

**DEPARTMENT OF ATTORNEY GENERAL**

***Peter F. Kilmartin, Attorney General***



**ACCESS TO PUBLIC RECORDS ACT**

**&**

**OPEN MEETINGS ACT**

**2012**



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

July 27, 2012

Dear Open Government Summit Attendee:

I would like to thank you for attending the annual Open Government Summit and I would also like to thank Roger Williams University School of Law for hosting this event.

Rhode Island's Open Meetings Act and Access to Public Records Act are critical to ensuring that this State's government operations remain open and accountable to the public. For this reason, I am pleased that the General Assembly passed amendments to the Access to Public Records Act that will further enhance a citizen's access to public records, yet limit the additional burdens imposed upon public bodies. It is my hope that these changes will lead to an increased understanding of government operations as well as facilitating a citizen's access to public records.

To this end, the Department of Attorney General is committed to public outreach and education concerning the requirements of the Open Meetings Act and the Access to Public Records Act. While this Department's Open Government Summit represents a large state-wide audience, members of the Attorney General's Office are available upon request to conduct smaller open government trainings on a town or regional basis and I encourage you to take advantage of this opportunity. Additionally, this Department will continue to issue, upon request from legal counsel for public bodies, advisory opinions concerning any pending matter that may implicate either the Open Meetings or the Access to Public Records Acts.

I also encourage you to take advantage of the resources available at the Department of Attorney General's website, [www.riag.ri.gov](http://www.riag.ri.gov). Our popular Attorney General's Guide to Open Government has been revised to reflect the latest legislative amendments and is located in the "Open Government" section of the Attorney General's website. In addition, this Department's website has links to findings and advisory opinions issued from 2001 to the present. These findings and advisory opinions may provide guidance on specific questions that you may encounter under the Open Meetings and Access to Public Records Acts.

On behalf of the entire Department, I again thank you for your interest and commitment to ensuring that state and local government is both transparent and accessible to the people of this State. If either the Department or I can assist you, please do not hesitate to contact us.

Very truly yours,

Peter F. Kilmartin  
Attorney General

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## SECTION I



## ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS – 2012

- PR 12-01**      **Livingston v. Rhode Island Family Court**  
The Rhode Island Family Court did not violate the APRA when it denied the Complainant's request for personal access to the Court's computer system to review requested electronic files because the APRA does not require that a requestor be provided actual computer access. See R.I. Gen. Laws § 38-2-3(e). This Department also determined that the Rhode Island Family Court did not violate the APRA when it denied the Complainant's request to search, carte blanche, its hardcopy and electronic records, especially because those records were unredacted and potentially contained information exempt from public disclosure under the APRA.  
*Issued January 5, 2012.*
- PR 12-02**      **Quirk v. Town of North Providence**  
The Town of North Providence violated the APRA by failing to respond to an APRA request within ten (10) business days. The Town was advised to respond to this Department's inquiry concerning whether the failure to timely respond constituted a willful and knowing violation in light of this and prior violations of the APRA.  
VIOLATION FOUND.  
*Issued January 26, 2012.*
- PR12-02B**      **Quirk v. Town of North Providence**  
In Quirk v. Town of North Providence, PR 12-02, released January 26, 2012, this Department concluded the Town violated the APRA by failing to respond to complainant's APRA request dated November 8, 2011. This supplemental finding concludes the Town's actions did not amount to a willful and knowing violation because, based upon the evidence presented, the Town's violation was the result of a clerical error and that the Town has now complied with the November 8, 2011 APRA request.  
*Issued July 11, 2012.*
- PR 12-03**      **Eikeland v. Newport Police Department**  
The Police Department did not violate the APRA as there was no evidence presented that the Police Department withheld or refused to produce responsive records.  
*Issued January 30, 2012.*
- PR12-04**      **Common Cause v. RI Board of Elections**  
The Board of Elections did not violate the APRA by failing to provide access to ballots from the November 2010 election because

R.I. Gen. Laws § 17-19-39.1 prohibits such access absent a vote by the Board of Elections or a court order. Accordingly, the requested documents were not public records.

*Issued February 29, 2012.*

PR 12-05 DesMarais v. Manville Fire Department, Board of Wardens  
The Board violated the APRA when it refused to provide documents requested via email since the Board's policy concerning email requests was unclear.

