.

Rule 13. Exceptions
All **Public Bodies**, with the exception of municipalities and **Public Bodies** whose responsibilities are solely advisory in nature, shall file meeting minutes with the **Secretary of State** electronically.

Rule 14. Severability
If any provision of these Rules and Regulations, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of these Rules and Regulations shall not be affected thereby.

Rule 15. Effective Date

These Rules and Regulations shall take effect twenty (20) days after filing with the **Secretary of State**.

The foregoing Rules and Regulations - "Electronic Filing of Meeting Minutes and Notices – Open Meetings", after due notice, are hereby adopted and filed with the **Secretary of State** on this 25th day of June, 2004 to become effective twenty (20) days thereafter, in accordance with the **Open Meetings Law**.

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Matthew A. Brown
Secretary of State

Notice Given on: May 17, 2004
Public Hearing held: May 26, 2004
Filing Date: June 25, 2004
Effective Date: July 17, 2004