

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF ATTORNEY GENERAL**



**2014 ANNUAL REPORT
OPEN MEETINGS ACT
AND
ACCESS TO PUBLIC RECORDS ACT
ATTORNEY GENERAL PETER F. KILMARTIN**

OPEN MEETINGS ACT



ANNUAL REPORT 2014

**ATTORNEY GENERAL'S ANNUAL REPORT
OF COMPLAINTS RECEIVED PURSUANT TO
RHODE ISLAND GENERAL LAWS SECTION 42-46-1 ET. SEQ.,
THE OPEN MEETINGS ACT**

Rhode Island General Laws Section 42-46-11 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Open Meetings Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2014.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	45
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	40
VIOLATIONS FOUND:	20
WARNINGS ISSUED:	19
LITIGATION INITIATED:	1
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	2
ISSUED:	1

VIOLATIONS FOUND/WARNINGS ISSUED

The Attorney General issued warnings in the following cases as a result of having found that they violated the Open Meetings Act:

OM 14-04	<u>Staven v. Portsmouth Town Council</u>
OM 14-06	<u>Novak v. Western Coventry Fire District</u>
OM 14-07	<u>Guarino, et al. v. Rhode Island Atomic Energy Commission</u>
OM 14-08	<u>Hathaway v. Rhode Island Atomic Energy Commission</u>
OM 14-09	<u>Gorman v. Central Coventry Fire District, Board of Directors</u> <u>Fay v. Central Coventry Fire District, Board of Directors</u>
OM 14-12	<u>Vitkevich v. Portsmouth Town Council</u>
OM 14-14	<u>Sheldon v. Warwick Minimum Housing Review Board</u>
OM 14-18	<u>Pierson v. Coventry School Committee</u>
OM 14-19	<u>Boss v. City of Woonsocket's School Board Review Committee</u>
OM 14-22	<u>Bourbonniere v. Newport City Council</u>

OM 14-24 Novak v. Western Coventry Fire District
OM 14-27 The Valley Breeze v. Pawtucket School Committee
OM 14-31 Carney v. Charlestown Planning Commission
OM 14-32 Aiello v. Westerly School Redesign Advisory Committee
OM 14-33 Buckley v. RI Turnpike and Bridge Authority
OM 14-34 Desmarais v. Manville Fire District
OM 14-37 Ryan v. Warren Housing Authority
OM 14-38 Faerber v. Portsmouth School Committee
OM 14-40 Clark v. West Glocester Fire District

VIOLATIONS FOUND/LAWSUIT FILED

OM 14-26B Block v. RI State Properties Committee

* * *

Summaries of all findings/written advisory opinions issued are attached hereto.

OPEN MEETINGS ACT FINDINGS - 2014

OM 14-01 **Mudge v. North Kingstown School Committee**

The North Kingstown School Committee did not violate the OMA because its August 13, 2013 executive session agenda adequately informed the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b).

Issued January 15, 2014.

OM 14-02 **Daniels v. Warwick Long Term Facilities Planning Committee**

The Warwick Long Term Facilities Planning Committee did not violate the OMA when it held its November 15, 2013 meeting at a location that could not accommodate a large number of attendees. The OMA “does not require a public body to provide unlimited seating.” See In re Town of West Warwick, ADV OM 99-02. Nor did we find any evidence that the Committee purposefully held the meeting at a location to minimize public attention and attendance.

Issued January 16, 2014.

OM 14-03 **Vadenais v. North Smithfield Town Council**

The Town Council did not violate the OMA when it held a “site visit” to review a parcel of land. For purposes of the OMA, a “meeting” is defined as “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.” R.I. Gen. Laws § 42-46-2(a). (Emphasis added). If members of a public body only view a site and do not collectively discuss their observations and findings, such action would not rise to the level of a “meeting” under the OMA. See Lamb v. Tiverton Budget Committee, OM 98-31.

Issued January 23, 2014.

OM 14-04 **Staven v. Portsmouth Town Council**

The Portsmouth Town Council violated the OMA when its October 15, 2013 meeting agenda did not adequately inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b).

VIOLATION FOUND.

Issued February 6, 2014.

OM 14-05 **Santos v. Exeter Town Council**

The Exeter Town Council did not violate the OMA when a quorum of its members convened for an unnoticed meeting because the evidence established that the Exeter Democratic Town Committee, and not the Exeter Town Council, convened for a meeting. The OMA expressly

provides that “political part[ies,] organization[s], or [a] unit therefore,” is not a “public body” within the OMA. See R.I. Gen. Laws § 42-46-2(3).

Issued February 12, 2014.

OM 14-06 Novak v. Western Coventry Fire District

PR 14-06 The Fire District violated the OMA when its 2013 annual notice did not include information required under R.I. Gen. Laws § 42-46-6(a). The Fire District did not violate the OMA when its agenda topics for the September 16 and 19, 2013 meetings adequately informed the public of the nature of the business to be discussed. The Fire District violated the OMA with respect to the September 19, 2013 agenda when it incorrectly listed the date the notice was posted as August 17, 2013, instead of September 17, 2013. The Fire District violated the APRA by failing to have a copy of its APRA procedures on its website. See R.I. Gen. Laws § 38-2-3(d).

VIOLATION FOUND.

Issued February 13, 2014.

OM 14-07 Guarino, et al. v. Rhode Island Atomic Energy Commission

The Complainants alleged the Rhode Island Atomic Energy Commission (“RIAEC”) violated the OMA on numerous occasions. After review of all allegations, this Department found the RIAEC violated the OMA when it: 1) held its December 10, 2012 meeting on less than 48 hours notice and discussed a topic that was not appropriate for executive session; 2) discussed a topic not proper for executive session on January 2, 2013 and failed to disclose in open session (and record in the open session minutes) the votes taken by each individual member in executive session; 3) failed to hold interviews in open session; 4) engaged in a collective discussion via an email chain beginning December 19, 2012 and ending on December 21, 2012; and 5) failed to post notice of its search committee meeting prior to conducting the March 1, 2013 meeting.

VIOLATION FOUND.

Issued February 17, 2014.

OM 14-08 Hathaway v. Rhode Island Atomic Energy Commission-

This Department found the RIAEC violated the OMA when it failed to properly conduct and record an open call for the following meetings: September 7, 2012; December 10, 2012; and January 2, 2013.

VIOLATION FOUND.

Issued February 17, 2014.

OM 14-09 **Gorman v. Central Coventry Fire District, Board of Directors**
Fay v. Central Coventry Fire District, Board of Directors

Since both complaints were submitted against the Central Coventry Fire District Board of Directors (“Board”), (“CCFD”), or (“Fire District”), and since both complaints contained similar allegations, this Department addressed both complaints in a single finding. Our investigation began by addressing the Board’s argument that they are not a public entity, therefore, not subject to the OMA. Since the Board provided no factual or legal support for this argument, and since this argument conflicted with Emergency Hiring Counsel v. Solas, 774 A.2d 820 (R.I. 2001), this Department rejected the Board’s argument that it is not a “public body.” Next, this Department addressed Mr. Gorman’s eight (8) allegations and Mr. Fay’s nine (9) allegations and found that the CCFD violated the OMA: 1) when it failed to timely post meeting minutes on the Secretary of State’s website, 2) when the Board failed to state in open session the reason for holding a closed session meeting by citing to the subdivision of R.I. Gen. Laws § 42-46-5(a), and 3) when the Board discussed matters, in closed session, that did not fall within R.I. Gen. Laws § 42-46-5(a)(2). In addition to the violations listed above, this Department identified certain matters as possible willful or knowing violations and directed the Board to provide a substantive response addressing, in a non-conclusionary manner, the willful or knowing concerns expressed in light of the willful or knowing standard identified by the Supreme Court and this Department. A supplemental finding will follow.

