

# ACCESS TO PUBLIC RECORDS ACT



ANNUAL REPORT 2016

# OPEN MEETINGS ACT



ANNUAL REPORT 2016

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

Rhode Island General Laws Section 42-46-11 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Open Meetings Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2016.

**STATISTICS**

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	38
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	15
VIOLATIONS FOUND:	7
WARNINGS ISSUED:	7
LITIGATION INITIATED:	0
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	1
ISSUED	3

**VIOLATIONS FOUND/WARNINGS ISSUED**

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

OM 16-03	<u>Elizabeth Tanner v. Bristol 4<sup>th</sup> of July Committee</u>
OM 16-07	<u>L. Nova v. The Compass School</u>
OM 16-10	<u>Robert Cushman v. Warwick City Council</u>
OM 16-11	<u>Lisa Tanguay v. City of Warwick</u>
OM 16-12	<u>Larry Anderson v. Little Compton School Committee</u>
OM 16-13	<u>Costa, et al v. Rhode Island Statewide Independent Living Council</u>
OM 16-14	<u>Trevor Clark v. West Glocester Fire District</u>

**VIOLATIONS FOUND/LAWSUIT FILED**

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

## OPEN MEETINGS ACT FINDINGS - 2016

### OM 16-01 Marcello v. Scituate Town Council

The Scituate Town Council did not violate the OMA when it discussed matters appropriate for closed session under R.I. Gen. Laws § 42-46-5(a)(2) - “[s]essions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.” Complainant further alleged that the Council violated the OMA when it failed to disclose a record of the votes taken in closed session. Rhode Island General Laws § 42-46-4(b) provides, in relevant part, “...a vote taken in 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 discussion conducted under § 42-46-5(a).” Based on the evidence presented, there was insufficient evidence to conclude that the Council violated the OMA when it failed to disclose the executive session vote as of the date the complaint was filed.

*Issued February 2, 2016.*

### OM 16-02 MacDougall v. Quonochontaug Central Beach Fire District

Complainant alleged that the Fire District violated the APRA when: 1) it failed to comply with this Department’s “Decision and Order” in MacDougall v. Quonochontaug, PR 13 - 17; OM 13-24; 2) when it failed to properly respond to certain portions of his January 18, 2014 APRA request; and 3) when the Fire District’s response to several of Complainant’s 2012 - 2013 APRA requests were not signed by someone certified to respond pursuant to R.I. Gen. Laws § 38-2-3.16. This Department concluded that the Fire District violated the APRA when it failed to provide all responsive documents to Complainant’s January 18, 2014 APRA request and that the Fire District violated the APRA when someone not certified pursuant to R.I. Gen. Laws § 38-2-3.16 responded or otherwise authorized the Fire District’s response to the 2012-2013 requests. Complainant further alleged that the Fire District violated the OMA when it failed to post the annual notices of six (6) subcommittees on the Secretary of State’s website. Since there was insufficient evidence to determine whether Complainant was aggrieved by the alleged lack of notice, we found no violation. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).

*Issued February 22, 2016.*

**OM 16-03**     **Tanner v. Bristol 4<sup>th</sup> of July Committee**

Complainant alleged that the Committee violated the OMA when the agenda for the Committee's January 6, 2016, meeting failed to adequately state the nature of the business to be discussed, in violation of R.I. Gen. Laws § 42-46-6(b). At the January 6, 2016 meeting, the Committee discussed and voted to shorten the Bristol Fourth of July Parade route, however, at no point in the agenda was the discussion and vote noticed, in violation of the OMA. The Committee acknowledged the deficiency in notice and took steps to remedy the violation.

VIOLATION FOUND.

*Issued February 23, 2016.*

**OM 16-04**     **Mathews v. Newport City Council**

The Complainant alleged the City Council violated the OMA during one of its meetings when a quorum of the members met just prior to the start of the meeting to discuss a matter over which the City Council had supervision, control, jurisdiction or advisory power. R.I. Gen. Laws § 42-46-2(a). Statements from the four (4) Council members who were outside the meeting venue deny any such improper discussion. Additionally, the telephone records produced evidence text messages were sent/received by two (2) of the four (4) Council members just prior to the commencement of the meeting indicating they were both running late. This also led this Department to the conclusion that it would have been virtually impossible for a quorum of the City Council to have had a substantive conversation concerning City Council business in the time frame in question. Based upon the evidence presented, we cannot conclude that a quorum of City Council members discussed a matter over which the City Council had "supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(a). We find no violation.

*Issued March 22, 2016.*

**OM 16-05**     **Comley v. Little Compton School Committee**

The Complainants alleged the School Committee convened into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) to discuss potential litigation, yet the School Committee also discussed "the extra paycheck for 2013-14." Based upon the evidence presented, it did not appear that the School Committee members had a collective discussion about the extra paycheck issue amongst each other. We cannot conclude that the School Committee collectively discussed and/or acted upon a matter over which the public body had supervision, control, jurisdiction, or advisory power. R.I. Gen. Laws § 42-46-2(a).

As such, we found no violation of the OMA. Regarding the Complainants' four (4) other allegations, the statute of limitations for this Department to file a lawsuit expired before this Department received their complaint. Thus, consistent with our precedent, this Department did not render a finding as to those alleged OMA violations. See R.I. Gen. Laws § 42-46-8(b).

*Issued March 24, 2016.*

**OM 16-06**  
**PR 16-13**

**Grieb v. AIPC**

The Complainant alleged the AIPC violated the OMA with respect to improper notice for its February 24, 2015 and March 28, 2015 meetings. There was no question that the Complainant attended both meetings and the OMA provides that only "aggrieved" citizens may file a complaint regarding an alleged violation. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002)(The Rhode Island Supreme Court found that it was "unnecessary" to address the merits of the OMA lawsuit because the plaintiffs had no standing to raise this issue since both plaintiffs were present at the meeting and were therefore not aggrieved by any defect in the notice.) The AIPC did not violate the OMA as there was no evidence that it discussed a subject-matter, other than what was noticed on the agenda, outside the public purview. With respect to the Complainant's APRA violations, we concluded that the AIPC did not violate the APRA with respect to her January 19, 2015 request as the evidence revealed she was provided responsive documents. The AIPC violated the APRA by failing to respond to the Complainant's March 3, 2015 APRA request wherein she sought the approved minutes for the AIPC's December 16, 2014 & January 13, 2015 meetings. No evidence has been presented of a willful and knowing, or reckless violation. Also, as the Complainant now has access to both sets of approved minutes, injunctive relief was not appropriate.

