

# Department of Attorney General

*Peter F. Kilmartin, Attorney General*



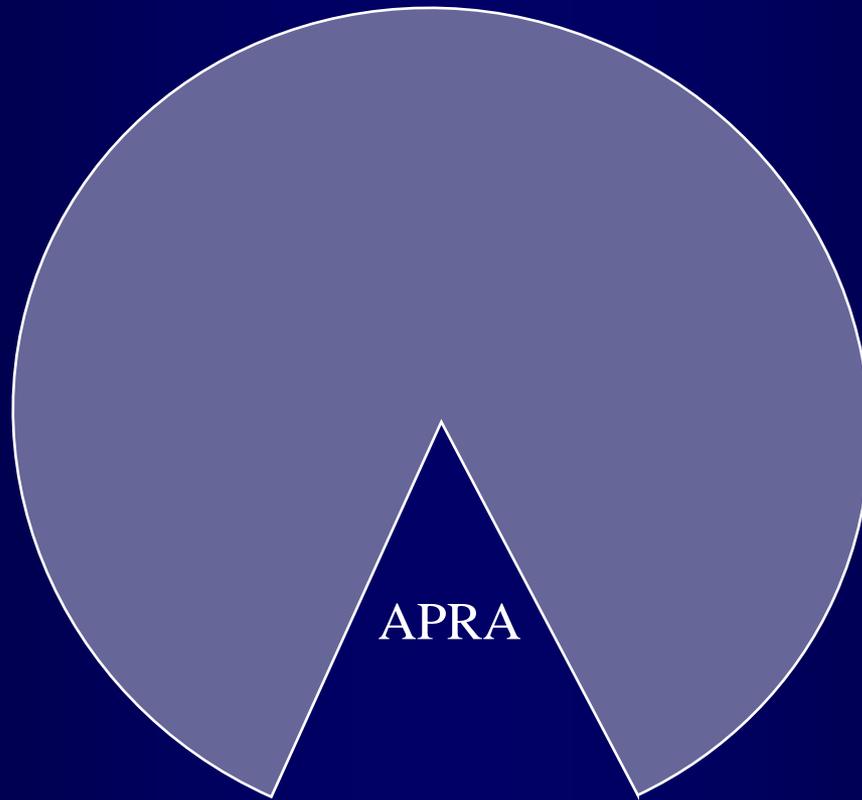
**Co-sponsored by the Roger Williams  
University Law Alumni Association**

# The Purpose

The right to access public records and the right to dignity and privacy are both recognized to be of the utmost importance.

*R.I.G.L. § 38-2-1*

# Document Requests



# The Basics

Is this an APRA request?

Presume Public Document

Who is making the  
request?

# IS IT AN APRA REQUEST?

Provide Source Documents

Not Narrative/Compilation

No Duty Under APRA to  
Answer Questions

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

# IS IT A PUBLIC BODY?

“or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency”

*R.I.G.L. § 38-2-2(1)*

NEARI v. Newport Public Library, PR 14-30

In re: Newport Public Library, ADV PR 14-04

“all records maintained or kept on file by any public body \*\*\* shall be public records and every person or entity shall have the right to inspect and/or copy those records”

*R.I.G.L. § 38-2-3(a)*

# APRA

A PROACTIVE APPROACH

REQUIREMENTS **BEFORE** A  
REQUEST IS EVEN MADE

“Each public body shall establish written procedures regarding access to public records”

- No written request if available per APA or prepared for/readily available to the public

*R.I.G.L. § 38-2-3(d)*

Shapiro v. Town of Warren, PR 15-39;

Access/RI v. New Shoreham Police Dept., PR 15-26

# Procedures Must Include

- Identification of designated public records officer or unit
- How to make a request
- Where to make a request

No requirement that request be made on public body's form, provided identifiable as request

*R.I.G.L. § 38-2-3(d)*

Iafrate v. Town of North Providence, PR 14-36

# Procedures

Copy of procedure shall be posted on public body's website if maintained & be otherwise readily available

# Department of Attorney General

“unless you are seeking records available pursuant to the [APA] or other documents prepared for or readily available to the public, we ask that you complete the Public Records Request Form”

# Training

Chief Administrative Officers of all public bodies must certify by January 1<sup>st</sup> of each year that all employees who have authority to grant/deny access to records have received training.