VIOLATION FOUND.

Issued June 27, 2014.

OM 14-09B **Gorman v. Central Coventry Fire District, Board of Directors**
Fay v. Central Coventry Fire District, Board of Directors

In Gorman v. Central Coventry Fire District, Board of Directors and Fay v. Central Coventry Fire District, Board of Directors, OM14-09, this Department concluded that five (5) matters/violations warranted further investigation. Specifically, these matters included the Board’s: (1) failure to timely post open session minutes on the Secretary of State’s website; (2) failure to maintain and post on the Secretary of State’s website its August 18, 2013 and October 21, 2013 open session minutes, as well as post on the Secretary of State’s website public notice for the August 18, 2013 meeting; (3) failure to maintain executive session minutes for those meetings post-July 2, 2013 that were not provided to this Department for in camera review; (4) discussing matters during the July 25, 2013, July 31, 2013, August 18, 2013, and August 28, 2013 meetings that were not appropriate for

executive session; and (5) convening into executive session, and possibly discussing in executive session, an improper topic during its October 7, 2013 meeting. After reviewing submissions from the Board, this Department has determined that there is insufficient evidence to conclude that the Board willfully or knowingly violated the OMA.

Issued January 23, 2015.

OM 14-10 Budziak v. Coventry Fire District

The Coventry Fire District (“Fire District”) did not violate the OMA when it refused to allow Complainant to attend an executive session meeting on January 30, 2014. Based upon the evidence presented, the portion of the meeting when the Fire District convened into a larger training room with the union members was part of the executive session and the Fire District’s request that the Complainant wait in an adjoining room did not violate the OMA.

Issued March 25, 2014.

OM 14-11 Rider v. Foster Town Council

The Complainant alleged that the Foster Town Council (“Town Council”) violated the OMA when the agenda item for the November 21, 2013 meeting did not specify the nature of the business to be discussed. Since the Complainant attended the November 21, 2013 meeting and did not demonstrate that she was aggrieved, this Department concluded that she did not have standing to raise the allegation. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).

Issued April 4, 2014.

OM 14-12 Vitkevich v. Portsmouth Town Council

The Portsmouth Town Council violated the OMA when the agenda for its October 29, 2013 meeting failed to inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b). The agenda item in question stated “Request Additional Funding for the Mothballing of the Elmhurst Chapel.” Despite the “mothballing” agenda, the Town Council voted in favor of developing a phasing plan and cost options for the demolition of the Chapel.

VIOLATION FOUND.

Issued April 11, 2014.

**OM 14-13 Riley v. I-195 Redevelopment District Commission
Scotti v. I-195 Redevelopment District Commission**

The I-195 Redevelopment District Commission did not violate the OMA by convening into executive session pursuant to R.I. Gen. Laws §

42-46-5(a)(5) for "Discussion/Vote to Select Firm to Provide Real Estate Brokerage and Advisory Services to the District." Although we determine this case to present "a close call," based upon the facts presented in this case, we conclude that the selection of a real estate brokerage firm falls within the purview for "[a]ny discussions or considerations related to the * * * disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public." R.I. Gen. Laws § 42-46-5(a)(5).

Issued April 14, 2014.

OM 14-14 **Sheldon v. Warwick Minimum Housing Review Board**

The Warwick Minimum Housing Review Board violated the OMA when they did not allow the Complainant to videotape the January 6, 2014 meeting. In this Department's finding of Pagliarini v. Kent County Water Authority, OM 06-24, we recognized that the United States District Court for the District of Rhode Island held that "a determination that the [OMA] requires [a public body] to allow members of the press and public to tape record its meetings follows inexorably from the policy set forth [in the OMA,]" and that this practice may also extend to videotaping. See Belcher v. Mansi, 569 F.Supp. 379, 382-83 (D.R.I. 1983).

VIOLATION FOUND.

Issued April 30, 2014.

OM 14-15 **Pagliarini v. Tiverton Tax Assessment Board of Review**

The Tiverton Tax Assessment Board of Review ("Board") did not violate the OMA prior to the start of its January 13, 2014 meeting as there was no evidence that a quorum of the Board collectively discussed public business outside the purview of the public.

Issued April 30, 2014.

OM 14-16 **Boss v. Woonsocket School Committee**

The Woonsocket School Committee did not violate the OMA because it created and maintained minutes for its November 13, 2013 executive session consistent with the requirements set forth in R.I. Gen. Laws § 42-46-7(a).

Issued May 12, 2014.

OM 14-17 **Zhang v. East Greenwich School Committee**

The School Committee did not violate the OMA when it refused to allow the Complainant to attend an executive session. The option to extend an invitation to an individual to attend an executive session is held by the public body, and not the individual seeking to attend the

executive session. See Vargas v. Providence School Board, OM 94-26. The School Committee did not violate the APRA when it refused to provide the Complainant with a copy of the November 5, 2013 executive session meeting minutes as properly sealed executive session minutes are not public. See R.I. Gen. Laws § 38-2-2(4)(J).

Issued May 6, 2014.

OM 14-18 Pierson v. Coventry School Committee

The Coventry School Committee violated the OMA when it failed to timely provide minutes and a record of all votes taken pursuant to R.I. Gen. Laws § 42-46-7(b). This Department found injunctive relief to be inappropriate since, based on the evidence presented, the untimely availability of the minutes was the result of a family illness and, the Complainant was provided with the minutes of all the meetings requested.

VIOLATION FOUND.

Issued May 7, 2014.

OM 14-19 Boss v. City of Woonsocket's School Board Review Committee

Based on the evidence presented, and using the analysis established in Solas v. Emergency Hiring Council, 774 A.2d 820, 825 (R.I. 2001) as a guide, this Department rejected the argument that the Woonsocket School Board Review Committee was not a public body because it was formed by the Mayor-elect, consisted of campaign staff, and emanated from the campaign. Instead, this Department found that the Committee was a "department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government" as defined by Rhode Island General Laws § 42-46-2(3). See also Schanck v. Glocester Town Council, OM 97-03.

VIOLATION FOUND.

Issued May 12, 2014.

OM 14-20 Curt-Hoard v. Woonsocket School Board

The Complainant alleged that the Woonsocket School Board ("School Board") violated the OMA when the agendas for the School Board's January 15, 2014 and February 12, 2014 meetings failed to specify the nature of the business to be discussed. Since the Complainant did not demonstrate that she was aggrieved by the allegation, and in fact attended the meetings in question, this Department concluded that she did not have standing to raise the issue. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d. 215 (R.I. 2002).

Issued May 29, 2014.

OM 14-21 **Common Cause v. I-195 Redevelopment District Commission**

The Frameworks Subcommittee did not violate the OMA when it met for a presentation because there was no evidence that any collective discussions of the members of the Frameworks Subcommittee occurred. Rather, it appears a presentation was made, and members of the Frameworks Subcommittee asked questions during the presentation. While in the proper circumstances these questions and answers could implicate the OMA, in light of the affidavits submitted by the three (3) Frameworks Subcommittee members, the evidence falls short of any collective discussions or action amongst them. The Frameworks Subcommittee members' collective presence, as well as the asking and answering of questions, is insufficient to trigger the OMA.

Issue May 30, 2014.