**VIOLATION FOUND.**

*Issued March 1, 2012.*

PR 12-06 Auclair v. Manville Fire District  
Because an APRA request did not comply with the Fire District's written procedures, the Fire District did not violate the APRA when it did not timely comply with the request.

*Issued March 1, 2012.*

PR 12-07 McBurney v. Lime Rock Fire District  
Consistent with prior findings, the Department of Attorney General declined to review this complaint (all prior parts had been withdrawn) because it raised issues identical to issues pending in Superior Court. Specifically, although the remaining issue was not pending in Superior Court, the Superior Court lawsuit did raise other issues relating to the same APRA request and sought the same relief, *i.e.*, access to the requested documents. Because both the pending complaint and the Superior Court lawsuit sought access to the requested documents, this Department yielded to the Superior Court's jurisdiction.

*Issued March 6, 2012.*

PR 12-08 Costantino v. Smithfield School Committee  
We concluded the School Committee did not violate the APRA when it refused to provide sealed executive session meeting minutes of April 21, 2008 as properly sealed minutes are not public records. See R.I. Gen. Laws § 38-2-2(5)(i)(J).

*Issued March 9, 2012.*

PR 12-09 McBurney v. City of Pawtucket  
The City violated the APRA when it failed to disclose or exempt an October 2010 memorandum. Based upon the evidence presented the Department was unable to determine when or how the October 2010 memorandum was disclosed to a third party, and therefore,

could not determine whether the attorney work product privilege was waived. Since the Complainant already had a copy of the October 2010 memorandum, the waiver issue was moot.

**VIOLATION FOUND.**

***Issued April 2, 2012.***

**PR 12-10**

**Rodriguez v. East Providence Police Department**

The East Providence Police Department did not violate the APRA when it was unable to locate a requested document. The evidence demonstrated that the Police Department's search, although unsuccessful, was reasonably calculated to discover the requested document.

***Issued April 4, 2012.***

**PR 12-11**

**Murphy v. Town of North Smithfield**

The Town violated the APRA when it refused to provide access to certain documents but provided no explanation why those documents were exempt from disclosure. The Town also violated the APRA when it refused to provide access to certain documents, claiming attorney/client privilege, yet the evidence revealed those documents were disclosed to third parties.

**VIOLATION FOUND.**

***Issued April 9, 2012.***

**PR 12-12**

**Gagnon v. East Providence School Committee**

The School Committee violated the APRA when it only partially responded to Complainant's APRA request. The School Committee did not violate the APRA when it failed to respond to Complainant's questions because a public body's APRA obligation does not extend to answering questions.

**VIOLATION FOUND.**

***Issued May 7, 2012.***

**PR 12-13**

**Campbell v. Town of Tiverton**

The Town violated the APRA by providing a written representation instead of providing Complainant with the right to inspect and/or copy the requested billing statements for legal fees (subject to the exemption found in R.I. Gen. Laws § 38-2-2(5)(i)(A)(I)).

**VIOLATION FOUND.**

***Issued May 7, 2012.***

- PR 12-14**      **Novak v. Western Coventry Fire District**  
The Fire District did not violate the APRA since the evidence showed the Fire District responded to Complainant's July 25, 2011 APRA request by mail despite the fact that Complainant did not receive it. The Fire District violated the APRA by failing to respond to Complainant's September 9, 2011 and November 2, 2011 APRA requests in accordance with R.I. Gen. Laws § 38-2-7.  
**VIOLATION FOUND.**  
***Issued May 10, 2012.***
- PR 12-15**      **AVCORR v. Central Falls Detention Facility Center**  
The Central Falls Detention Facility Center ("CFDFC") violated the APRA when it failed to respond in some capacity within ten (10) business days to AVCORR Management, LLC's ("AVCORR") APRA request. See R.I. Gen. Laws § 38-2-7. The CFDFC did not violate the APRA when it failed to produce the requested document because the evidence revealed the document was the subject of discovery in pending litigation and that AVCORR was in possession of the document through this discovery. As such, this Department was not the appropriate forum to determine whether the document was a public record. See *Horton v. Portsmouth Police Department*, PR 06-27; *Zendran v. Providence Police Department*, PR 06-30.  
**VIOLATION FOUND.**  
***Issued May 23, 2012.***
- PR 12-16**      **Conservation Law Foundation v. DOA**  
The Department of Administration ("DOA") violated the APRA when it did not timely respond to complainant's APRA request under R.I. Gen. Laws § 38-2-7. No evidence was presented to show that the request did not comply with the DOA's policies and procedures for submitting public records requests. The violation, however, was not knowing and willful.  
**VIOLATION FOUND.**  
***Issued June 8, 2012.***
- PR 12-17**      **WPRI v. Woonsocket Police Department**  
The Police Department violated the APRA when it: 1) initially denied WPRI's request for an initial arrest (face) report, and 2) failed to provide the Complainant with the initial narrative report. The Police Department did not violate the APRA when it identified

