

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



**2018 ANNUAL REPORT
OPEN MEETINGS ACT
AND
ACCESS TO PUBLIC RECORDS ACT
ATTORNEY GENERAL PETER F. NERONHA**

OPEN MEETINGS ACT



ANNUAL REPORT 2018

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. On occasion, the Attorney General will issue one finding or advisory opinion in response to multiple similar complaints or requests for advisory opinions, resulting in a discrepancy between complaints received and findings/advisory opinions issued. Additionally, advisory opinions may be issued in response to requests received in the prior year, resulting in a discrepancy between the number of requests received and opinions issued. The Attorney General is pleased to submit the following information concerning the calendar year 2018.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	50
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	32
VIOLATIONS FOUND:	11
WARNINGS ISSUED:	11
LITIGATION INITIATED:	0
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	3
ADVISORY OPINIONS ISSUED:	4

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 18-01	<u>Caldwell v. East Greenwich Town Council / McNamara v. East Greenwich Town Council</u>
OM 18-02	<u>Aveyard v. East Greenwich Town Council / Kitchin v. East Greenwich Town Council</u>
OM 18-08	<u>Roberts v. Woonsocket Board of Assessment Review</u>
OM 18-10	<u>Langseth v. Air Service Development Council</u>
OM 18-13	<u>Belmore v. Newport City Council</u>
OM 18-14	<u>Sinapi v. Warwick School Committee</u>

OM 18-15 Davis v. Cranston City Council
OM 18-22 McCutcheon v. Pascoag Fire District
OM 18-24 Clifford v. North Smithfield Municipal Building Review Task Force
OM 18-28 Goodness v. Davies Career and Technical High School
OM 18-31 Spodnik v. West Warwick Town Council

VIOLATIONS FOUND/LAWSUIT FILED

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

OPEN MEETINGS ACT FINDINGS - 2018

OM 18-01 Caldwell v. East Greenwich Town Council / McNamara v. East Greenwich Town Council

Complainants alleged that the Town Council violated the OMA when a rolling quorum occurred outside the public purview and when an agenda item on the Town Council's July 17, 2017 meeting failed to sufficiently specify "the nature of the business to be discussed." R.I. Gen. Laws § 42-46-6(b). With respect to the rolling quorum allegation, the Town Council submitted uncontroverted evidence in affidavit form that none of the Town Council members discussed or were told the thoughts, actions, or opinions of any other members of the Town Council. With no evidence of a "collective discussion," we did not find a rolling quorum and, consequently, did not find an OMA violation. With respect to the notice allegation, consistent with Rhode Island Supreme Court precedent, we found that the agenda item "Town Manager's Report" provided no indication that collective bargaining agreements would be discussed. Therefore, the Town Council violated the OMA. However, we did not find evidence of a willful or knowing violation and no action was taken under this agenda item.

VIOLATION FOUND.

Issued January 12, 2018.

OM 18-02 Aveyard v. East Greenwich Town Council / Kitchin v. East Greenwich Town Council

The Complainants alleged that the Town Council violated the OMA when it voted to terminate their respective positions at its June 26, 2017 executive session meeting, yet the agenda was not specific enough to adequately inform the public of the nature of the business to be discussed. The agenda indicated that the Town Council would convene into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2), "[s]essions pertaining to collective bargaining or litigation, or work session pertaining to collective bargaining or litigation." Our review of the meeting minutes revealed that the discussion concerned a Town restructuring plan that included layoffs of municipal employees. The Town alleged this topic was proper for executive session since the Town Solicitor advised the Town Council members of any legal implications of terminating Town employees. We concluded, however, that after the Town Council discussed litigation issues that could have surrounded the terminations, the discussion and/or vote to implement its plan (and by extension Complainants' terminations) did not relate to "litigation." Since we found that the Town Council's executive session discussion and vote regarding the terminations violated the OMA, we directed the Town Council to reconsider its June 26, 2017 action at a properly noticed subsequent meeting.

We found no evidence to support the allegation that a quorum of the Town Council met outside the purview of a properly noticed public meeting on June 5, 2017, or on June 19, 2017.

VIOLATION FOUND.

Issued January 12, 2018.

OM 18-03 Salvatore v. Town of Cumberland

The Complainant alleged that the Mayor's Advisory Council was a "public body" under the OMA and was meeting outside of the public purview. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we found that the Advisory Council is not a "public body" within the meaning of the OMA. We noted that the Advisory Council shares numerous key features with the CRC in Pontarelli: the Advisory Council is an "informal, strictly advisory committee"; there is no requirement that the Advisory Council meet pursuant to any set schedule or at any particular intervals; the Advisory Council was not created by executive order, *cf.* Solas, 774 A.2d at 825; and the Advisory Council's "sole function is to advise the [Mayor], who in turn has to make a recommendation to the council." These similarities with the CRC in Pontarelli conclusively place the Advisory Council outside of the OMA umbrella. Therefore, we found no violations.

Issued February 19, 2018.

OM 18-04 Paul v. Coventry Planning Commission

The Complainant alleged the Coventry Planning Commission violated the OMA when a quorum of the Commission met and discussed public business during the recess of one of its open meetings. Following the recess, the Commission Chairman announced that the Commission reached an agreement to continue the discussion and vote on a particular agenda item to a future meeting. Based upon this Office's review of the videotape, although it appeared that during the Commission's recess three (3) individuals spoke to the Chairman for approximately fifteen (15) seconds, it did not appear that a discussion occurred amongst a quorum of the Commission members. R.I. Gen. Laws § 42-46-2. Additionally, we noted that the subject-matter of this alleged meeting - rescheduling a meeting - likely falls outside the ambit of the OMA. *See* R.I. Gen. Laws § 42-46-5(b)(1).

Issued February 20, 2018.

OM 18-05 Furness v. Scituate Town Council

Complainant alleged that a quorum of the Town Council regularly met outside of scheduled Town Council meetings regarding public business. Based on corroborated affidavits, we found no credible evidence that a quorum of the Town Council had met outside of the public purview.

Instead, it appeared that the Complainant's allegations were based on unsupported circumstantial evidence and inferences drawn from Facebook postings. Noting that this was insufficient, we found no violation.

Issued March 14, 2018.

OM 18-06 **Westerly Residents for Thoughtful Development v. Westerly Town Council**

Complainant alleged that the Town Council violated the OMA when it changed an agenda item with less than forty-eight hours' notice and when an agenda item was insufficient. Because the Complainant did not provide any indication that the alleged violations specifically prevented her or other members of her organization from attending the meetings, and failed to provide any evidence that they were disadvantaged by the alleged violations, we found that Complainant had not met her burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). As such, we found that Complainant was not an "aggrieved" party and therefore had no standing to allege the OMA violations contained in her complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20. Notwithstanding, even assuming, arguendo, that the Complainant had standing to bring these allegations, we found no violations because there was no evidence that the agenda item was changed or that the agenda item failed to "fairly inform the public of the nature of the business to be discussed or acted upon[.]" Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013).

Issued March 14, 2018.