OM 14-22 **Bourbonniere v. Newport City Council**

The narrow issue presented to this Department can be defined as whether the City's video conferencing accommodation complies with R.I. Gen. Laws § 42-46-13. Rhode Island General Laws § 42-46-13(c) recognizes that the OMA "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 [the OMA] are held in accessible facilities." (Emphasis added). The OMA also provides guidance on how a public body can comply with the accessibility requirement. See R.I. Gen. Laws § 42-46-13(d). While R.I. Gen. Laws § 42-46-13(d) does not appear to be an exhaustive list of alternative accommodations, it is notable that video or tele-conferencing are not included, and that all alternatives listed within R.I. Gen. Laws § 42-46-13(d) would permit a person with a disability to physically attend a public meeting. Moreover, the State Building Code standards referenced within R.I. Gen. Laws § 42-46-13(b) further support our conclusion that the video conferencing alternative fails to comply with the OMA.

VIOLATION FOUND.

Issued June 4, 2014.

OM 14-23 **Sinapi v. University of Rhode Island Student Senate**

The University of Rhode Island Student Senate did not violate the OMA as this Department concluded that the Student Senate is not a "department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government." See R.I. Gen. Laws § 42-46-2(c). We are aware of no authority, and none has been presented, to support the proposition

that the voluntary adoption of the OMA by a non-public body subjects that entity to the OMA and this Department's jurisdiction.

Issued June 5, 2014.

OM 14-24 **Novak v. Western Coventry Fire District**

The Fire District violated the OMA by failing to timely post its minutes on the secretary of state's website for seven (7) meetings. Rhode Island General Laws § 42-46-7(b)(2) states that "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2).

VIOLATION FOUND.

Issued June 11, 2014.

OM 14-25 **Kelly v. Woonsocket Budget Commission**

The Complainant alleged that members of the Woonsocket Budget Commission ("WBC") violated the OMA when the members voted to terminate the services of the Finance Director through email communications, and when the Commission failed to post proper notice on the Secretary of State's website. Rhode Island General Laws § 45-9-6(a) clearly defines the five (5) instances under which the Commission must comply with the OMA. The termination of an employee does not fall into any of those five (5) situations. Thus, the WBC did not violate the OMA.

Issued June 12, 2014.

OM 14-26 **Block v. RI State Properties Committee**

The Rhode Island State Properties Committee ("Committee") violated the OMA when it failed to file its minutes for the August 13, 2013, September 26, 2013, October 8, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State's website in a timely manner. The Committee shall have ten (10) business days to respond to this Department's concern that the instant violation is "willful or knowing." A supplemental finding will be issued.

VIOLATION FOUND.

Issued June 13, 2014.

OM 14-26B Block v. RI State Properties Committee

Based upon the Committee's representation that it was aware of its statutory obligations, yet failed to timely post minutes to the Secretary of State's website, this Department determined the violations were "willful or knowing."

LAWSUIT FILED.

Issued July 11, 2014.

OM 14-27 The Valley Breeze v. Pawtucket School Committee

The School Committee violated the OMA during its February 11, 2014 executive session meeting when the executive session did not involve the seeking or obtaining legal advice on either the interim superintendent or the interpretation of a personnel contract. Even though the advertised topic may have been appropriate for executive session, after our in camera review of the executive session meeting minutes, much of the actual discussion was not appropriate for executive session.

VIOLATION FOUND.

Issued July 25, 2014.

OM 14-28 McCarthy v. Woonsocket School Board

Ward v. Woonsocket School Board

The Woonsocket School Board did not violate the OMA since the agenda items were sufficient to adequately inform the public of the nature of the business to be discussed. The agenda items indicated that the School Board was going to discuss and may vote on "Administrative Contracts/Job Performance" under R.I. Gen. Laws § 42-46-5(a)(1) and "Collective Bargaining (Local 1137 Contracts)" under R.I. Gen. Laws § 42-46-5(a)(2). The evidence revealed that the School Board voted to approve the Local 1137 contract and voted to extend the School Superintendent's contract. We find these agenda items were not misleading.

Issued September 5, 2014.

OM 14-29 Ward v. Woonsocket School Board

The Complainant alleged that the Woonsocket School Board violated the OMA during its February 26, 2014 meeting when, after recessing to review the resume of the interim legal counsel, members of the School Board discussed public business outside the purview of the public. In light of the affidavits submitted by the School Board members, we cannot conclude that during this break to review the resume, discussions occurred amongst a quorum of School Board members regarding matters over which the School Board has supervision,

control, jurisdiction, or advisory power. The evidence reveals that, after the break, the School Board discussed the appointment of temporary legal counsel in open session and voted to hire the candidate. As such, we find no violation.

Issued September 15, 2014.

OM 14-30 **Fortin v. Bristol Warren Regional School District**

The Complainant alleged that the Bristol Warren Regional School District (“BWRSD”) violated the OMA when it failed to post notice of its July 14, 2014 School Committee meeting at the Warren Town Hall. With respect to the posting of supplemental public notice, the OMA provides that “Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (f).” R.I. Gen. Laws § 42-46-6(c). The evidence showed that the BWRSD posted notice with the Secretary of State, at the BWRSD Administration Building (“the principal office of the public body”), and the BWRSD high school (“one other prominent place within the government unit”). Accordingly, this Department found that the BWRSD did not violate the OMA.

Issued September 16, 2014.

OM 14-31 **Carney v. Charlestown Planning Commission**

The Charlestown Planning Commission (“Commission”) violated the OMA during its May 7, 2014 meeting when it took a secret “preliminary” paper vote. The Commission also violated the OMA when the minutes failed to include a record by individual members of any votes taken regarding this “preliminary” vote or the Commission’s subsequent oral vote. The OMA requires that all public bodies “keep written minutes of all their meetings” and that these written minutes include, among other things, “[a] record by individual members of any vote taken[.]” R.I. Gen. Laws § 42-46-7(a)(3).

VIOLATION FOUND.

Issued September 23, 2014.

OM 14-32 **Aiello v. Westerly School Redesign Advisory Committee**

The Complainant alleged that the Westerly School Redesign Advisory Committee (“Committee”) violated the Open Meetings Act (“OMA”) when it denied him access to the August 7, 2014 meeting because the entry doors were locked. Rhode Island General Laws § 42-46-14 states,

“[i]n 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.” Although the evidence showed that the members of the Committee and one member of the public were in attendance, the Committee did not produce evidence that the entry doors to the building were indeed unlocked. In fact, the evidence presented suggested otherwise. Accordingly, this Department found that the Committee violated the OMA when it denied Complainant access to the August 7, 2014 meeting.

VIOLATION FOUND.

Issued September 25, 2014.

OM 14-33 Buckley v. RI Turnpike and Bridge Authority

The Rhode Island Turnpike and Bridge Authority (“RITBA”) violated the OMA when it failed to timely post its minutes for the July 9, 2014 meeting on the Secretary of State’s website in violation of R.I. Gen. Laws § 42-46-7(d). This Department shall allow the RITBA ten (10) business days to respond to our concern that the instant violation is willful or knowing in accordance with our precedent. Thereafter, a supplemental finding will be issued concerning whether the instant violation is willful or knowing.

VIOLATION FOUND.

Issued October 17, 2014.

