STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

DEPARTMENT OF ATTORNEY GENERAL

2015 ANNUAL REPORT

OPEN MEETINGS ACT
AND
ACCESS TO PUBLIC RECORDS ACT

ATTORNEY GENERAL PETER F. KILMARTIN

OPEN MEETINGS ACT

ANNUAL REPORT 2015

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 2015.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	51
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	20
VIOLATIONS FOUND:	10
WARNINGS ISSUED:	8
LITIGATION INITIATED:	2
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	1
ISSUED:	0

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 15-04	The Valley Breeze v. Cumberland Fire Committee
OM 15-06	Appolonia v. West Warwick Board of Canvassers
OM 15-07	Novak v. Western Coventry Fire District
OM 15-08	Higgins v. Lonsdale Fire District
OM 15-12	Howard v. Portsmouth Agriculture Advisory Committee
OM 15-13	Ranaldi v. Town of Narragansett
OM15-17	Fagnant v. Woonsocket City Council
OM15-19	Marcello v. Scituate School Committee

VIOLATIONS FOUND/LAWSUIT FILED

OM 15-03B Novak v. Western Coventry Fire District
OM 15-05B Cushman v. Warwick Retirement Board

* * *

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

OPEN MEETINGS ACT FINDINGS - 2015

OM 15-01 **Alix v. Harrisville Fire District**

The Complainant alleged that the Harrisville Fire District ("Fire District") violated the OMA when its Fire Subcommittee held a meeting in March 2014 without notice to the public. In order for the OMA to apply, a "quorum" of a "public body" must convene for a "meeting" as these terms are defined by the OMA. Because the evidence is undisputed that two (2) members of the Subcommittee gathered, this Department needed to determine whether the Subcommittee is composed of three (3) members, or whether the Subcommittee is composed of four (4) members, which would include the ex officio member. We saw no reason, nor were we presented with any legal argument, why an ex officio member of a public body would not be counted towards a quorum. Since two (2) of the four (4) Subcommittee members were present for this unnoticed March 2014 meeting, a "quorum" was not present and the OMA was not implicated. As such, we found no violation.

Issued January 27, 2015.

OM 15-02 **Common Cause v. Board of Elections**

Insufficient evidence was presented that the Complainant was aggrieved by the allegedly deficient public notice. Accordingly, pursuant to Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), the Complainant lacked standing to bring this complaint.

Issued February 27, 2015.

OM 15-03 **Novak v. Western Coventry Fire District**

The Complainant alleged the Western Coventry Fire District ("Fire District") violated the OMA when it failed to timely post its meeting minutes on the Secretary of State's website for eleven (11) of its meetings. See R.I. Gen. Laws § 42-46-7(b)(2). On June 11, 2014, this Department issued Novak v. Western Coventry Fire District, OM 14-24, wherein this Department found that the Fire District violated the OMA by failing to timely post its unofficial minutes on the Secretary of State's website for seven (7) meetings. Notwithstanding this actual notice, previously, by letter dated November 4, 2013, the Attorney General advised all Fire Districts that the OMA had been amended, effective July 2013, to include R.I. Gen. Laws § 42-46-7(b)(2)'s posting requirement - the precise requirement that we find the Fire District has violated. The Fire District shall have ten (10) business days to respond

to this Department's concern that the violations are "willful or knowing." A supplemental finding will be issued.
VIOLATION FOUND.
Issued March 9, 2015.

OM 15-03B **Novak v. Western Coventry Fire District**
The Western Coventry Fire District violated the OMA when it failed to timely post the unofficial minutes for its September 18, 2014 meeting. The OMA requires that "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2). (Emphases added). This section of the statute was enacted into law on June 15, 2013, and became effective upon passage. The Fire District filed the minutes for its September 18, 2014 meeting on October 14, 2014 when they should have been posted by October 9, 2014. Accordingly, this Department will file a civil lawsuit against the Fire District.
LAWSUIT FILED.
Issued April 13, 2015.

OM 15-04 **The Valley Breeze v. Cumberland Fire Committee**
The Cumberland Fire Committee ("CFC") violated the Open Meetings Act ("OMA") on November 6, 2014, when a quorum of the CFC met outside of a properly noticed open meeting and collectively discussed public business, i.e., the future chair and vice-chair of the CFC. See R.I. Gen. Laws § 42-46-2(1). While, at the time in question, the members of the CFC had not been officially sworn in, this Department has repeatedly held that members-elect are subject to the OMA. See Offer v. Newport City Council, OM 95-31. See also Schanck v. Glocester Town Council, OM 97-03. Other aspects of the November 6, 2014 meeting did not implicate the OMA, and accordingly, these discussions did not violate the OMA.
VIOLATION FOUND.
Issued April 13, 2015.

OM 15-05 **Cushman v. Warwick Retirement Board**
The Warwick Retirement Board violated the OMA when it held a meeting on less than forty-eight (48) hours notice, see R.I. Gen. Laws § 42-46-6(b), and when it discussed matters not appropriate for closed

session in executive session at its March 18 meeting. See R.I. Gen. Laws § 42-46-5(7). Based on the totality of the circumstances, we have concerns that the violations found may be willful or knowing. Before reaching a conclusion on whether the Board knowingly or willfully violated the OMA by holding its March 4, 2015 meeting on less than forty-eight (48) hours notice and by discussing matters in closed session that were not appropriate under the exemption cited, we will allow the Board ten (10) business days from the receipt of this finding to address these issues. A supplemental finding will following.
VIOLATION FOUND.
Issued April 27, 2015.

OM 15-05B **Cushman v. Warwick Retirement Board**

After viewing all the evidence presented, this Department determined sufficient evidence to conclude that the Warwick Retirement Board knowingly or willfully violated the OMA when it posted notice and convened its March 4, 2015 meeting on less than forty-eight (48) hours notice and when it discussed matters in executive session not appropriate under the exemption cited at its March 18, 2015 meeting. Accordingly, this Department filed a lawsuit against the Warwick Retirement Board seeking civil fines. See R.I. Gen. Laws § 42-46-8.
LAWSUIT FILED.
Issued May 12, 2015.

OM 15-06 **Appolonia v. West Warwick Board of Canvassers**

The West Warwick Board of Canvassers ("Board") violated the OMA during its October 27, 2014 meeting when it discussed an item not listed on the agenda. More specifically, the Board discussed and voted on procedures regarding poll worker contact, yet that item was not listed on the agenda. During the Board's October 27, 2014 meeting, under the agenda item "General Discussion," the Board began a rather lengthy discussion on poll worker contact. The Board decided, through a motion and a vote, to send the Complainant a correspondence indicating that the clerk of the Board would not be contacting poll workers for either the Democratic or Republican Party - it was the responsibility of both the Democratic and Republican Parties to contact their respective poll workers. As such, the Board violated the OMA when it took a vote during the public forum portion of the meeting, yet that item was not advertised.
VIOLATION FOUND.
Issued May 15, 2015.

OM 15-07 **Novak v. Western Coventry Fire District**

The Western Coventry Fire District ("Fire District") violated the OMA when it untimely posted on the Secretary of State's website approved minutes of seven (7) of its meetings. The Fire District also violated the OMA when the evidence revealed that it failed to post official and/or approved minutes for two (2) other meetings. Rhode Island General Laws § 42-46-7(d) requires "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not" to "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." R.I. Gen. Laws § 42-46-7(d).
VIOLATION FOUND.
Issued May 15, 2015.

