8-1-2003

5th Annual Open Government Summit: Access to Public Records Act & Open Meetings Act, 2003

Department of Attorney General, State of Rhode Island

Department of Attorney General

Patrick C. Lynch, Attorney General

5TH Annual Open Government Summit

Roger Williams University
Ralph R. Papitto School of Law
Friday, August 1, 2003

Co-Sponsored by the Roger Williams University Law Alumni Association

Index

Section I – The Access to Public Records Act

Section II – The Open Meetings Act

State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400
TDD (401) 453-0410

Patrick C. Lynch, Attorney General

August 1, 2003

Dear Open Government Summit Attendee:

I would like to take this opportunity to thank you for attending the 5th 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 1996 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 the Department's Open Government attorney, Special Assistant Attorney General Joe Gaeta, at 274-4400 ext. 2425.

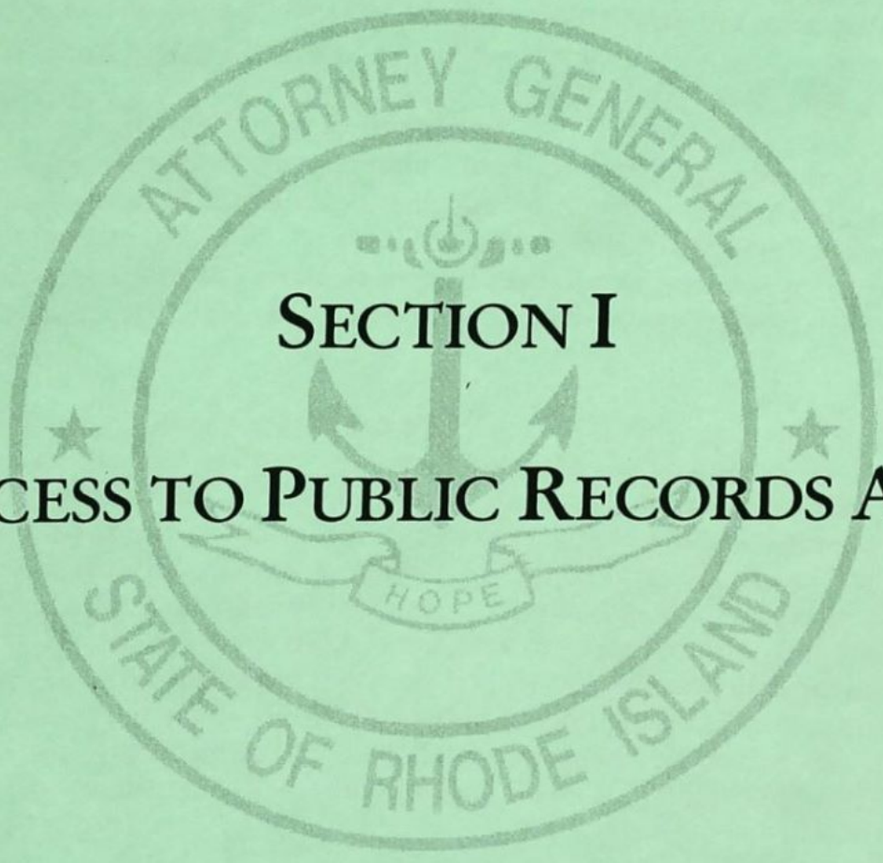
Very truly yours,

Patrick C. Lynch
Attorney General

OPEN GOVERNMENT SUMMIT
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW
AUGUST 1, 2003
9:00 A.M. – 12:20 P.M.

8:30 – 9:00 a.m.	Check-in/Distribution of Material
9:00 – 9:05 a.m.	Welcoming by David A. Logan, Dean, Roger Williams University Ralph R. Papitto School of Law
9:05 – 9:15 a.m.	Opening Remarks by Patrick C. Lynch, Attorney General *The Philosophy and Mission of the Department of Attorney General.*
9:15 – 9:55 a.m.	Access to Public Records Act Presentation by 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 discussed and a 2002-2003 case law/legislative update will be provided. Frequent trouble areas and advanced planning tips will also be reviewed.*
9:55 – 10:35 a.m.	Open Meetings Act Presentation by Joe Gaeta, Special Assistant Attorney General *Presentation will highlight how to determine when the Open Meetings Act applies and when an executive session is appropriate. Other statutory requirements, such as posting notice, amending school committee and non-school committee agendas, and maintaining minutes will be discussed. Frequent trouble areas and a 2002-2003 case law/legislative update will also be reviewed.*
10:35 – 11:15 a.m.	Access to Public Records Act and Open Meetings Act Questions and Answers
11:15 – 11:30 a.m.	Break
11:30 – 12:20 p.m.	Ethics Commission Presentation by Jason Gramitt, Rhode Island Ethics Commission *Identifying and avoiding conflicts of interests under the Code of Ethics, guidelines for filing financial disclosure forms, and your questions.*

This Program is co-sponsored by the Roger Williams University Law Alumni Association and has been certified for 3.5 Continuing Legal Education Credits.



SECTION I

ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORD ACT FINDINGS-2002

PR 02-01 **Orabona v. Public Utilities Motor Carrier Division**

The Department of Attorney General only has jurisdiction to investigate an Access to Public Records Act complaint after a person or entity requests a particular record and has been denied access to that record. Because the Department of Attorney General has not been supplied with the request made by the complainant, and since the complainant has presented the Department of Attorney General with three different representations of what was requested, this Department cannot fully, accurately, and objectively review the public body's actions to determine whether or not it complied with the Access to Public Records Act. Issued March 21, 2002.