*R.I.G.L § 38-2-3.16*

In re: Albion Fire District, PR 15-18;  
Access/RI v. New Shoreham Police Dept., PR 15-26

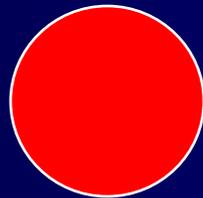
# APRA

REQUIREMENTS WHEN A  
REQUEST IS MADE

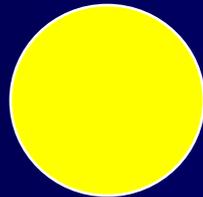
# The Exemptions:

R.I.G.L. § 38-2-2(4)

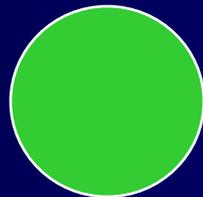
27 Exemptions



Confidential



Exempt

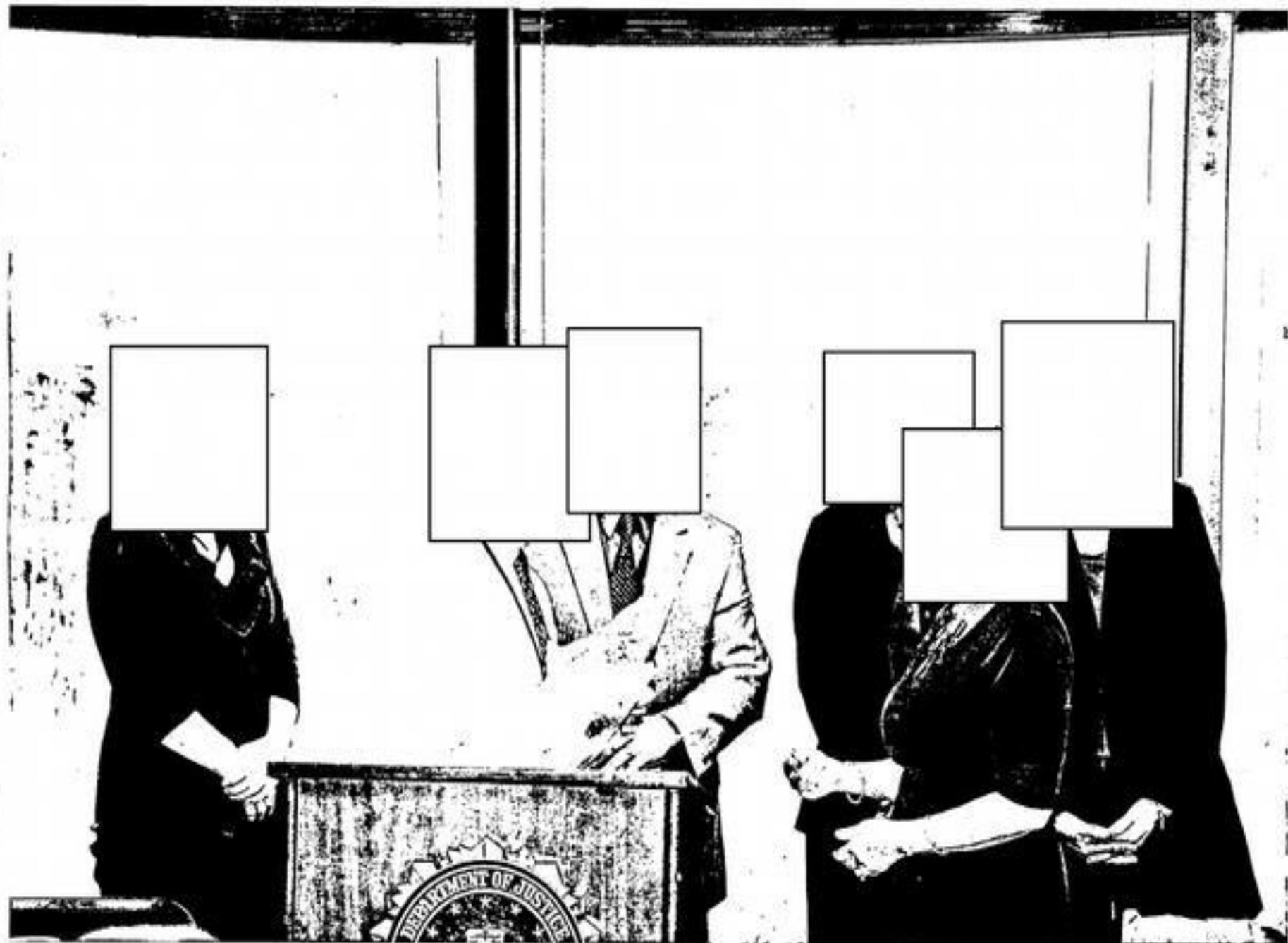


Public

Any reasonably segregable portion of a public record shall be available

If entire document is exempt, must state in writing that no reasonable segregable information exists.