OM 15-08 **Higgins v. Lonsdale Fire District**

The Lonsdale Fire District violated the OMA when it failed to articulate a proper open call by omitting the subdivision of R.I. Gen. Laws § 42-46-5 upon which the executive session was convened.
VIOLATION FOUND.
Issued May 21, 2015.

OM 15-09 **Thibeault v. Smithfield Town Council**

The Complainant alleged that she was prevented from taking notes at the Town Council's March 19, 2015 meeting. Specifically, Complainant alleged that the Town Manager "informed [her] that the rest of the meeting was 'off the record' and that [she] could not report on anything that was said." In Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997), the Rhode Island Supreme Court was confronted with a situation where a moderator of a financial town meeting caused a reporter to be ejected. The Court held that "the moderator is only the presiding officer of the financial town meeting and cannot in and of himself or herself constitute a public body." Id. In the present matter, the evidence showed that Complainant's allegations pertained specifically (and only) to the Town Manager and no argument or evidence was presented that the Town Council, or its members, precluded Complainant from taking notes at the March 19 meeting. Therefore, following the Supreme Court's reasoning in Pine, we concluded that the Town Manager's alleged actions did not constitute an OMA violation on behalf of the Town Council.
Issued June 18, 2015.

OM 15-10 **Pitochelli v. Town of Johnston**

The Johnston Town Council did not violate the OMA since the evidence established that the Town Council articulated its open call in open session and disclosed any votes taken in open session at the conclusion of the executive session. The evidence also established that the executive session was properly noticed, and in any event, the Complainant was present at the time the executive session convened. Accordingly, the Complainant was not aggrieved.
Issued June 23, 2015.

OM 15-11 **Fuller v. Westerly Town Council**

The Complainant alleged the Town Council violated the OMA during its December 8, 2014 meeting, when it improperly met with the School Committee Chairperson in executive session. The Complainant also alleged the Town Council met in executive session for the improper purpose of developing interview questions, establishing qualifications and obtaining advice regarding municipal positions, including the position of Assistant Solicitor for Schools. The OMA does not expressly govern who may attend executive or closed sessions and we found nothing within the OMA, nor were we directed to any provision, that would enable us to conclude that the Town Council violated the OMA by including the School Committee Chairperson during the portion of the executive session where the Town Council was interviewing candidates for the position of Assistant Solicitor for Schools. Our in camera review of the executive session minutes and audio recording also revealed that the School Committee Chairperson exited the executive session prior to the start of the interviews and that the executive session did not consist of establishing qualifications nor developing general interview questions. As such, we found no violation with respect to that allegation.
Issued June 25, 2015.

OM 15-12 **Howard v. Portsmouth Agriculture Advisory Committee**

The Portsmouth Agriculture Advisory Committee ("Committee") violated the OMA when it failed to timely make two (2) open session meeting minutes available to the public. See R.I. Gen. Laws § 42-46-7(b)(1)("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 * * * .")
VIOLATION FOUND.
Issued July 16, 2015.

OM 15-13 **Ranaldi v. Town of Narragansett**
PR 15-40 The Complainant averred that eight (8) meetings of the Ad Hoc Working Group on URI-Narragansett Student Rental Issues were not posted on the Secretary of State's website as required by the OMA, but the evidence established that the Complainant had attended two (2) of these meetings and two (2) other meetings had not occurred. No evidence was presented that the Complainant was aggrieved by any alleged violation and instead the evidence suggested that the Complainant viewed other notices on the Town's website. The Town did not violate the Access to Public Records Act when it failed to provide a copy of the September 10, 2014 minutes, since such minutes did not exist; but the Town did violate the OMA when its August 25, 2014 and September 29, 2014 minutes did not contain a record of the members present/absent.
VIOLATION FOUND.
Issued July 16, 2015.

OM 15-14 **Boss v. Woonsocket School Board**
Complainant alleged that the School Board violated the OMA when its full day Kindergarten Subcommittee ("Subcommittee") discussed public business outside the public purview either by convening non-public meetings or by creating a "rolling" quorum. The evidence demonstrated that the Subcommittee was comprised of two (2) School Committee members and each member attested that they "never attended any meeting, other than those for the full School Committee... at which any other member of the School Committee was present and during which full day Kindergarten was discussed." While the Subcommittee members did acknowledge that they each separately attended administrative meetings with other City officials where the topic of full day Kindergarten was discussed, no evidence was presented that the two (2) Subcommittee members discussed the full day Kindergarten matter amongst themselves, either individually or as a "rolling" quorum. Based on the totality of the circumstances, this Department found insufficient evidence to support Complainant's allegation and, therefore, found no violation.
Issued July 27, 2015.

OM 15-15 **Block v. Ashway Fire District**
PR 15-47 Complainant alleged, and the Fire District conceded, that the Fire District violated the OMA when it failed to timely post meeting minutes on the Secretary of State's website for meetings held between August 2014 through January 2015. Accordingly, we found that the Fire District violated the OMA when it failed to timely post meeting

minutes on the Secretary of State's website. See R.I. Gen. Laws § 42-46-7(b)(2).
Issued August 21, 2015.

OM 15-16 **Grieb v. Aquidneck Island Planning Commission**
Insufficient evidence was presented that the Complainant was aggrieved by the allegedly deficient public notice. Accordingly, pursuant to Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), the Complainant lacked standing to object to the notice. See R.I. Gen. Laws § 42-46-8(a). The Complainant attended the meeting and provided no evidence or argument, consistent with Graziano, that she was "disadvantaged, such as lack of preparation or ability to respond to the issue." Graziano, 810 A.2d at 221.
Issued September 18, 2015.

OM15-17 **Fagnant v. Woonsocket City Council**
The Complainant alleged the Woonsocket City Council ("City Council") violated the OMA during its May 4, 2015 meeting when, under the agenda item "Good and Welfare," members of the City Council began discussing him, yet that topic was not properly advertised. The OMA requires all public bodies provide supplemental public notice of all meetings at least forty-eight (48) hours in advance of the meeting. See R.I. Gen. Laws § 42-46-6(b). "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." Id. (Emphasis added). We concluded that the agenda item, "Good and Welfare" lacked any identifying information concerning the nature of the business to be discussed. The meeting agenda contained "vague and indefinite notice to the public" and "one lacking in specificity." A review of the meeting audio reveals a discussion of several topics, including one concerning the Complainant. These discussions under the agenda topic of "Good and Welfare" violated the OMA. See Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013).
VIOLATION FOUND.
Issued October 5, 2015.

OM15-19 **Marcello v. Scituate School Committee**
The School Committee violated the OMA during its November 18, 2014 meeting when it memorialized its open call in the executive session meeting minutes, rather than the open session minutes. The School Committee violated the OMA when it recorded 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 R.I. Gen. Laws § 42-46-5(a) and a statement specifying the nature of the business to be discussed, in the executive session meeting minutes when it should have been recorded in the open session minutes. The School Committee also violated the OMA when it failed to disclose the vote upon returning to open session. See R.I. Gen. Laws § 42-46-4(b). Lastly, the School Committee violated the OMA when it convened into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) - sessions pertaining to collective bargaining or litigation - yet none of the school department employees were members of collective bargaining units and litigation was not pending or reasonably anticipated.
VIOLATION FOUND.
Issued December 3, 2015.