OM 18-07 **Fernandes v. Foster Center Volunteer Fire Center**

PR 18-07

The Complainant alleged that the FCVFC violated the OMA by failing to post sufficient notice and failing to post sufficient and/or timely meeting minutes for numerous meetings. With respect to these OMA allegations, Complainant provided no indication that these alleged defects specifically disadvantaged him, instead providing only conclusory assertions. Because bare assertions of interest are insufficient to demonstrate "aggrieved" status, we found that Complainant had not met his burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). We next addressed Complainant's allegation that the FCVFC failed to respond to his APRA request. The evidence indicated that the FCVFC is a separate and independent entity without an established agency relationship with any governmental entity. As such, we found that FCVFC is not a "public body" under the APRA. Therefore, we found no violations.

Issued March 19, 2018.

OM 18-08 **Roberts v. Woonsocket Board of Assessment Review**

The Woonsocket Board of Assessment Review violated the OMA when it convened into executive session. The evidence was completely devoid of any open call as is required pursuant to R.I. Gen. Laws § 42-46-4(a). See R.I. Gen. Laws § 42-46-5(a). Because we concluded that the Board of Review violated the OMA when it did not comply with the requirement of an “open call” and provided no evidence or argument that it convened into executive session for an appropriate purpose, we required that the Board of Review release the December 19, 2017 executive session meeting minutes.

VIOLATION FOUND.

Issued April 11, 2018.

OM 18-09 **Langseth v. Rhode Island Commerce Corporation**

The Complainant alleged the Rhode Island Commerce Corporation violated the OMA when it untimely posted minutes on the Secretary of State’s website for numerous meetings. The OMA provides that “[a]ny 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.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant provided no indication that he was aggrieved during the time period when the meeting minutes should have been posted but were not. In fact, the Complainant informed this Office that he did not have a specific interest in any of the subject meetings. As such, the Complainant had no standing to object and, accordingly, we found no violation.

Issued April 19, 2018.

OM 18-10 **Langseth v. Air Service Development Council**

The Complainant alleged the Air Service Development Council violated the OMA when it failed to post its meeting minutes on the Secretary of State’s website for its September 8, 2017 meeting in a timely manner. As it did not appear that the Council had legal counsel, this Office attempted on three (3) occasions to obtain a formal response from the Council’s Special Advisor regarding these allegations. We received no substantive response. Through this Office’s own investigation, we concluded that the September 8, 2017 meeting minutes were filed on the Secretary of State’s website on December 4, 2017. The meeting minutes should have been filed no later than October 13, 2017. This Office determined it was appropriate to seek a supplemental response from the Council concerning whether the violation was willful or knowing, which would subject the Council to civil penalties.

VIOLATION FOUND.

Issued April 19, 2018.

OM 18-10B Langseth v. Air Service Development Council

This supplemental finding addressed whether the OMA violation found in Langseth v. Air Service Development Council, OM 18-10 was willful or knowing. After reviewing all the evidence presented, we found insufficient evidence of a willful or knowing violation. The Council's actions did not indicate a "specific intent" to violate the OMA or a conscious disregard for the OMA's requirements. See Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453, 459 (R.I. 1986).

Issued August 24, 2018.

OM 18-11 Novak v. Western Coventry Fire District

The Complainant alleged the Western Coventry Fire District violated the OMA when it failed to post the unofficial minutes for its September 7, 2017 meeting on the Secretary of State's website in violation of R.I. Gen. Laws § 42-46-7(b)(2). The OMA provides that "[a]ny 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." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, it was unclear how the alleged violation specifically disadvantaged the Complainant. This Office found that the Complainant was not an "aggrieved" party and therefore did not have standing to allege the OMA violation. See Fernandes v. Foster Center Volunteer Fire Center, OM 18-07; Langseth v. Rhode Island Commerce Corporation, OM 18-09.

Issued May 9, 2018.

OM 18-12 Spodnik v. West Warwick Town Council

The Complainant alleged the West Warwick Town Council violated the OMA when the agenda for its January 16, 2018 meeting was posted less than forty-eight (48) hours in advance of the meeting in violation of R.I. Gen. Laws § 42-46-6(b). The OMA provides that "[a]ny 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." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, it was unclear how the alleged violation specifically disadvantaged the Complainant. This Office found that the Complainant was not an "aggrieved" party and therefore did not have standing to allege the OMA violation. See Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12; Novak v. Western Coventry Fire District, OM 18-11.

Issued, May 15, 2018.

OM 18-13 Belmore v. Newport City Council

The Complainant alleged that the City Council violated the OMA when it discussed the process for selecting a new councilmember outside of the public purview. The Complainant also alleged that the interviews of candidates in executive session was improper. The submitted affidavits revealed that numerous City Councilors had conversations regarding the open City Council seat, all outside the public purview. We found that these individual interactions collectively added up to a quorum of the City Council. See In re: Pawtucket City Council, ADV OM 05-01. By discussing the process for selecting the new City Councilor outside the public purview, the City Council violated the OMA. As such, this Office directed the City Council to provide a supplemental response addressing why the violations we found should not be considered “willful or knowing” violations. We also found that the interviews of candidates were appropriate for executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1).

VIOLATION FOUND.

Issued May 16, 2018.

OM 18-13B Belmore v. Newport City Council

This supplemental finding addressed whether the OMA violations found in Belmore v. Newport City Council, OM 18-13 were willful or knowing. After reviewing all the evidence presented, we found insufficient evidence of a willful or knowing violation. We concurred with the City Solicitor’s contention that this matter presented “a hodge-podge of discussions in which there is no indication that councilors involved knew who else was involved other than the ones that they had talked to.” While ultimately violative of the OMA, in our opinion, the City Council’s actions reflected a careless and freewheeling process, not a willful or knowing violation of the OMA.

Issued June 13, 2018.

OM 18-14 Sinapi v. Warwick School Committee

The Warwick School Committee violated the OMA when it discussed a non-noticed item in executive session. See Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016). More specifically, the School Committee discussed a recent Rhode Island Department of Education decision and whether or not the School Committee was going to appeal the decision. It was unclear to this Office why the School Committee could not have scheduled a special meeting to discuss the decision and potential appeal. While this may very well be an isolated incident, this Office directed the School Committee to supply it with the agenda and official minutes for all of the School Committee’s February 2018 and March 2018 minutes for our in camera review. See R.I. Gen. Laws § 42-46-8(e). Should additional similar violations be found, this

Office does not rule out taking appropriate action, nor does it rule out future unannounced requests for agendas/minutes to review.

VIOLATION FOUND.

Issued May 31, 2018.

OM 18-15 Davis v. Cranston City Council

The Cranston City Council violated the OMA when it referred a resolution, namely “No Guns in Schools” to the Ordinance Committee, yet later in the meeting – after the Complainant left the meeting – decided not to forward this resolution to the Ordinance Committee.

VIOLATION FOUND.

Issued June 1, 2018.

OM 18-16 Waring v. Portsmouth Town Council

The Complainant alleged that the Town Council violated the OMA when the agenda for its September 11, 2017 meeting was insufficiently specific with respect to a sound variance and when the September 11, 2017 meeting minutes were insufficient and/or inaccurate. With respect to the alleged notice defect, we found that the Complainant attended the meeting in question and that he failed to sufficiently articulate how he was aggrieved by the alleged defect. Accordingly, we found that the Complainant was not aggrieved. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Even assuming, arguendo, that the Complainant had standing to bring his allegation regarding an insufficient agenda, we found no violation because the agenda item “fairly inform[ed] the public of the nature of the business to be discussed or acted upon[.]” Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013). With respect to the allegation regarding insufficient meeting minutes, we similarly found no violation because the minutes contained all the requisite information and accurately recorded the Town Council vote. See R.I. Gen. Laws § 42-46-7(a).