PR 02-02 **Casey v. Johnston Police Department**

Police Department did not violate the Access to Public Records Act by denying access to records describing a suicide scene, in graphic detail, as well as other documents attendant to the suicide. Requested documents "could reasonably be expected to constitute an unwarranted invasion of personal privacy" to the family of the decedent. See R.I. Gen. Laws § 38-2-2(4)(i)(D)(c). Issued March 21, 2002.

PR 02-03 **Blanchard v. Glendale Fire District**

Although the Fire District provided some of the requested documents, the Fire District violated the Access to Public Records Act when it failed to provided in writing the specific reasons for denying access to other documents. Fire District also violated the Access to Public Records Act by failing to "indicate the procedures for appealing the denial." Pursuant to the Access to Public Records Act "[a]ny denial of the right to inspect or copy records...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." R.I. Gen. Laws § 38-2-7. VIOLATION FOUND. Issued March 21, 2002.

PR 02-04 **East Providence City Council v. Department of Labor and Training**

The Department of Labor and Training violated the Access to Public Records Act when it failed to respond to a November 14, 2001 and a January 11, 2002 request within the ten (10) business days mandated by R.I. Gen. Laws § 38-2-7. Department of Labor and Training's defense that complainant had failed to exhaust its administrative remedies by petitioning the public body's chief administrative officer is without merit since the Access to Public Records Act does not require a complainant to exhaust its remedies prior to filing a complaint with the Department of Attorney General. VIOLATION FOUND. Issued June 12, 2002.

PR 02-05 **Moriarty v. Middletown Police Department**

The Department of Attorney General has consistently stated that with respect to an Access to Public Records Act complaint filed with the Department of Attorney General, which is also pending before the Rhode Island Superior Court, the Department of Attorney General will not interfere with the judicial process when the Superior Court has full jurisdiction over such issues. Since complainant's Access to Public Records Act complaint is inextricably intertwined with a Superior Court lawsuit, it is inappropriate for the Department of Attorney General to interfere with the judicial process. Specifically, complainant's lawsuit states that "the records and their inaccuracy and disappearance will become an issue." Further, complainant seeks a court order that the Town "keep and maintain accurate tow logs and make them available to Plaintiff's inspection upon reasonable request." Issued June 27, 2002.

PR 02-06 **OPLARI v. Providence School Board**

School Board did not violate the Access to Public Records Act by failing to provide access to executive session minutes since the requested executive session minutes were sealed. See R.I. Gen. Laws § 38-2-2(4)(i)(J)(exempting "[a]ny minutes of a meeting of a public body which are not required to be disclosed pursuant to [the Open Meetings Act]"). Evidence demonstrates that other requested documents were provided. Issued July 3, 2002.

PR 02-07 **Faerber v. City of Newport**

City violated the Access to Public Records Act by failing to provide access to requested documents, or in the alternative, failing to provide a letter denying access to the requested documents, within ten (10) business days. See R.I. Gen. Laws § 38-2-7. VIOLATION FOUND. Issued July 3, 2002.

PR 02-08 **McGreavy v. Middletown Public Schools**

Public Schools violated the Access to Public Records Act by failing to provide access to requested documents, or in the alternative, failing to provide a letter denying access to the requested documents, within ten (10) business days. See R.I. Gen. Laws § 38-2-7. VIOLATION FOUND. Issued July 12, 2002.

PR 02-09 **Providence Journal v. Bristol County Water Authority**

Water Authority did not violate the Access to Public Records Act by failing to provide access to a list of its legal fees and a copy of legal invoices. Since R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) exempts from public disclosure "all records relating to a client/attorney relationship," the requested records were exempt from public disclosure, except for the total number of hours billed, the total amount of monies paid, and the identity of the attorney/firm to whom fees were paid. All other information was exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) and this Department's prior findings. Issued August 1, 2002.

PR 02-10 **Gorman v. Coventry (Anthony) Fire District**

Complaint filed that Fire District failed to respond to an Access to Public Records Act request within the ten (10) business days mandated by R.I. Gen. Laws § 38-2-7. Investigation revealed that Fire District failed to comply with the ten (10) business day response requirement and that the Fire District had been warned in Gorman v. Anthony (Coventry) Fire District, PR 00-06, that its failure to comply with the ten (10) business day response requirement in that case constituted a violation of the Access to Public Records Act, which may serve as evidence of a willful and knowing violation in any similar future circumstance. Since Fire District had been already warned to comply with R.I. Gen. Laws § 38-2-7, the Department of Attorney General considered the instant violation to constitute a willful and knowing violation. Lawsuit was filed and Consent Judgment entered for the Department of Attorney General resulting in a declaration that the Fire District willfully and knowingly violated the Access to Public Records Act, injunctive relief, and a $400.00 civil fine assessed personally against the Fire Chief. VIOLATION FOUND. LAWSUIT FILED. Issued August 19, 2002.

PR 02-11 **Naughton v. Rhode Island Economic Policy Council**

Representative Naughton made an Access to Public Records Act request seeking the 1999, 2000, and 2001 Economic Policy Council and Slater Center audits. After not receiving the 1999 and 2000 Economic Policy Council and Slater Center audits, Representative Naughton filed an Access to Public Records Act complaint. Based upon the evidence presented, the Department of Attorney General concluded that all documents requested that were maintained by the Economic Policy Council were provided in a timely manner. See R.I. Gen. Laws § 38-2-7 (ten business days). Nevertheless, the Economic Policy Council violated the Access to Public Records Act by failing to provide the specific reasons for denying access to the 1999 Slater Center audit report, i.e., the audit report did not exist. See R.I. Gen. Laws § 38-2-3(f)(no requirement to create documents not maintained). VIOLATION FOUND. Issued July 19, 2002.