OM 15-20 **Mudge v. North Kingstown School Committee**
Complainant alleged that sometime between June 3 and October 14, 2014, four members of the North Kingstown School Committee discussed the topic of leasing office space outside the public purview. After reviewing all the evidence presented, we found no violation. Specifically, the evidence established that the School Committee discussed this topic during open session at the School Committee's June 3, 2014 meeting, but no evidence was presented to suggest that this topic was discussed outside the public purview by a quorum of the School Committee between June 3 and October 14, 2014.
Issued December 31, 2015.

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2015

NONE

ACCESS TO PUBLIC RECORDS ACT

ANNUAL REPORT 2015

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 2015.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	64
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	56
VIOLATIONS FOUND:	25
WARNINGS ISSUED:	23
LITIGATION INITIATED:	3[1]
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	5
ISSUED:	3
APRA REQUESTS TO THE ATTORNEY GENERAL:	79

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 15-01	Clark v. West Glocester Fire District
PR 15-11	Paiva v. Rhode Island Department of Corrections
PR 15-12	Smith v. RI Dept. of Education
	Smith v. RI Dept. of Education
	Smith v. RI Dept. of Education
PR 15-13	Smith v. Warwick Public School Department

[1] Litigation was initiated during calendar year 2015 for one finding issued in 2014.

PR 15-17 Farinelli v. City of Pawtucket
PR 15-20 Higgins v. Lonsdale Fire District
PR 15-24 Access/Rhode Island v. West Warwick School Department
PR 15-25 Access/Rhode Island v. West Greenwich Police Department
PR 15-27 Access/Rhode Island v. Department of Corrections
PR 15-28 Access/Rhode Island v. Town of Warren
PR 15-29 Access/Rhode Island v. Charlestown Police Department
PR 15-30 Access/Rhode Island v. Newport School Department
PR 15-31 Access/Rhode Island v. East Greenwich School Department
PR 15-34 Access/Rhode Island v. Town of Scituate
PR 15-35 Access/Rhode Island v. Office of Auditor General
PR 15-36 Access/Rhode Island v. Department of Labor and Training
PR 15-37 Access/Rhode Island v. Warren Police Department
PR 15-38 Access/Rhode Island v. Rhode Island State Police
PR 15-41 Finnegan v. Town of Scituate
PR 15-50 MacDougall v. Dept. of Health & Office of Drinking Water Quality
PR 15-51 Town of Portsmouth v. Rhode Island Department of Public Safety
PR 15-54 Moore v. Rhode Island Board of Education
PR 15-56 Anderson v. Little Compton School Dept. and School Committee

VIOLATIONS FOUND/LAWSUIT FILED

PR14-24B International Association of Fire Fighters v. Nasonville Fire Department/District
PR 15-08B DesMarais v. Manville Fire Department/District
PR 15-18B In Re: Albion Fire District

* * *

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

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2015

PR 15-01 **Clark v. West Glocester Fire District (February 3, 2014)**

The Complainant sought minutes for executive sessions convened on July 23, 2013, November 5, 2013, and November 19, 2013. Because the July 23, 2013 executive session minutes were not sealed, these executive session minutes were public records. Conversely, because the November 2013 executive session minutes were sealed, these documents were exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(J). The Fire District's denial adequately provided the reasons for the denial and no evidence was submitted that the denial was based upon the reason the records were sought. The Fire District was directed to provide the Complainant copies of the July 23, 2013 executive session minutes.

VIOLATION FOUND.

Issued January 8, 2015.

PR 15-02 **Kurland v. Providence Department of Public Safety**

The Complainant alleged that the Department of Public Safety ("DPS") violated the APRA when it failed to timely respond to her APRA request, dated Saturday, October 18, 2014, and received by the DPS on Monday, October 20, 2014. The DPS responded on November 3, 2014. 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). We concluded that the DPS correctly calculated the due date, namely ten (10) business days from the receipt of the APRA request. See Burke v. Rhode Island College, 671 A.2d 803 (R.I. 1996); Young v. Town of Hopkinton, PR 05-10; and Rhode Island Superior Court Rules of Civil Procedure 6(a). All of these authorities make clear that the date an APRA request is received is not counted as the first business day.

Issued February 2, 2015.

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

The Complainant alleged that the East Bay Energy Consortium ("EBEC") violated the APRA by withholding various documents. Our in camera review found that many documents listed in the EBEC privilege log were not responsive to the APRA request and other documents that may have been responsive were exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) and (K).

Issue February 3, 2015.

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

The Complainant alleged that the Town violated the APRA when it failed to provide a sufficient explanation for extending the time to respond to his APRA request, as required by R.I. Gen. Laws § 38-2-3(e). Complainant's request sought any documents maintained by the Town "in any way relating to the property located at 320 Stillwater Rd." and contained no time frame limiting the search. Based on the broad nature of the request and the nearly thirteen (13) hours the Town exhausted "searching for, compiling, sorting, and printing out the requested records," we concluded that the Town did not violate the APRA when they extended the time to respond and that the Town's basis for the extension – "due to the scope and breadth of [the] request" – was particularized to the request.
Issued February 6, 2015.

PR 15-05 **Durand v. Warwick Board of Canvassers**

The Complainant alleged the Warwick Board of Canvassers ("Board") violated the APRA when he made an oral request for a site map and the Board required him to complete a form. The APRA provides that "[e]ach public body shall establish written procedures regarding access to public records but shall not require written requests * * * for other documents prepared for or readily available to the public." See R.I. Gen. Laws § 38-2-3(d). The fact that the Board required the request be in writing did not violate the APRA since no evidence had been presented that the site map was "prepared for or readily available to the public." If the Board had required the Complainant to fill out its APRA form to the exclusion of other forms of writing, or if the Complainant had refused to complete the APRA form, yet put the request in writing such that it was "otherwise readily identifiable as a request for public records," we may very well have a different view of this matter. Because no evidence has been submitted to substantiate this version of events, we found no violation.
Issued February 9, 2015.

PR 15-06 **Nangle v. Town of North Smithfield**

The Town of North Smithfield ("Town") did not violate the APRA when it denied the Complainant's APRA request seeking the names and email addresses of individuals who receive the Town's newsletter. We concluded, based upon the evidence presented, that disclosure of the names and email addresses of those who subscribe to a Town's newsletter will not shed any light on government operations. Balanced against a minimal, if any, "public interest," we perceive a greater privacy interest. See Fuka v. RI Dept. of Environmental Mgmt,

2007 WL 1234484 (the home addresses of licensed fishermen were exempt under the APRA); United States Department of State v. Ray, 502 U.S. 164 (1991)(disclosing names of illegal emigrants constituted clearly unwarranted invasion of personal privacy); Bibles v. Oregon Natural Desert Ass'n, 519 U.S. 355 (1997)(mailing list containing names and addresses where newsletter sent not a public record).
Issued February 16, 2015.

PR 15-07 **Murphy v. City of Providence**

The Complainant alleged the City of Providence ("City") violated the APRA when it did not provide her any records responsive to her June 21, 2014 APRA request. There was simply no evidence to demonstrate that the City's search for the requested records was unreasonable or that the City maintained the requested records. We were presented no evidence to establish that the City had responsive documents that it refused to provide to the Complainant. This Department has previously held that the failure of a public body to produce records that do not exist does not violate the APRA. See, e.g., O'Rourke v. Bradford Fire District, PR 13-11; Hazelwood v. Town of West Greenwich, OM 13-09; Tetreault v. Lincoln School Committee and Superintendent of Schools, PR 99-14. See also R.I. Gen. Laws § 38-2-3(h).
Issued February 17, 2015.