Issued June 4, 2018.

OM 18-17 Block v. Rhode Island Board of Elections

The Complainant alleged that the Board of Elections filed its official/approved minutes on the Secretary of State’s website in an untimely manner for fourteen meetings. Several of these meetings were cancelled or did not constitute meetings. In addition, for nine of these meetings, the complainant filed his complaint with this Office after the statute of limitations for filing a lawsuit had already expired. See R.I. Gen. Laws § 42-46-8. For the one remaining meeting – an April 2017 meeting – we determined that the complainant was not aggrieved since the complainant indicated that the “critical window” of his interest was in the “summer of 2016” and “before the 2016 general election.” The April 2017

minutes were outside the window described by the complainant, and therefore, he failed to demonstrate he was aggrieved. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).
Issued June 14, 2018.

OM 18-18 **DiGregorio v. Exeter Town Council**

The Complainant alleged the Exeter Town Council violated the OMA when its agenda did not sufficiently inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b). Based on our review of the agenda and the open session minutes, we found nothing that indicated that the agenda item provided “vague and indefinite notice to the public.” Anolik v. Zoning Bd. of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013).
Issued June 15, 2018.

OM 18-19 **Residences at Slatersville Mill v. Town of North Smithfield**

PR 18-14 Because the subject-matter of this Complaint is the same subject-matter of a lawsuit pending in the Rhode Island Superior Court by the Complainant, this Office dismissed the Complaint filed with this Office since it is duplicative with the lawsuit that has already been filed.
Issued June 22, 2018.

OM 18-20 **Gladstone v. City of Pawtucket**

The Complainant alleged that the City violated the OMA when it formed a stakeholder group that met or will meet outside the public purview. The uncontroverted evidence demonstrated that no meeting of the stakeholders group had occurred. Therefore, the OMA was not implicated. Furthermore, based on the undisputed evidence, the stakeholders group acknowledged that it is subject to the OMA and had taken steps to comply with the OMA’s requirements. For these reasons, we found no violation.
Issued June 27, 2018.

OM 18-21 **McCutcheon v. Pascoag Fire District**

The Complainant alleged that the Fire District violated the OMA when two meetings occurred outside the public purview and when she was instructed that she “need not” attend a public meeting. With respect to the first alleged meeting, we found no violation because there was no evidence that any of the members discussed or were told the thoughts, actions, or opinions of any other members and, accordingly, no rolling quorum existed. See Caldwell, et al. v. East Greenwich Town Council, OM 18-01 With respect to the second alleged meeting, we found no violation because no quorum of the public body was present. With respect to the final allegation, the evidence indicated that the Fire District instructed that the Complainant “need not” attend the meeting, not that she could not

attend the meeting. We found no evidence that the Fire District barred the Complainant from attending the meeting. As such, we found no violations.

Issued July 03, 2018.

OM 18-22 **McCutcheon v. Pascoag Fire District**

The Fire District violated the OMA when it failed to post supplemental notice for its February 2018 meeting on the Secretary of State's website. There was no evidence the Fire District willfully or knowingly violated the OMA, and in fact, the Fire District posted its supplemental notice for the February 2018 meeting in other locations. Additionally, the Fire District re-considered the matters discussed during the February 2018 meeting at its March 2018 meeting. Therefore, injunctive relief was not appropriate.

VIOLATION FOUND.

August 16, 2018.

OM 18-23 **Roberts v. City of Woonsocket, Board of Assessment Review**

The Complainant presented no evidence that he had been aggrieved by the allegation that minutes had not been timely posted to the Secretary of State's website and presented no evidence that he had been aggrieved by other alleged deficiencies in the minutes. See *Graziano v. Rhode Island Lottery Commission*, 810 A.2d 215 (R.I. 2002). Moreover, the allegation that the minutes were devoid of discussion relating to "old business" did not violate the OMA since the OMA does not require the minutes to memorialize such information. See R.I. Gen. Laws 42-46-7(a).

Issued August 16, 2018.

OM 18-23B **Roberts v. City of Woonsocket, Board of Assessment**

The supplement acknowledged Mr. Roberts' May 9, 2018 response and concluded that it did not alter our conclusion in *Roberts v. City of Woonsocket, Board of Assessment*, OM 18-23.

OM 18-24 **Clifford v. North Smithfield Municipal Building Review Task Force**

PR 18-27

The Complainant alleged that the MBRTF violated the APRA by withholding a responsive document and violated the OMA by improperly discussing items during executive sessions, insufficiently specifying the litigation discussed on meeting agendas, and failing to timely submit meeting minutes to the Town Clerk. With respect to the APRA allegation, we found no violation. We noted that the requested document was not maintained by the MBRTF and, in any event, that the requested document no longer existed at the time of the APRA request. With respect to the first OMA allegation, based on our in camera review we found all six contested discussions appropriate for executive session. See R.I. Gen. Laws §§ 42-46-5(a)(2), (3). With respect to the second OMA allegation, we found that two

of the seven meeting agendas in question insufficiently identified the number of litigation matters discussed in executive session. However, we did not find a willful or knowing violation. With respect to the third OMA allegation, we found that the Complainant had not adequately articulated that he was “aggrieved” by the alleged violations. R.I. Gen. Laws § 42-46-8(a). The Complainant failed to identify how the allegedly late filed minutes aggrieved him during the period for which they were unavailable. Accordingly, we found that the Complainant had no standing to bring these allegations.

VIOLATION FOUND.

Issued August 21, 2018.

OM 18-25 **Musella v. Central Coventry Fire District**

PR 18-28

The Complainant alleged that the Fire District violated the APRA by failing to post its APRA procedures on its website. Because the Fire District’s website presently contains its APRA procedures, this Office determined that injunctive relief was not appropriate. Also, there was no evidence of a willful and knowing, or reckless violation, assuming that the Fire District’s past conduct violated the APRA. The Complainant also alleged that the Fire District violated the APRA by not having a mechanism to make an anonymous APRA request. This Office found no APRA violation because although the Fire District’s public request form included fields for identifiable information, no evidence was submitted that the Fire District required her to provide such information as a condition to having any public records request fulfilled. The Complainant alleged that the Fire District violated the OMA by failing to maintain meeting minutes at its office and failing to post minutes for certain meetings. This Office found that the Complainant lacked standing to bring the OMA complaint because she did not demonstrate that she was aggrieved by the alleged OMA violations, that the meetings complained of were cancelled, and/or that the subject meetings did not fall within the scope of the OMA.

Issued September 21, 2018.