*R.I.G.L. § 38-2-3(b);  
d'Oliveira v. Department of Public Safety, PR 11-10*



GROUP RES# [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] no snack car. [REDACTED]

# Is It a Public Record?

- Does one of the twenty-seven exceptions apply?
- The Balancing Test: Does the individual's privacy interest outweigh the public's interest in disclosure?

Individually – identifiable records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to the FOIA.

*R.I.G.L. § 38-2-2(4)(A)(I)(b);*

In re: Richmond & Portsmouth Police Depts, ADV PR 14-03;

Jackson v. Town of Coventry, PR 14-35;

Fusaro v. Westerly Police Dept., PR 15-09

# Public Employee Information\*

- name
- gross salary
- salary range
- total cost of paid fringe benefits
- gross amount received in overtime
- other remuneration
- job title
- job description
- employment contract
- dates of employment
- positions held with the state, municipality, or public works projects
- work location or project
- business telephone number
- city/town of residence
- date of termination

# Law Enforcement

Records maintained by law enforcement agencies for criminal law enforcement are exempt, but only if disclosure could:

*R.I.G.L. § 38-2-2(4)(D)*

- (a) reasonably be expected to interfere with investigations of criminal activity or enforcement proceedings
- (b) deprive a person of the right to a fair trial
- (c) reasonably be expected to constitute an unwarranted invasion of personal privacy

Providence Journal v. Dept. of Public Safety,  
No. PC12-5458 / Decision on April 1, 2014

- (d) reasonably be expected to identify a confidential source
- (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions
- (f) reasonably be expected to endanger the life or physical safety of any individual

Records relating to the management  
and the direction of a law  
enforcement agency and records or  
reports reflecting the initial arrest  
of an adult are public records

*R.I.G.L. § 38-2-2(4)(D)*

# Adult Arrest Logs

- Must be made available within 48 hours of a request (72 hours if made on a weekend or holiday).
- Applies only to arrests made within 5 days of the request.

*R.I.G.L. § 38-2-3.2*

# Adult Arrest Logs

- Full name of arrested adult;
- Home address of arrested adult, unless doing so would identify a crime victim;
- Year of birth of arrested adult;
- Charge or charges;
- Date of the arrest;
- Time of the arrest;
- Gender of the arrested adult;
- Race of the arrested adult;
- Name of the arresting officer unless doing so would identify an undercover officer

*R.I.G.L. § 38-2-3.2*

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

*R.I.G.L § 38-2-2(4)(E)*

Hydron Laboratories, Inc. v. Attorney General,

492 A.2d 135 (R.I. 1985)

“Any minutes of a meeting of a public body which are not required to be disclosed pursuant to [the OMA].”

*R.I.G.L. § 38-2-2(4)(J)*

Preliminary drafts, notes,  
impressions, memoranda, working  
papers, and work products

**Exception:**

above documents submitted at a  
public meeting shall be public

*R.I.G.L. § 38-2-2(4)(K)*

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

Flaherty v. RIDOT, PR 15-22;

Felise v. East Bay Energy Consortium, PR 15-03

Correspondence of/to elected  
officials with or relating to  
those they represent and  
correspondence of/to elected  
officials in their official  
capacity

*R.I.G.L. § 38-2-2(4)(M)*

All investigatory records of  
public bodies pertaining to  
possible violations of  
statute, rule, or regulation,  
other than records of final  
action taken

*R.I.G.L. § 38-2-2(4)(P)*

Pisaturo v. RI Department of Health, PR 14-27

Any individually identifiable evaluations of public school teachers made pursuant to state or federal law or regulation.

*R.I.G.L. § 38-2-2(4)(Z)*

All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

*R.I.G.L. § 38-2-2(4)(AA)*

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

*R.I.G.L. § 38-2-2(4)(S)*

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

# Balancing Test

Does the privacy interest of the individual outweigh the public's interest in disclosure?

*DARE v. Gannon*, 713 A.2d 218, 225 (R.I. 1998);  
*West Broadway Assoc. v. Portsmouth Police Dept.*, PR 14-26

# Public Interest

“Official information that sheds light on an agency’s performance of its statutory duties.”

Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989);  
Nangle v. Town of No. Smithfield, PR 15-06

# Privacy Interest

“[W]here the subject of the documents ‘is a private citizen,’ ‘the privacy interest . . . is at its apex.’”

National Archives & Records Admin.v. Favish,  
541 U.S. 157 (2003)

# Reason or Identity of Person Making Request

Public body cannot require, as condition of fulfilling request, a person/entity provide reason for request or provide personally identifiable information

*R.I.G.L § 38-2-3(j)*

# Timeframe to Respond After Receiving a Request

- provide the records within ten (10) business days, **or**
- extend the time period for an additional twenty (20) business days for “good cause,” **or**
- deny access to records within ten (10) business days

*R.I.G.L. § 38-2-7*

# Procedures for Denying Access to Records

- denial must be in writing, and
- state the specific reason(s) for the denial, and
- indicate the procedure(s) for an appeal in R.I.G.L. § 38-2-8

*R.I.G.L. § 38-2-7*

Smith v. Warwick Public School Dept., PR 15-13

# Procedures For “Good Cause”

- Explain in writing need for additional time
- Specific to request made (no boilerplate forms)
- Extend time based upon:
  - voluminous nature of request,
  - number of pending requests, or
  - difficulty in searching/retrieving/copying records

*R.I.G.L. § 38-2-3(e)*

Pitochelli v. Town of Johnston, PR 14-20;

CVDDI, LLC v. Town of Smithfield, PR 15-04

# Procedures For “Good Cause”

Unavailability of designated  
public records officer shall  
not be deemed “good cause”

*R.I.G.L. § 38-2-3(d)*

# Procedures Prior to Providing Records

- upon request, provide estimate of charges, **and**
- upon request, provide detailed itemization of search/retrieval costs, **and**
- perform search/retrieval within reasonable amount of time, **and**
- provide reduction or waiver of search/retrieval costs upon a court order

RESPONDING TO  
AN APRA  
REQUEST

1. All records relating to your policies and practices regarding the examination, screening, or diagnosis of children in the State of Rhode Island for lead poisoning or lead exposure.
2. All records relating to your policies and practices regarding reports of the results of the examination, screening, or diagnosis of children in the State of Rhode Island for lead poisoning or lead exposure made to the Rhode Island Department of Health, including sample medical reports or forms for reporting.
3. All records relating to your policies and practices regarding the reporting of suspected or diagnosed cases of lead poisoning or lead exposure to the Rhode Island Department of Health.

4. All records from the Rhode Island Department of Health Laboratory or any other laboratory relating to all children in the State of Rhode Island who have been diagnosed with lead poisoning or lead exposure.
5. All records, reports, or compilations of children in the State of Rhode Island found to have lead poisoning or lead exposure.
6. All records relating to medical records or reports of children in the State of Rhode Island found to have lead poisoning or lead exposure.

7. All records relating to your policies or practices regarding notifying the parents or legal guardians of children who have been diagnosed with lead poisoning or lead exposure.
8. All records relating to attempted or actual notification of the parents or legal guardians of children diagnosed with lead poisoning or lead exposure.
9. All other records relating to the screening of children in the State of Rhode Island for lead poisoning or lead exposure not covered in Request Nos. 1-8 above.

10. All records relating to your current policies regarding the retention or destruction of records of the type requested in Requests Nos. 1-9 above.
11. All records relating to your policies and practices regarding the medical treatment and monitoring of children in the State of Rhode Island diagnosed with lead poisoning or lead exposure.
12. All records relating to guidelines or policies of the Rhode Island Department of Health Childhood Lead Poisoning Prevention Program regarding the medical treatment and monitoring of children in the State of Rhode Island diagnosed with lead poisoning or lead exposure.

13. All records relating to the medical treatment and monitoring of individual children in the State of Rhode Island diagnosed with lead poisoning or lead exposure.
14. All records relating to and/or data compiled or stored using the methods of the Systematic Tracking of Elevated Lead Levels and Remediations (“STELLAR”) developed by the Centers for Disease Control or any other methods of keeping records regarding the diagnosis, medical treatment, and monitoring of children in the State of Rhode Island diagnosed with lead poisoning or lead exposure.

15. All records relating to your policies or practices applicable in the event the parent or guardian of a child diagnosed with lead poisoning or lead exposure fails to seek treatment for that child.
16. All records relating to specific incidents where the parent or guardian of a child in the State of Rhode Island diagnosed with lead poisoning or lead exposure fails to seek treatment for that child.
17. All records relating to your policies or practices applicable in the event health care providers fail to treat or monitor a child diagnosed with lead poisoning or lead exposure in accordance with any rules or regulations concerning lead poisoning prevention or any guidelines or policies of the Rhode Island Health Department Childhood Lead Poisoning Prevention Program.