PR 15-08 **DesMarais v. Manville Fire Department**

The Fire Department violated the APRA when it failed to timely respond to Complainant's APRA request. Specifically, the undisputed evidence showed that on February 24, 2014, Complainant filed an APRA request with the Fire Department and on March 10, 2014, the Fire Department extended the time to respond an additional twenty (20) business days but no further response was provided by the Fire Department until approximately seven months after the APRA request was received. This Department previously confronted this issue in DesMarais v. Manville Fire Department Board of Wardens, PR 12-05. The Fire Department was allowed ten (10) business days to provide a response explaining why this Department should not find its failure to timely respond to Complainant's APRA request knowing and willful, or alternatively, reckless, in light of the Fire Department's recognition of the APRA requirements and this Department's precedent. A supplemental finding will follow.
VIOLATION FOUND.
Issued February 20, 2015.

PR 15-08B **DesMarais v. Manville Fire Department/District**

After viewing all the evidence presented, this Department determined sufficient evidence to conclude that the Fire Department knowingly and willfully violated the APRA when it failed to timely respond to Complainant's APRA request. Accordingly, this Department filed a lawsuit against the Fire Department seeking civil fines. See R.I. Gen. Laws § 38-2-9.
LAWSUIT FILED.
Issued April 13, 2015.

PR 15-09 **Fusaro v. Westerly Police Department**

The Complainant alleged that the Westerly Police Department ("Police Department") violated the APRA when it improperly denied her APRA request seeking "a copy of [her] police background check * * * including the detective notes." This Department was provided with copies of records the Police Department exempted from disclosure and determined that these documents contain information consistent with a background check on the Complainant, as well as information obtained from third parties. Rhode Island General Laws § 38-2-2(4)(A)(I)(b) exempts from disclosure "[p]ersonnel 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...[.] (Emphasis added). Considering the nature and content of the requested documents, as well as the arguments and evidence presented, there exists little to no public interest adequate to overcome the clearly unwarranted invasion of personal privacy that would result from disclosure.
Issued February 19, 2015.

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

The Complainant alleged the Rhode Island Division of Lotteries ("Division") violated the APRA when it improperly denied a September 17, 2014 APRA request. The Division sent an email indicating that the estimated time to produce the requested documents would be approximately 140 hours for an estimated fee of $2,100. With respect to pre-payment of the fees, we have previously found that the APRA does not prohibit a public body from requesting pre-payment of fees. See Smith v. Watch Hill Fire District, PR 99-15. Moreover, ever since the 2012 APRA amendment, the APRA expressly allows an entity, such as the Division, to require prepayment for "costs properly charged" and provides that in such a case "the production of records shall not be deemed untimely if the public body is awaiting receipt of

payment." R.I. Gen. Laws § 38-2-7(b). No argument or evidence was presented that the estimated fee was improperly charged. Additionally, we cannot conclude the Division violated the APRA when it decided not to grant a fee waiver, and also observe that the APRA allows a court to reduce or waive the costs to fulfill an APRA request.
Issued March 9, 2015.

PR 15-11 **Paiva v. Rhode Island Department of Corrections**
The Complainant submitted an APRA request for copies of employment applications and the name and contact information for the doctors' medical insurance carriers. The Department of Corrections ("DOC") denied Complainant's request on the basis that disclosure would constitute a "clearly unwarranted invasion of personal privacy." See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). With respect to one employment application (our investigation revealed that the second employment application did not exist), we concluded that the public interest outweighed the privacy interest asserted by DOC, and that disclosure of the employment application, after redacting the information contained in the employment application that would constitute a "clearly unwarranted invasion of personal privacy," would advance that interest. See Jackson v. Town of Coventry, PR 14-35. With respect to the name and contact information of the doctors' medical insurance carriers, we concluded that the insurance information sought would "reveal[] little or nothing about [DOC's] own conduct," and that even the most minimal privacy interest outweighed the non-existent "public interest." See Reporters Comm., 489 U.S. at 749, 109 S.Ct. at 1481-82. Therefore, we found that DOC violated the APRA when it denied access to the employment application en toto.
VIOLATION FOUND.
Issued March 13, 2015.

PR 15-12 **Smith v. RI Dept. of Education (August 15, 2013 APRA Request)**
Smith v. RI Dept. of Education (September 25, 2013 APRA Request)
Smith v. RI Dept. of Education (May 5, 2014 APRA Request)
The Complainant filed three (3) APRA complaints against the Rhode Island Department of Education ("RIDE") regarding various documents pertaining to the West Bay Collaborative ("WBC"). As such, we consolidated all three complaints into a single finding. Although all three complaints raised several allegations, based on the evidence presented, we concluded RIDE violated the APRA on two occasions. First, we concluded that RIDE violated the APRA when it

failed to provide Complainant with the redacted source documents responsive to Complainant's request. Second, we found that RIDE violated the APRA when it "granted" Complainant's request for responsive documents that did not exist.
VIOLATION FOUND.
Issued March 13, 2015.

PR 15-13 **Smith v. Warwick Public School Department**
The Complainant alleged that the School Department violated the APRA when it failed to provide notice of the appeal process in its denial. Under the APRA, "[a]ny denial of the right to inspect or copy records...shall be made to the person or entity requesting the right 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." See R.I. Gen. Laws § 38-2-7(a). Based on the evidence presented, we found that by not providing Complainant with documents responsive to the request because the School Department did not maintain such documents, Complainant's request was denied. Therefore, we concluded that the School Department violated the APRA when it failed to indicate the appeal procedure in its denial letter.
VIOLATION FOUND.
Issued March 16, 2014.

PR 15-14 **Bicki v. City of Woonsocket**
The City did not violate the APRA when it did not produce documents not within the City's possession as of the date of Complainant's APRA request and/or not responsive to the plain language of the request. Specifically, Rhode Island General Laws § 38-2-3(h) provides, in pertinent part, that "[n]othing 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."
Issued March 27, 2015.

PR 15-15 **The Providence Journal v. Rhode Island Department of Health**
The Providence Journal filed an APRA complaint because the Department of Health created a document that listed the number and location of drug overdose deaths, but did not list the number of overdose deaths in municipalities that had five (5) or less deaths, and otherwise listed "unknown location" in situations where the location of death was undetermined. The Department of Health did not maintain a single document responsive to the APRA request and the

APRA did not require the Department of Health to create a document for purposes of fulfilling an APRA request. See R.I. Gen. Laws § 38-2-3(h). Moreover, R.I. Gen. Laws § 23-3-23 provides that "it shall be unlawful for any person to permit inspection of, or to disclose information contained in, vital records, or to copy, or issue a copy, of all or part of any vital record[.]" The term "vital records" includes records relating to death, and "data related to those records." R.I. Gen. Laws § 23-3-1(18). Lastly, the Department of Health's records were not susceptible of determining the number of opioid related overdose deaths, as requested, and also could not further breakdown the location of the "unknown" deaths.
Issued April 24, 2015.

PR 15-16 **Bath v. Rhode Island Office of Health and Human Services**

The Complainant alleged that EOHHS failed to comply with R.I. Gen. Laws § 38-2-3(e) when it extended the time to respond to the two (2) APRA requests without providing a "particularized" explanation, and that EOHSS did not have "good cause" to extend the time to respond to a December 10, 2014 APRA request.

While not determinative, there is no dispute that the December 18, 2014 correspondence did reference the subject-matter of the December 5, 2014 and December 10, 2014 APRA requests, and indicated additional time was required to allow staff to complete its search, retrieval, and production. Considering the volume, breadth, and sequence of the APRA requests, we have no doubt that this extension fell within the scope of the APRA.
Issued April 30, 2015.