reasons for denying the initial narrative report sufficient to comply with R.I. Gen. Laws § 38-2-7(a).

**VIOLATION FOUND.**

***Issued June 14, 2012.***

**PR 12-18**

**Costa v. Town of Scituate**

The Town violated the APRA by failing to respond in a timely manner.

**VIOLATION FOUND.**

***Issued July 5, 2012.***

**PR 12-19**

**Waltonen v. West Greenwich Town Council**

The West Greenwich Town Council (“Town Council”) did not violate the APRA when it provided a redacted copy of a letter requested through an APRA request as the redactions were limited to information regarding the identity of a juvenile and is not public because public disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(5)(i)(D)(c). See also Direct Action for Rights and Equality v. Gannon, 712 A.2d 218 (R.I. 1998) (balancing test); R.I. Gen. Laws § 38-2-2(5)(i)(A)(I). The Town Council did not violate the OMA because no evidence has been presented that a quorum of the Town Council met to discuss and/or act upon approving an invitation to bid for computer software outside of a publicly held meeting. R.I. Gen. Laws § 42-46-2(a).

***Issued July 10, 2012.***

## CHAPTER 2

### ACCESS TO PUBLIC RECORDS

**38-2-1.Purpose.** — The public’s right to access to public records and the individual’s right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

**38-2-2. Definitions.** — As used in this chapter:

(1) “Agency” or “public body” ~~shall mean~~ means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in section 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

(2) “Chief administrative officer” means the highest authority of the public body. ~~as defined in subsection (a) of this section.~~

~~(3) “Prevailing plaintiff” means and shall include those persons and entities deemed prevailing parties pursuant to 42 U.S.C. section 1988.~~

~~(4)~~(3) “Public business” means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

~~(5)~~(4)~~(i)~~ “Public record” or “public records” shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) (I) (a) All records ~~which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records~~ relating to a client/attorney relationship and to a doctor/patient relationship, including and all ~~personal or~~ medical information relating to an individual in any files; ~~including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body;~~

(b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of ~~the any public~~ retirement systems ~~established by the general laws~~ as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems ~~established in title 8, title 36, title 42, and title 45~~ and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a

confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

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

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

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

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(V) Printouts from TELE -TEXT devices used by people who are deaf or hard of hearing or speech impaired.

(W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country; at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.

(X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.

(Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island General Law § 9-1.1-6.

~~(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.~~

~~(5) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.~~

**38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. —**

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

(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

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

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

These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body's website if such a website is maintained and be made otherwise readily available to the public. The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to subsection (e). A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records.

(e) A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

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

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

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

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

~~(h)~~ (j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body 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.

(k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile,

or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

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

**38-2-3.2. Arrest logs.** – (a) Notwithstanding the provisions of subsection 38-2-3(e), the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the public body:

- (1) Full name of the arrested adult;
  - (2) Home address of the arrested adult, unless doing so would identify a crime victim;
  - (3) Year of birth of the arrested adult;
  - (4) Charge or charges;
  - (5) Date of the arrest;
  - (6) Time of the arrest;
  - (7) Gender of the arrested adult;
  - (8) Race of the arrested adult; and
  - (9) Name of the arresting officer unless doing so would identify an undercover officer.
- (b) The provisions of this section shall apply to arrests made within five (5) days prior to the request.

**38-2-3.16. Compliance by agencies and public bodies.** – Not later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access to records under this chapter have been provided orientation and training regarding this chapter. The attorney general may, in accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements of this section.

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

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.

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

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

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

**38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:**

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

~~— 38-2-6. Commercial use of public records. — No person or business entity shall use information obtained from public records pursuant to this chapter [to solicit for commercial purposes] or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one year.~~

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

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended ~~for a period not to exceed thirty (30) business days.~~ in accordance with the provisions of subsection 38-2-3(e) of

this chapter. All copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under section 38-2-4.