*Issued March 31, 2016.*

**OM 16-07**

**Nova v. The Compass School**

The Compass School violated the OMA when it held a strategic planning session meeting on February 7, 2015, yet failed to keep written minutes in violation of R.I. Gen. Laws § 42-46-7. The School violated the OMA when its agenda item for its March 25, 2015 and April 1, 2015 meetings indicated it would convene into executive session pursuant to "RIGL 42-46-5(a)(1) director, as relates to director search," yet it appears the School generally discussed the position and requirements for a new director. The executive session meeting minutes for both meetings contain too little information to substantiate

the School's argument for executive session, and thus we found that the subject-matter for those two meetings was not appropriate for executive session. The School did not violate the OMA as the minutes reflect in the open call a recording of the affirmative vote of its members to convene into executive session for both meetings. The School did not violate the OMA when, upon reconvening into open session during the March 25, 2015 meeting, it did not record the vote because the evidence revealed no vote was taken and the School properly recorded the votes in its April 1, 2015 open session meeting. As a remedy, the School must disclose its March 25, 2015 and April 1, 2015 executive session minutes.

VIOLATION FOUND.

*Issued April 15, 2016.*

**OM 16-08**     **Wilk v. Cumberland Fire District**

The Complainant alleged the Cumberland Fire District ("CFD") violated the OMA when the agenda for one of its meeting did not include a time the meeting was to commence. The Complainant did not attend the meeting in question, nor did he attend any of the CFD's meetings. This Department sent correspondences to the Complainant dated November 16, 2015 and December 3, 2015 inquiring whether the reason Complainant did not attend the meeting was because he did not know the time of the meeting, or because he generally does not attend these meetings. We received no response. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a). See also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002) (The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice). Here, pursuant R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant did not demonstrate that he was "in some way disadvantaged or aggrieved by such defect" in the notice, and, as such, had no standing to object to the notice in accordance with Graziano. Accordingly, we found no violation.

*Issued April 18, 2016.*

**OM 16-09**     **Hodge v. Rhode Island Department of Health**

The Complainant, a member of the Board of Examiners for Interpreters for the Deaf ("Board"), alleged various allegations, many of which were outside the purview of the OMA. With respect to the OMA, the Complaint alleged that the Board's February 12, 2014 and June 11, 2014 minutes were not timely posted to the Secretary of State's website, and

that the Board's July 23, 2014 minutes did not contain an item that Complainant wanted memorialized within those minutes. Rhode Island General Laws § 42-46-8(b) prohibits the filing of a complaint by this Department after 180 days from the date of the public approval of the meeting minutes at which the alleged violation(s) occurred. Complainant's OMA allegations were filed with our office on March 30, 2015, outside of the 180-day statute of limitations for our Office to review those allegations. Therefore, we decline to address the merits of Complainant's allegations.

*Issued April 28, 2016.*

**OM 16-10**      **Cushman v. Warwick City Council**

The Complainant alleged Warwick City Council violated the OMA when a quorum of its members met at an unannounced meeting and signed a correspondence addressed to members of the Warwick delegation to the Rhode Island General Assembly. Based upon the evidence presented, it appears that a June 15, 2015 letter was circulated amongst a quorum of City Council members who were instructed to read and, if desired, sign the letter. Although the members of the City Council who signed the letter indicated that the letter was merely circulated amongst the members and that "no meeting of a group of Council members occurred at a single point in time where they collectively discussed the letter," the City Council violated the OMA by passing around a correspondence concerning a matter over which the City Council had supervision, control, jurisdiction, or advisory power, and indicating support by signing their names to the June 15, 2015 letter. R.I. Gen. Laws § 42-46-2(1).

**VIOLATION FOUND.**

*Issued June 9, 2016.*

**OM 16-11**      **Tanguay v. City of Warwick**

The City of Warwick violated the OMA when it failed to record complete meeting minutes for two vicious dog hearings on May 9, 2012 and October 7, 2015. The documents submitted by the City included the date, the three panel members present and the vote for specific requirements, however, neither set of minutes contained the "time" the meeting was convened and the May 9, 2012 minutes reference a 2-1 vote, yet failed to contain a "record by individual members of any vote taken" as required by R.I. Gen. Laws § 42-46-7(a)(3).

**VIOLATION FOUND.**

*Issued July 18, 2016.*



**OM 16-12**     **Anderson v. Little Compton School Committee**

The School Committee violated the OMA when it voted on the issue of appointment of a Superintendent while in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1). The plain language of the OMA and our previous findings have held that when a public body chooses to convene into executive session under this exemption, it must discuss only and not take a vote while in executive session. The School Committee violated the OMA when it failed to record in its open session minutes for its July 20, 2015 meeting that advanced written notice was provided to the three (3) applicants being interviewed for consideration and appointment for Superintendent. With respect to the allegation that the School Committee violated the OMA when it failed to articulate that the affected persons had received advanced written notice and that the School failed to articulate in open session the open call pursuant to R.I. Gen. Laws § 42-46-4, this Department found that the Complainant was not aggrieved and therefore we did not address the merits of these allegations. The School Committee further violated the OMA when it failed to record and enter into its open session minutes for the July 20, 2015 meeting, the reason for holding a closed meeting, by a citation to a subdivision of R.I. Gen. Laws § 42-46-5(a), and a statement specifying the nature of the business to be discussed. The Complainant further alleged that the School Committee violated the OMA when it failed to disclose in its minutes, as well as in the July 20, 2015 open session, a "record by individual members of any vote taken." Because the evidence demonstrated that the Complainant was already aware of the individual member vote, and had already obtained a record from the School Committee concerning the individual member votes, we concluded that the Complainant was not aggrieved by this allegation. VIOLATION FOUND.

*Issued November 14, 2016.*

**OM 16-13**     **Costa, et al v. Rhode Island Statewide Independent Living Council**

This Department determined that the RISILC and its leadership subcommittee is a public body for purposes of the OMA and this finding, and that the RISILC violated the OMA by failing to post minutes to the Secretary of State's website for the May 20, 2015, June 24, 2015, June 25, 2015, July 8, 2015, August 5, 2015 and August 19, 2015 meetings. We also concluded that the August 19, 2015 meeting agenda item, labeled "Office Space and Staff," was insufficient and violated the OMA since a payroll matter was discussed during this

topic. Other allegations raised either did not violate the OMA and/or the Complainants were not aggrieved.

VIOLATION FOUND.