PR 02-12 **Tierney v. Department of Environmental Management**

Records sought listing all employees at the Department of Environmental Management with account numbers and their position numbers as of a specific past date. The complainant was informed that because the Department of Environmental Management's personnel databases are constantly updated, the Department of Environmental Management could not provide the requested information as of a specific past date without creating a computer program to retrieve the requested information. The Department of Environmental Management estimated the cost at retrieving the requested electronic information to be $300.00 and this complaint ensued, alleging that the assessed estimate was "excessive and not reasonable." Investigation revealed that the requested information was not available in a hard copy format and that the requested records would be available only by writing a computer program. The requesting citizen was apprised of these measures, advised that the estimated actual cost for

providing the electronic records would be $300.00, and subsequently paid the estimated cost. Since the Access to Public Records Act allows a public body to charge the reasonable actual cost for providing access to electronic records, and since the evidence presented supports the actual cost assessed, there was no violation. Issued September 13, 2002.

PR 02-13 **Palazzo v. West Warwick Pension Board**

Access to Public Records Act complaint filed alleging that the Pension Board failed to provide access to billing invoices submitted by a law firm and failed to provide access to a contract entered into with the Town. The Pension Board did not violate the Access to Public Records Act by denying access to the legal bills since "all records relating to a client/attorney relationship" are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(i)(A)(I). The Department of Attorney General opined that only the total number of hours billed, the total amount of monies paid, and the identity of the attorney/firm to whom fees were paid represented public records. Pension Board nonetheless violated the Access to Public Records Act by failing to provide access to the contract within the ten (10) business days permitted by the Access to Public Records Act. See R.I. Gen. Laws § 38-2-7. The Pension Board did forward a copy of the contract to the complainant. VIOLATION FOUND. Issued September 13, 2002.

PR 02-14 **Greenwood v. Middletown Zoning Board**

Request made seeking access to the Middletown Zoning Board minutes and transcript from an August 25, 1992 meeting. Investigation revealed that no minutes were kept for Zoning Board meetings in 1992 and further investigation revealed a transcript of the 1992 public hearing was never ordered. Since the Open Meetings Act requires that "[a]ll public bodies shall keep written minutes of all their meetings" and since the Access to Public Records Act requires that "[e]ach public body shall make, keep, and maintain written or recorded minutes of all meetings," the Department of Attorney General concluded that the Zoning Board violated the Open Meetings Act and the Access to Public Records Act by failing to maintain minutes of its meeting in 1992. Since neither the Open Meetings Act nor the Access to Public Records Act required a public body to keep or maintain transcripts of its public meeting, the Zoning Board did not violate the Access to Public Records Act or the Open Meetings Act by failing to maintain copies of the transcript or by failing to provide access to records that did not exist. R.I. Gen. Laws § 38-2-3(f). VIOLATION FOUND. Issued September 13, 2002.

PR 02-15 **McGreavy v. Middletown Pubilc Schools**

Complainant alleged that the Middletown Public Schools violated the Access to Public Records Act by failing to respond to the request within the ten (10) business days required, failing to provide an estimate of the cost for search and retrieval prior to providing copies of the records, failing to indicate on its invoice that the first hour of search and retrieval was free, and for charging $45.00 for the cost of search and retrieval even though the requested records had already been

compiled as part of a previous third party Access to Public Records Act request. Records compiled for the instant Access to Public Records Act request differed from records requested as part of the referenced previous third party Access to Public Records Act request, and therefore, $45.00 charge for search and retrieval was found to be appropriate. Since there is no requirement that a public body state on its invoice that the first hour for search and retrieval was free of charge, and since evidence revealed that Middletown Public Schools did not assess a fee for the first hour of search and retrieval, no violation. Middletown Public Schools did violate the Access to Public Records Act by failing to provide documents in a timely manner and by failing to provide an estimate for the cost of search and retrieval prior to providing copies of the requested records. VIOLATION FOUND. Issued October 2, 2002.

PR 02-16 **DeWitt v. Department of Corrections**

Complaint filed by a former Department of Corrections correctional officer and current spouse of a maximum security inmate, requesting access to any and all reports, tapes, and information maintained by the Department of Corrections, Office of Inspection, concerning the requested individual. The Department of Attorney General reviewed in camera the requested documents and determined that public dissemination of these documents could disclose confidential informants, jeopardize the safety of Department of Correction personnel, and interfere with the Department of Correction's ability to conduct future investigations. In addition, the requested records were identifiable to an individual employee, and therefore, exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I)(exempting records identifiable to an individual employee). Issued October 8, 2002.

PR 02-17 **Kelly, Kelleher, Reilly & Simpson v. DEM**

Request seeking access to records maintained by the Department of Environmental Management concerning the 2000 Lobster Restoration Project, which was part of the Consent Decree and entered as settlement of the 1996 North Cape Oil Spill Disaster. Requested records had been provided to a Trustee and then forwarded to the Department of Environmental Management, Division of Enforcement, pursuant to allegations of civil and criminal misconduct. Additional documents were obtained by the Division of Enforcement pursuant to search warrants as part of an ongoing investigation into the Lobster Restoration Project. Since requested records were forwarded to the Department of Environmental Management Enforcement Division solely for investigative purposes, public dissemination of the requested records (which were not previously public) "could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings" and therefore were exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(i)(D)(a). Issued October 30, 2002.

ACCESS TO PUBLIC RECORDS ACT ADVISORY OPINIONS-2002

ADV PR 02-01 **In re Emergency 911 Uniform Telephone System**

Emergency 911 recorded telephone calls are exempt from public disclosure. See R.I. Gen. Laws § 39-21.1-4(2)("[a]ll telephone calls and telephone call transmissions received pursuant to [the 911 Emergency Telephone Number Act] and all tapes containing records of telephone calls shall remain confidential and used only for the purpose of handling emergency calls and for public safety purposes as may be need[ed] for the law enforcement, fire, medical, rescue or other emergency services.") Issued June 27, 2002.