(c) A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the request in accordance with this chapter, state that it does not have or maintain the requested records.

**38-2-8. Administrative appeals. —** (a) Any person or entity denied the right to inspect a record of a public body ~~by the custodian of the record~~ may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

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

**38-2-9. Jurisdiction of superior court. —**

(a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of any party, or sua sponte by the court made in accordance with the rules of civil procedure of the superior court.

(d) The court shall impose a civil fine not exceeding ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter and shall award reasonable attorney fees and

costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or costs if the court determines that the defendant's case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

**38-2-10. Burden of proof.** — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

**38-2-11. Right supplemental.** — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

**38-2-12. Severability.** — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

**38-2-13. Records access continuing.** — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

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

**38-2-15. Reported violations.** — Every year the attorney general shall prepare a report summarizing all the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

## SECTION II



## OPEN MEETINGS ACT

## OPEN MEETINGS ACT FINDINGS – 2012

- OM 12-01    Cote v. Warwick City Council  
The City Council did not violate the OMA since it properly recorded in its minutes a vote by individual members as required by R.I. Gen. Laws § 42-46-7(a)(3).  
*Issued January 4, 2012.*
- OM 12-02    Waltonen v. West Greenwich Town Council  
The Town Council did not violate the OMA because there was no evidence of discussions or actions among a quorum of the Town Council. The Town Council also did not violate the OMA since there was no evidence that members of the Town Council discussed town business outside the purview of the public. The Town Council violated the OMA by not making a statement specifically indicating that an employee had been notified that his job performance would be discussed in executive session and that this statement was omitted from the minutes of the meeting. See R.I. Gen. Laws § 42-46-5(a)(1).  
VIOLATION FOUND.  
*Issued January 6, 2012.*
- OM 12-03    Knight v. Pawtucket School Committee  
A public body must disclose all votes taken in executive session but a public body need not to disclose a vote during the time period in which the disclosure of the vote would “jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” The School Committee, during its April 12, 2011 executive session, voted to extend a firm offer to the Pawtucket Teachers’ Alliance for a collective bargaining agreement. Once that offer was accepted and the School Committee voted on the final contract in public at its April 25, 2011 meeting, any strategy, negotiation or investigation discussed during executive session was no longer in jeopardy and the School Committee’s failure to report out the vote at the April 25, 2011 meeting was a violation of the OMA.  
VIOLATION FOUND.  
*Issued January 9, 2012.*
- OM 12-04    Lambi v. Cumberland Hill Fire District  
The Cumberland Hill Fire District did not violate the OMA since there was no evidence that members of the Fire District met to

discuss an agenda item or any other public business outside the public purview.  
*January 25, 2012.*

OM 12-05 Block v. Rhode Island Board of Elections

Complainant alleged that the Board of Elections violated the OMA during meetings in February 2010 and April 2010. Since the complaint was filed with this Department in November 2011, well after the expiration of the statute of limitations set forth in R.I. Gen. Laws § 42-46-8(b), this Department declined to review the complaint.

*Issued February 13, 2012.*

OM 12-06 Finlay v. Town of Cumberland

The Committee at issue was formed by the Mayor of the Town of Cumberland and its membership consists of the Mayor, members of two different Cumberland fire districts, members of the Town Council and members of the public to study the consolidation of fire services into a single provider. Although the Town submits the Committee's function is advisory, Solas v. Emergency Hiring Council, 774 A.2d 820, 825 (R.I. 2001) held that a public body that performs an advisory role falls within the OMA. The Committee's failure to comply with the requirements of the OMA was a violation.

VIOLATION FOUND.

*Issued February 16, 2012.*

OM 12-06B Finlay v. Town of Cumberland

The Town requested that this Department reconsider our prior finding in Finlay v. Town of Cumberland, OM 12-06. The Town's supplemental response did not change this Department's conclusion that the Committee at issue is a public body as that term is defined in the OMA. As such, its failure to comply with the OMA was a violation.

*Issued April 23, 2012.*

OM 12-07 Reilly v. Providence Economic Development Partnership, Inc.