PR 15-17 **Farinelli v. City of Pawtucket**

The Complainants sought access to a Pawtucket Police Department internal affairs report. The City denied the request on the grounds that disclosure would constitute a clearly unwarranted invasion of personal privacy. After reviewing the internal affairs report in camera, using case law for guidance, and based on the unique facts and evidence presented, we concluded that disclosure of the internal affairs report in a redacted manner would not constitute a "clearly unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Accordingly, we found that the City of Pawtucket violated the APRA when it denied Complainants access to the internal affairs report in its entirety.
VIOLATION FOUND.
Issued May 14, 2015.

PR 15-18 **In Re: Albion Fire District**

This Department initiated an APRA investigation against the Fire District for failure to timely comply with R.I. Gen. Laws § 38-2-3.16. See R.I. Gen. Laws § 38-2-8(d). The evidence showed that despite repeated notice from this Department and despite the District's assurances that the certifications were "forthcoming," no certifications were received until March 3, after the Fire District received notice of the present investigation. Therefore, we concluded that the Fire District violated the APRA when it failed to timely comply with R.I. Gen. Laws § 38-2-3.16. Based on the totality of the circumstances, we had concerns that the District's failure to timely comply with R.I. Gen. Laws § 38-2-3.16 was knowing and willful, or, alternatively, a reckless violation. The District shall have ten (10) business days to provide us with a supplemental explanation as to why its failure to timely comply with R.I. Gen. Laws § 38-2-3.16 should not be considered knowing and willful, or reckless, in light of its recognition of the APRA and this Department's repeated requests to comply with its requirements. A supplemental finding will follow.

VIOLATION FOUND.

Issued May 18, 2015.

PR 15-18B **In Re: Albion Fire District**

After viewing all the evidence presented, in particular the multiple notifications by this Department, the Fire District's assurances, and the Fire District's failure to provide a certification form until after this Department initiated this complaint, we determined that there was sufficient evidence to conclude that the Fire District knowingly and willfully, or recklessly, violated the APRA when it failed to comply with R.I. Gen. Laws § 38-2-3.16. Accordingly, this Department will file a civil lawsuit against the Albion Fire District.

LAWSUIT FILED.

Issued October 26, 2015.

PR 15-19 **Save the Bay v. Department of Environmental Management**

The Department of Environmental Management ("DEM") did not violate the APRA when it withheld from disclosure a document prepared within a client/attorney relationship, and therefore, not deemed public pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). Based upon case law from the Rhode Island and United States Supreme Courts, we must conclude that the document requested, which was created by DEM's legal counsel and sent to various DEM employees relative to their legal inquiries, is exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(i)(E). See also R.I. Gen. Laws § 38-2-

2(4)(i)(A)(I)(exempting "all records relating to a client/attorney relationship"). Even the Complainant's September 24, 2014 APRA complaint seems to acknowledge that "[t]he requested document [was] prepared with advice of counsel." With respect to the allegation that the DEM's APRA procedures were not on DEM's website, the Complainant presented no evidence to dispute the assertion that DEM's APRA procedures have been on its website since 2012.
Issued May 18, 2015.

PR 15-20 **Higgins v. Lonsdale Fire District**
The Lonsdale Fire District violated the APRA when it failed to timely respond to an APRA request and failed to identify the specific reasons for the denial. The Fire District was directed to respond to the APRA requests in a manner consistent with the APRA and this Department's finding, and was further instructed that it could not charge for the search, retrieval, or copying costs regarding the pending APRA requests. See R.I. Gen. Laws § 38-2-7(b).
VIOLATION FOUND.
Issued May 21, 2015.

PR 15-21 **Banna v. Pawtucket Police Department**
The Complainant alleged the Pawtucket Police Department violated the APRA when it improperly redacted portions of its response to her APRA request dated December 3, 2014. The Complainant had requested an incident report that described the circumstances involving her being bitten by a dog. The Complainant alleged the redacted portions, including a home address and other identifying information, are public records. Based on the evidence submitted, we concluded the redacted information sought would "reveal[] little or nothing about [the Police Department's] own conduct." See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press 489 U.S. at 749, 109 S.Ct. at 1481-82. Therefore, because there is little to no public interest in disclosing the home address, date of birth, license number and telephone number in this case, we conclude that the privacy interests outweigh the public interest and the redacted records are exempt.
Issued May 22, 2015.

PR 15-22 **Flaherty v. Rhode Island Department of Transportation**
The Complainant alleged the Rhode Island Department of Transportation ("RIDOT") violated the APRA when it denied her APRA request seeking documents regarding the "Draft Feasibility Study for Phase 4 Canonchet Farm Bike Path." The RIDOT denied the

request pursuant to R.I. Gen Laws § 38-2-2(4)(K) as a "draft." Rhode Island General Laws § 38-2-2(4)(i)(K) exempts from public disclosure, "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any document submitted at a public meeting of a public body shall be deemed public." As no evidence was submitted that this draft was submitted at a public meeting, we found no violation.
Issued June 2, 2015.

PR 15-23 **Olawuyi v. Pawtucket Police Department**

The Pawtucket Police Department did not violate the APRA when it withheld from disclosure an incident report that did not lead to an arrest. This Department has consistently held that where an arrest has not taken place, there is a presumption that incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). While the foregoing principles may not apply in a situation where an incident report could be redacted to protect any privacy rights, in the present matter, this Department found that the privacy interests outweighed any interest the public may have in disclosure of such a report and that disclosure of the requested record could reasonably be expected to constitute an unwarranted invasion of personal privacy.
Issued June 8, 2015.

PR 15-24 **Access/Rhode Island v. West Warwick School Department**

Access/Rhode Island hired a third-party named MuckRock from Boston, Massachusetts to conduct an Access to Public Records Act ("APRA") survey regarding various state and local government APRA compliance within Rhode Island. After considering the facts and applicable case law, this Department concluded that since the APRA requests and inquiries were all made by MuckRock, and provided no indication that any APRA request or inquiry was made by or on behalf of Access/Rhode Island, Access/Rhode Island lacked legal standing to file the instant complaint or a lawsuit. See e.g. Fieger v. Federal Election Commission, 690 F.Supp.2d 644 (E.D. Mich. 2010). Nonetheless, after considering numerous factors, this Department concluded that it would review all the Access/Rhode Island APRA complaints pursuant to the Attorney General's independent statutory authority to advance the public interest. See R.I. Gen. Laws § 38-2-8(d). In doing so, this Department determined that the School Department failed to submit a timely APRA certification pursuant to R.I. Gen. Laws § 38-2-3.16, although the evidence suggested that a School Department employee received APRA training in January 2014, yet failed to submit the appropriate form to this Department; and the

School Department also violated the APRA when it failed to maintain and post APRA procedures on its website, although the evidence revealed that at the time of the MuckRock APRA requests, the School Department's website was under construction. All of these violations were remedied prior to the filing of the December 2014 APRA complaint. The School Department also violated the APRA on three (3) occasions by failing to respond to MuckRock's APRA requests in a timely manner and this Department directed the School Department to provide a supplemental response concerning these untimely responses to determine whether such a violation was willful and knowing, or reckless, which would subject the School Department to civil fines.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-25 **Access/Rhode Island v. West Greenwich Police Department**