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 Mr. Dubis'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.

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.

ACCESS TO PUBLIC RECORDS ACT FINDINGS

CUMULATIVE INDEX (1993-2003)

COURT RECORDS

PR97-10

CREATION OR COMPILATION OF DOCUMENT WHICH DOES NOT EXIST (NOT REQUIRED)

PR96-02
PR96-10
PR96-17
PR97-02
PR97-07
PR97-09
PR97-14
PR97-18
PR97-21
PR97-23
PR97-23B
PR98-02
PR98-08
PR98-22
PR98-25
PR99-12
PR99-14
PR99-15
PR99-18
PR99-19
PR00-03
PR00-05
PR00-10
PR00-12
PR00-13
PR00-21
PR00-22
PR00-24
PR00-27
PR02-11
PR03-01
PR03-12

CUSTODIAN

PR01-04

DRAFTS

PR97-20
PR98-13
PR99-07
PR99-08
PR01-03

EMPLOYEES

(See Personnel)

FINANCIAL INFORMATION (§ 38-2-2(4)(i)(B))

Bids — PR95-15

Budget Allocations — PR94-04, PR95-14

Sewer Assessments — PR96-03

Student Loans — PR95-12

INFORMATIONAL QUESTIONS

PR95-20
PR96-17
PR97-03

PR97-09
PR97-22
PR97-23
PR98-22
PR99-05
PR99-16
PR03-01

INVESTIGATORY/LAW ENFORCEMENT RECORDS (§ 38-2-2(4)(i)(D)&(P))

Accident Reports	PR98-05 PR98-07 PR98-10
Attorney General's	PR94-13 PR95-02
Arrest records	PR94-14 PR94-15 PR94-19 PR95-01 PR95-07 ADV PR99-02 ADV PR99-03 ADV PR00-03 ADV PR00-04 PR03-14
Capitol Police	PR95-17
Department of Corrections	PR95-19 PR97-01 PR02-16
Investigatory Records	PR98-26 PR99-01 PR99-03 PR00-08 ADV PR00-05 PR02-01 PR02-02
Fire Marshal	PR94-16 PR98-04
Civilian complaints v. police officers	PR94-22 ADV PR00-01 ADV PR01-02
Human Rights Commission	PR94-27
Mug shots	PR95-29

Updated: July 15, 2002

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.

(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.

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.

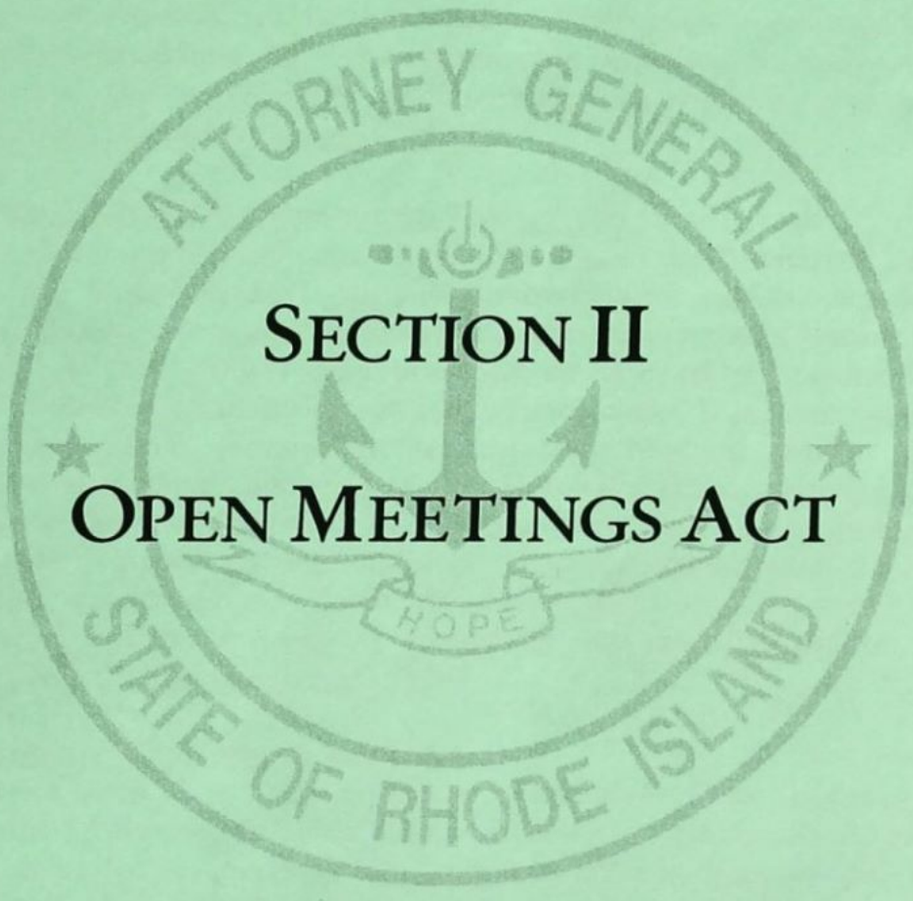
38-2-14. Information relating to settlement of legal claims. — Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

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 – 2002

OM 02-01 **Allen v. Charlestown Town Council**

Various Open Meetings Act allegations that Town Council convened in executive session to discuss the Town Administrator's job performance despite the Town Administrator's request that the discussion occur in open session. Since R.I. Gen. Laws § 42-46-5(a)(1) only provides an affected person the right to have a discussion in open session, and since the instant complaint was not filed by an affected person, complainant did not have legal standing to file a complaint. Other allegations concerned Town Council members engaging in discussions outside the public purview, filing its minutes in an untimely manner, failure to provide required information in its open session minutes, posting insufficient notice concerning the Town Council's intention to convene into executive session, and the propriety of convening into executive session. VIOLATION FOUND. Issued on January 7, 2002.