OM 18-26 **Mudge v. North Kingstown School Bond Subcommittee**

The Complainant alleged the North Kingstown School Bond Subcommittee violated the OMA when its members met without providing public notice for its meetings. This Office found that the group described by the Complainant as a “Subcommittee” was not a “public body” subject to the OMA. Rather, the facts before this Office demonstrated that the “Subcommittee” was an informal group that gathered to discuss and share information about potential bonds for the school and the town. The group was established informally, did not meet regularly, and did not appear to have any authority. Moreover, although two of the group’s participants were members of the town council and

another two were members of the school committee, there was not a quorum of either the town council or the school committee when the group gathered. Accordingly, this Office found that the OMA did not apply.

Issued October 4, 2018.

OM 18-27 Langseth v. Rhode Island Commerce Corporation

The Complainant alleged the Corporation violated the OMA when it failed to timely post the minutes for its April 23, 2018 meeting on the Secretary of State's website in accordance with R.I. Gen. Laws § 42-46-7(d). The Complainant presented insufficient evidence that he had been aggrieved by this allegation, and indeed, the evidence demonstrated that approved minutes were available on the Corporation's website. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002). Therefore, we found no violation.

Issued October 24, 2018.

OM 18-28 Goodness v. Davies Career and Technical High School

The Davies Career and Technical High School violated the OMA when it convened into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), yet did not discuss any person's job performance, character, or physical or mental health. Rather, the School's discussion centered on the economic viability of a job position, which is not appropriate for executive session. See Hayes v. Bristol/Warren Regional Joint Finance Committee, OM 95-32. This Office directed the School to reconsider and re-vote on the matter discussed during its executive session meeting at a properly posted future meeting.

VIOLATION FOUND.

Issued November 5, 2018.

OM 18-29 St. Croix v. Town of Foster Zoning Board of Review

The Town of Foster Board of Review did not violate the OMA because the evidence demonstrated that a record of the individual vote of its members was available to the public within two (2) weeks of the vote. See R.I. Gen. Laws 42-46-7(b)(1). Also, the Board's unofficial minutes were timely posted on the Secretary of State's website because the Board extended the time for posting its unofficial minutes and stated the reason for the extension. Id.

Issued December 12, 2018.

OM 18-30 Neill v. Nasonville Fire District

The Complainant alleged that the NFD violated the OMA by providing improper supplemental notice for its September 27, 2018 meeting because one of the agenda items was vague. The Complaint only included the first four words of the agenda item. Upon review of the full agenda item, we

found it sufficiently specified the nature of the business to be discussed and therefore did not violate the OMA. See R.I. Gen. Laws § 42-46-6(b).
Issued December 17, 2018.

OM 18-31 **Spodnik v. West Warwick Town Council**

The Complainant alleged the West Warwick Town Council (“Town Council”) violated the OMA when it discussed items at a meeting that were not noticed on the agenda. More specifically, the Complainant alleged that numerous topics were discussed under the agenda item entitled “Ward Reports.” Based on this Office’s review of the meeting’s audio recording, we noted that a specific member of the Town Council spoke about, inter alia, two (2) specific properties in West Warwick, a vandalized vehicle, and about an individual, all under the topic of “Ward Reports.” We found that the agenda item describing “Ward Reports” did not adequately inform the public of the business to be discussed by the Town Council. Accordingly, we found that the Town Council violated the OMA. See R.I. Gen. Laws § 42-46-6(b); Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016).
VIOLATION FOUND.

Issued December 21, 2018.

OM 18-32 **Burke v. Exeter West Greenwich Regional School District**

PR 18-19 Based upon this Office’s in camera review of the executive session meeting minutes, the Exeter West Greenwich Regional School District did not violate the OMA. The evidence revealed that the School District properly convened into executive session and its discussion was proper under R.I. Gen. Laws § 42-46-5(a)(2). The evidence also revealed that the School District did not violate the APRA as the request concerned matters related to the Complainant’s school employment and/or non-renewal and, as a union member, the Complainant was represented by legal counsel. The School District reasonably relied on the representations of the Complainant’s union attorney that the APRA request could be held “in abeyance.” See R.I. Supreme Court Art. V, Rule 4.2.

Issued August 6, 2018.

OPEN MEETINGS ACT
ADVISORY OPINIONS – 2018

ADV OM 18-01 In Re: South Foster Volunteer Fire Company

Legal counsel for the South Foster Volunteer Fire Company sought an OMA advisory opinion concerning whether the SFVFC is a “public body” subject to the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), as well as this Office’s previous findings, we looked to the SFVFC’s federal income tax forms, Articles of Incorporation, and By-Laws to assist our analysis. The evidence demonstrated, inter alia, that the SFVFC is a nonprofit corporation that selects its own members independent of any governmental or public approval process, that the SFVFC provides no medical benefits and no pensions to its members, and that the SFVFC does not have any taxing authority. Based on the specific evidence presented, we opined that the SFVFC is not a “public body” under the OMA.

Issued March 19, 2018.

ADV OM 18-02 In Re: Open Meetings Agenda Posting

The Rhode Island Secretary of State sought guidance as to whether using an electronic kiosk to post OMA information was proper. We concluded that the proposed electronic kiosk that is physically present outside the State Library complies with R.I. Gen. Laws § 42-46-6(c). We also found that the OMA did not prohibit the electronic kiosk from linking to the Secretary of State’s website.

Issued May 16, 2018.

ADV OM 18-03 In Re: Subcommittees of the Bristol Fourth of July Committee

The fifty-seven (57) Subcommittees of the Bristol Fourth of July Committee sought an OMA advisory opinion concerning whether they are “public bod[ies]” subject to the OMA. However, we were provided few facts regarding the fifty-seven (57) Subcommittees upon whose status we were asked to opine. Indeed, twenty-five (25) Subcommittees are not contained in the submitted Policy Manual and we were provided no information concerning these entities other than the name of the Subcommittee and its members. We also had little information regarding the parent Committee itself. On this sparse record, and in light of the fact-specific nature of the OMA analysis, we declined to issue an advisory opinion concerning whether all fifty-seven (57) Subcommittees are public bodies pursuant to the OMA.

Issued August 6, 2018.

ADV OM 18-04

In Re: Boone Lake Dam Management District

The District sought an OMA advisory opinion concerning whether the District is a “public body” subject to the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the District’s enabling statute. The statute indicated, inter alia, that District members were granted the same indemnity afforded to public and elected officials. Additionally, the statute afforded the District a broad scope of authority, including the power to tax. On balance, we found that the significant scope of authority delegated to the District and the quintessentially governmental nature of the public business the District performs compelled the inclusion of the District within the “public body” ambit of the OMA.

Issued October 23, 2018.