18. All records relating to specific incidents where a health care provider failed to treat or monitor a child diagnosed with lead poisoning or lead exposure in accordance with the rules and regulations for lead poisoning prevention or any guidelines or policies of the Rhode Island Health Department Childhood Lead Poisoning Prevention Program.
19. All other records relating to the medical treatment and monitoring of children in the State of Rhode Island diagnosed with lead poisoning or lead exposure not covered in Request Nos. 11-18 above.
20. All records relating to your current policies regarding the retention or destruction of records of the type requested in Requests Nos. 11-19 above.

21. All records relating to your policies or practices regarding the evaluation and inspection of dwelling units, rooming units, structures or parts thereof, buildings, premises or properties in the State of Rhode Island for the presence of deteriorated paint, lead-based paint, lead-contaminated dust, or any actual or potential lead-based paint hazard including, but not limited to copies of all Comprehensive Environmental Lead Inspections, copies of all Limited Environmental Lead Inspections and copies of all Environmental Lead Assessments, or comparable inspection or assessments, however denominated.

22. All records relating to the evaluation or investigation of any dwelling, dwelling unit, rooming unit, structure or part thereof, building, premises or property in the State of Rhode Island for the presence of deteriorated paint, lead-based paint, lead-contaminated dust, or any actual or potential lead-based paint hazard.
23. All records relating to the detection and/or reporting of deteriorated paint, lead-based paint, lead-contaminated dust, or any actual or potential lead-based paint hazard in any dwelling, dwelling unit, rooming unit, structure or part thereof, building, premises or property in the State of Rhode Island.

24. All records relating to lead-based hazard reduction measures implemented or to be implemented in any dwelling, dwelling unit, rooming unit, structure or part thereof, building, premises or property in the State of Rhode Island.

25. All records relating to complaints or notices submitted to your agency alleging the presence of deteriorated paint, lead-based paint, lead-contaminated dust, or any actual or potential lead-based paint hazard in any dwelling, dwelling unit, rooming unit, structure or part thereof, building, premises or property in the State of Rhode Island.

26. All records relating to complaints or notices filed with your agency seeking the maintenance or repair of deteriorated paint, lead-based paint, friction surfaces, impact surfaces, lead-contaminated dust or any actual or potential lead-based paint hazard in any dwelling, dwelling unit, rooming unit, structure or part thereof, building, prem-ises or property in the State of Rhode Island.
27. All records relating to the actual or alleged violation of any statutes, codes, rules, regulations, ordinances or orders pertaining to maintenance, evaluation, reduction, interim controls, abatement or any other procedure designed to reduce human exposure or likely exposure to lead-based paint hazards in any dwelling, dwelling unit, rooming unit, structure or part thereof, building, premises or property in the State of Rhode Island.

28. All other records relating to the evaluation of any dwelling, dwelling unit, rooming unit, structure or part thereof, building, premises or property in the State of Rhode Island for any actual or potential lead-based hazard not covered in Requests Nos. 21-27 above.
29. All records relating to your current policies regarding the retention or destruction of records of the type requested in Requests Nos. 21-28 above.
30. All records relating to your policies and practices regarding the training, certification and/or licensing of any person who performs lead-based hazard evaluations.

31. All records relating to your policies and practices regarding the training, certification and/or licensing of any person who implements lead-based hazard reduction measures.

32. All records relating to your policies and practices regarding the monitoring and supervision of the lead-based hazard evaluations performed or lead-based hazard reduction measures implemented by persons to whom licenses, certifications and/or permits were issued by the Rhode Island Department of Health.

# Cost and Delivery Procedures

- \$.15 per photocopy on common/legal size paper
- \$15.00 per search/retrieval hour, no charge for the first hour
- No more than the actual reasonable cost for providing electronic records

*R.I.G.L. § 38-2-4*

Saunders v. RI Division of Lotteries, PR 15-10

# Public Body May Seek Pre-Payment

“production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under § 38-2-4”

*R.I.G.L. § 38-2-7*

“the costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested document”

DARE v. Gannon, 819 A.2d 651, 661 (R.I. 2003)

# Cost and Delivery Procedures

- For purposes of calculating search and retrieval time, multiple requests from same person or entity during a 30 day time period shall be considered one request.