*Issued November 17, 2016.*

**OM 16-14**     **Clark v. West Glocester Fire District**

**PR 16-51**     Complainant alleged that the WGFD violated the OMA and the APRA when it: (1) untimely posted its annual notice after its first meeting; (2) untimely posted notice of its annual meeting; (3) failed to include the open call requirements set forth in R.I. Gen. Laws § 42-46-4(a) in its open session minutes for its February 4, 2014 meeting; and (4) responded to various APRA requests without having the responding person certified pursuant to R.I. Gen. Laws § 38-2-3.16. Because Complainant had not alleged, nor could we find any evidence supporting, that he was aggrieved pursuant to R.I. Gen. Laws § 42-46-8(a) and the standard established in Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), we found that he lacked standing to bring his first two allegations. However, we found that the WGFD did violate the OMA when it failed to include in the February 4, 2014 unofficial minutes, the subsection under which it convened into executive session as required by R.I. Gen. Laws § 42-46-4(a). We found no evidence of a willful or knowing violation in light of the fact that this omission was corrected in the February 4, 2014 official minutes. We also found that Complainant lacked standing to bring his APRA allegations because there was no evidence that the Complainant had made the APRA requests at issue. See Clark v. Town of Glocester / Clark v Glocester Police Department, PR 16-12.

VIOLATION FOUND.

*Issued December 9, 2016.*

**OM 16-15**     **Catanzaro v. North Providence Public Safety Complex Committee**

The Complainant alleged that various meetings were convened without public notice by the Public Safety Complex Committee on unknown dates. No evidence was produced that the Complainant was aggrieved by these allegations or did not attend any meetings due to the lack of posting. In accordance with Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), we found no violation.

*Issued December 22, 2016.*

**OPEN MEETINGS ACT**  
**ADVISORY OPINIONS - 2016**

ADV OM 16-01

**In Re: Coventry School Committee**

The School Committee sought guidance as to whether the participation of a School Committee member in the audience of a subcommittee meeting convened a “meeting” of the School Committee within the meaning of R.I. Gen. Laws § 42-46-2(a). Although we found insufficient information to offer an opinion on the precise situation at hand, this Department generally opined that quorums of a committee at a subcommittee meeting do not constitute a “meeting” of the committee under the OMA if the subcommittee restricts its discussion and/or actions to matters exclusive to subcommittee business. See In Re Bristol Warren Regional School Committee, ADV OM 07-01. We further cautioned that due care must be taken to distinguish subcommittee business from committee business by clearly defining the subcommittee’s role and scope of authority.

*Issued August 3, 2016.*

ADV OM 16-02

**In Re: Statewide Independent Council**

This Department determined that the RISILC and its leadership subcommittee is a public body for purposes of the OMA.

*Issued November 17, 2016.*

ADV OM 16-03

**In Re: Prudence Island Volunteer Fire Department**

Legal counsel for the Prudence Island Volunteer Fire Department (“PIVFD”) sought an OMA advisory opinion concerning whether the PIVFD is a “public body” subject to the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001), and this Department’s previous findings in Finnegan v. Scituate Town Council, OM 97-05, Schmidt v. Ashaway Volunteer Fire Association, OM 98-33, and Montiero v. Providence School Board Nominating Commission, OM 02-25, we looked to the PIVFD’s Articles of Incorporation, Fire Service Agreement with the Town of Portsmouth, and Corporate Bylaws to assist our analysis. The evidence demonstrated, *inter alia*, that the PIVFD is a nonprofit corporation that was not created by the Town of Portsmouth, that the PIVFD selects its own members independent of any governmental or public approval process, that the PIVFD provides no medical benefits and no pensions to its members, and that the Fire Service Agreement is terminable by either

party. Based on the specific evidence presented, we opined that the PIVFD is not a “public body” under the OMA.  
*Issued December 21, 2016.*

# ACCESS TO PUBLIC RECORDS ACT



ANNUAL REPORT 2016

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

Rhode Island General Laws Section 38-2-15 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Access to Public Records Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. The Attorney General is pleased to submit the following information concerning the calendar year 2016.

**STATISTICS**

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	67
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	53
VIOLATIONS FOUND:	16
WARNINGS ISSUED:	15
LITIGATION INITIATED:	1
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	2
ISSUED:	0
APRA REQUESTS TO THE ATTORNEY GENERAL:	88

**VIOLATIONS FOUND/WARNINGS ISSUED**

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

PR 16-04	<u>Andrew Shapiro v. Town of Warren</u>
PR 16-05	<u>Donald MacDougall v. Quonochontaug Central Beach Fire District</u>
PR 16-07	<u>Warwick Post, et al v. Warwick School Department, et al</u>
PR 16-08	<u>Conservation Law Foundation v. Office of the Governor</u>
PR 16-11	<u>Stephen Vowels v. RISE/Mayoral Academy</u>
PR 16-13	<u>Nancy Grieb v. Aquidneck Island Planning Commission</u>
PR 16-14	<u>Barbara Ravetti v. BHDHH</u>
PR 16-15	<u>Common Cause Rhode Island v. Department of Business Regulation</u>

PR 16-23 Ronald Marcos v. Cumberland Police Department  
PR 16-25 Deborah Salvatore v. Town of South Kingstown, et al  
PR 16-28 Katrina A. Lapierre v. City of Woonsocket  
PR 16-36 Mike Piskunov v. Town of Coventry  
PR 16-41 Mike Piskunov v. City of Cranston  
PR 16-52 William Nye v. Rhode Island State Court System  
PR 16-53 Ethan Shorey v. City of Pawtucket

**VIOLATIONS FOUND/LAWSUIT FILED**

PR16-16 Joe Smith v. The Compass School

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

## ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2016

PR 16-01

### Clark v. West Gloucester Fire District

The Complainant alleged that the WGFD failed to specify the reasons for its denial, failed to indicate whether responsive documents did not exist, and that the requested documents maintained in a third party's personnel file should be deemed public records. Although the Fire District's denial referenced the incorrect APRA exemption, its denial was specific and we determined that "good cause" existed so the requested third party personnel file records were not deemed publicly accessible.

*Issued January 8, 2016.*

PR 16-02

### Collette v. Town of Hopkinton

Complainant alleged that the Town violated the APRA when it denied him access to requested documents. Based on all the evidence presented, we found that the privacy interests implicated by disclosure clearly outweighed the public interest and, therefore, disclosure would "constitute a clearly unwarranted invasion of personal privacy." See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). We also concluded that several documents fell within APRA Exemption (K) - "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products" that have not been "submitted at a public meeting of a public body." See R.I. Gen. Laws § 38-2-2(4)(K).

*Issued February 2, 2016.*

PR 16-03

### Jackson v. Coventry School Department

Complainant requested and was denied access to copies "of all resumes received by the Coventry Schools Administration's advertised position for a Financial Director as well as any resumes received from other sources" on the grounds that disclosure would "constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq." See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). The resumes at issue concerned only the resumes of individuals who applied, but were not selected for employment by the School Department, and acknowledged that all past and present employment information would be redacted. After reviewing all the evidence presented and balancing the public interest in disclosure against the privacy interests implicated, we found that the privacy interests outweighed the public interest and concluded that the School Department did not violate the APRA. See Jackson v. Town of Coventry, PR 14-35.