OM14-33B Buckley v. Rhode Island Turnpike and Bridge Authority

Based upon the totality of the evidence, we cannot conclude that the Rhode Island Turnpike and Bridge Authority (“RITBA”) willfully or knowingly violated the OMA. The facts establish that the RITBA failed to file “official and/or approved” minutes on the Secretary of State’s website for its July 9, 2014 meeting in a timely manner, but the facts also demonstrate that the RITBA did not have a meeting in August 2014. See R.I. Gen. Laws § 42-46-7(d) (requiring “official and/or approved”) minutes to be filed on the Secretary of State’s website within 35 days of a meeting). Rather, the RITBA next met on September 10, 2014 and it was at that meeting that the RITBA approved the minutes for the July 9, 2014 meeting. While arguably the RITBA could have posted “official” meeting minutes on the Secretary of State’s website within thirty-five days of the meeting, the lack of definition and/or any authority to guide a public body concerning what constitutes “official” minutes provides sufficient support for our conclusion.

Issued January 23, 2015.

OM 14-34 **Desmarais v. Manville Fire District**

The Manville Fire District violated the OMA when ten (10) of its meeting minutes were either not filed on the Secretary of State's website or were untimely filed. See R.I. Gen. Laws § 42-46-7(b)(2). The Fire District also violated the OMA because its 2014 annual notice is not posted on the Secretary of State's website. See R.I. Gen. Laws § 42-46-6(a). The Fire District violated the OMA when the minutes of the November 13, 2013 meeting did not record the individual members' vote to approve the prior meeting minutes. See R.I. Gen. Laws § 42-46-7(a). The Fire District violated the OMA when the minutes of the January 15, 2014 meeting did not record the individual members' vote approving the prior meeting minutes or adjourning the meeting. Id.
VIOLATION FOUND.

Issued November 17, 2014.

OM 14-35 **Clark v. West Glocester Fire District – (Nov. 13, 2013 complaint)**
PR 14-28

Mr. Clark raised numerous allegations that the Fire District violated the OMA and the APRA. This Department determined that the Fire District violated the APRA by not providing the specific reason for a denial and by not advising Mr. Clark of his appellate remedies. The Fire District also violated the APRA by failing to provide or properly deny certain documents and the Fire District's advisement that Mr. Clark could obtain various documents from the Secretary of State's website, rather than either providing or denying Mr. Clark the requested documents, also violated the APRA.

Issued November 12, 2014.

OM 14-36 **Fitzmorris v. Portsmouth Town Council**

The Complainant alleged the Town Council convened into executive session under R.I. Gen. Laws § 42-46-5(a)(2) for "litigation," but since all the parties to the litigation were present, the Complainant alleged the meeting should have occurred in open session. This Department concluded that the meeting of the Town Council in executive session with DEM officials and its legal counsel to discuss litigation which, at the time, was pending in the DEM's Administrative Adjudication Division involving a Notice of Violation issued by DEM against the Town was an appropriate topic pursuant to R.I. Gen. Laws § 42-46-5(a)(2).

Issued November 17, 2014.

OM 14-37 **Ryan v. Warren Housing Authority**

The Warren Housing Authority violated the OMA by communicating via correspondence concerning public business. The evidence revealed

that a letter was written and signed by one of the Housing Authority members. Although it appears no discussions amongst a quorum of the Housing Authority members occurred, the letter was circulated to two (2) other Housing Authority members who read and signed the letter. Since the Housing Authority is comprised of five (5) members, three (3) members would constitute a quorum. The fact that the letter was hand delivered to Housing Authority members, rather than sent electronically, was of no moment to our analysis.

VIOLATION FOUND.

Issued November 19, 2014.

OM 14-38 Faerber v. Portsmouth School Committee

The School Committee violated the OMA when a quorum of its members met on two (2) occasions outside the purview of the public to discuss business over which the School Committee has supervision, control, jurisdiction, or advisory power.” R.I. Gen. Laws § 42-46-2(a). A quorum of the School Committee met with potential candidates for School Superintendent. There was insufficient evidence to find that the School Committee violated the OMA with respect to the allegation that members of the School Committee engaged in walking or rolling quorums prior to one of its meetings.

VIOLATION FOUND.

Issued November 25, 2014.

OM 14-39 Goldberg v. Warren Town Council

Complainant alleged that the Warren Town Council violated the OMA when it discussed her application outside of a public meeting. Specifically, because Council members denied her application without public discussion or council deliberation, Complainant alleged that Council members “had somehow met and decided to deny the application in advance [of the April 8 meeting].” In order for the OMA to apply, a “quorum” of a “public body” must convene for a “meeting” as these terms are defined by the OMA. See Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). Because there was no evidence that a quorum of the Town Council convened to discuss matters outside the public purview, we found no violation.

Issued December 19, 2014.

OM 14-40 Clark v. West Gloucester Fire District

The Complainant alleged that the Fire District committed numerous OMA violations ranging from 2004 to 2013, typically relating to maintaining open session minutes and the failure to articulate and

record an open call. See R.I. Gen. Laws §§ 42-46-7(a); 42-46-4. This Department determined that the Fire District violated the OMA on several occasions, but that other allegations did not violate the OMA. Of note, this Department determined that the Fire District fell within the ambit of the OMA and must post “official and/or approved” minutes within the timeframe set forth in R.I. Gen. Laws § 42-46-7(d) and that the Fire District must also post “unofficial” minutes within the timeframe set forth in R.I. Gen. Laws § 42-46-7(b)(2). The OMA does not specify whether public bodies must seal executive session minutes by a vote occurring in open session or in executive session.

VIOLATION FOUND.

Issued December 23, 2014.

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2014

ADV OM 14-01 In Re: R.I. Gen. Laws § 42-46-7(b)(2)

This Department opines that, although R.I. Gen. Laws § 42-46-7(b)(2), enacted on July 15, 2013, adds a requirement that certain fire-related entities file minutes on the Secretary of State’s website, this amendment did nothing to change the definition of a “public body.” As noted in Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999), as a prerequisite to any entity being required to comply with the OMA, including § 42-46-7(b)(2), that entity must be a “public body” as defined by R.I. Gen. Laws § 42-46-2(3) (“any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government.”). If the fire-related entity was a public body prior to the amendment, absent a determination made by this Department to the contrary, it remains a public body for purposes of the OMA. Likewise, if a fire-related entity was not a public body for purposes of the OMA prior to the amendment, absent a determination made by this Department to the contrary, it remains so.

Issued July 11, 2014.

ACCESS TO PUBLIC RECORDS ACT



ANNUAL REPORT 2014

**ATTORNEY GENERAL'S ANNUAL REPORT
OF COMPLAINTS RECEIVED PURSUANT TO
RHODE ISLAND GENERAL LAWS SECTION 38-2-1 ET. SEQ.,
THE ACCESS TO PUBLIC RECORDS ACT**

Rhode Island General Laws Section 38-2-15 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Access to Public Records Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2014.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	95
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	39
VIOLATIONS FOUND:	16
WARNINGS ISSUED:	13
LITIGATION INITIATED:	3
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	6
ISSUED:	4
APRA REQUESTS TO THE ATTORNEY GENERAL:	94

VIOLATIONS FOUND/WARNINGS ISSUED

Warnings were issued in the following cases as a result of having found that they violated the Access to Public Records Act:

PR 14-05	<u>Citizens Advocating for a Safe Environment v. Central Coventry Fire District</u>
PR 14-06	<u>Novak v. Western Coventry Fire District</u>
PR 14-12	<u>Fitzgerald v. East Providence Police Department</u>
PR 14-13	<u>Fitzgerald v. Warwick Police Department</u>
PR 14-14	<u>Go Local Prov. v. City of Providence</u>
PR 14-23	<u>Clark v. Department of Public Safety</u>
PR 14-25	<u>Howard v. Rhode Island Turnpike and Bridge Authority</u>
PR 14-28	<u>Clark v. West Glocester Fire District - (Nov. 13, 2013 complaint)</u>

PR 14-31 Boss v. Woonsocket Superintendent's Office
PR 14-32 Desaulniers v. Woonsocket Superintendent's Office
Clarke v. Woonsocket Superintendent's Office
PR 14-34 IBPO Local 302 v. Town of Portsmouth
PR 14-35 Jackson v. Town of Coventry
PR 14-38 Susler v. West Glocester Fire District

VIOLATIONS FOUND/LAWSUIT FILED

PR 14-07B Scripps News v. Rhode Island Department of Business Regulations
PR 14-19B Kelly & Mancini v. Town of Warren
PR 14-24B International Association of Fire Fighters v. Nasonville Fire
Department/District [*This Lawsuit was filed on January 8, 2015]

* * *

Summaries of all findings/written advisory opinions issued are attached hereto.