*R.I.G.L. § 38-2-4(b)*

- All fees waived if fail to produce requested records in a timely manner.

*R.I.G.L. § 38-2-7(b)*

# Cost and Delivery Procedures

At the option of the person requesting the records, the public body shall provide copies \* \* \* electronically, by facsimile, or by mail \* \* \* unless complying \* \* \* would be unduly burdensome due to the volume of records requested or the costs incurred.

*R.I.G.L. § 38-2-3(k)*

# Cost and Delivery Procedures

- Persons requesting delivery responsible for any actual cost of delivery.

*R.I.G.L. § 38-2-3(k)*

- May assess charge for retrieving records from storage where public body is assessed retrieval fee.

*R.I.G.L. § 38-2-4(a)*

No requirement to reorganize,  
consolidate, or compile data not  
maintained in the requested  
form

**Exception:** records in an electronic  
format and not unduly burdensome

*R.I.G.L. § 38-2-3(h)*

Bicki v. City of Woonsocket, PR 15-14

“Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them”

*R.I.G.L. § 38-2-3(g)*

# Remedies

*\$2,000* for a willful and knowing violation

*\$1,000* for a reckless violation

Injunctive Relief

Attorney Fees

# Department of Attorney General

*Peter F. Kilmartin, Attorney General*



## Open Meetings Act

# OPEN MEETINGS ACT

A PROACTIVE APPROACH

REQUIREMENTS BEFORE A  
MEETING IS CONVENED

# Three Threshold Elements that Trigger OMA

- A “quorum” of a “public body” has a “meeting”
- If one (or more) element is missing, the OMA does not apply

# What is a Public Body?

“department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government”

*R.I.G.L. § 42-46-2(c)*

Thibault v. Smithfield Town Council, OM 15-09;

Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997)

# What is a Quorum?

“unless otherwise defined ...  
a simple majority of the  
membership”

*R.I.G.L. § 42-46-2(d)*

Ryan v. Warren Housing Authority, OM 14-37;

Goldberg v. Warren Town Council, OM 14-39;

Alix v. Harrisville Fire District, OM 15-01;

Valley Breeze v. Cumberland Fire Comm., OM 15-04

# “Rolling” or “Walking”

## Quorum

A series of meetings each less than a “quorum,” but that collectively represent a “quorum”

# “Rolling” or “Walking” Quorum

Quorums can be created not only by members of a public body, but through a third person

# What is a Meeting?

“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.G.L. § 42-46-2(a)*

Ward v. Woonsocket School Board, OM 14-29

# Electronic Communication

Discussions of a public body via electronic communication is permitted **only** to schedule a meeting.

*R.I.G.L § 42-46-5(b)(1)*

“List serves” (email distribution lists through which subscribers receive information on a particular topic) do not violate the OMA

Members must be present to participate in meeting except:

- on active duty
  - has a **disability** and cannot otherwise participate
- Subject to Governor's Commission on Disabilities

*R.I.G.L § 42-46-5(b)(2)(3) & (4)*

# Two Types of Notice

- Annual Notice: at the beginning of each calendar year
- Supplemental Notice: a minimum of 48 hours before every meeting

# Notice Requirements

## Annual

- Dates, times and location of regularly scheduled meetings

## Supplemental

- Date, time and location of meeting
- Date posted
- Statement specifying nature of business to be discussed

McCarthy/Ward v. Woonsocket School Board, OM 14-28

**Tanner v. Town of East Greenwich,**  
**880 A.2d 784 (R.I. 2005)**

“intended to establish a flexible standard aimed at providing fair notice to the public under the circumstances”

**Anolik v. Zoning Bd. of Review of the**  
**City of Newport,**  
**64 A.3d 1171 (R.I. 2013)**

**“IV. Communications**

Request for extension from  
Turner Scott received 11/30/08  
Re: Petition of Congregation  
Jeshuat Israel.”

# Executive Session Notice

- If publicly known, provide detailed statement – If not publicly known, may use more general language.
- “Anticipated Litigation”

Graziano v. R.I. Lott’y Comm., OM 99-06

# Executive Session Notice

- Public body is required to individually label each item it intends to discuss in executive session.
- Identify the number of items to be discussed.
- No boiler plate language.