*Issued February 16, 2016.*



PR 16-04

**Shapiro v. Town of Warren**

Complainant alleged that the Town violated the APRA when it failed to provide a written response to his April 1, 2015 APRA request and when it failed to provide all documents responsive to his April 1, 2015 APRA request. We found that the Town violated the APRA when it failed to respond to the aspect of the APRA seeking attorney invoices. With respect to Complainant's second allegation, we found no evidence that Town failed to provide Complainant with additional responsive documents within the Town's custody or control and that the Town's search and retrieval for documents responsive to Complainant's April 1, 2015 APRA request was adequate and sufficient under the circumstances.

VIOLATION FOUND.

*Issued February 18, 2016.*

PR 16-05

**MacDougall v. Quonochontaug Central Beach Fire District**

Complainant alleged that the Fire District violated the APRA when: 1) it failed to comply with this Department's "Decision and Order" in MacDougall v. Quonochontaug, PR 13 - 17; OM 13-24; 2) when it failed to properly respond to certain portions of his January 18, 2014 APRA request; and 3) when the Fire District's response to several of Complainant's 2012 - 2013 APRA requests were not signed by someone certified to respond pursuant to R.I. Gen. Laws § 38-2-3.16. This Department concluded that the Fire District violated the APRA when it failed to provide all responsive documents to Complainant's January 18, 2014 APRA request and that the Fire District violated the APRA when someone not certified pursuant to R.I. Gen. Laws § 38-2-3.16 responded or otherwise authorized the Fire District's response to the 2012-2013 requests. Complainant further alleged that the Fire District violated the OMA when it failed to post the annual notices of six (6) subcommittees on the Secretary of State's website. Since there was insufficient evidence to determine whether Complainant was aggrieved by the alleged lack of notice, we found no violation. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).

VIOLATION FOUND.

*Issued February 22, 2016.*

PR 16-06

**Law Offices of Richard Humphrey v. Dept. of Health**

The Complainant alleged the DOH violated the APRA when it refused to provide records responsive to its APRA request seeking a copy of the Intoxilyzer I-9000 Training Manual. Among the twenty-seven (27) exceptions to the APRA is R.I. Gen. Laws § 38-2-2(4)(B), which exempts

from public disclosure, “[t]rade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.” In The Providence Journal v. Convention Center Authority, 774 A.2d 40, 47 (R.I. 2001), the RI Supreme Court examined R.I. Gen. Laws § 38-2-2(4)(B) and explained that commercial information provided to the Government was exempt from disclosure “if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.” Based upon the evidence presented, we concluded that the Intoxilyzer I-9000 Training Manual, which is copyrighted, is “of a kind that would customarily not be released to the public by the person from whom it was obtained.” The DOH did not violate the APRA.

*Issued February 23, 2016.*

PR 16-07

**Warwick Post v. Warwick School Department**

**Warwick Beacon v. Warwick School Committee**

**Howell v. City of Warwick**

All APRA requests sought two oral reports (“Reports”), which were presented to the School Committee in executive session and concerned the School Committee’s review of the handling of accusations of inappropriate conduct. The APRA exempts from public disclosure “[a]ll 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.” R.I. Gen. Laws § 38-2-2(4)(P). Warwick submitted the Reports constituted “investigatory records,” but failed to address the “statute, rule or regulation” that served as the basis for the School Committee’s investigation, and thus implicated Exemption (P). Warwick’s failure to identify the “statute, rule or regulation” that was possibly violated was fatal to its assertion that the portions of the Reports constituted “investigatory records of public bodies \* \* \* pertaining to possible violations of statute, rule or regulation.” We concluded that the information contained in the Reports that address how the school administration handled this matter must be disclosed.

**VIOLATION FOUND.**

*Issued March 2, 2016.*

PR 16-08

**Conservation Law Foundation v. Office of the Governor**

The Governor's Office violated the APRA when it provided the Complainant with one avenue for appeal, but omitted the other options for appeal. R.I. Gen. Laws § 38-2-8(a). The Governor's Office did not violate the APRA when it failed to provide the Complainant the basis for its waiver denial. The Governor's Office did not violate the APRA when it required pre-payment before providing access to documents for review. R.I. Gen. Laws § 38-2-7(b). After our in camera review of the withheld and redacted documents, with the exception of one-word, we find no violation. With respect to the documents withheld in whole, our review finds this category contains drafts and other documents (e-mails, memorandum, and other records) reflecting the deliberative process. R.I. Gen. Laws §§ 38-2-2(4)(E),(K).

VIOLATION FOUND.

*Issued March 10, 2016.*

PR 16-09

**Scalzi v. Town of North Smithfield**

The Complainant alleged that the Town violated the APRA when it failed to include all documents responsive to her APRA request dated March 30, 2015. The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or copy such records. See R.I. Gen. Laws § 38-2-3(a). Accordingly, our inquiry concerns not whether the Town has provided all requested documents, but rather whether the Town has conducted an adequate and appropriate search to determine whether the Town maintains the requested records. In fact, the linchpin of our inquiry concerns the reasonableness of the Town's search. The evidence demonstrated that the Town spent approximately four (4) hours conducting a search of 110 files and produced records responsive to the APRA request. There is no evidence that the Town's search was inadequate. Accordingly, we find no APRA violation.

*Issued March 17, 2016.*

PR 16-10

**The Town of North Providence v. Salvatore Mancini Resource and Activity Center**

The Complainant alleged the SMRAC violated the APRA when it failed to respond to its APRA request dated May 15, 2015. During the pendency of this matter, the SMRAC filed a Petition for a Writ of Mandamus in the Rhode Island Superior Court against the Town. The Town answered the Petition and filed a Counterclaim. Among the averments set forth in the Town's Counterclaim is that "[a] dispute has arisen between the Town and the Center as to whether the Center is a

private agency acting on behalf of and/or in place of the Town of North Providence in providing services to the senior citizens of the Town, within the meaning of R.I.G.L § 38-2-1 and 38-2-2, et. seq.," the APRA. This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegation that is raised in a complaint with this Department, this Department's investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court's jurisdiction. See Graziano v. Personnel Appeals Board, OM 97-21; Narragansett Improvement Company, et al. v. Town of North Smithfield, OM 09-11. Because the issue presented by this complaint is the same issue that is pending before the Superior Court, this Department will take no action on this matter.

*Issued March 24, 2016.*

**PR 16-11 Vowels v. RISE/Mayoral Academy**

The RISE/Mayoral Academy ("Academy") violated the APRA when it failed to respond to the Complainant's APRA request. See R.I. Gen. Laws § 38-2-7. This Department assumed, without deciding, that the Academy is subject to the APRA and nothing within the finding bars the Academy from raising this issue at a future point. Based upon the specific facts and nature of the APRA, this Department concluded that the Academy's failure to timely respond to the APRA request was not a willful or knowing, or reckless, violation.