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2014

- PR 14-01** **WPRI v. Community College of Rhode Island**
The Community College of Rhode Island (“CCRI”) did not violate the APRA when it denied WPRI’s request for records responsive to the reason a CCRI employee was terminated. After the APRA complaint was filed, the employee’s termination was reversed and the employee was reinstated. Even if we assume that WPRI had established some “public interest,” we cannot conclude that the public interest outweighs the employee’s privacy interest. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).
Issued January 17, 2014.
- PR 14-02** **Rosenfield v. North Kingstown School Department**
Since the Complainant’s September 19, 2013 email request for certain documents did not comport with the School Department’s APRA policy, this Department found no violation.
Issued January 29, 2014.
- PR 14-03** **Chappell v. Rhode Island Department of Public Safety**
The Department of Public Safety (“DPS”) did not violate the APRA when it refused to provide the Complainant with the city/town of residence of state police officers and civilian employees of the DPS because the Complainant demonstrated no “public interest” in disclosure. Balanced against this non-existent “public interest,” this Department perceived at least some privacy and personal safety interest. See also Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998); R.I. Gen. Laws § 31-10-26.
Issued February 6, 2014.
- PR 14-04** **DeAscentis v. Town of Jamestown**
The Town did not violate the APRA when it withheld from disclosure the street addresses and states of residence for the Town’s mooring permit holders. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b); Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998).
Issued February 11, 2014.
- PR 14-05** **Citizens Advocating for a Safe Environment v. Central Coventry Fire District**
The Fire District violated the APRA when it failed to timely respond to an APRA request in writing. See R.I. Gen. Laws § 38-2-7.
VIOLATION FOUND.
Issued February 11, 2014.

- PR 14-06** **Novak v. Western Coventry Fire District**
OM 14-06 The Fire District violated the OMA when its 2013 annual notice did not include information required under R.I. Gen. Laws § 42-46-6(a). The Fire District did not violate the OMA when its agenda topics for the September 16 and 19, 2013 meetings adequately informed the public of the nature of the business to be discussed. The Fire District violated the OMA with respect to the September 19, 2013 agenda when it incorrectly listed the date the notice was posted as August 17, 2013, instead of September 17, 2013. The Fire District violated the APRA by failing to have a copy of its APRA procedures on its website. See R.I. Gen. Laws § 38-2-3(d).
VIOLATION FOUND.
Issued February 13, 2014.
- PR 14-07** **Scripps News v. Rhode Island Department of Business Regulations**
The Rhode Island Department of Business Regulations (“DBR”) violated the APRA when it failed to timely respond to Complainant’s APRA request dated July 10, 2013. See R.I. Gen. Laws § 38-2-7. DBR was allowed ten (10) business days to provide a response explaining why this Department should not find its failure to timely respond to Complainant’s APRA request knowing and willful, or alternatively, reckless, in light of DBR’s recognition of the APRA requirements and this Department’s precedent. A supplemental finding will follow.
VIOLATION FOUND.
Issued April 14, 2014.
- PR 14-07B** **Scripps News v. Rhode Island Department of Business Regulations**
After reviewing submissions from both DBR and the Complainant, this Department determined that there was sufficient evidence to conclude that DBR recklessly violated the APRA when it failed to timely respond to the July 10, 2013 APRA request. Accordingly, this Department filed a lawsuit against DBR seeking civil fines.
LAWSUIT FILED.
July 11, 2014.
- PR 14-08** **DiBenedetto v. Town of Foster**
On February 10, 2014, the Complainant requested the voice recording of a January 23, 2014 vicious dog hearing. Based upon the evidence presented, the Complainant received this voice recording on February 19, 2014. As such, the Town did not violate the APRA. See R.I. Gen. Laws § 38-2-3(e). The Town did not violate the APRA when it did not provide a “transcript” of the same vicious dog hearing because, there was no evidence that a transcript ever existed. Since a transcript did

not exist, the APRA does not require “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[.]” R.I. Gen. Laws § 38-2-3(h).

Issued April 10, 2014.

PR 14-09 **McQuade v. Rhode Island Department of Public Safety**

Mr. McQuade submitted an APRA request to the Rhode Island Department of Public Safety (“DPS”) requesting documents, broken down into nineteen (19) different categories, concerning the Rhode Island State Fusion Center and related programs and activities of the Rhode Island State Police and its partner agencies. DPS provided Complainant with some of the documents but denied others on the grounds that, either the documents did not exist and were exempt under R.I. Gen. Laws § 38-2-3(h) or, were exempt under R.I. Gen. Laws § 38-2-2(S) and section 892(e) of the Homeland Security Act. After reviewing the evidence presented, the Department found no violation.

Issued April 11, 2014.

PR 14-10 **East Bay Newspapers v. Rhode Island Department of Public Safety**

The Department of Public Safety did not violate the APRA when it did not disclose law enforcement records that identified a particular person, did not lead to criminal charges and where no allegation had been made concerning the propriety of the DPS investigation. Such disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(D)(c).

Issued May 12, 2014.

PR 14-11 **Reilly v. Providence Economic Development Partnership**

The PEDP did not violate the APRA as there was no evidence that the PEDP physically maintained additional documents responsive to the Complainant’s request. The PEDP’s extension of time to contact its former legal counsel to determine whether any responsive records were maintained demonstrated “good cause.” As such, there was no violation. See R.I. Gen. Laws § 38-2-3(e).

Issued May 30, 2014.

PR 14-12 **Fitzgerald v. East Providence Police Department**

The East Providence Police Department violated the APRA when it refused to provide the Complainant with electronic access to the responsive documents. See R.I. Gen. Laws § 38-2-3(k). The Police Department violated the APRA when it improperly assessed a \$5.00 charge for mailing when that amount did not represent “the actual cost

of delivery, if any.” R.I. Gen. Laws § 38-2-3(k). The Police Department did not violate the APRA as there was no evidence that the APRA policy prohibits the faxing or emailing of APRA responses. The Police Department’s APRA procedures adequately designate the public records officer/unit and indicate how and where a citizen can make a public records request. We also concluded that since the Police Department does not have an independent website, the posting of this procedure on the City’s website/webpage, where the Police Department has a page, does not violate the APRA.

VIOLATION FOUND.

Issued June 11, 2014.

PR 14-13 **Fitzgerald v. Warwick Police Department**

The Warwick Police Department violated the APRA when it improperly charged the Complainant for her APRA request. Additionally, the Police Department violated the APRA when it did not provide the Complainant with a detailed itemization of the costs involved, despite her request. The Police Department has ten (10) business days to respond to this Department’s concern that the instant violation is “reckless” or willful and knowing. Thereafter, a supplemental finding will be issued.

VIOLATION FOUND.