OM 02-02 **Chariho Times v. Charlestown Town Council**

Various Open Meetings Act allegations that Town Council convened in executive session to discuss the Town Administrator's job performance despite the Town Administrator's request that the discussion occur in open session. Since R.I. Gen. Laws § 42-46-5(a)(1) only provides an affected person the right to have a discussion in open session, and since the instant complaint was not filed by an affected person, complainant did not have legal standing to file a complaint. Other allegations concerned Town Council members engaging in discussions outside the public purview, filing its minutes in an untimely manner, failure to provide required information in its open session minutes, posting insufficient notice concerning the Town Council's intention to convene into executive session, and the propriety of convening into executive session. VIOLATION FOUND. Issued on January 7, 2002.

OM 02-03 **Johnson v. Charlestown Town Council**

Various Open Meetings Act allegations that Town Council convened in executive session to discuss the Town Administrator's job performance despite the Town Administrator's request that the discussion occur in open session. Since R.I. Gen. Laws § 42-46-5(a)(1) only provides an affected person the right to have a discussion in open session, and since the instant complaint was not filed by an affected person, complainant did not have legal standing to file a complaint. Other allegations concerned Town Council members engaging in discussions outside the public purview, filing its minutes in an untimely manner, failure to provide required information in its open session minutes, posting insufficient notice concerning the Town Council's intention to convene into executive session, and the propriety of convening into executive session. VIOLATION FOUND. Issued on January 7, 2002.

OM 02-04 **Mageau v. Charlestown Town Council**

Various Open Meetings Act allegations that Town Council convened in executive session to discuss the Town Administrator's job performance despite the Town Administrator's request that the discussion occur in open session. Since R.I. Gen. Laws § 42-46-5(a)(1) only provides an affected person the right to have a discussion in open session, and since the instant complaint was not filed by an affected person, complainant did not have legal standing to file a complaint. Other allegations concerned Town Council members engaging in discussions outside the public purview, filing its minutes in an untimely manner, failure to provide required information in its open session minutes, posting insufficient notice concerning the Town Council's intention to convene into executive session, and the propriety of convening into executive session. VIOLATION FOUND. Issued on January 7, 2002.

OM 02-05 **Smith v. Charlestown Town Council**

Various Open Meetings Act allegations that Town Council convened in executive session to discuss the Town Administrator's job performance despite the Town Administrator's request that the discussion occur in open session. Since R.I. Gen. Laws § 42-46-5(a)(1) only provides an affected person the right to have a discussion in open session, and since the instant complaint was not filed by an affected person, complainant did not have legal standing to file a complaint. Other allegations concerned Town Council members engaging in discussions outside the public purview, filing its minutes in an untimely manner, failure to provide required information in its open session minutes, posting insufficient notice concerning the Town Council's intention to convene into executive session, and the propriety of convening into executive session. VIOLATION FOUND. Issued on January 7, 2002.

OM 02-06 **Johnson & Wales v. Narragansett Bay Commission and Rhode Island Resource Recovery Corporation**

Evidence demonstrated that representatives of Rhode Island Resource Recovery Corporation and/or Narragansett Bay Commission did not collectively discuss or take any action upon any matter over which their respective public bodies had supervision, control, jurisdiction, or advisory power. Instead, evidence demonstrated that an August 20, 2001 hearing was an informational presentation by the respective public bodies and an opportunity for public comment. Accordingly, a "meeting," as contemplated by R.I. Gen. Laws § 42-46-2(a), did not convene. Issued on January 28, 2002.

OM 02-07 **Pitochelli v. Johnston Town Council**

Town Council did not violate the Open Meetings Act when its newspaper advertisement for a July 23, 2001 meeting advertised the incorrect location of its meeting and/or failed to specify the nature of the business to be discussed. Since the Open Meetings Act does not require a town council to publish public notice in a newspaper of general circulation, absent evidence of intentionally trying to mislead the public, a town council does not violate the Open Meetings Act when

its newspaper advertisement does not contain a statement specifying the nature of the business to be discussed or when its newspaper advertisement does not contain the correct location for a meeting. Town Council did violate the Open Meetings Act by failing to post two public notices, both of which contained a statement specifying the nature of the business to be discussed. VIOLATION FOUND. Issued March 20, 2002.

OM 02-08 **Parks v. Cumberland School Committee**

No evidence that a quorum of the Cumberland School Committee, or a quorum of the Financial Subcommittee, collectively discussed and/or acted upon any matter over which it had supervision, control, jurisdiction, or advisory power. Accordingly, a "meeting," as defined by R.I. Gen. Laws § 42-46-2(a), was not convened. Issued March 21, 2002.

OM 02-09 **Edson v. Woonsocket Harris Public Library Board of Trustees**

The Board violated the Open Meetings Act by failing to make its open session minutes available to the public at the office of the public body within thirty-five (35) days of a meeting or at the next regularly scheduled meeting, whichever is earlier. The Department of Attorney General is unable to address the allegations that the Board improperly convened into executive session because the statute of limitations for filing a complaint expired. VIOLATION FOUND. Issued March 22, 2002.