**VIOLATION FOUND.**

*Issued April 1, 2016.*

**PR 16-12 Clark v. Town of Glocester / Clark v. Glocester Police Department**

This Department has long held that "in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record." Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21. Because there was no evidence or indication that the Complainant had made the APRA requests at issue, he lacked standing to complain about alleged violations stemming from these APRA requests.

*Issued March 31, 2016.*

**PR 16-13 Grieb v. AIPC**

The Complainant alleged the AIPC violated the OMA with respect to improper notice for its February 24, 2015 and March 28, 2015 meetings. There was no question that the Complainant attended both meetings and the OMA provides that only "aggrieved" citizens may

file a complaint regarding an alleged violation. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002)(The Rhode Island Supreme Court found that it was “unnecessary” to address the merits of the OMA lawsuit because the plaintiffs had no standing to raise this issue since both plaintiffs were present at the meeting and were therefore not aggrieved by any defect in the notice.) The AIPC did not violate the OMA as there was no evidence that it discussed a subject-matter, other than what was noticed on the agenda, outside the public purview. With respect to the Complainant’s APRA violations, we concluded that the AIPC did not violate the APRA with respect to her January 19, 2015 request as the evidence revealed she was provided responsive documents. The AIPC violated the APRA by failing to respond to the Complainant’s March 3, 2015 APRA request wherein she sought the approved minutes for the AIPC’s December 16, 2014 & January 13, 2015 meetings. No evidence has been presented of a willful and knowing, or reckless violation. Also, as the Complainant now has access to both sets of approved minutes, injunctive relief was not appropriate.

VIOLATION FOUND.

*Issued March 31, 2016.*

PR16-14

**Ravetti v. RI Department of Behavioral Healthcare, Developmental Disabilities and Hospitals**

The Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (“BHDDH”) violated the APRA when it failed to respond to the Complainant’s APRA request within ten (10) business days. See R.I. Gen. Laws § 38-2-7(b). The Complainant sent a March 18, 2015 request that did not conform to the BHDDH’s APRA policy and did not mention the APRA. The Complainant made a request on March 23, 2015, which was virtually identical in substance except that the March 23, 2015 request invoked the APRA at the end of the correspondence. As such, we found no willful and knowing, or reckless violation. Injunctive relief was not appropriate because the documents sought were confidential by law. See Scripps v. Department of Business Regulation, PR 14-07 (documents deemed confidential by law exempt despite failure to respond timely).

VIOLATION FOUND.

*Issued April 13, 2016.*

PR 16-15

**Common Cause Rhode Island v. Rhode Island Department of Business Regulation**

The DBR violated the APRA when it failed to respond to Common Cause Rhode Island's September 23, 2015 email APRA request. See R.I. Gen. Laws § 38-2-7. Based upon the evidence presented, it appears the DBR was undergoing a transition from one email system to another. Because of this transition, it was apparent that the DBR did not receive the Complainant's first email request on September 21, 2015. It was also apparent, that when the Complainant "re-submitted" its APRA request two (2) days later, on September 23, 2015, the DBR's new email system was still "experiencing technical issues stemming from the Department's migration to MS Outlook." No evidence was submitted that the DBR's failure to comply with the APRA request was anything other than a result from the DBR's transition to a new email system. The DBR violated the APRA, but all responsive documents have been provided to the Complainant, therefore, injunctive relief was not appropriate. Additionally, we found no evidence of a willful and knowing, or reckless violation.

VIOLATION FOUND.

*Issued April 27, 2016.*

PR 16-16

**Smith v. The Compass School**

The Complainant made an APRA request to the School seeking six (6) categories of documents. The School acknowledged the APRA request and indicated that information was being gathered. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws §§ 38-2-7, 38-2-3(e). The School violated the APRA when it failed to timely and completely respond to the APRA request. The School provided absolutely no response to categories 1, 2, or 3, provided no response to portions of category 6 and provided the documents to category 5, but did so in an untimely manner. After reviewing all the evidence presented, we have grave concerns regarding the School's untimely response and whether such omission should be considered knowing and willful, or alternatively, reckless. A supplemental finding will be issued.

VIOLATION FOUND.

*Issued May 5, 2016.*

**PR 16-16B**     **Smith v. The Compass School**

In Smith v. The Compass School, PR 16-16, we reviewed the Complainant's APRA complaint filed against the Compass School and concluded that the School violated the APRA when it failed to timely and completely respond to his APRA request. See R.I. Gen. Laws § 38-2-7. The School was allowed to provide an explanation as to why its untimely and incomplete response should not be considered knowing and willful, or reckless. See R.I. Gen. Laws § 38-2-9(d). Given the evidence presented to us, including the fact that the Complainant received a complete response to his APRA request nearly five (5) months from the date of request, in combination with the School's acknowledgment that it "understood and appreciated that [it] was subject to the APRA," we found that the School willfully and knowingly, or recklessly, violated the APRA. Accordingly, this Department filed a civil lawsuit against the School seeking civil fines. VIOLATION FOUND.

*Issued November 2, 2016.*

**PR 16-17**     **Chiaradio v. Town of Westerly**

The Complainant alleged the Town violated the APRA when it denied part of her APRA request, which sought copies of itemized invoices from two (2) law firms that were engaged to represent the Town. Based upon the evidence presented, the Town provided the Complainant with redacted copies of the invoices. Rhode Island General Laws § 38-2-2(4)(A)(I)(a) exempts from public disclosure "all records relating to a client/attorney relationship." Upon this Department's in camera review of the legal invoices, we conclude the redacted narratives contained information related to the client/attorney relationship and that these portions are not reasonably segregable. Indeed, the Town has already provided the reasonably segregable portions of the legal bills with the attorney narratives redacted. We found no violation.

*Issued May 5, 2016.*

**PR 16-18**     **Lyssikatos v. City of Pawtucket**

The Complainant failed to present evidence that the public interest in disclosure outweighed the privacy interest in the disclosure of an unfounded internal affairs report relating to a specific incident. Accordingly, the requested document was exempt from public disclosure. R.I. Gen. Laws 38-2-2(4)(I)(A)(b).

*Issued May 13, 2016.*

PR 16-19

**Niquette v. Woonsocket Police Department**

The Complainant alleged the Woonsocket Police Department violated the APRA when it improperly denied his APRA request. The Complainant requested records concerning an incident where law enforcement officers were dispatched to his house, but did not concern the Complainant. This Department has consistently held that where an arrest has not taken place, there is a presumption that initial incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). The Complainant did not identify the public interest in the disclosure of these documents that he wished this Department to consider and no public interest is readily discernible from our review. Our review of the report reveals it contains, at least some, personal and sensitive information. These privacy interests therefore outweigh the public interest in disclosure of such a report. For these reasons, we find no violation.