Issued June 12, 2014.

PR 14-14 **Go Local Prov. v. City of Providence**

The undisputed facts revealed that the Complainant made an APRA request to the City of Providence (the “City”) on March 30, 2014 via email. It was further undisputed that the Complainant received no response until on or about May 22, 2014, after the Complainant called the City on May 20, 2014 to inquire as to the status of the APRA request. Thus, the City violated the APRA when it failed to respond within ten (10) business days to the March 30, 2014 APRA request. See R.I. Gen. Laws § 38-2-7.

VIOLATION FOUND.

Issued June 25, 2014.

PR 14-15 **The Providence Journal v. Rhode Island Office of General Treasurer**

The General Treasurer’s Office did not violate the APRA when it redacted certain financial and commercial information from Cliffwater, LLC Due Diligence Reports. The Due Diligence Reports were created prior to the State of Rhode Island’s investment in the respective hedge funds, and therefore, did not shed any light on “how the pension fund investments made by the [State Investment Commission] are

performing and what those investments cost.” Based upon the totality of the evidence, the redacted material was “of a kind that would customarily not be released to the public by the person from whom it was obtained.” The Providence Journal v. Convention Center Authority, 774 A.2d 40, 47 (R.I. 2001). There was also no evidence that the Due Diligence Reports were “submitted” at a public meeting of a public body, and therefore, did not fall within the purview of R.I. Gen. Laws § 38-2-2(4)(B).

Issued July 16, 2014.

PR 14-16 **Rogers v. Pawtucket School Department**

The Complainant alleged that the Pawtucket School Department (“School Department”) violated the APRA when they failed to provide all documents responsive to her January 8, 2014 and January 21, 2014 APRA requests. Since this Department was neither presented with nor discovered any evidence to support the conclusion that the School Department did not produce all documents responsive to the Complainant’s broad APRA requests, this Department concluded that the School Department did not violate the APRA.

Issued July 16, 2014.

PR 14-17 **Coventry Police IBPO Local 306 v. Town of Coventry**

Complainant alleged that the Town violated the APRA when it denied Complainant’s March 26, 2014 APRA request. The evidence showed that the March 26, 2014 APRA request was never filed with the Town. While Complainant did file a March 25, 2014 request, no complaint relating to that APRA request, or subsequent response, was made. Accordingly, this Department found that the Town did not violate the APRA when it did not respond to the March 26, 2014 APRA request.

Issued July 21, 2014.

PR 14-18 **Lassiter v. Pawtucket Police Department**

Complainant alleged that the Police Department violated the APRA when it inappropriately redacted information contained in an incident report that involved Complainant, but did not result in an arrest. The evidence showed that the Police Department redacted individually identifiable information of the two juveniles involved, the disclosure of which would constitute an unwarranted invasion of personal privacy under R.I. Gen. Laws § 38-2-2(4)(D)(c). This Department found that the redactions were necessary to protect the privacy interests of the juveniles involved and, that even in situations where the requester is the subject of the records sought, the privacy interest outweighs the public’s interest in disclosure. See Higginbotham v. Department of

Public Safety, PR 09-15. Accordingly, this Department found no violation.

Issued July 21, 2014.

PR 14-19 **Kelly & Mancini v. Town of Warren**

The Town violated the APRA when it failed to timely respond to the Complainant's APRA request. See R.I. Gen. Laws § 38-2-7(a). The Town was allowed ten (10) business days to provide a response explaining why this Department should not find the violation knowing and willful, or alternatively, reckless. See R.I. Gen. Laws § 38-2-7(d). A supplemental finding will follow.

VIOLATION FOUND.

Issued July 28, 2014.

PR 14-19B **Kelly & Mancini v. Town of Warren**

After reviewing submissions from both the Town and the Complainants, this Department determined that there is sufficient evidence to conclude that the Town willfully and knowingly violated the APRA when it failed to timely respond to the March 11, 2014 APRA request. Accordingly, this Department filed a lawsuit against the Town seeking civil fines.

LAWSUIT FILED.

Issued August 28, 2014.

PR 14-20 **Pitochelli v. Town of Johnston**

Complainant alleged that the Town of Johnston ("Town") violated the Access to Public Records Act ("APRA") when it estimated an unreasonable amount of time searching and retrieving records responsive to his request. Complainant also alleged that the documents received were not responsive. Based on the totality of the circumstances - the one (1) year time period, the fact that the Town expended resources from three (3) departments, and that the search revealed three hundred and seventy-five (375) pages of documents - we concluded that the \$116.25 charge was not unreasonable. This Department also concluded that the documents received were responsive to Complainant's request since no evidence was presented to suggest responsive documents had been withheld and, pursuant to R.I. Gen. Laws § 38-2-3(h), a public body is not required to reorganize, consolidate, or create documents that do not exist. Accordingly, we found that the Town did not violate the APRA.

Issued August 20, 2014.

PR 14-21 **Calouro v. Town of Bristol**

The Complainant alleged the Town violated the APRA when it failed to respond to his June 20, 2014 APRA request. The Town Administrator's sworn affidavit submitted in response to the complaint indicated that a response was mailed to the Complainant via first-class mail on June 24, 2014. The Complainant provided no evidence or argument to contradict the Town's position. Based upon the evidence presented, we cannot conclude the Town failed to respond to Complainant's June 20, 2014 request.

Issued August 20, 2014.

PR 14-22 **Sulser v. Department of Public Safety**

Complainant alleged that the Department of Public Safety ("DPS") violated the Access to Public Records Act ("APRA") when it: 1) denied a February 21, 2014 APRA request seeking a Bureau of Criminal Identification ("BCI") record for a particular individual; 2) failed to provide a reasonable segregable BCI report; and 3) exempted the entire BCI record from disclosure, yet failed to "state in writing that no portion of the document or record contains reasonable segregable information that is releasable." This Department's prior findings, as well as the language of R.I. Gen. Laws § 12-1-4, make clear that BCI records for named individuals are "confidential," nothing within R.I. Gen. Laws § 12-1-4 suggests that a law enforcement agency may provide a redacted BCI report, and confirming (or refuting) that a particular individual either does or does not have a BCI record implicates the very interests protected by R.I. Gen. Laws § 12-1-4. Accordingly, this Department found no violations.

Issued August 27, 2014.

PR 14-23 **Clark v. Department of Public Safety**

Complainant alleged numerous Access to Public Records Act ("APRA") violations against the Department of Public Safety ("DPS"). Based on the evidence presented, this Department found that: 1) since Complainant granted DPS's telephonic request for an extension, he is estopped from complaining that the telephonic extension was improper and untimely; 2) the DPS did not violate the APRA when it asked that Complainant assert a public interest that could be balanced against the privacy interests when one of the documents requested implicated the privacy interests versus the public's interest in disclosure; 3) the DPS did not violate the APRA when it did not provide Complainant a reasonable segregable portion of the one withheld document, or alternatively, failed to indicate that the one withheld document could not be redacted; 4) the DPS violated the

APRA when it improperly charged \$1.20 in copying fees for eight (8) documents that were not responsive to Complainant's APRA request; and 5) the DPS did not violate the APRA when they charged a one (1) hour search and retrieval fee associated for the time expended in denying requested documents. Specifically, this Department found that a rule that would allow a public body to charge for the time expended as "part of the process" for "producing" requested documents, but not allow a public body to charge for the time expended as "part of the process" for "denying" requested documents, is at odds with DARE v. Gannon, 819 A.2d 651, 661 (R.I. 2003) and the APRA. See R.I. Gen. Laws § 38-2-7(a).