ACCESS TO PUBLIC RECORDS ACT



ANNUAL REPORT 2018

**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. On occasion, the Attorney General will issue one finding or advisory opinion in response to multiple similar complaints or requests for advisory opinions, resulting in a discrepancy between complaints received and findings/advisory opinions issued. Additionally, advisory opinions may be issued in response to requests received in the prior year, resulting in a discrepancy between the number of requests received and opinions issued. The Attorney General is pleased to submit the following information concerning the calendar year 2018.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	47
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	38
VIOLATIONS FOUND:	11
WARNINGS ISSUED:	10
LITIGATION INITIATED:	1
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	0
ADVISORY OPINIONS ISSUED:	1
APRA REQUESTS TO THE ATTORNEY GENERAL:	99

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 18-02	<u>Lombardo v. Town of Westerly</u>
PR 18-11	<u>Pierson v. Central Coventry Fire District</u>
PR 18-20	<u>McCutcheon v. Pascoag Fire District</u>
PR 18-24	<u>Davis v. City of Providence</u>
PR 18-25	<u>Handy Law v. Coastal Resources Management Council (CRMC)</u>
PR 18-26	<u>Clifford v. Town of North Smithfield</u>
PR 18-33	<u>Iacobucci v. Town of Lincoln</u>

PR 18-34 Milkovits v. Cranston Police Department
PR 18-35 DiZoglio v. City of Cranston
PR 18-36 Szerlag v. Town of East Greenwich

VIOLATIONS FOUND/LAWSUIT FILED

PR 18-03B Gill v. Tiverton Town Council

* * *

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

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2018

PR 18-01 **DiGregorio v. Town of North Kingstown**

The Complainant alleged that the Town violated the APRA when it twice produced the same document with slightly different spacing. This Office found that the Town timely responded to both of the Complainant's APRA requests by providing the requested document. The slightly different spacing was due to differences in the forwarding address but did not alter the document's content. This Office also found that the Complainant's APRA requests failed to specify which format he was requesting. For these reasons, this Office found no violation.

Issued February 13, 2018.

PR 18-02 **Lombardo v. Town of Westerly**

The Complainant alleged the Town of Westerly violated the APRA when it denied his request for "all public documents concerning the Master Agreement between the Town of Westerly, Rhode Island and Westerly Local #503, International Brotherhood of Police Officers July 1, 2016 to June 30, 2019." The Town exempted numerous documents under R.I. Gen. Laws § 38-2-2(4)(H) claiming they related to reports and statements of strategy or negotiation involving labor negotiations and collective bargaining, as well as R.I. Gen. Laws § 38-2-2(4)(K), as such drafts or revisions constitute "preliminary drafts, notes, impressions, working papers." Although documents related to the negotiation process are exempt from public disclosure, see Providence Journal v. Convention Center Authority, 774 A.2d 40 (R.I. 2001), based upon this Office's in camera review, we determined there are five documents (eight pages) that were deemed by the Town to be responsive that this Office did not believe fell within the purview of R.I. Gen. Laws §§ 38-2-2(4)(K) or (H). This Office directed the Town to release these documents within ten (10) business days.

VIOLATION FOUND.

Issued February 20, 2018.

PR 18-03B **Gill v. Tiverton Town Council (Supplement to PR 17-57)**

In Gill v. Tiverton Town Council, PR 17-57, this Office found the Town Council violated the APRA when it claimed it did not maintain or possess the document the Complainant requested, namely a statement that Councilor Lebeau referred to at the July 10, 2017 Town Council meeting. This Office directed Mr. Lebeau and/or the Town Council to provide the Complainant with a copy of the document within ten (10) business days of our finding. The Town's legal counsel emailed the Complainant a one-sided color photograph, which purported to be the document in question. Both the Complainant and this Office were unsatisfied with the response

as it appeared that the document may have had writing on the backside. As such, this Office directed that within ten (10) business days of this supplemental finding, a copy of both sides of this document must be provided to the Complainant and this Office, along with an affidavit from Councilor Lebeau that the provided document represents a true and accurate copy of both sides of the document previously photographed and provided to the Complainant. This Office noted that failure to do so would result in action being taken to ensure compliance with the APRA.

VIOLATION FOUND.

Issued March 6, 2018.

PR 18-04 **Tanish v. Warwick School Department**

The Warwick School Department did not violate the APRA when it failed to respond to the Complainant's October 9, 2017 APRA request that he transmitted by email. The evidence appeared uncontradicted that the School Department did not receive the Complainant's electronic APRA request. The APRA provides that "[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request." See R.I. Gen Laws § 38-2-3(e) (emphases added). The School Department submitted an affidavit and a supporting email evidencing that the email was never received by the School Department. Since the School Department responded to this request within ten (10) business days of receiving it (through the filing of this APRA complaint), this Office found no violations.

Issued March 12, 2018.

PR 18-05 **Simoneau v. City of Warwick**

The Complainant alleged that the City violated the APRA when it failed to provide certain documents responsive to his request. Because the Complainant was already in possession of documents responsive to his request, this Office investigated whether the Complainant's allegations represented a knowing and willful, or reckless, violation of the APRA that would subject the City to civil penalties. See Farinelli v. City of Pawtucket, PR 16-27. After reviewing all of the evidence presented, we found that the City's response was based, in part, on a mistaken misconstruction of the Complainant's APRA request. We also found credible the affidavit evidence submitted by the City that its computer system did not produce responsive documents because the documents were mislabeled. As such, we found no willful and knowing, or reckless, violations.

Issued March 14, 2018.

PR 18-06 **Crenshaw v. Rhode Island Department of Public Safety**

The Complainant alleged that the DPS violated the APRA when it failed to provide all responsive documents in its possession. Because the Complainant already had all documents responsive to his request, we

investigated whether the Complainant's allegations represented a knowing and willful, or reckless, violation of the APRA that would subject the DPS to civil penalties. See Farinelli v. City of Pawtucket, PR 16-27. After reviewing all of the evidence presented, we found that the DPS did provide documents responsive to the requests. Moreover, the DPS's efforts to further assist the Complainant after responding to his requests by answering questions belies any "specific intent" to violate the APRA. See Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453, 459 (R.I. 1986). As such, we found no willful and knowing, or reckless, violations.

Issued March 14, 2018.

PR 18-07 Fernandes v. Foster Center Volunteer Fire Center

OM 18-07

The Complainant alleged that the FCVFC violated the OMA by failing to post sufficient notice and failing to post sufficient and/or timely meeting minutes for numerous meetings. With respect to these OMA allegations, Complainant provided no indication that these alleged defects specifically disadvantaged him, instead providing only conclusory assertions. Because bare assertions of interest are insufficient to demonstrate "aggrieved" status, we found that Complainant had not met his burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). We next addressed Complainant's allegation that the FCVFC failed to respond to his APRA request. The evidence indicated that the FCVFC is a separate and independent entity without an established agency relationship with any governmental entity. As such, we found that FCVFC is not a "public body" under the APRA. Therefore, we found no violations.

Issued March 19, 2018.

PR 18-08 Harris v. City of Providence

The Complainant alleged that the City violated the APRA when it made approximately 500 redactions when producing over 5,000 calendar entries. Based on our in camera review, we found each redaction proper under the APRA. Numerous entries - such as those regarding interviewees who were not hired, those regarding a public official's safety, and those regarding the attorney-client privilege - were appropriately redacted in a manner consistent with our precedent and case law. Other entries were appropriately redacted where the public interest in disclosure did not outweigh the implicated privacy interests. See R.I. Gen. Laws § 38-2-2(A)(I)(b). We also noted that the Complainant did not submit any evidence that any City employee had engaged in any improper conduct nor did our in camera review disclose any such evidence. We concluded that the information redacted by the City did not advance the public interest in knowing "what their government is up to," U.S. Dept. of Justice

v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 773 (1989), and/or was otherwise properly redacted. We found no violations.
Issued April 2, 2018.