Access/Rhode Island charged that the Police Department violated the APRA on four (4) occasions when it failed to respond in a timely manner to MuckRock's APRA requests. The evidence demonstrated that during the time in question, the Police Department was undergoing major communication upgrades and that its telecommunications system was interrupted. No evidence was produced that MuckRock's four (4) APRA requests sent by facsimile were ever received by the Police Department, and no facsimile confirmation was ever produced by MuckRock or Access/Rhode Island to support the Police Department's receipt of the facsimile APRA requests. Notwithstanding the lack of evidence supporting the receipt of a facsimile APRA request, because the Police Department did not rebut MuckRock's assertion that it had subsequently sent a follow-up e-mail APRA request - after not having received an acknowledgment by facsimile - this Department determined that the failure to timely respond to this follow-up e-mail APRA request violated the APRA.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-26 **Access/Rhode Island v. New Shoreham Police Department**

Access/Rhode Island contended that the Police Department violated the APRA on six (6) occasions, when it failed to submit an APRA certification form to this Department pursuant to R.I. Gen. Laws § 38-2-3.16, when it failed to maintain/post APRA procedures on its website, and when it failed to respond timely to four (4) separate APRA requests. The evidence revealed that the Town of New Shoreham promulgated an APRA procedure and that this APRA

procedure was posted on the Town's website "since April 1, 2014." The Town's APRA procedure required all APRA requests made to any Town department, including the Police Department, be made to the Town Clerk. Here, the four (4) APRA requests that Access/Rhode Island claimed where responded to in an untimely manner were all made after April 1, 2014, and were all made to persons or entities other than the Town Clerk, typically, the Police Chief. Because the APRA mandates that public bodies provide notice to the public and post on its website the manner in which APRA requests should be made, see R.I. Gen. Laws § 38-2-3(d), because the Town complied with this requirement for all post-April 1, 2014 APRA requests, and because MuckRock failed to follow the posted Town APRA procedures, we found that the Police Department did not violate the APRA when it failed to respond in a timely manner to MuckRock's four (4) post April 1, 2014 APRA requests, none of which were not made in accordance with Town's APRA procedures. See Rosenfield v. North Kingstown School Department, PR 14-02 ("This Department has previously determined that an APRA request must first comport with a public body's APRA policy before we can decide whether a violation has occurred"). Moreover, since R.I. Gen. Laws § 38-2-3.16 mandates that a public employee receive APRA training when that employee has "the authority to grant or deny persons or entities access to records under this [APRA]," and since the evidence demonstrated that the Town Clerk and not the Police Chief had this authority according to the Town's APRA procedures, we also found that the Police Department did not violate the APRA when the Police Department did not submit an APRA certification form to this Department. Lastly, we found that because the Town promulgated and posted APRA procedures, and these APRA procedures expressly included all town departments including the Police Department, the Police Department did not violate the APRA when it did not independently promulgate and post APRA procedures.
Issued June 12, 2015.

PR 15-27 **Access/Rhode Island v. Department of Corrections**

Access/Rhode Island contended that the Department of Corrections violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to respond in a timely manner to two (2) MuckRock APRA requests. The evidence demonstrated that although two (2) DOC attorneys had attended and received appropriate APRA training in August 2013, which would have qualified for calendar year 2014 in accordance with R.I. Gen. Laws §

38-2-3.16, no evidence was submitted that the certification forms had been submitted to this Department, and accordingly, this omission violated the APRA. With respect to the allegations that the DOC had responded in an untimely manner to two (2) MuckRock APRA requests, we found that one of these instances violated the APRA. In particular, MuckRock had made an APRA request to the DOC e-mail account, but unbeknownst to the employee who monitored the DOC e-mail account, information technology changes had been made and she was no longer permitted access. This issue was corrected. With respect to the second untimely response allegation, Access/Rhode Island alleged that the DOC responded one (1) day late to MuckRock's APRA request seeking "[c]ontracts for the ten (10) employees with the highest salaries," which was made on April 29, 2014. The evidence revealed that on May 7, 2014, within the ten (10) business day statutory time period, DOC responded that its staff employees were not hired under a contract agreement, at which point MuckRock responded by indicating that "[i]f no staff of Department of Corrections is under contract, then you can consider this request closed." Although MuckRock sought further confirmation, as of May 8, 2014, the DOC had related that it did not maintain staff contracts and MuckRock had indicated that if no DOC staff were under contract, the APRA request could be considered "closed." All of these events occurred within ten (10) business days.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-28 **Access/Rhode Island v. Town of Warren**

Access/Rhode Island alleged that the Town violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to promulgate and post APRA procedures to its website. These violations have since been remedied. The Town provided no substantive response to the underlying allegations, and therefore, we found the allegations meritorious. Because the Town did not provide a substantive response or explanation concerning the violations, we deemed it appropriate to direct the Town to provide a supplemental response addressing the underlying violations so that this Department could determine whether the violations were willful and knowing, or reckless, which would subject the Town to civil fines.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-29 **Access/Rhode Island v. Charlestown Police Department**

Access/Rhode Island alleged that the Police Department violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to promulgate and post APRA procedures to its website. These violations have since been remedied, and accordingly, injunctive relief would be ineffective. Additionally, based upon the totality of the evidence and circumstances, we found insufficient evidence to demonstrate a willful and knowing, or reckless, violation.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-30 **Access/Rhode Island v. Newport School Department**

Access/Rhode Island alleged that the School Department violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, when it failed to promulgate and post APRA procedures to its website, and when it failed to respond timely to a MuckRock APRA request. The evidence demonstrated that a School Department employee had received APRA training in January 2014, yet had not submitted an APRA certification form to the Department of Attorney General, and the evidence also revealed that the School Department failed to promulgate and post its APRA procedures to its website. These violations have since been remedied. With respect to Access/Rhode Island's allegation that the School Department responded to MuckRock's APRA request in an untimely manner, the evidence demonstrated that the School Department timely asserted an extension of time pursuant to R.I. Gen. Laws §§ 38-2-3(e) and 38-2-7(b), and subsequently timely denied access to the requested records since the School Department did not maintain the requested records. R.I. Gen. Laws § 38-2-3(h).

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-31 **Access/Rhode Island v. East Greenwich School Department**

Access/Rhode Island alleged that the School Department violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, when it failed to post its promulgated APRA procedures on its website, and when it failed to respond in a timely manner to two (2) MuckRock APRA requests. The School Department acknowledged that it failed to timely provide APRA certification forms to this

Department and that it failed to appropriately post its promulgated APRA procedures to its website. Both violations have since been remedied. Access/Rhode Island further alleged that the School Department failed to respond in a timely manner to MuckRock's APRA request seeking written procedures for access to an agency's public records, but the evidence established that the School Department did provide a timely reply to this request and even Access/Rhode Island's rebuttal acknowledged that "[t]he [School] Department did provide a reply in a timely manner." The School Department did not timely respond to MuckRock's June 27, 2014 APRA request seeking documents relating to teacher layoffs - despite not having any responsive documents. The School Department's failure to timely respond to this request violated the APRA and this Department directed the School Department to provide a supplemental response concerning whether such a failure should be considered willful and knowing, or reckless, which would subject the School Department to civil fines.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-32 **Access/Rhode Island v. Cumberland Police Department**
Access/Rhode Island sent a staff member from a third party (MuckRock) to the Cumberland Police Department to request in-person records deemed public pursuant to R.I. Gen. Laws § 38-2-3.2, which provides that certain delineated information concerning an arrested adult "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[.]" The foregoing time constraints apply only to "arrests made within five (5) days prior to the request." R.I. Gen. Laws § 38-2-3.2(b). Here, the Cumberland Police Department timely provided the required information for "arrests made within five (5) days prior to the request" and timely provided the additional adult arrest logs concerning arrests made more than five (5) days after the request.
Issued June 12, 2015.