VIOLATION FOUND.

Issued August 27, 2014.

PR 14-24 **International Association of Fire Fighters v. Nasonville Fire Department/District**

The Nasonville Fire Department/District ("Department/District") violated the APRA when it failed to timely respond to Complainant's APRA request dated January 15, 2014. See R.I. Gen. Laws § 38-2-7. The Department/District was allowed ten (10) business days to provide a response explaining why this Department should not find its failure to timely respond to Complainant's APRA request knowing and willful, or alternatively, reckless, in light of this Department's precedent. A supplemental finding will follow.

VIOLATION FOUND.

Issued September 22, 2014.

PR14-24B **International Association of Fire Fighters v. Nasonville Fire Department/District**

In International Association of Fire Fighters v. Nasonville Fire Department/District, PR 14-24, this Department concluded that the Nasonville Fire Department/District ("Department/District") violated the Access to Public Records Act ("APRA") when it failed to timely respond to Complainants' APRA request. See R.I. Gen. Laws § 38-2-7. The Department/District was allowed ten (10) business days to provide an explanation as to why its untimely response should not be considered knowing and willful, or reckless. See R.I. Gen. Laws § 38-2-9(d). When a public body delegates to an employee within its purview the responsibility to comply with the APRA, the public body maintains ultimate authority and the Department/District acknowledges that it should have more closely supervised the clerk in this case. Given the evidence before us and the totality of the circumstances in this specific instance, we find that the Department/District willfully and

knowingly, or recklessly, violated the APRA. Accordingly, this Department filed a civil lawsuit against the Department/District seeking civil fines.

LAWSUIT FILED.

Issued January 8, 2015.

PR 14-25 **Howard v. Rhode Island Turnpike and Bridge Authority**

The Rhode Island Turnpike and Bridge Authority (“RITBA”) violated the APRA when it failed to fully respond to the Complainant’s APRA request dated March 11, 2014. The fact that RITBA timely responded to the APRA request with some of the documents shows that RITBA was aware of the APRA requirements. We shall allow the RITBA ten (10) business days within receipt of this finding to respond to our concern that the instant violation is reckless or willful and knowing. Thereafter, a supplemental finding will be issued concerning whether the instant violation is reckless or willful and knowing.

VIOLATION FOUND.

Issued October 10, 2014.

PR 14-26 **West Broadway Associates v. Portsmouth Police Department**

The Portsmouth Police Department did not violate the APRA when it withheld from disclosure incident reports that did not lead to an arrest. This Department found that the privacy interests outweighed any interest the public may have in disclosure of such a report because when the police determine an arrest is not warranted, disclosure of related records can reasonably be expected, in most cases, to constitute an unwarranted invasion of personal privacy.

Issued November 6, 2014.

PR 14-27 **Pisaturo v. Rhode Island Department of Health**

Complainant sought access to records pertaining to the “investigation of complaint made by Deborah Pisaturo against Kent County Memorial Hospital.” Based on the totality of the circumstances, and based on our understanding that no final action had been taken on the matter, we found that the documents were properly exempted under R.I. Gen. Laws § 38-2-2(4)(P). Thus, we found no violation.

Issued November 6, 2014.

PR 14-28 **Clark v. West Gloucester Fire District – (Nov. 13, 2013 complaint)**
OM 14-35

Mr. Clark raised numerous allegations that the Fire District violated the OMA and the APRA. This Department determined that the Fire District violated the APRA by not providing the specific reason for a denial and by not advising Mr. Clark of his appellate remedies. The

Fire District also violated the APRA by failing to provide or properly deny certain documents and the Fire District's advisement that Mr. Clark could obtain various documents from the Secretary of State's website, rather than either providing or denying Mr. Clark the requested documents, also violated the APRA.

VIOLATION FOUND.

Issued November 12, 2014.

PR 14-29 **Clark v. West Glocester Fire District - (January 29, 2014 complaint)**

Mr. Clark raises numerous allegations that the Fire District violated the APRA by not providing him access to his personnel file and by not properly responding to his requests. This Department found no violations and determined that Mr. Clark's request and complaint was more properly focused on R.I. Gen. Laws § 28-6.4-1, which allows employees access to their personnel files, rather than the APRA. For this reason, among others, the allegations that the Fire District violated the APRA were misplaced.

Issued November 12, 2014.

PR 14-30 **NEARI v. Newport Public Library**

ADVPR **In Re: Newport Public Library**

14-04

The Newport Public Library ("Library") sought an APRA advisory opinion concerning whether it is a "public body" subject to the APRA. While this request for an advisory opinion was pending, the Complainant filed an APRA complaint contending that the Library violated the APRA when it denied various requests for public records. Based upon the present facts, we cannot conclude that the Newport Public Library is a public body as that term is defined in the APRA. The Library is not a public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency, including the City of Newport. R.I. Gen. Laws § 38-2-2(1). Since the APRA is not implicated, the Library did not violate the APRA when it denied the Complainant's request for records.

Issued November 12, 2014.

PR 14-31 **Boss v. Woonsocket Superintendent's Office**

Complainant submitted an APRA request to the Superintendent's Office requesting, among other documents, a copy of the Superintendent's evaluation. The Superintendent's Office denied access to the evaluation on the grounds that it was a "working paper," i.e., pursuant to R.I. Gen. Laws § 38-2-2(4)(K). Based on the evidence presented, this Department concluded that the evaluation was not a "working paper." Accordingly, the issue left to be decide was whether

there is “good cause” to permit the Superintendent’s Office to withhold disclosing the evaluation, even though not expressly claimed in the denial, under the personal privacy exemption, *i.e.*, pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Based on the totality of the circumstances, we found that the Superintendent’s Office had not shown sufficient “good cause,” as required under R.I. Gen. Laws § 38-2-7(a), to overcome a waiver argument. In so concluding, we found that the Superintendent’s Office waived its right to deny the request under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Finally, we found that the Superintendent’s Office violated the APRA when it denied the request for the evaluation under R.I. Gen. Laws § 38-2-2(4)(K).

VIOLATION FOUND.

Issued December 1, 2014.

PR 14-32

Desaulniers v. Woonsocket Superintendent’s Office

Clarke v. Woonsocket Superintendent’s Office

Complainants submitted APRA requests to the Superintendent’s Office for a copy of the Superintendent’s evaluation. The Superintendent’s Office denied the requests under the personal privacy exemption, *i.e.*, pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Due to the fact that the evaluation at issue in Clarke was ordered to be disclosed in accordance with Boss v. Woonsocket Superintendent’s Office, PR 14-31, the Department concluded that any privacy interest in the evaluation was diminished. As such, when we weighed the diminished privacy interest against the public’s interest, the scales tipped in favor of the public’s interest in disclosure. Therefore, by virtue of our holding in Boss v. Woonsocket Superintendent’s Office, PR 14-31, we found that the Superintendent’s Office violated the APRA when it denied access to the Superintendent’s evaluation.

VIOLATION FOUND.

Issued December 1, 2014.

PR 14-33

Brown v. Exeter-West Greenwich Regional School District

Under the APRA, if, for good cause, a public body cannot comply with a records request within ten (10) business days, then the public body may extend the period an additional twenty (20) business days. See R.I. Gen. Laws § 38-2-3(e). Here, the Complainants challenged the determination that the School District had “good cause” to extend the time to respond. This Department concluded that the School District did not violate the APRA when it extended the time an additional twenty (20) business days because of the voluminous nature of the

request. Even the Complainants' request acknowledged that they requested "a lot of information."