The Providence Economic Development Partnership, Inc. ("PEDP") is the primary economic development policy making body of the City of Providence and its members are appointed by the Mayor of Providence. The PEDP's assets and liabilities are listed on the City of Providence's annual report. Based upon the evidence presented, the business of the PEDP is inextricably intertwined with that of the

City of Providence. As such, the PEDP is a subdivision of municipal government and its failure to post its agendas with the Secretary of State is a violation of the OMA.

**VIOLATION FOUND.**

***Issued February 16, 2012.***

**OM 12-08** **Beagan v. Albion Fire District**

The Fire District violated the OMA by failing to articulate in its open call, its open session minutes, and its agenda a statement specifying the nature of the business to be discussed in executive session. The Fire District also violated the OMA by failing to memorialize in its open session minutes that an affected person received advanced written notice that they may have an executive session in open session.

**VIOLATION FOUND.**

***Issued February 16, 2012.***

**OM 12-09** **DesMarais v. Manville Fire Department, Board of Wardens**

The Board violated the OMA by posting its annual notice of its regularly scheduled meetings after its first regularly scheduled meeting was held. The Board violated the OMA when its May 11, 2011 meeting agenda failed to state the date, time and location of the meeting and when the agenda was posted. The Board did not violate the OMA when it did not convene into executive session during some meetings despite executive sessions being listed on the agenda as there was no evidence to conclude the agendas were misleading. The Board did not violate the OMA when it failed to file and transmit its meeting minutes to the Secretary of State as there was no evidence the Board met the criteria of R.I. Gen. Laws § 42-46-7(d) & (e). The Board violated the OMA when it failed to indicate in its open session minutes of December 15, 2010 and January 19, 2011 that certain Board members were present or absent. The Board did not violate R.I. Gen. Laws § 42-46-7(a)(3) with a recorded vote of “all in favor” as that sufficiently informs the public of the “record by individual members of any vote taken” to indicate that all present members voted unanimously. The Board violated the OMA during its March 11, 2011 meeting when the Board failed to disclose an executive session vote upon returning to open session. The Board violated the APRA when it refused to provide documents requested via email as the Board’s policy concerning email requests was unclear.

**VIOLATION FOUND.**

***Issued March 1, 2012.***

OM 12-10 Auclair v. Manville Fire District

The Manville Fire District violated the OMA when it failed to disclose a vote taken in executive session and when its agenda provided insufficient information to advise the public of the nature of the business to be discussed. Because an APRA request did not comply with the Fire District's written procedures, the Fire District did not violate the APRA when it did not timely comply with the request.

**VIOLATION FOUND.**

***Issued March 1, 2012.***

OM 12-11 Novak v. Western Coventry Fire District

The Fire District violated the OMA when it listed "anticipated litigation" on its July 7, 2011 executive session agenda, yet the lawsuit had already been filed. In accordance with our finding in Graziano v. R.I. Lottery Commission, OM 99-06, the case name should have been included on the agenda. The Fire District did not violate the OMA with respect to the August 24, 2011 and September 7, 2011 executive sessions as they were properly advertised. The Fire District violated the OMA with its September 7, 2011 executive session agenda because a number of topics in addition to the agenda items were discussed. This Department has held that when more than one matter is discussed under one or more of the topics found in R.I. Gen. Laws § 42-46-5, each matter must be noticed on the agenda. See Perry v. Coventry (Anthony) Fire District, OM 02-15. The Fire District did not violate the OMA when its agendas for the September 7, 2011, September 24, 2011, October 29, 2011, November 9, 2011, December 1, 2011 and December 10, 2011 meetings were listed on the Secretary of State's website as "Annual Meetings" as opposed to regular or special meetings because there was no evidence that the advertisement was designed to mislead the public or that the complainant was aggrieved by this alleged error. Graziano v. R.I. State Lottery Commission, 810 A.2d 215 (R.I. 2002).