OM 02-10 **Langseth v. Buttonwoods Fire District**

Fire District did not violate the Open Meetings Act by failing to post notice for its annual meetings since these meetings did not involve a collective discussion of the Fire District and/or any action among the Fire District, but instead, was a meeting of all eligible electors. See Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997)(financial town meeting is a quintessential example of an open meeting and the Open Meetings Act was designed to prevent public bodies of a different type from holding meetings in closed session). Other meetings of the Fire District not opened to all eligible electors, but involving "informal" sessions comprised only of the Board of Supervisors did violate the Open Meetings Act when the Fire District failed to provide public notice. VIOLATION FOUND. Issued March 22, 2002.

OM 02-11 **Pitochelli v. Town of Johnston**

Town violated the Open Meetings Act when it established a policy that a Town Council member had to request open session minutes from the Mayor. The Open Meetings Act requires that all public bodies make its open session minutes available to the public at the office of the public body, and in this case, the Town Councilor's inability to access the Zoning Board minutes at the Building Department violated the Open Meetings Act. See R.I. Gen. Laws § 42-46-7(b). VIOLATION FOUND. Issued June 12, 2002.

OM 02-12 **OPLARI v. Providence School Board**

The Open Meetings Act does not address whether the public has the right to speak during a public comment portion of an open meeting, nor does the Open Meetings Act address whether a public body must receive public comment. Accordingly, the School Board did not violate the Open Meetings Act when it did not allow public comment. Further, complainant alleged that the Providence School Board violated the Open Meetings Act by discussing students in executive session without properly advising these students of their right to have the discussion take place in open session. Because complainant was not an affected student, and R.I. Gen. Laws § 42-46-5(a)(8) provides only an affected student with the right to require an executive session discussion to be held in open session, complainant did not have legal standing to file complaint. Issued July 3, 2002.

OM 02-13 **Friends of the Station v. Barrington Town Council**

Town Council did not violate the Open Meetings Act by convening into executive session, and subsequently sealing its executive session minutes, based upon the evidence that advance public information of the Town Council's discussion would have been detrimental to the public interest. In particular, Town Council's discussion concerned obtaining the best possible offer for the disposition of real estate, purchase price, possible zoning changes, rights of reverter, and other details concerning the submission of bids to the Financial Town Meeting. Town Council did violate the Open Meetings Act when it convened into executive session when there was no evidence to demonstrate that advance public information of the executive session discussion would have been detrimental to the public interest. See R.I. Gen. Laws § 42-46-5(a)(5). VIOLATION FOUND. Issued July 3, 2002.

OM 02-14 **Faerber v. Trusts and Investments Commission, et al.**

Trusts and Investments Commission violated the Open Meetings Act by not making its open session minutes available to the public within the time period prescribed by R.I. Gen. Laws § 42-46-7(b). Specifically, this provision requires that open session minutes 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. VIOLATION FOUND. Issued July 3, 2002.

OM 02-15 **Perry v. Coventry (Anthony) Fire District**

Fire District violated the Open Meetings Act by failing to post its May 16, 2002 notice in two locations as required by R.I. Gen. Laws § 42-46-6(c). Evidence demonstrated that the Fire District posted its May 16, 2002 notice at its principal office, but did not post a notice at one other "prominent place within the governmental unit." Instead, the Fire District posted its second notice at a local hardware store. Fire District also violated the Open Meetings Act by failing to specify the nature of the business to be discussed on its public notice. R.I. Gen. Laws § 42-46-6(c). VIOLATION FOUND. Issued August 19, 2002.

OM 02-16 **Staven v. Portsmouth Financial Subcommittee (School Committee)**
Financial Subcommittee violated the Open Meetings Act by failing to allow complainant to videotape its meetings. Although the United States Federal District Court in Belcher v. Mansi, 569 F.Supp. 379 (D.R.I. 1983) stated that certain restrictions could be imposed upon the public in order to preserve the orderly conduct of a meeting, the Financial Subcommittee's asserted justifications did not fall within the ambit of Belcher. VIOLATION FOUND. Issued August 30, 2002.

OM 02-17 **Cervasio v. Town of Foster**
Town violated the Open Meetings Act when three individuals convened to interview finalists for the position of Town Planner. Although evidence demonstrated that only two of the five members of the Town Council were on the three member committee, and therefore the Town Council did not convene for a meeting, since the Open Meetings Act applies to subcommittees and advisory committees, the three member ad hoc committee comprised to interview finalists for the position of Town Planner was a public body by itself. See Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001)(hiring council functioning in advisory capacity was a public body). VIOLATION FOUND. Issued September 13, 2002.

OM 02-18 **Greenwood v. Middletown Zoning Board**
Request made seeking access to the Middletown Zoning Board minutes and transcript from an August 25, 1992 meeting. Investigation revealed that no minutes were kept for Zoning Board meetings in 1992, and further, investigation revealed a transcript of the 1992 public hearing was never ordered. Since the Open Meetings Act requires that "[a]ll public bodies shall keep written minutes of all their meetings" and since the Access to Public Records Act requires that "[e]ach public body shall make, keep, and maintain written or recorded minutes of all meetings," the Department of Attorney General concluded that the Zoning Board violated the Open Meetings Act and the Access to Public Records Act by failing to maintain minutes of its meeting in 1992. Since neither the Open Meetings Act nor the Access to Public Records Act required a public body to keep or maintain transcripts of its public meeting, the Zoning Board did not violate the Access to Public Records Act or the Open Meetings Act by failing to maintain copies of the transcript or by failing to provide access to records that did not exist. R.I. Gen. Laws § 38-2-3(f). VIOLATION FOUND. Issued September 13, 2002.

OM 02-19 **Stycos v. Cranston School Committee**
Complaint filed by Cranston School Committee member alleging that School Committee convened to open union negotiations without public notice. Allegation was based upon the School Committee Chairperson's comment during a meeting that she had "been authorized by the majority of this committee to take part [in negotiations]," and a newspaper editorial wherein two School Committee members wrote that the School Committee Chairperson was authorized to

represent the School Committee's interest during union negotiations. Investigation revealed that the School Committee Chairperson's comment related to the fact that she had been voted by a majority of the members to act as chairperson and that the two School Committee members who wrote the newspaper editorial were mistaken. No evidence that the Cranston School Committee convened a meeting without public notice. Issued September 24, 2002.