PR 15-33 **Access/Rhode Island v. Providence Police Department**
In its complaint, Access/Rhode Island alleged that the Police Department violated the APRA when it responded to a MuckRock APRA request in an untimely manner. Upon receiving the Police Department's response to Access/Rhode Island's complaint and supporting evidence, Access/Rhode Island requested that it be

allowed to "withdraw" the APRA allegation against the Police Department and this Department permitted its withdrawal.
Issued June 12, 2015.

PR 15-34 **Access/Rhode Island v. Town of Scituate**

Access/Rhode Island alleged that the Town violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16 and when it failed to promulgate and post APRA procedures on its website. The evidence suggested that the Town Clerk may have had prior APRA training, yet failed to submit an APRA training certification form to this Department. Moreover, although the evidence demonstrated that the Town had promulgated an APRA form and procedure, and that the Town's APRA form was posted to its website, the Town acknowledged that its APRA procedures were not posted to its website. As best as could be determined, this omission appeared to be the result of an information technology error since the APRA form had been posted, but not the APRA procedures. These violations were remedied.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-35 **Access/Rhode Island v. Office of Auditor General**

In this complaint, Access/Rhode Island alleged that the Office of Auditor General violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, failed to timely respond to a MuckRock APRA request, and failed to promulgate and post on its website APRA procedures. The Office of Auditor General acknowledged the instant violations and has since remedied its violations by submitting its APRA certification, promulgating and posting its APRA procedures, and providing MuckRock the requested documents. Nonetheless, based upon the Office's failure to timely respond to MuckRock's APRA request, this Department directed the Office of Auditor General to provide a supplemental response presenting evidence concerning whether its failure to timely respond should be considered willful and knowing, or reckless, and thus subject the Office of Auditor General to civil fines.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-36 **Access/Rhode Island v. Department of Labor and Training**

Access/Rhode Island alleged that the Department of Labor and Training ("DLT") violated the APRA when it failed to provide APRA certification forms to this Department evidencing APRA training pursuant to R.I. Gen. Laws § 38-2-3.16, and when it failed to respond in a timely manner to two (2) MuckRock APRA requests. Although the evidence demonstrated that the designated DLT public records officer received APRA training in 2013, which would have been applicable for calendar year 2014, no evidence was submitted that an APRA certification form had been submitted for this training. Accordingly, this violated the APRA. Additionally, the evidence indicated that the DLT failed to respond in a timely manner to MuckRock's APRA request by one (1) day. Based upon the evidence presented, it appears this omission was the result of, as Access/Rhode Island phrased it, an "imprecise email sent by" another agency that DLT believed was responding on its behalf. Regarding Access/Rhode Island's allegation that a second APRA request had not been timely responded to by DLT, we found no violation. The evidence indicated that MuckRock had sent this APRA request via facsimile and the evidence presented by DLT established that it had not received this facsimile APRA request. Access/Rhode Island attempted to rebut the DLT's position that it never received this APRA request by presenting a facsimile confirmation sheet, but this confirmation sheet pertained to MuckRock's first APRA request (made on April 29, 2014) and did not pertain to MuckRock's second APRA request, which was at issue (allegedly made on June 9, 2014). Because neither Access/Rhode Island nor MuckRock was able to present evidence to rebut the DLT's position, we found that the DLT received this second APRA request on June 24, 2014 and timely responded to this second APRA request on July 3, 2014.

VIOLATION FOUND.

Issued June 12, 2015.

PR 15-37 **Access/Rhode Island v. Warren Police Department**

Access/Rhode Island alleged that the Police Department violated the APRA when it maintained APRA procedures, but when it failed to post these maintained APRA procedures on its website. Additionally, Access/Rhode Island alleged that the Police Department violated the APRA when it failed to timely respond to four (4) APRA requests made by MuckRock. The Police Department did not contest that it failed to post its promulgated/maintained APRA procedures on its website, and accordingly, this allegation violated the APRA. With respect to the allegations that the Police Department failed to timely

respond to MuckRock's APRA requests, on two (2) of these occasions, the Police Department violated the APRA. In both situations, MuckRock sent by facsimile APRA requests to a machine that was not regularly monitored by the Police Department. In the other two (2) situations, we found no violations. In one situation, the Police Department required pre-payment from MuckRock for the cost of the APRA request. In such a situation, the time for a public body to respond to the APRA request is tolled, pending pre-payment. See R.I. Gen. Laws § 38-2-7(b)("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"). Because the time from MuckRock's APRA request to the Police Department providing responsive documents totaled ten (10) business days, exclusive of the time awaiting payment, the Police Department's response was timely. Additionally, even though R.I. Gen. Laws § 38-2-3.2 provides that certain delineated adult arrest log information be provided 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," the evidence established that MuckRock's APRA request expressly requested such information be provided by the Police Department within "10 business days," thus waiving the time frame set forth in R.I. Gen. Laws § 38-2-3.2. See Gallucci v. Brindamour, 477 A.2d 617, 618 (R.I. 1984)("Generally, a party or parties for whose benefit a right is provided by constitution, by statute, or by principles of common law may waive such right, regardless of the plain and unambiguous terms by which such right is expressed."). Accordingly, the Police Department's response was also timely with respect to this request. Based upon the prior two (2) violations for failing to respond in a timely manner, this Department directed the Police Department to provide a supplemental response concerning whether such a violation should be considered willful and knowing, or reckless, which would subject the Police Department to a civil fine.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-38 **Access/Rhode Island v. Rhode Island State Police**
In this case, Access/Rhode Island alleged that the State Police failed to respond in a timely manner to two (2) MuckRock APRA requests. The first sought adult arrest log records delineated within R.I. Gen. Laws § 38-2-3.2, which in pertinent part, requires that such records "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." Construing the evidence in the light least-favorable to the State Police, the evidence demonstrated that MuckRock made an in-person APRA request on May 19, 2014 and the State Police provided a mailed response (at MuckRock's request) on May 21, 2014. The State Police violated the APRA when it failed to timely respond to MuckRock's APRA request for other arrest log information. In particular, the evidence established that after receiving MuckRock's APRA request on June 9, 2014, the State Police responded on June 20, 2014 by requiring prepayment. This period of time - nine (9) business days - was a timely response and tolled the time for the State Police to respond pending pre-payment. See R.I. Gen. Laws § 38-2-7(b)("the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under § 38-2-4"). On June 30, 2014, MuckRock provided pre-payment, and the time for the State Police to timely respond within ten (10) business days - nine (9) of which had already expired - once again began to expire. While the State Police argued that the ten (10) business days started anew upon MuckRock's June 30, 2014 pre-payment, no authority supported this position and instead, the time that had been tolled effective June 20, 2014 once again began to run effective June 30, 2014. Accordingly, the ten (10) business day period expired one (1) day after MuckRock provided its payment. The State Police did provide the requested documents.
VIOLATION FOUND.
Issued June 12, 2015.

PR 15-39 **Shapiro v. Town of Warren**
This Department found that the Town of Warren did not violate the APRA when it failed to respond to an APRA request within ten (10) business days. The Town had a properly promulgated and posted APRA procedure requiring all requests to be made to the Town Clerk. Since this APRA request was made to the Town Manager, and not the Town Clerk, the failure to timely respond did not violate the APRA.
Issued June 18, 2015.