# Improper Agenda Items

- Old Business/New Business
- Treasurer's Report
- Police Chief's Report
- Any other matter brought before the Board

## 8. Correspondence:

- Receive and act on resignation letters from Rebecca Ballard and Ruth Pefido of the Deer Task Force
- Receive Annual Report from Deer Task Force
- Receive and act on resignation letter from Michael Ballard of the Harbors Committee
- Receive and act on Notice of Public Hearing before Zoning Board for modification of special use permit for Payne 1614 Realty, LLC (Plat 5, Lot111)

**1. Request a motion for Executive Session**

**(closed session) Pursuant to 42-46-5 Sub**

**Section (a) (2) Litigation, Wells v. Town of**

**Warren, RICHR#15ESE144-37/37”**

**Executive session at 6:00 PM under R.I.G.L. 42-**

**46(a) Exception (3) Review of**

**District Safety Plan; and (8) Matter relating to**

**student privacy records.**

**Any matter appearing on this agenda may be voted**

**upon by the School Committee.**

## **28. Executive Session in Accordance with RIGL:**

- Discuss and Approve Sealed Minutes of Executive Session on May 21 and 16, 2015 and June 1, 2015.**
- 42-46-5 (a) (2) Litigation Re: North End Holdings, LLC and Morse Tax Appeal**
- 42-46-(a) (6) Prospective Business**
- 42-46-5 (a) (5) Acquisition**
- 42-46-5 (a) (1) Personnel - Solicitor**

# Posting Requirements

## Annual

- Available to public upon request
- Secretary of State

## Supplemental

- Principal office; if none, where meeting held
- One other prominent location within governmental unit
- Secretary of State

# DISCLOSURE OF VOTES

- (All): “available, at the office of the public body, within two (2) weeks of the date of the vote.” R.I. Gen. Laws § 42-46-7(b)(1)
- Note: No extension

Carney v. Charlestown Planning Comm., OM 14-31

# DISCLOSURE OF VOTES

Executive session votes must be disclosed upon reconvening into open session except if disclosure would jeopardize a strategy, negotiation, or investigation.

**No sunset provision  
for Executive Session minutes**

# Minutes

- the date, time, and place of the meeting
- the members who are absent/present
- a record by individual member of any vote(s) taken
- any other relevant information that a member of the public body requests

*R.I.G.L. § 42-46-7(a)*

# DISCLOSURE OF UNOFFICIAL MINUTES

- (All\*): “unofficial minutes shall be available, to the public at the office of the public body, within thirty-five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier[.]” R.I. Gen. Laws § 42-46-7(b)(1).

Howard v. Portsmouth Agriculture Adv. Comm., OM 15-12

# DISCLOSURE OF UNOFFICIAL MINUTES

– Exceptions: Sealed executive session  
minutes

Extend the time period for  
filing minutes and publicly  
state the reason

# DISCLOSURE OF UNOFFICIAL MINUTES

- (Fire Companies): “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).
  - No extension
  - Post to Secretary of State website

# **DISCLOSURE OF** **OFFICIAL/APPROVED MINUTES**

Public bodies within the executive branch of state government, all state public and quasi-public boards, agencies, and corporations, and all fire companies shall:

# DISCLOSURE OF OFFICIAL/APPROVED MINUTES

“shall file a copy of the minutes of all open meetings with the secretary of state \* \* \* within thirty-five (35) days of the meeting[.]” R.I. Gen. Laws § 42-46-7(d).

Exception: Public bodies whose responsibilities are solely advisory in nature

– No extension

Buckley v. RI Turnpike & Bridge Authority, OM 14-33



**WESTERN COVENTRY FIRE DISTRICT**

**1110 Victory Highway**

**Greene, Rhode Island 02827**

**Phone (401) 397-7520, Fax (401) 397-1084, [www.wcfd.net](http://www.wcfd.net)**

**Standard Administrative Procedure (SAP) Committee Meeting  
to be held at the above location**

**Thursday, 11 June, 2015, 7:30 p.m.**

**AGENDA**

*(posted 7 June, 2015)*

**14. Adjournment.\***

Note: the unofficial minutes of this meeting must be posted on the SOS site prior to midnight, 11 June, 2015, i.e., the date of this meeting, seven days prior to the next regularly scheduled BOD meeting of 18 June, 2015.

\*Voting by the committee on SAP matters may take place. When ever practical and at the discretion of the chair, the meeting or any part there of may be conducted in an open forum.

Note: the unofficial minutes of this meeting must be posted on the SOS site prior to midnight, 11 June, 2015, i.e., the date of this meeting, seven days prior to the next regularly scheduled BOD meeting of 18 June, 2015.