*Issued May 23, 2016.*

PR 16-20

**GoLocal Prov v. City of Providence**

The Complainant alleged that the City of Providence ("City") violated the APRA when it failed to provide responsive documents to the Complainant's APRA request. The City determined that the Complainant's APRA request asked for a "list" and "breakdown" of certain information, and the City maintained it did not have responsive documents to that request. After thoroughly reviewing the Complainant's APRA request, this Department concluded that the City did not violate the APRA because the Complainant's APRA request could reasonably be interpreted to ask for a "list" and "breakdown" of certain information. Under R.I. Gen. Laws § 38-2-3(h), no public body is required to create lists that do not exist at the time of the APRA request. See also Direct Action for Rights & Equality v. Gannon, 713 A.2d 218, 225 (R.I. 1998).

*Issued May 26, 2016.*

PR 16-21

**Plain v. Office of the Governor**

The Complainant alleged that the Office failed to comply with R.I. Gen. Laws § 38-2-3 (e) when it extended the time to respond to an APRA request without providing "good cause" to extend the time to respond. We found that the Office had "good cause" to extend the time to respond due to several other pending APRA requests, many of which were broad and required the review of thousands of documents. Considering the volume, breadth and sequence of the APRA requests, we find no violation.

*Issued June 3, 2016.*



PR 16-22

**Ryan v. Town of Burrillville**

The Complainant filed an APRA complaint, contending that various documents were not provided. Our review of the voluminous record determined that the Town conducted an adequate and appropriate search to find responsive records and no evidence was presented or discovered that the Town was withholding requested records. Instead, our review found that records had either been provided, where not responsive, or that requested documents/information was not maintained.

*Issued June 3, 2016.*

PR 16-23

**Marcos v. Cumberland Police Department**

After an *in camera* review of two separate “incident reports”, this Department concluded that the Police Department did not violate the APRA when it withheld incident report #15-3388-OF of December 11, 2015 per R.I. Gen. Laws § 38-2-2(4)(D)(a). This Department did conclude, however, that the Police Department violated the APRA when it withheld incident report #13-789-OF. The Police Department already disclosed the related arrest report in redacted form, and thus the “strong presumption” that disclosure of an incident report would invade the subject’s privacy is not applicable. See In re: Cumberland Police Department, ADV PR 03-02. This Department directed the Police Department to disclose incident report #13-789-OF in redacted form in accordance with State law and the APRA.

VIOLATION FOUND.

*Issued June 6, 2016.*

PR 16-24

**GoLocal Prov vs. R.I. Commerce Corporation**

The Complainant alleged that the Rhode Island Commerce Corporation (“RICC”) failed to comply with R.I. Gen. Laws § 38-2-3 (e) by failing to respond to a March 24, 2016 APRA request within ten (10) business days. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. The RICC responded on April 7, 2016, and thus we concluded that the RICC responded to the Complainant in a timely manner.

*Issued June 20, 2016.*

PR 16-25

**Salvatore v. Town of South Kingstown and South Kingstown School Department**

The Town of South Kingstown violated the APRA when its response to the Complainant’s APRA request did not include the rights of appeal

pursuant to R.I. Gen. Laws § 38-2-7(a). The South Kingstown School Department violated the APRA when its response provided a narrative answer rather than providing the documents. The School Department also violated the APRA when it failed to provide both the specific reasons for the denial and rights of appeal. This Department found no evidence that the Town or the School Department committed a willful, knowing, or reckless violation. This Department concluded, however, that disclosure of the responsive legal bills during the requested time frame was appropriate and allowed the School Department ten (10) business days to provide these invoices, in a redacted manner.

VIOLATION FOUND.

*Issued July 7, 2016.*

PR 16-26 **Paterson v. Rhode Island Department of Environmental Management**

The DEM responded to the Complainant's APRA request in a timely manner. Accordingly, there was no violation.

*Issued July 12, 2016.*

PR 16-27 **Farinelli v. City of Pawtucket**

The Complainant alleged the City violated the APRA when it denied her May 5, 2015 APRA request, wherein she sought a copy of a completed investigation report of the Internal Affairs complaint involving a particular officer. The Complainant also contended that the City violated the APRA when it failed to timely respond to her April 16, 2015 APRA request and when the City required that all her future questions be submitted in the form of APRA requests. The Complainant informed this Department that she was in receipt of the Internal Affairs report and did not need this Department to release it to her. As such, since the Complainant had a copy of the Internal Affairs report, this Department did not determine whether the Internal Affairs report was a "public record" or whether the City violated the APRA when it denied access. Injunctive relief was not appropriate and we determined there was no evidence of a willful and knowing, or reckless, violation. We also found that the City did not violate the APRA with respect to the allegation that the City failed to timely respond to her April 16, 2015 APRA request. The evidence demonstrated that the City did not receive her APRA request until May 5, 2015. Finally, the City did not violate the APRA with respect to the Complainant's final allegation.

*Issued July 18, 2016.*

PR 16-28

**Lapierre v. City of Woonsocket**

The City of Woonsocket violated the APRA when it failed to respond to an aspect of the APRA request seeking a document that it did not maintain. Because the Complainant received the second document she was seeking from the City, it was unnecessary to determine whether the City violated the APRA when it misaddressed the envelope since injunctive relief was moot. There was no evidence that the misaddressed envelope or the failure to respond to one aspect of the request was a willful and knowing, or reckless, violation.

VIOLATION FOUND.

*Issued July 18, 2016.*

PR 16-29

**Brien v. Woonsocket Housing Authority**

The Complainant sought copies of all reports prepared by a search consultant who was hired to evaluate applications and resumes of candidates for the position of the Woonsocket Housing Authority's Executive Director. There were two responsive documents, one that lists the names of applicants and identified these individuals into different categories, and second, a scoring grid of various applicants. We concluded that the disclosure of the information contained in these documents that refers to unsuccessful candidates for the position of Executive Director would constitute a clearly unwarranted invasion of these candidates' personal privacy. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b); Jackson v. Town of Coventry, PR 14-35. The WHA did not violate the APRA when it provided the Complainant with the business addresses of the Board of Commissioners.

*Issued July 22, 2016.*

PR 16-30

**NBC 10 v. Rhode Island Department of Public Safety**

The Department of Public Safety did not violate the APRA when it redacted the identities and contact information for third parties – but released the substantive information related to these third parties – and when it redacted the subject-matter of one incident or circumstance involving the subject of the report. In both cases, the Complainant provided little to no public interest in disclosure and this interest did not outweigh the privacy interest. The remaining portions of the report were released by the DPS unredacted.

*Issued July 28, 2016.*

PR 16-31

**Tavares v. Newport Housing Development**

Complainant filed a complaint against the Housing Development alleging that it had violated the APRA when it failed to respond to his

October 26, 2015 and November 20, 2015 APRA requests, as well as his December 16, 2015 administrative appeal. The Housing Authority responded that it never received the above-referenced documents, and upon receipt of the complaint, provided the responsive documents. Since the Complainant received the requested records, injunctive relief was not appropriate (and moot), and this Department found no evidence of a willful and knowing, or reckless, violation.