**VIOLATION FOUND.**

***Issued March 6, 2012.***

OM 12-12 Costantino v. Smithfield School Committee

Due to the statute of limitations, we declined to review whether the School Committee improperly convened into executive session on April 21, 2008 as the complaint was received by this Department on October 21, 2011. See R.I. Gen. Laws § 42-46-8(b). We concluded

the School Committee did not violate the APRA when it refused to provide sealed executive session meeting minutes of April 21, 2008 as properly sealed minutes are not public records. See R.I. Gen. Laws § 38-2-2(5)(i)(J).  
*Issued March 9, 2012.*

OM 12-13 DesMarais v. Manville Fire District

The Manville Fire District violated the OMA when it held its November 9, 2011 open meeting at a place within the Manville fire station that was inaccessible to persons with disabilities. See R.I. Gen. Laws § 42-46-13(c). The Fire District shall have ten (10) business days to respond to this Department's inquiry concerning whether the violation found was willful and knowing in light of our finding in DesMarais v. Manville Fire District, OM 11-31.  
VIOLATION FOUND.  
*Issued March 16, 2012.*

OM 12-13B DesMarais v. Manville Fire District

This Department concluded the Manville Fire District violated the OMA in DesMarais v. Manville Fire District, OM 12-13, by holding its November 9, 2011 meeting at a location that was not accessible to persons with disabilities in violation of R.I. Gen. Laws § 42-46-13. While the evidence suggests that a willful or knowing violation may have occurred, a lawsuit has already been filed in Superior Court on Mr. DesMarais' behalf for the meeting at issue in this finding. As such, we decline to file a lawsuit with respect to this meeting.  
*Issued July 5, 2012.*

OM 12-14 Clapp v. Newport City Council

The Newport City Council did not violate the OMA as the May 25, 2011 and the December 14, 2011 meeting agendas properly advised the nature of the business to be discussed.  
*Issued March 19, 2012.*

OM 12-15 Cook v. Tiverton Town Council

The Tiverton Town Council did not violate the OMA when it discussed how the Town Administrator handled media relations during an executive session noticed as discussing the Town Administrator's job performance. Moreover, the evidence demonstrated that the Town Administrator unilaterally changed

the manner in which media inquiries were handled and did not do so at the express request of the Town Council.

*Issued April 2, 2012.*

OM 12-16 Montgomery v. New Shoreham Town Council

The Town Council did not violate the OMA as its agenda for its October 3, 2011 meeting adequately informed the public of the nature of the business to be discussed.

*Issued April 4, 2012.*

OM 12-17 Murphy v. North Smithfield Town Council

The Town Council did not violate the OMA since its December 5, 2011 executive session meeting agenda adequately informed the public of the nature of the business to be discussed in executive session.

*Issued April 9, 2012.*

OM 12-18 Murphy v. North Smithfield Town Council

The Town Council did not violate the OMA since its agenda for the December 19, 2011 executive session meeting adequately informed the public of the nature of the business to be discussed in executive session.

*Issued April 9, 2012.*

OM 12-19 Maloney v. North Kingstown Planning Commission

Complainant alleged that the North Kingstown Planning Commission violated the OMA during its May 17, 2011 meeting. Since the complaint was filed with this Department in January 2012, after the expiration of the statute of limitations set forth in R.I. Gen. Laws § 42-46-8(b), this Department declined to review the complaint.

*Issued April 19, 2012.*

OM 12-20 Albro v. West Greenwich Town Council

Complainant alleged that the Town Council violated the OMA when her employment status, which was not listed on the agenda, was mentioned during the meeting within the context of a properly noticed agenda item. This Department found that her job performance was mentioned only as a passing reference not as part of a discussion, and therefore the absence of public notice did not violate the OMA.

*Issued April 25, 2012.*

- OM 12-21 **Mooney v. New Shoreham Town Council**  
The Town Council did not violate the OMA because its agenda for its October 3, 2011 meeting adequately informed the public of the nature of the business to be discussed. See also Montgomery v. New Shoreham Town Council, OM 12-16.  
***Issued May 7, 2012.***
- OM 12-22 **Novak v. Western Coventry Fire District**  
The Fire District did not violate the APRA as the evidence showed the Fire District responded to Complainant's July 25, 2011 APRA request by mail despite the fact that Complainant did not receive it. The Fire District violated the APRA by failing to respond to Complainant's September 9, 2011 and November 2, 2011 APRA requests in accordance with R.I. Gen. Laws § 38-2-7. The Fire District violated the OMA by failing to make available to the public a record of all votes taken for its August 24, 2011 meeting, listing how each member voted on each issue. R.I. Gen. Laws § 42-46-7(b).  
**VIOLATION FOUND.**  
***Issued May 10, 2012.***
- OM 12-23 **Murphy v. North Smithfield Town Council**  
The Town Council did not violate the OMA since its agenda for the March 5, 2012 meeting adequately informed the public of the nature of the business to be discussed in executive session.  
***Issued June 8, 2012.***
- OM 12-24 **DesMarais v. Manville Fire District**  
The Manville Fire District violated the OMA when it held its December 14, 2011, January 11, 2012 and February 8, 2012 meetings at a location that was not accessible for persons with disabilities in violation of R.I. Gen. Laws § 42-46-13. Our prior findings make clear that the Fire District was well aware of its obligation to hold its meetings in a handicapped accessible location and yet it continues to disregard this requirement. As such, this Department will file a lawsuit against the Manville Fire District in Superior Court seeking injunctive and monetary relief.  
**VIOLATION FOUND.**  
**LAWSUIT FILED.**  
***Issued July 5, 2012.***