# DISCLOSURE OF EXECUTIVE SESSION MINUTES

- (All): “available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5.” R.I. Gen. Laws § 42-46-7(c).
  - No extension

# **Ensure Accessibility to Persons with Disabilities**

**R.I. Gen. Laws § 42-46-13**

*Aiello v. Westerly School Redesign Adv. Comm.*, OM 14-32

# AUDIO/VIDEOTAPING

- Subject to “reasonable restrictions” a public body must allow taping:
  - preserve orderly conduct of meeting
  - safeguard public facility against damage caused by recording equipment

Sheldon v. Warwick Min. Hous. Review Brd., OM 14-14;  
Belcher v. Mansi, 569 F.Supp. 379 (D.R.I. 1983)

# REQUIREMENTS AT THE MEETING

# Convening Into Closed Session

- “Open Call”
  - Majority vote in open session
  - State in open session and in minutes subsection of § 42-46-5
  - State in open session and in minutes a statement of the business to be discussed
  - Not discuss any other matter

*R.I.G.L. § 42-46-4(a)*

Graziano v. R.I. Lottery Comm., OM 99-06

The invitation into executive session lies with the public body, not the individual seeking to attend.

Fuller v. Westerly Town Council, OM 15-11

# Executive Session

- Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5. *R.I.G.L. § 42-46-3*

- Ten (10) purposes for which meeting may be closed.

*R.I.G.L. § 42-46-5(a)(1)-(10)*

# R.I.G.L. § 42-46-5(a)(1)

- **Discussions** of job performance, character, or physical or mental health of affected person or persons
  - advanced written notice that discussion may take place in open session
  - state in open call and open minutes that notice provided

**R.I.G.L. § 42-46-5(a)(2)**

Sessions or work sessions  
pertaining to collective  
bargaining or litigation

Fitzmorris v. Warren Housing Auth., OM 14-37

**R.I.G.L. § 42-46-5(a)(4)**

Investigative proceedings  
regarding allegations of  
civil or criminal  
misconduct

*R.I.G.L. § 42-46-5(a)(4)*

# R.I.G.L. § 42-46-5(a)(8)

School Committee sessions to conduct student disciplinary hearings or to review other matters relating to the privacy of students or their records, provided that:

- Advanced written notice that discussion may take place in open session
- State in open call and open minutes that notice provided

# Amending the Agenda

“Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members.”

R.I. Gen. Laws § 42-46-6(b)

Appolonia v. West Warwick Bd of Canvassers, OM 15-06

# Amending the Agenda

A vote may not be taken, except:

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

# Amending Agenda School Committee

1. Posted within 48 hours of meeting at:
  - a. The 2 public locations
  - b. Secretary of State
  - c. Posted on School District's website
2. Process available to provide timely notice to:
  - a. Any person who has requested
  - b. Reasonable steps taken to make public aware

# Amending Agenda

## School Committee (*Cont.*)

3. Original notice indicate that changes will be:
  - a. Posted on website
  - b. Posted in 2 locations
  - c. Filed with Secretary of State

# Public Comment (Not School Committee)

Public body may respond to  
comments initiated by a  
member of the public during a  
properly noticed open forum

*R.I.G.L. § 42-46-6(d)*

# Public Comment School Committee

Pursuant to a request:

1. Submitted in writing
2. By a member of the public
3. During the public comment session
4. Informational purposes only

*R.I.G.L. § 42-46-6(b)*

Nothing requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic

*R.I.G.L. § 42-46-6(d)*

# Emergency Meeting

Upon a majority vote, an emergency meeting may be convened:

“to address an unexpected occurrence that requires immediate action to protect the public.”

*R.I.G.L. § 42-46-6(c);  
Kalunian v. Coventry Town Council, OM 09-14*

Any citizen or entity of the state  
who is aggrieved as a result of  
violations \* \* \* of this chapter  
may file a complaint with the  
attorney general.

*R.I.G.L. § 42-46-8(a)*

Graziano v. RI Lot. Comm., 810 A.2d 215 (RI 2002);

Common Cause v. Brd of Elections, OM 15-02;

Pitochelli v. Town of Johnston, OM 15-10

# Remedies

- File an action with the Superior Court
- File a complaint with the Department of Attorney General

*R.I.G.L. § 42-46-8*

# Penalties

- Injunctive relief and declare actions null and void
- Civil fine up to \$5,000 for a willful and knowing violation
- Attorney fees and costs

*R.I.G.L. § 42-46-8(d)*