PR 18-09 **Harris v. City of Providence**

The Complainant alleged that the City violated the APRA when it responded to her request by seeking prepayment and stating that review and redaction would take 123 hours. Based on the evidence presented, including the large scope of the request, we found that this estimate was reasonable. See R.I. Gen. Laws § 38-2-4(b). Specifically, we noted that the Complainant's request for approximately 7,400 calendar entries equated to one minute of review and redaction per entry. Based on the City's documented time responding to a previous similar request concerning calendar entries, we found that the City's estimate did not violate the APRA.

Issued April 2, 2018.

PR 18-10 **Peckham v. City of Pawtucket**

The Complainant alleged that the City violated the APRA when it failed to provide a document responsive to his request. Although we had concerns whether the Complainant's request fell within the ambit of the APRA, we noted that because the Complainant already had the requested document, we only needed to determine whether his allegations represented a knowing and willful, or reckless, violation of the APRA that would subject the City to civil penalties. See R.I. Gen. Laws § 38-2-8. Having framed this narrow issue, and after reviewing all the evidence presented, we found no evidence of a willful and knowing, or reckless, violation. We noted that misconstruing an APRA request "is a mistaken act, not a willful, knowing, or reckless one." Simoneau v. City of Warwick, PR 18-05. We also noted that the City's determination that it did not maintain the requested document - even though it subsequently provided the requested document - may very well have been correct. Finally, we found that the City's initial intended response that it did not have any responsive documents was preceded by an adequate search. Accordingly, we found no violations.

Issued May 16, 2018.

PR 18-11 **Pierson v. Central Coventry Fire District**

The Central Coventry Fire District violated the APRA when it failed to respond to the Complainant's APRA request dated September 18, 2017. The evidence revealed that the Complainant made an APRA request on September 15, 2017, which the Fire District responded to on September 18, 2017 at 4:00 PM. The Complainant made another APRA request for a similarly-related document on September 18, 2017 at 9:14 PM to which the Fire District failed to respond. This Office directed the Fire District to

respond to the Complainant's September 18, 2017 APRA request within ten (10) business days of this finding in a manner consistent with this finding and the APRA.

VIOLATION FOUND.

Issued May 31, 2018.

PR 18-12 **Paiva v. Rhode Island Department of Corrections**

An inmate incarcerated for life in prison requested the job applications of two correctional officers and after being denied certain information, namely the name of the elementary school or secondary school last attended, the type of high school, the highest and lowest salary for prior employment, and the dates of prior employment, filed a complaint with this Office. Based upon Gallop v. Adult Correctional Institutions, 182 A.3d 1137 (R.I. 2018), the Complainant is civilly dead and has no right to file an Access to Public Records Act complaint. Independent of Gallop, the public interest in disclosure of the requested information is not outweighed by the privacy interest, and therefore, is exempt from disclosure. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

Issued June 5, 2018.

PR 18-13 **DiGregorio v. Town of Exeter**

The Town of Exeter did not violate the APRA when the evidence revealed that the Complainant's APRA request was made to a member of a public body. The request was personally directed to a Town Council member. The Councilor by himself is not a public body. As such, the Complainant's APRA request represented a legal nullity and we found no violation relating to this APRA request. See Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001).

Issued June 15, 2018.

PR 18-14 **Residences at Slatersville Mill v. Town of North Smithfield**

OM 18-19

Because the subject-matter of this Complaint is the same subject-matter of a lawsuit pending in the Rhode Island Superior Court by the Complainant, this Office dismissed the Complaint filed with this Office since it is duplicative with the lawsuit that has already been filed.

Issued June 22, 2018.

PR 18-15 **Cote v. Warwick Fire Department**

The Complainant alleged that the Fire Department violated the APRA when it denied his request for documents on the grounds that they did not exist. The Complainant alleged that the documents did exist. We found that the Complainant's request unequivocally sought completed forms. Since no completed forms existed at the time of the Complainant's request, the Fire Department did not violate the APRA by failing to provide non-existent documents. See, e.g., Murphy v. City of Providence,

PR 15-07; O'Rourke v. Bradford Fire District, PR 13-11. Accordingly, we found no violation.

Issued June 27, 2018.

PR 18-16 **Boynton v. Rhode Island Interscholastic League**

The Complainant alleged that the RIIL failed to respond to his requests for documents. The RIIL maintained that they are not a “public body” under the APRA. In determining whether the RIIL is a “public body” pursuant to the APRA, we found that the RIIL is not “acting on behalf of and/or in place of” a governmental entity. R.I. Gen. Laws § 38-2-2(1). Indeed, no evidence was presented that any school committee has expressly delegated any services to the RIIL. Instead, the evidence demonstrated that, as a 501(c)(3) nonprofit corporation, the RIIL elects its own members and maintains control of its finances. As membership is voluntarily determined by a school’s principal, including private schools, the RIIL operates completely independently from any school committee. These facts are corroborated by the Rhode Island Supreme Court’s decision in Hebert v. Ventetuolo, 480 A.2d 403, 407 (R.I. 1984). Therefore, we found that the RIIL was not a “public body” under the APRA, and, accordingly, found no violations.

Issued June 27, 2018.

PR 18-17 **Dunlap v. Providence School Department**

The School Department did not violate the APRA when it denied a request for a videotape depicting a minor. Even if the requester had an enhanced interest in the requested record, an APRA request must be evaluated with respect to the public at-large, not the interest of the particular requester. Also, the School Department did not violate the APRA when it failed to respond to an appeal within ten (10) business days since the appeal was not directed to the “chief administrative officer.” See R.I. Gen. Laws § 38-2-2(2).

Issued July 11, 2018.

PR 18-18 **Brogan v. Portsmouth Police Department**

Because the subject-matter of this Complaint is the same subject-matter of a lawsuit pending in the Rhode Island Superior Court by the Complainant, this Office dismissed the Complaint filed with this Office since it is duplicative with the lawsuit that has already been filed.

Issued July 24, 2018.

PR 18-19 **Burke v. Exeter West Greenwich Regional School District**

OM 18-32

Based upon this Office’s in camera review of the executive session meeting minutes, the Exeter West Greenwich Regional School District did not violate the OMA. The evidence revealed that the School District properly convened into executive session and its discussion was proper

under R.I. Gen. Laws § 42-46-5(a)(2). The evidence also revealed that the School District did not violate the APRA as the request concerned matters related to the Complainant's school employment and/or non-renewal and, as a union member, the Complainant was represented by legal counsel. The School District reasonably relied on the representations of the Complainant's union attorney that the APRA request could be held "in abeyance." See R.I. Supreme Court Art. V, Rule 4.2.
Issued August 6, 2018.

PR 18-20 **McCutcheon v. Pascoag Fire District**

The Pascoag Fire District violated the APRA when it failed to respond to a request in a timely manner. The Fire District was directed to file a supplemental response so that this Office could examine and determine whether the violation was "knowing and willful" or "reckless" within R.I. Gen. Laws § 38-2-8. The Fire District was also directed to describe its search efforts for a document that was requested, but that the Fire District indicated it could not locate.
VIOLATION FOUND.
Issued August 6, 2018.