- OM 12-25     Moniz v. Tiverton Zoning Board of Review  
 The Tiverton Zoning Board of Review did not violate the OMA when its agenda indicated that it would consider a variance request for a “garage,” rather than a variance request for a “barn.”  
*Issued July 5, 2012.*
- OM 12-26     Waltonen v. West Greenwich Town Council  
 The West Greenwich Town Council (“Town Council”) did not violate the APRA when it provided a redacted copy of a letter requested through an APRA request as the redactions were limited to information regarding the identity of a juvenile and is not public because public disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(5)(i)(D)(c). See also Direct Action for Rights and Equality v. Gannon, 712 A.2d 218 (R.I. 1998) (balancing test). The Town Council did not violate the OMA because no evidence has been presented that a quorum of the Town Council met to discuss and/or act upon approving an invitation to bid for computer software outside of a publicly held meeting. R.I. Gen. Laws § 42-46-2(a).  
*Issued July 10, 2012.*

**OPEN MEETINGS ACT**  
**ADVISORY OPINIONS - 2012**

- ADV OM 12-01     In Re Pojac Point Fire District  
 The Fire District’s Annual Meeting is not subject to the Open Meetings Act because a meeting of Qualified Electors, who have control over all issues raised, discussed, and voted upon at the meeting, “cannot be other than highly public.”  
See Pine v. McGreavy, 687 A.2d 1244, 1245 (R.I. 1997).  
*Issued June 14, 2012.*

## CHAPTER 46

### OPEN MEETINGS

**42-46-1. Public policy.** — It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

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

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

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

(c) “Public body” means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.

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

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

(f) “Open forum” means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.

**42-46-3. Open meetings.** — Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

**42-46-4. Closed meetings.** — (a) By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by § 42-46-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting. No public body shall discuss in closed session any public matter which does not fall within the citations to § 42-46-5(a) referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.

(b) All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions

conducted under § 42-46-5(a).

**42-46-5. Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct. —**

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

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

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

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

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

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

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

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

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

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

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

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

(10) Any discussion of the personal finances of a prospective donor to a library.

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

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) any waiver decisions shall be a matter of public record.

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

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

**42-46-6. Notice. — As Amended by Article 12 in the Fiscal Year 2012 State Budget. -**

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

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote

of the members. School committees may, however, add items for informational purposes only, pursuant to a request, submitted in writing, by a member of the public during the public comment session of the school committee's meetings. Informational items may not be voted upon unless they have been posted in accordance with the provisions of this section. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.

(c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (f); ~~provided, that in the case of school committees the required public notice shall be published in a newspaper of general circulation in the school district under the committee's jurisdiction; however, ad hoc committees, sub-committees and advisory committees of school committees shall not be required to publish notice in a newspaper;~~ however, nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (f) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

(d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter 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 at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

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

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

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

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

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

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

(f) All notices required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of notices with the secretary of state shall take effect one (1) year after this subsection takes effect.

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

#### **42-46-7. Minutes. —**

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

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

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

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

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

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

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

(d) All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations shall keep official and/or approved minutes of all meetings of the body and shall file a copy

of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.

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

**42-46-8. Remedies available to aggrieved persons or entities. —**

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

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

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

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

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

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

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

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

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

**42-46-9. Other applicable law. —** The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29, which has been expressly repealed.

**42-46-10. Severability.** — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the remaining provisions or the other applications of this chapter.

**42-46-11. Reported violations.** — Every year the attorney general shall prepare a report summarizing the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

**42-46-12. Notice of citizen's rights under this chapter.** — The attorney general shall prepare a notice providing concise information explaining the requirements of this chapter and advising citizens of their right to file complaints for violations of this chapter. The notice shall be posted in a prominent location in each city and town hall in the state.