OM 02-20 **Palazzo v. W. Warwick School Building Committee**

School Building Committee violated the Open Meetings Act by failing to make its unofficial minutes available "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. R.I. Gen. Laws § 42-46-7(b). Instead, School Building Committee made its unofficial minutes available at its next scheduled meeting, but minutes were not available at the office of the public body. School Building Committee represents that its unofficial minutes are now provided to the Town Clerk within ten (10) days of a previous meeting. VIOLATION FOUND. Issued October 1, 2002.

OM 02-21 **Langseth v. Buttonwoods Fire District**

Complaint filed that the Buttonwoods Fire District convened a meeting on May 19, 2002 that "was not open to the public" since the meeting was "held in a location that was behind a sign...that limits access to 'residents & guests only.'" Upon further inquiry, the complainant acknowledged that she had not tried to attend the May 19, 2002 meeting, did not know if she would had been turned away if she had attempted to attend the meeting, and acknowledged that underneath the complained sign was a supplemental notice of a public meeting. Since evidence demonstrated that the complainant had not attempted to attend the meeting, and therefore was not denied access, complainant was not an "aggrieved" citizen within the meaning of R.I. Gen. Laws § 42-46-8. Issued October 1, 2002.

OM 02-22 **Lapierre v. Batterers' Intervention Programs Standard Oversight Subcommittee (Rules and Standards)**

Complaint filed by Chairperson of the Rules and Standards Subcommittee alleging numerous violations of the Open Meetings Act, including that the minutes did not record the complainant's dissenting vote, that after a June 7, 2002 Subcommittee meeting, a separate non-public meeting was convened, that at this separate June 7, 2002 meeting the leadership/job performance of the chairperson/complainant was discussed, that at a June 26, 2002 Subcommittee meeting the topic of a new Subcommittee Chairperson was discussed without prior notice, and that the Subcommittee continued its June 26, 2002 meeting after adjournment. Evidence demonstrated that the complainant was listed as a dissenting vote in the June 7, 2002 meeting minutes and that the Subcommittee's June 26, 2002 notice indicated that the Subcommittee intended to discuss the "Subcommittee leadership." Accordingly, the June 26, 2002 agenda properly

provided public notice that the Subcommittee leadership would be discussed and there was no evidence that the Subcommittee continued its June 26, 2002 meeting after adjournment. Nevertheless, the Subcommittee did violate the Open Meetings Act when it continued to discuss possible candidates for a new Subcommittee Chairperson after the adjournment of the June 7, 2002 meeting. VIOLATION FOUND. Issued October 2, 2002.

OM 02-23 **McGreavy v. Middletown School Committee, et al.**

School Committee violated the Open Meetings Act when it convened an emergency meeting on Sunday, December 9, 2001. No evidence presented to demonstrate that the emergency meeting was convened to discuss an "unexpected occurrence that requires immediate action to protect the public." R.I. Gen. Laws § 42-46-6. School Committee also violated the Open Meetings Act by failing to post its notice "as soon as practicable." Id. The notice also failed to provide a statement specifying the nature of the business to be discussed. VIOLATION FOUND. Issued October 2, 2002.

OM 02-24 **DelPonte v. Johnston School Committee**

Relying upon a newspaper article, complainant alleged that the School Committee violated the Open Meetings Act by convening outside the public purview to discuss the appointment of an Interim Superintendent. The Department of Attorney General received a statement from the School Committee member referenced in a newspaper article, as well as an affidavit from this individual, disputing that the School Committee had improperly convened or discussed the appointment of an Interim Superintendent outside the public purview. Evidence was supported by the School Committee's secretary. Issued October 30, 2002.

OM 02-25 **Montiero v. Providence School Board Nominating Commission**

Complaint alleged that the Providence School Board Nominating Commission violated the Open Meetings Act by failing to post notice for its March 27, 2002 meeting and/or improperly convening its meeting outside the public purview. Investigation revealed that the Nominating Commission is not a public body within the definition of the Open Meetings Act. See R.I. Gen. Laws § 42-46-2(c). Specifically, the Nominating Commission was comprised as a result of a 1991 evaluation by the Providence Blue Print for Education and adopted by then Mayor Vincent Cianci in 1993. Nominating Commission is comprised of members selected from sponsoring non-profit/non-governmental organizations without any governmental approval process. In addition, the Nominating Commission's work is not supported by public funding, members are not paid a salary, medical benefits, or a pension for their services. Issued December 13, 2002.

OPEN MEETINGS ACT ADVISORY OPINIONS-2002

ADV OM 02-01

In re Tiverton Town Council

Based upon Town Council representation that it seeks to convene into executive session "to negotiate contracts with non collective bargaining individuals," the Department of Attorney General opined that the Town Council would violate the Open Meetings Act if it convenes into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2). See Walsh v. Charlestown Town Council, OM 00-03 ("this Department will not consider negotiations with a non-union employee...or negotiations with a group of non-union employees...to constitute 'collective bargaining' for purposes of the [Open Meetings Act]"). Although the request for advisory opinion does not provide sufficient facts to allow us to determine whether the Town Council may discuss in executive session "the terms of a contract to be offered to an individual who has applied for the open position as a Tax Assessor," the plain language of R.I. Gen. Laws § 42-46-5(a)(1) permits a public body to convene into executive session for "any discussions of the job performance, character, or physical or mental health of a person or persons." To the extent that the Town Council is discussing "the job performance, character, or physical or mental health of a person or persons," these discussions are appropriate for executive session. See R.I. Gen. Laws § 42-46-5(a)(1). Issued June 27, 2002.