PR 18-21 **Beaudry v. City of Providence**

The Complainant's APRA request sought weekly certified payroll records of Martone Service Company's purported subcontractor, New England Masonry. We found no evidence that a separate document concerning New England Masonry existed that was being improperly withheld. Since no weekly certified payroll for New England Masonry existed at the time of the Complainant's request, the City did not violate the APRA by failing to provide a non-existent document. See R.I. Gen. Laws § 38-2-3(h).
Issued August 8, 2018.

PR 18-22 **Tax Sale Nerd v. City of Cranston**

The Complainant filed an anonymous complaint asking this Office to file a lawsuit for alleged violations of the APRA and seeking injunctive relief. While R.I. Gen. Laws 38-2-3(j) provides that a public body shall not require, "as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself," we are aware of no authority that would permit this Office to file a lawsuit on behalf of a person without the identity of that person being known to the parties and the court. Indeed, court rules would require the identity to be disclosed. The anonymous nature of this complaint allowed the Complainant to avoid certain issues and hindered the public body's ability to defend against the complaint.
Issued August 17, 2018.

PR 18-23 **Tax Sale Nerd v. City of Cranston / Tax Sale Nerd v. Coventry Fire District**

The Complainant filed an anonymous complaint asking this Office to file a lawsuit for alleged violations of the APRA and seeking injunctive relief. While R.I. Gen. Laws 38-2-3(j) provides that a public body shall not require, “as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself,” we are aware of no authority that would permit this Office to file a lawsuit on behalf of a person without the identity of that person being known to the parties and the court. Indeed, court rules would require the identity to be disclosed. The anonymous nature of this complaint allowed the Complainant to avoid certain issues and hindered the public body’s ability to defend against the complaint.

Issued August 17, 2018.

PR 18-24 **Davis v. City of Providence**

The Complainant alleged that the City violated the APRA when it disclosed a requested list of condemned properties but redacted the street numbers of the properties. After weighing the public interest in disclosure against any privacy interests, we found that there was a public interest in disclosure of the street numbers that outweighed the privacy interests. The matter thus differed in kind from Shorey v. City of Pawtucket, PR 16-53. Accordingly, we found that the City violated the APRA when it redacted the street numbers. The City was directed to disclose the document with the street numbers unredacted.

VIOLATION FOUND.

Issued August 17, 2018.

PR 18-25 **Handy Law v. Coastal Resources Management Council**

The Complainant alleged that the CRMC violated the APRA when it withheld requested documents pursuant to R.I. Gen. Laws § 38-2-2(4)(K). The CRMC maintained that we should find no violation because the Complainant had not followed the CRMC’s APRA procedures, but as best as we could tell, the APRA request ultimately was received in the correct location and was handled according to the CRMC’s procedures. While there certainly are instances where failure to adhere to a public body’s APRA procedures will effectively invalidate a request for documents, the specific facts here counseled reaching the merits of the complaint. Turning to the gravamen of the complaint, we noted that other than broadly asserting that § 38-2-2(4)(K) is implicated, the CRMC never explained in their initial response to the Complainant, their response to the Complainant’s appeal, or in their substantive response to this Office, which particular subset of this APRA exemption is applicable. Their failure to do so was inconsistent with the CRMC’s burden under R.I. Gen.

Laws § 38-2-10. We therefore concluded that the CRMC's failure to release the requested documents violated the APRA. The CRMC was directed to disclose the documents.

VIOLATION FOUND.

Issued August 17, 2018.

PR 18-26 **Clifford v. Town of North Smithfield**

The Town of North Smithfield violated the APRA when it denied the Complainant's request to view a financial report, claiming it was an exempt correspondence to an elected official in his official capacity, pursuant to R.I. Gen. Laws § 38-2-2(4)(M). This Office determined that the financial report was not exempt because it did not qualify as a "correspondence" under the exemption. This Office directed the Town to respond to the Complainant's APRA request within ten (10) business days from the date of this finding in a manner consistent with this finding and the APRA.

VIOLATION FOUND.

Issued August 21, 2018.

PR 18-27 **Clifford v. North Smithfield Municipal Building Review Task Force**
OM 18-24

The Complainant alleged that the MBRTF violated the APRA by withholding a responsive document and violated the OMA by improperly discussing items during executive sessions, insufficiently specifying the litigation discussed on meeting agendas, and failing to timely submit meeting minutes to the Town Clerk. With respect to the APRA allegation, we found no violation. We noted that the requested document was not maintained by the MBRTF and, in any event, that the requested document no longer existed at the time of the APRA request. With respect to the first OMA allegation, based on our in camera review we found all six contested discussions appropriate for executive session. See R.I. Gen. Laws §§ 42-46-5(a)(2), (3). With respect to the second OMA allegation, we found that two of the seven meeting agendas in question insufficiently identified the number of litigation matters discussed in executive session. However, we did not find a willful or knowing violation. With respect to the third OMA allegation, we found that the Complainant had not adequately articulated that he was "aggrieved" by the alleged violations. R.I. Gen. Laws § 42-46-8(a). The Complainant failed to identify how the allegedly late filed minutes aggrieved him during the period for which they were unavailable. Accordingly, we found that the Complainant had no standing to bring these allegations.

Issued August 21, 2018.

PR 18-28 **Musella v. Central Coventry Fire District**
OM 18-25

The complainant alleged the Fire District violated the APRA by failing to post its APRA procedures on its website. Because the Fire District's

website presently contains its APRA procedures, this Office determined that injunctive relief was not appropriate. Also, there was no evidence of a willful and knowing, or reckless violation, assuming that the Fire District's past conduct violated the APRA. The complainant also alleged the Fire District violated the APRA by not having a mechanism to make an anonymous APRA request. This Office found no APRA violation because although the Fire District's public request form included fields for identifiable information, no evidence was submitted that the Fire District required her to provide such information as a condition to having any public records request fulfilled. The complainant alleged that the Fire District violated the OMA by failing to maintain meeting minutes at its office and failing to post minutes for certain meetings. This Office found that the complainant lacked standing to bring the OMA complaint because she did not demonstrate that she was aggrieved by the alleged OMA violations, that the meetings complained of were cancelled, and/or that the subject meetings did not fall within the scope of the OMA.

Issued September 21, 2018.

PR 18-29 **Cushman v. City of Warwick**

Complainant alleged that the City violated the APRA when it failed to provide a 2017 version of a particular document. Because the Complainant already had the 2017 document responsive to his request, we investigated whether the Complainant's allegations represented a knowing and willful, or reckless violation of the APRA that would subject the City to civil penalties, assuming that a violation even occurred. See Farinelli v. City of Pawtucket, PR 16-27. The undisputed evidence indicated that the City did not have the 2017 document at the time of the APRA request. The failure of a public body to produce records that do not exist does not violate the APRA. See Murphy v. City of Providence, PR 15-07. Moreover, the City's subsequent creation and disclosure of the 2017 document went beyond the APRA's requirements and decidedly counseled against finding a willful and knowing, or reckless, violation. See Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453, 459 (R.I. 1986).

Issued October 4, 2018.