*Issued July 28, 2016.*

**PR 16-32**     **Katz v. Employees Retirement System**

The ERSRI did not violate the APRA when it denied a request that would have required the ERSRI to perform a calculation that it had not performed. Because the ERSRI did not perform this calculation, and thus had no documents responsive to this calculation, the APRA did not require the ERSRI to create documents or calculations that did not exist.

*Issued July 28, 2016.*

**PR 16-32B**     **Katz v. Employees Retirement System**

This supplemental finding addressed whether Complainant's rebuttal altered our finding in Katz v. Employees Retirement System, PR 16-32. The evidence demonstrated that Complainant's APRA request sought data that was not part of the computer program's usual outputs. Calculating a new output would require substantial computer reprogramming at a considerable cost. We found that the APRA did not require a public body to bear this undue burden. See R.I. Gen. Laws § 38-2-3(h). Accordingly, we found no violation.

*Issued November 23, 2016.*

**PR 16-33**     **Harris v. City of Providence**

The Complainant alleged that the City violated the APRA when it withheld, based upon the attorney-client relationship, documents responsive to her APRA request. Based upon this Department's in camera review of the three (3) emails, consisting of two (2) pages, we concluded that the documents were properly withheld under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) ("[a]ll records relating to a client/attorney relationship"). As such, we found no violation.

*Issued July 28, 2016.*

- PR 16-34      **Piskunov v. Town of New Shoreham**  
The Town did not violate the APRA when it did not provide documents that it did not maintain. No evidence was presented that the requested documents were maintained by the Department at the time of the APRA request. See R.I. Gen. Laws § 38-2-3(h).  
*Issued August 29, 2016.*
- PR 16-35      **O’Gorman v. Town of Coventry**  
Complainant alleged that the Town violated the APRA when it failed to provide access to a document responsive to her May 13, 2016 APRA request. We found no evidence that the requested document existed. Consistent with previous cases that found no APRA violation for failure to produce records that do not exist, we concluded that the Town had not violated the APRA.  
*Issued August 29, 2016.*
- PR 16-36      **Piskunov v. Town of Coventry**  
Complainant alleged that the Town violated the APRA when it failed to provide a reason for requesting a time extension to his February 13, 2016 APRA request. We found that the Town’s failure to provide a reason why it was requesting a time extension violated R.I. Gen. Laws. § 38-2-3(e). Based on the specific facts presented, including the fact that the Complainant did not challenge the validity of the Town’s request for an extension, we found no evidence of a willful and knowing, or reckless, violation.  
VIOLATION FOUND.  
*Issued August 29, 2016.*
- PR 16-37      **Harris v. City of Providence**  
The Complainant alleged the City violated the APRA when it stated that it maintained no documents responsive to her APRA request. The APRA request sought “all registration signup sheets for the Providence Summer Midnight Basketball Program from May 26 through August 8, 2015.” There was no evidence that the City had or maintained the requested records, nor did it appear that The Salvation Army was acting on behalf of, or in place of, the City such that The Salvation Army would be within the ambit of the APRA. Even if we concluded that The Salvation Army fell within the scope of the APRA for purposes of this request, we would still find no violation as the privacy interests outweigh the public interest in disclosure.  
*Issued September 1, 2016.*

PR 16-38

**Piskunov v. Town of North Providence**

Complainant alleged that the Town violated the APRA when it failed to respond to his February 13, 2016 APRA request. Because the Town later released the requested documents to Complainant, we concluded that we only needed to determine if the Complainant's allegation represented a willful and knowing, or reckless, violation of the APRA such that the Town would be subject to civil penalties. Based on the specific facts presented, including the fact that the Complainant did not comply with the Police Department's procedures for submitting an APRA request, we found no evidence of a willful and knowing, or reckless, violation.

*Issued September 13, 2016.*

PR 16-39

**Cote v. City of Warwick**

Complainant alleged that the City violated the APRA when it redacted information in its response to his May 24, 2016 APRA request. Consistent with our prior finding in Higgins v. Lonsdale Fire District, PR 15-20, we found that the requested W2 forms of public employees were not public records subject to the APRA. Accordingly, the City did not violate the APRA.

*Issued September 23, 2016.*

PR 16-40

**Koutsogiane v. Cumberland Fire District**

The Cumberland Fire District did not violate the APRA as the evidence revealed that the Complainant's August 26, 2015 complaint raised no issue with the Fire District's exercising an extension to respond to the Complainant's APRA request. Rather, the APRA complaint simply contended that as of the date of the complaint, the Complainant had "not received any of the requested materials." The reason the Complainant had "not received any of the requested materials" was because the Fire District timely extended the time to respond to the Complainant's APRA request. On this basis, we found no violation.

*Issued September 23, 2016.*

PR 16-41

**Piskunov v. City of Cranston**

The Complainant alleged that the City violated the APRA when it withheld requested documents without providing the specific reasons for the denial and without indicating the procedures for appealing the denial. The evidence revealed that the City released the requested documents during the pendency of this matter. We found no evidence of a willful and knowing, or reckless, violation, noting that the City provided the requested documents within the extended thirty (30) business day time period. We also found that the City provided

specific reasons for the denial. However, we concluded that the City violated the APRA by failing to indicate the procedures for appealing the denial.

VIOLATION FOUND.

*Issued October 6, 2016.*

**PR 16-42**      **Caldwell v. City of Cranston**

The Cranston Police Department did not violate the APRA when it withheld some documents responsive to an incident report and provided other documents related to an incident report in a redacted manner. No evidence was presented that disclosure would advance the APRA "public interest" as described by the United States and Rhode Island Supreme Courts.

*Issued October 7, 2016.*

**R 16-43**      **Farinelli v. Town of Foster**

Complainant alleged that the Town violated the APRA when it failed to respond to his APRA request. The evidence indicated that the Town timely responded to the APRA request by stating that it did not have the requested documents. We also found that Complainant's suggestion that the Police Department violated the APRA was unfounded, because even if Complainant had properly made an APRA request to the Police Department, his complaint was not ripe for review.

*Issued October 14, 2016.*

**PR 16-44**      **Clark v. West Glocester Fire District**

This Department has long held that "in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record." Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21. Because there was no evidence or indication that the Complainant had made the APRA requests at issue, he lacked standing to complain about alleged violations stemming from these APRA requests.

*Issued October 14, 2016.*

**PR 16-45**      **The Providence Journal v. R.I. Department of Corrections**

Complainant alleged that the DOC violated the APRA when it declined to produce documents responsive to its APRA request. The evidence indicated that the DOC properly withheld documents due to the privacy interests that outweighed the public interest in disclosure. We also found that the documents were not reasonably segregable and

contained individually identifiable medical and health care information subject to federal health care confidentiality law.