Issued December 1, 2014.

PR 14-34 **IBPO Local 302 v. Town of Portsmouth**

Complainant filed an APRA request seeking "all debts paid and owed due to negotiations with the Portsmouth Police Union to include legal fees, witnesses, actuary costs, etc." The Town responded by providing Complainant with numerical information and/or a narrative response and asserted that Complainant's request was "a request for information - not records." The Town presented no evidence or argument that Complainant's request was not susceptible to document production. This Department has never required an APRA request to contain talismanic language in order to be considered an APRA request. See Campbell v. Coastal Resources Management Council, PR 08-33. Therefore, based on the evidence provided, we found that Complainant's request was a proper APRA request and that the Town violated the APRA by failing to provide Complainant with documents responsive to his request. See R.I. Gen. Laws § 38-2-3(a).

VIOLATION FOUND.

Issued December 8, 2014.

PR 14-35 **Jackson v. Town of Coventry**

The Town denied Complainant's request for the resumes of the top five (5) individuals who applied for the position of Finance Director and the resume of the individual selected for that position, and the resumes of the top five (5) individuals who applied for the position of Director of Public Works and the resume of the individual selected for that position on the grounds that disclosure would constitute a "clearly unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Rhode Island General Laws § 38-2-2(4)(A)(I)(b) requires the balancing of the public's interest in disclosure against the privacy interests. After reviewing the resumes *in camera*, and using federal case law for guidance, we concluded that disclosure of the resumes of the two successful candidates would not constitute a "clearly unwarranted invasion of personal privacy," but that disclosure of the unsuccessful applicant resumes would constitute a "clearly unwarranted invasion of personal privacy." Even the Complainant's correspondences recognized that the unsuccessful applicants maintained a privacy interest. As detailed herein, federal cases is replete with the conclusion that "on balance that disclosure of th[e] identity [of an unsuccessful applicant] would work a clearly unwarranted invasion of personal privacy." See Holland v. Central

Intelligence Agency, 1992 WL 233820 (D.D.C. 1992). Therefore, we found that the Town violated the APRA when they denied Complainant access to the resumes of the successful applicants, but did not violate the APRA by denying access to the resumes of the unsuccessful applicants.

VIOLATION FOUND.

Issued December 12, 2014.

PR 14-36 Iafrate v. Town of North Providence

The Complainant alleged that the Town of North Providence violated the APRA when it failed to respond to an APRA request that was sent on the Complainant's behalf by her Union representative. The Union representative, however, made this request for information in the context of an exchange of information concerning an upcoming arbitration hearing and not as an APRA request addressed to the Town. The request was not made pursuant to the Town's APRA procedure. Perhaps most importantly, even if we assume that the request was made pursuant to the APRA, the undisputed evidence reveals that the Complainant's Union representative orally withdrew this request. Since the request was withdrawn, we can find no violation for the Town's failure to respond to the withdrawn request.

Issued December 19, 2014.

PR 14-37 Howard v. Rhode Island Turnpike and Bridge Authority

The Complainant alleged the RITBA violated the APRA when it improperly withheld records responsive to her August 9, 2013 APRA request. The APRA request sought amendments made to a contract and this request was denied by letter dated August 13, 2013 when RITBA represented that the requested documents did not exist. In May 2014, the Complainant received a copy of these amendments through a third party and these amendments existed at the time of her August 9, 2013 APRA request. This Department sought an explanation of the search and retrieval that was undertaken when the RITBA received the August 9, 2013 APRA request in order to determine whether the RITBA conducted a reasonable search for responsive documents. It appears that when the RITBA received the August 9, 2013 APRA request, the RITBA's attorney or a paralegal searched the location where these documents should have been found. We cannot conclude the search to find the responsive document was unreasonable. See R.I. Gen. Laws § 38-2-4(c). We have neither been presented nor discovered any evidence to support the conclusion that

the RITBA purposefully withheld documents responsive to the original APRA request.

Issued December 24, 2014.

PR 14-38 **Susler v. West Glocester Fire District**

The Complainant alleged various APRA violations against the Fire District and while many of these allegation were found to be non-meritorious, this Department did find that the Fire District failed to provide the specific reasons for the denial, see R.I. Gen. Laws § 38-2-7(a), and failed to provide sufficient evidence to determine whether the Fire District’s search and retrieval assessment was reasonable. See Duxbury v. Town of Coventry, PR 13-16.

VIOLATION FOUND.

Issued December 24, 2014.

PR 14-39 **Providence Journal v. City of Providence**

On September 15, 2014, the Complainant requested data and images extracted from an individual’s cell phone during a search warrant. On September 26, 2014, the City denied the APRA request, citing, among other provisions, R.I. Gen. Laws § 38-2-2(4)(D)(c), which exempts from public disclosure documents maintained by law enforcement agencies for criminal law enforcement purposes where disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” On October 2, 2014, the Providence County Superior Court enjoined the Department of Attorney General and the City from disclosing, among other documents, the electronic cellular telephone data the Complainant sought. Considering the Superior Court’s October 2, 2014 order, the City’s reliance on this order in denying the appeal, and that the Superior Court’s order remained in effect at the time the Complainant’s appeal was considered and denied, this Department cannot find that the City violated the APRA when it denied the APRA request. See R.I. Gen. Laws § 38-2-2(4)(S). Disclosure was prohibited by court order.

Issued December 24, 2014.

ACCESS TO PUBLIC RECORDS ACT
ADVISORY OPINIONS - 2014

ADV PR 14-01 **In re Barton Gilman, LLP**

Legal counsel for the Cumberland School Committee requested an APRA Advisory Opinion concerning the disclosure of certain documents that were referenced and/or “presented” during a

pre-suspension hearing of a Cumberland School Department employee. Based upon the evidence presented, we were unable to definitively respond to the inquiry. We were presented no evidence concerning what specific documents were actually submitted, referenced, discussed, or quoted during the open session. Accordingly, we were unable to balance unknown privacy related facts with unknown public interest facts in order to determine whether disclosure “would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et. seq.” R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

Issued March 28, 2014.

ADV PR 14-02

In re Point Judith Venture Fund II, L.P.

Because the City of Providence has concluded that the Limited Partnership agreement should be disclosed, at least in part, this Department opined that nothing within the Access to Public Records Act prohibits the City from disclosing the Limited Partnership agreement in accordance with its conclusion and/or discretion.

Issued March 31, 2014.

ADV PR 14-03

In Re Richmond Police Department

In Re Portsmouth Police Department

An APRA request seeking a list or log, including the date, time and location of each detail, and the name(s) of the police officer(s) who worked each detail, as well as a log of sick and vacation days taken by each officer, and the dates when each sick or vacation day was used, is not exempt from disclosure. Although this Department cannot exclude the possibility that some version of facts may exist where disclosure would constitute a clearly unwarranted invasion of personal privacy, no such facts have been presented in this advisory opinion request. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

Issued August 7, 2014.

ADV PR 14-04

In Re: Newport Public Library

The Newport Public Library (“Library”) sought an APRA advisory opinion concerning whether it is a “public body” subject to the APRA. While this request for an advisory opinion was pending, the Complainant filed an APRA complaint contending that the Library violated the APRA when it denied various requests for public records. Based upon the present facts, we cannot conclude that the Newport Public Library is a

public body as that term is defined in the APRA. The Library is not a public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency, including the City of Newport. R.I. Gen. Laws § 38-2-2(1). Since the APRA is not implicated, the Library did not violate the APRA when it denied the Complainant's request for records.

Issued November 12, 2014.