**42-46-13. Accessibility for persons with disabilities.** —

(a) All public bodies, to comply with the nondiscrimination on the basis of disability requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of title 11), shall develop a transition plan setting forth the steps necessary to ensure that all open meetings of said public bodies are accessible to persons with disabilities.

(b) The state building code standards committee shall, by September 1, 1989 adopt an accessibility of meetings for persons with disabilities standard that includes provisions ensuring that the meeting location is accessible to and usable by all persons with disabilities.

(c) This section does not require the public body to make each of its existing facilities accessible to and usable by persons with disabilities so long as all meetings required to be open to the public pursuant to chapter 46 of this title are held in accessible facilities by the dates specified in subsection (e).

(d) The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.

(f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their Jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor's commission on disabilities for review and approval. The governor's commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.

(g) The provisions of §§ 45-13-7 — 45-13-10, inclusive, shall not apply to this section.

**42-46-14. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.**

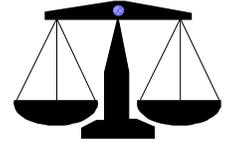
## SECTION III



## ACCESS TO PUBLIC RECORDS ACT PROCEDURES



DEPARTMENT OF ATTORNEY GENERAL  
*PETER F. KILMARTIN, ATTORNEY GENERAL*



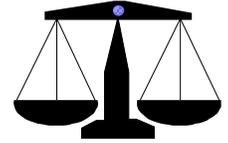
PUBLIC RECORDS REQUEST GUIDELINES  
*OPEN GOVERNMENT UNIT*

The Department of Attorney General has instituted the following procedure to help you obtain public records.

1. To reach us by telephone please call (401) 274-4400 and ask to be connected to the Open Government Unit.
2. The regular business hours of the Department are 8:30 a.m. to 4:30 p.m. If you come in after regular business hours, please complete the Public Records Request Form at the front desk and it will be given to the Department the following day.
3. The Department may ask you the reason for your request, as its regular course of business. However, you are not required to provide identification or the reason you seek the information, and your right to access public records will not depend upon providing identification or reasons.
4. In order to ensure that you are provided with the public records you seek in an expeditious manner, we ask that you complete the Public Records Request Form located at the front desk, or on our website <http://www.riag.ri.gov/civil/opengovernment>.
5. You may also obtain a copy of the Attorney General's Guide to Open Government, which can be found at <http://www.riag.ri.gov/civil/opengovernment>.
6. There are times when the public records you seek are not available at the time of your request. Please be advised that the Access to Public Records Act allows a public body ten (10) business days to respond, which can be extended an additional twenty (20) business days for "good cause." We appreciate your understanding and patience.
7. If you feel that you have been denied access to public records, you have the right to file a review petition with the Attorney General. If you are still not satisfied, you may file a lawsuit in Superior Court.
8. The Department of Attorney General is committed to providing you with public records in an expeditious and courteous manner.



DEPARTMENT OF ATTORNEY GENERAL  
PETER F. KILMARTIN, ATTORNEY GENERAL



PUBLIC RECORDS REQUEST FORM  
UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date \_\_\_\_\_ Request Number \_\_\_\_\_

Name (optional) \_\_\_\_\_

Address (optional) \_\_\_\_\_

Telephone (optional) \_\_\_\_\_

Requested Records: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**OFFICE USE ONLY**

Request taken by: \_\_\_\_\_ Request Number \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Records to be available on: \_\_\_\_\_ Mail \_\_\_\_\_ Pick Up \_\_\_\_\_

Records provided: \_\_\_\_\_

Costs: \_\_\_\_\_ copies \_\_\_\_\_ search and retrieval

*Forward this Document to the Public Records Office*

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**Department of Attorney General - Public Records Request Receipt**

If you desire to pick up the records, they will be available on \_\_\_\_\_ at the front desk. If, after review of your request, the Department determines that the requested records are exempt from disclosure for a reason set forth in R.I. Gen. Laws § 38-2-2(4)(i)(A) through (Y), the Department reserves its right to claim such exemption.

Note: If you chose to pick up the records, but did not include identifying information on this form (name, etc.), please inform the receptionist at the front desk of the date you made the request, records requested and request number.

Thank you.