*Issued October 28, 2016.*

**PR 16-46**     **Nye v. Rhode Island Department of Public Safety**

This Department concluded that the DPS did not violate the APRA because its search and retrieval relating to the Complainant's APRA request was reasonably calculated to discover all responsive documents. The APRA request sought arrest records and "any related documents, due to any body attachments," in a particular civil case. The DPS provided six (6) pages in an unredacted manner. The Complainant insisted that an "arrest record" existed, but the evidence was clear and undisputed that no "arrest record" existed.

*Issued November 22, 2016.*

**PR 16-47**     **Save the Bay v. Rhode Island Department of Environmental Management**

Based upon the evidence presented, the subject document responsive to Save the Bay's APRA request was generated by the Chief of DEM's Office of Compliance and Inspection, in consultation with DEM attorneys (and on occasion with attorneys from the Department of Attorney General) to evaluate and strategize potential DEM legal action. "The general rule is that communications made by a client to his attorney for the purposes of seeking professional advice, as well as the responses by the attorney to such inquiries, are privileged communications not subject to disclosure." State v. Von Bulow, 475 A.2d 995, 1004 (R.I. 1984). Accordingly, we concluded the requested document was exempt from disclosure as a document "relating to a client/attorney relationship." R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). Moreover, because the document was created, at least in part, by DEM's legal counsel, no reasonably segregable portion is available for public inspection. See R.I. Gen. Laws § 38-2-3(b). There was no violation.

*Issued December 2, 2016.*

**PR 16-48**     **Providence Journal v. Pawtucket Police Department**

The Providence Journal alleged the Police Department violated the APRA when it denied its APRA request, which sought "a copy of the police report from Feb. 11 on the murder-suicide of [Mr. and Mrs. Doe] and Feb. 4 report made by [Ms. Doe] alleging threats by [Mr. Doe]." In National Archives and Records Administration v. Favish, 541 U.S. 157 (2004), the United States Supreme Court considered a similar public interest argument. Even if we assume the Complainant satisfied the



Favish standard and presented evidence that disclosure would advance some public interest, case law and our in camera review makes clear that in this case, and based upon the evidence presented, the surviving family members' privacy interests outweigh the public interest and no reasonable segregable portion can be provided. See R.I. Gen. Laws § 38-2-3(b).  
*Issued December 9, 2016.*

PR 16-49

**Farinelli v. Pawtucket Police Department**

The Complainant sought the "narratives for the last 10 death cases the PPD [Pawtucket Police Department] classified as 'suicide.'" It is beyond debate that the deceased individuals identified in the ten (10) requested reports have no privacy interest as "the right to privacy dies with the person." Clift v. Narragansett Television L.P., 688 A.2d 805, 814 (R.I. 1996). Nevertheless, the United States Supreme Court has considered this precise issue and has expressly determined that when balancing the privacy interest versus the public interest, the privacy interest of the decedent's family must be considered. See National Archives and Records Administration v. Favish, 541 U.S. 157, 171 (2004). The investigation reports regarding the last ten (10) suicides contain graphic and emotional content for a surviving family member and sometimes vividly describes the nature, method, and motivation for the suicide. The Police Department did not violate the APRA in not disclosing these reports because the reports implicated significant privacy interests of the surviving family members when balanced against the public interest in disclosure.  
*Issued December 9, 2016.*

PR 16-50

**Clark v. West Greenwich Fire District**

Complainant alleged that the WGFD violated the APRA when it failed to produce documents responsive to his request. This Department has long held that "in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record." Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21. Because there was no evidence or indication that the Complainant had made the request at issue, he lacked standing to complain about alleged violations stemming from the request. We additionally found that the request was not a cognizable request under the APRA because it would require a series of conclusions and assumptions by the WGFD that goes beyond the scope of an APRA request.  
*Issued December 9, 2016.*

PR 16-51

**Clark v. West Greenwich Fire District**

Complainant alleged that the WGFD violated the OMA and the APRA when it: (1) untimely posted its annual notice after its first meeting; (2) untimely posted notice of its annual meeting; (3) failed to include the open call requirements set forth in R.I. Gen. Laws § 42-46-4(a) in its open session minutes for its February 4, 2014 meeting; and (4) responded to various APRA requests without having the responding person certified pursuant to R.I. Gen. Laws § 38-2-3.16. Because Complainant had not alleged, nor could we find any evidence supporting, that he was aggrieved pursuant to R.I. Gen. Laws § 42-46-8(a) and the standard established in Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), we found that he lacked standing to bring his first two allegations. However, we found that the WGFD did violate the OMA when it failed to include in the February 4, 2014 unofficial minutes, the subsection under which it convened into executive session as required by R.I. Gen. Laws § 42-46-4(a). We found no evidence of a willful or knowing violation in light of the fact that this omission was corrected in the February 4, 2014 official minutes. We also found that Complainant lacked standing to bring his APRA allegations because there was no evidence that the Complainant had made the APRA requests at issue. See Clark v. Town of Glocester / Clark v Glocester Police Department, PR 16-12.

*Issued December 9, 2016.*

PR 16-52

**Nye v. Rhode Island State Court System**

**Nye v. Rhode Island State Court System**

Complainant alleged that the RISCs violated the APRA when it failed to produce documents responsive to two separate APRA requests and when it failed to timely respond to his appeal of the denial of his second APRA request. The evidence indicated that the RISCs had released the requested documents during the pendency of this matter. We found no evidence of a willful and knowing, or reckless, violation. However, we did find that the RISCs violated the APRA by failing to respond to the Complainant's appeal within ten (10) business days. The evidence demonstrated that the chief administrative officer was away from the office and, once discovered the appeal, responded within ten (10) business days.

**VIOLATION FOUND.**

*Issued December 12, 2016.*

PR 16-53

**Shorey v. City of Pawtucket**

The Complainant alleged that the City violated the APRA when it failed to timely respond to his APRA request and when it withheld a requested document pursuant to R.I. Gen. Laws § 38-2-2(4)(K) as a “working paper” and/or “work product.” We found that the City timely responded to the APRA request because the ten business day period to respond excludes weekends and holidays. We also found that the document did not constitute a “working paper” or “work product” based on our in camera review of the document. After weighing the public interest in disclosure against any privacy interests, we found that there was some public interest in disclosure and that the privacy interests and law enforcement concerns could be adequately protected through redaction. Accordingly, we found that the City violated the APRA when it failed to release the requested document in a redacted manner. The City was directed to do so.

VIOLATION FOUND.

*Issued December 22, 2016.*

**ACCESS TO PUBLIC RECORDS ACT**  
**ADVISORY OPINIONS - 2016**