PR 18-30 **Norton v. Pawtucket School Department**

The Complainant alleged the Pawtucket School Department violated the APRA because the document it provided in response to his request was not the document the Complainant sought. This Office found no violation of the APRA because it was the Complainant's duty as requestor to frame his request with sufficient particularity, which he did not do until after the School Department responded. Additionally, the evidence demonstrated that the School Department did not maintain or keep a document like the one the Complainant sought through his request, nor does the APRA require the School Department to create such a document.

Issued November 5, 2018.

PR 18-31 **Howard v. RI Department of Environmental Management**

The Complainant alleged the Department of Environmental Management (“DEM”) violated the APRA when the Complainant requested copies of certain written conservation management plans for farmland property and DEM provided four written conservation plans but did not provide nine additional plans. The evidence before this Office revealed that DEM does not have the additional records in its possession and provided the Complainant with all the files and documents it had that were responsive to her request. Because the APRA does not require “a public body to reorganize, consolidate, or compile data not maintained by the public body,” R.I. Gen. Laws § 38-2-3(h), this Office found no violation of the APRA.

Issued November 5, 2018.

PR 18-32 **Nesi v. Rhode Island State Council on the Arts and Rhode Island Film & Television Office**

Complainant alleged that the RISCA violated the APRA when it produced information responsive to his request but redacted information concerning the “Anticipated Amount of Motion Picture Tax Credit” pursuant to R.I. Gen. Laws § 38-2-2(4)(B). We observed that another statute – R.I. Gen. Laws §§ 44-31.2-6.1(f), (g) – already governed the timing of disclosure of this information. Because the General Assembly has specifically indicated that motion picture tax credits become public after the tax credits have been received, and because at the time of the Complainant’s request the tax credits had not yet been awarded, we found no violation. We found nothing in the APRA that upset the more-specific tax statute on this point.

Issued November 7, 2018.

PR 18-33 **Iacobucci v. Town of Lincoln**

The Town of Lincoln violated the APRA when it failed to respond to the Complainant’s APRA request within ten (10) business days. See R.I. Gen. Laws § 38-2-7. As the Complainant was in possession of the responsive documents, injunctive relief was not appropriate. Based upon the specific facts, this Office concluded that the Town’s failure to timely respond to the APRA request was not a willful and knowing, or reckless violation.

VIOLATION FOUND.

Issued November 7, 2018.

PR 18-34 **Milkovits v. Cranston Police Department**

The Complainant alleged that the Police Department violated the APRA when it withheld a requested arrest report pursuant to R.I. Gen. Laws § 12-1-12 and R.I. Gen. Laws § 38-2-2(4)(D)(c). We noted that a 1984 letter from then-Attorney General Dennis J. Roberts to then-Superintendent of

the Rhode Island State Police Colonel Walter E. Stone explained that R.I. Gen. Laws § 12-1-12 does not apply to arrest reports. We then considered whether the arrest report would constitute “an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(D)(c). We observed the “General Assembly’s specific determination that arrest reports are public,” though subject to limited redaction on a case-by-case basis. Radtke v. Rhode Island Department of Public Safety, PR 13-10. We also observed that the arrest report at issue was readily susceptible to redaction. We finally noted that the subject of the arrest report had not moved to seal the court records related to the arrest. We accordingly concluded that disclosure of the arrest report did not constitute an unwarranted invasion of personal privacy and that the Police Department violated the APRA by not disclosing it. We instructed the Police Department to disclose it, noting that the released arrest report could contain certain redactions but not the identity of the arrested individual.

VIOLATION FOUND.

Issued December 5, 2018.

PR 18-35 **DiZoglio v. City of Cranston**

The City of Cranston Building Department violated the APRA by failing to timely respond to two APRA requests hand-delivered on February 5, 2018. The City subsequently provided the complainant with documents and although the complainant alleged that other responsive documents were withheld by the City, we found no evidence to support this allegation. We also found no evidence that the City's failure to timely respond was the result of a willful and knowing, or reckless violation.

VIOLATION FOUND.

Issued December 17, 2018.

PR 18-36 **Szerlag v. Town of East Greenwich**

The Complainant alleged that the Town violated the APRA by withholding certain documents, charging for certain produced documents, redacting signatures on produced documents, and demanding prepayment prior to search and retrieval. We found that the Town’s responses to several categories of the APRA request were unsupported and accordingly instructed the Town to detail the search it undertook in responding to the requests and to explain whether it had any responsive documents. With respect to the produced documents, we found that they were fairly encompassed by the broad request and thus the Town did not violate the APRA by providing them. With respect to the redacted signatures, we noted the privacy interest inherent in one’s signature but also found a public interest in knowing who was signing documents on behalf of the Town. We accordingly instructed the Town to reveal the name(s), but not the signature(s), of the signatory. Finally, we found the Town’s request for a deposit prior to search and retrieval

without any connection to an estimate violated the APRA. However, because the Complainant took no issue with the final amount charged, we took no further action.

VIOLATION FOUND.

Issued December 21, 2018.

PR 18-37 **Markey v. South Kingstown School Department**

The Complainant alleged that the SKSD violated the APRA when it withheld certain documents pursuant to R.I. Gen. Laws § 38-2-2(4)(M) and provided other documents with allegedly improper redactions. With respect to the withheld documents, the Complainant contended that the exemption contained at R.I. Gen. Laws § 38-2-2(4)(M) applied only to “elected officials” and thus did not cover officials appointed to positions to fulfill the remainder of an elected official’s term. We declined to narrow R.I. Gen. Laws § 38-2-2(4)(M) to exclude appointed officials holding elected positions. With respect to the contested redactions, we noted that the vast majority of the redactions were of encryption and routing data that was non-substantive. The sole document our attention was directed to was provided in full, with only the encryption data redacted. We further noted that there were only two instances where the SKSD redacted arguably responsive information and that material was not related to the information sought. Therefore, we found no violations.

Issued December 21, 2018.

PR 18-38 **The Providence Journal v. Rhode Island Secretary of State**

The Complainant alleged that the SOS violated the APRA when it produced the requested state voter list but withheld the days and months of voters’ dates of birth. We first found that R.I. Gen. Laws § 17-6-5 does not require disclosure of the full dates of birth. We next weighed the public interest in disclosure against the privacy interest pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). On the facts presented, we found little evidence that the information captured by the broad request would further the public interest. As such, we concluded on this record that the privacy interest outweighed the public interest and that the APRA does not mandate disclosure of the full dates of birth here. However, we did not foreclose that full dates of birth could advance a public interest on a different record. We found no violations.

Issued December 31, 2018.

ACCESS TO PUBLIC RECORDS ACT
ADVISORY OPINIONS - 2018

ADV PR 18-01 In Re: Exeter Volunteer Fire Company No. 2

The Exeter Volunteer Fire Company No. 2 sought an APRA advisory opinion concerning whether the Company is a “public body” subject to the APRA. Based on R.I. Gen. Laws § 38-2-2(1) and Reilly & Olneyville Neighborhood Association v. Providence Department of Planning and Development and/or Providence Redevelopment Agency, PR 09-07B, we looked at whether the Company acts on behalf of and/or in place of any public agency. The evidence demonstrated, inter alia, that in 2014 the General Assembly amended the law governing the Exeter Fire District such that the District has the authority to direct the actions of the Company. Accordingly, on the evidence presented, we opined that the Company was a “public body” under the APRA.

Issued February 22, 2018.