ADV OM 02-02

In re Sexually Violent Predatory Status Board of Review

Based upon the facts presented, we have no information to suggest that the Board of Review is not a "public body" for purposes of the Open Meetings Act. In particular, R.I. Gen. Laws § 11-37.1-6 created a Board of Review and its requirement that its five (5) members be appointed by the Governor. The Open Meetings Act does not specifically address whether one public body can convene a meeting at the same time as another public body, and accordingly, we find no restriction within the Open Meetings Act to prohibit such a meeting. However, in the event that two public bodies convene a joint-meeting, the Open Meetings Act and its provisions will apply to both public bodies. Issued June 28, 2002.

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 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 publicly available unofficial minutes at its next regularly scheduled meeting. See R.I. Gen. Laws § 42-46-8(d). VIOLATION FOUND. Issued: February 18, 2003.

OPEN MEETINGS ACT FINDINGS

CUMULATIVE INDEX
(1993 - 2003)

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

APPROVAL OF MINUTES

OM96-28

BIDS, PUBLIC

OM94-03

BURDEN OF PROOF

OM00-22

BUSINESS TO BE DISCUSSED, STATEMENT OF

Official OM96-04
OM96-01
OM96-02
OM98-02
OM98-12
OM98-17
OM00-27
OM01-04
OM01-05

OM96-03
OM96-04
OM96-08
OM96-27
OM96-28
OM96-33
Official OM97-01
OM97-01
OM97-04
OM97-11
OM97-13
OM97-16
OM97-17
OM97-28
OM98-20
OM98-23
OM98-24
OM98-31
OM98-34
OM99-01
OM99-02
OM99-06
OM99-12
OM99-36
OM00-06
OM00-18
OM00-19
OM00-26
OM02-05

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
ADV OM02-01

OM96-22
OM96-27
OM00-03
ADV OM00-06

CONTINUING OF MEETINGS

OM95-21(1)
OM98-17
OM99-29
OM99-39
OM02-22

DISRUPTION OF MEETING (§ 42-46-5(d))

OM00-05

ELECTRONIC COMMUNICATIONS

See "Telephone/Electronic Communications"

EMERGENCY MEETINGS (§ 42-46-6(c))

U93-03
U93-34
U93-63
OM94-16
OM96-08
OM96-31
OM97-12
OM99-31
OM02-23

GRIEVANCES CLOSED SESSION (§ 42-46-5(a)(9))

ADV OM00-06

HANDICAPPED ACCESSIBILITY / ACCESSIBILITY OF MEETINGS

OM97-08
OM97-27
OM97-27B
Official OM98-01
ADV OM99-03

INVESTIGATIVE PROCEEDINGS (§ 42-46-5(a)(4))

OM96-33
ADV OM00-01

INVESTMENT OF PUBLIC FUNDS (§ 42-46-5(a)(7))

U93-44

JUDICIAL PROCEEDINGS (§ 42-46-5(c))

Official OM96-01
OM96-10
OM99-04
ADV OM99-15

LITIGATION (§ 46-42-(5)(a)(2))

U93-31
U93-52
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
OM98-06
OM98-16
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
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
OM00-23
OM00-29
ADV OM01-01
OM01-07
OM01-08
OM01-09
OM02-06
OM02-08
OM02-10

OM97-08
OM97-09
OM97-14
OM00-11
OM00-15
ADV OM00-03

MEETINGS - TIME FOR SCHEDULING / CANCELLING MEETINGS

U93-23
OM98-01
ADV 99-07

MINUTES (§ 42-46-7)

U93-20
OM94-02
OM94-11
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
OM97-24
OM97-25
OM98-29
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
OM02-18
OM02-20
OM03-01
OM03-05

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
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
OM99-13
OM99-23
OM99-28
OM99-29
OM99-30
OM00-07
OM00-17
OM00-18
OM00-25
OM02-05
OM02-15
OM02-21

OM95-19
OM95-21(2)
OM95-25
Official OM96-02
Official OM96-03
Official OM96-04
OM98-23
OM98-26
OM98-26B
OM98-31
OM99-07
OM99-10

PENDING COMPLAINT

OM97-21
OM97-22

PERSONNEL (§ 42-46-5(a)(1))

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

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
OM98-05
OM98-07
OM98-10
OM98-14
OM98-25
OM98-28
OM98-33
OM99-04

PUBLIC COMMENTS

QUORUM

SECURITY MATTERS

SOCIAL GATHERINGS

STATUTE OF LIMITATIONS

OM00-13

STUDENT DISCIPLINARY HEARINGS/STUDENT PRIVACY (§ 42-46-5(a)(8))

OM01-03

TAPING OF MEETINGS

OM95-03
OM97-15
OM97-26
OM02-16

TELEPHONE/ELECTRONIC COMMUNICATIONS (§ 42-46-5(b))

U93-34
OM94-14
OM96-01
OM97-12

VOTES - RECORDING OF / DISCLOSURE OF (§ 42-46-4)

OM95-20
OM95-23
OM96-09
OM96-20
OM96-21
OM96-28
Official OM97-01
OM97-07
OM99-19
OM99-35

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: July 15, 2003

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,

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 regular 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.

(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; 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, 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.

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.

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

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.

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.

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.

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.

2003 Amendment to the Open Meetings Act

42-46-6. Notice - (a) All public bodies shall give written notice of their ~~regular~~ 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 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 an 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 section 42-46-8.

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

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

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

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

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

(b) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the

public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with sections 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 sections 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 (1) 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 section 42-46-8.