PR 15-40 **Ranaldi v. Town of Narragansett**
OM 15-13 The Town did not violate the Access to Public Records Act when it failed to provide a copy of the September 10, 2014 minutes, since such minutes did not exist.
Issued July 16, 2015.

PR 15-41 **Finnegan v. Town of Scituate**

The Town of Scituate violated the APRA when it failed to mail its denial letter within ten (10) business days of a request. The evidence suggested that the denial letter was timely prepared, but misfiled, and that the requested document did not exist.
VIOLATION FOUND.
Issued July 20, 2015.

PR 15-42 **Clark v. Department of Health**

Complaint alleged that DOH violated the APRA when it withheld forty four (44) documents from review. After viewing the forty-four (44) documents in camera, this Department concluded that while two (2) of the documents at issue were responsive to one APRA request, the two (2) documents were not public records and were exempt. In addition, the Complainant waived the timeframe for DOH to respond within ten (10) business days. Therefore, we found no violation.
Issued July 22, 2015.

PR 15-43 **Ryan v. Rhode Island Housing**

The Complainant alleged that Rhode Island Housing violated the APRA when it failed to provide access to certain documents and when it extended the time to respond for twenty (20) business days. This Department determined that the documents that were not produced (meeting minutes, notices for future meetings, and a roster of past and present committee membership) was not maintained by Rhode Island Housing, and therefore, the APRA was not violated when these documents were not produced. See R.I. Gen. Laws § 38-2-3(h). Rhode Island Housing also did not violate the APRA when it extended the time to respond to the APRA request since the evidence demonstrated that the Complainants made other requests for information at or around the same time period of the instant APRA request and ultimately over 1,700 pages were produced.
Issued July 23, 2015.

PR 15-44 **Mudge v. Town of North Kingstown**

The Complainant alleged that the Town violated the APRA by not responding to a July 2, 2014 APRA request, but the evidence established, and the Complainant acknowledged, that he had never made a July 2, 2014 APRA request to the Town. Accordingly, this Department found no violation.
Issued August 11, 2015.

PR 15-45 **Block v. Block Island Volunteer Fire District**

Complainant submitted a forty-nine (49) question "Fire Survey" to the Block Island Volunteer Fire Department ("Fire Department"). Upon receiving no response, Complainant filed an APRA complaint with this Department alleging that the Fire Department violated the APRA when it failed to respond to the survey. After reviewing all the evidence presented, we concluded that the "Fire Survey" was not a proper APRA request. Specifically, the evidence demonstrated that considering the totality of the evidence, Complainant's survey was clearly seeking answers to questions and was not seeking access to public records. Several correspondences expressing Complainant's intent to receive answers and not records further supported our conclusion. The APRA does not require that public bodies respond to interrogatories or questions. See Schmidt v. Ashaway Volunteer Fire Association et. al, PR 97-23. Therefore, the Fire Department did not violate the APRA by failing to respond to the "Fire Survey."

Issued August 21, 2015.

PR 15-46 **Block v. Prudence Island Volunteer Fire District**

Complainant filed an APRA complaint alleging that the Fire District violated the APRA when it failed to respond to a "Fire Survey." This issue was addressed in Block v. Block Island Volunteer Fire Department, PR 15-45, wherein we concluded that the Fire Department did not violate the APRA because the "Fire Survey" was not a proper APRA request and, therefore, there was no obligation under the APRA to respond to the "Fire Survey." Our finding in Block, PR 15-45 has been adopted and incorporated into this finding and we likewise find no violation.

Issued August 21, 2015.

PR 15-47 **Block v. Ashway Fire District**

OM 15-15 Complaint filed against the Fire District alleging that the Fire District violated the APRA when it failed to respond to Complainant's "Fire Survey." This issue was addressed in Block v. Block Island Volunteer Fire Department, PR 15-45, wherein we concluded that the Fire Department did not violate the APRA because the "Fire Survey" was not a proper APRA request and, therefore, there was no obligation under the APRA to respond to the "Fire Survey." Our finding in Block, PR 15-45 has been adopted and incorporated into this finding and we likewise find no APRA violation.

Issued August 21, 2015.

PR 15-48 **Cullen v. City of Pawtucket**

An attorney submitted an APRA request to the City of Pawtucket ("City"). Pursuant to that request, some documents were provided and other documents were denied. Thereafter, the attorney, acting on behalf of his client, filed an APRA complaint alleging that the City's denial violated the APRA. The City argued that since the APRA request, and subsequent denial, was made by and to the attorney and not on behalf of the client, the attorney lacked standing to file this complaint on behalf of his client. The APRA provides that "[a]ny person or entity denied the right to inspect a record of a public body," may appeal the denial. See R.I. Gen. Laws § 38-2-8(a). Since the client neither requested nor was denied access to certain records pursuant to the APRA request, the attorney lacked standing to file this complaint on behalf of his client.

Issued August 21, 2015.

PR 15-49 **Melo v. Department of Public Safety**

The Department of Public Safety did not violate the APRA when it did not provide copies of incident reports relating its investigation into a particularly identifiable individual concerning allegations of child pornography. Considering the totality of the circumstances, the disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(4)(D)(c).

Issued August 21, 2015.

PR 15-50 **MacDougall v. Dept. of Health & Office of Drinking Water Quality**

The Department of Health and Office of Drinking Water Quality ("DOH" and "DWQ") violated the APRA when it failed to timely respond to the Complainant's APRA request. See R.I. Gen. Laws § 38-2-7. We have concerns whether the DOH and DWQ's violation amount to a "knowing and willful" or "reckless" violation. See Boss v. Woonsocket Superintendent's Office, PR 13-19; Scripps News v. Rhode Island Department of Business Regulations, PR 14-07. Thus, the DOH and DWQ was allowed ten (10) business days to provide a response explaining why this Department should not find this violation knowing and willful, or alternatively, reckless, in light of the APRA requirements and this Department's precedent. A supplemental finding will follow.

VIOLATION FOUND.

Issued August 21, 2015.

PR15-51 **Town of Portsmouth v. Rhode Island Department of Public Safety**

The DPS violated the APRA when it failed to provide redacted documents responsive to the Town's APRA request. The Town sought documents concerning a particular investigation but the DPS denied the request indicating that the disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy" pursuant to R.I. Gen. Laws § 38-2-2(4)(D)(c). Although this Department concluded that the incident report at issue did contain identifying type information, such as name and other information that could lead to one's identity, the Town was not seeking reports identifiable to a particular person(s). As such, "[a]ny 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." R.I. Gen. Laws § 38-2-3(b). The DPS's denial failed to take into consideration this provision. VIOLATION FOUND.

Issued August 21, 2015.

PR15-52 **Gagnon v. East Providence School Department**

The Complainant alleged that the East Providence School Department ("School Department") violated the APRA when it failed to fully respond to his APRA request for documents regarding the Whiteknact School in East Providence, Rhode Island. Our inquiry must concern the reasonableness of the School Department's search and whether this search was adequate to discover the bid proposal. When determining the adequacy of an agency's search, one must measure the reasonableness of the search in light of the scope of the request. Meeropol v. Meese, 790 F.2d 942, 956 (D.C. Cir. 1986). Based upon the totality of the evidence, including the fact that the Complainant made several requests on or around the same date, and that the School Department provided the Complainant with an inch and half of documents, which appears to correspond to hundreds of documents, we discern no evidence that the School Department's search was unreasonable and in violation of the APRA.

Issued October 13, 2015.

PR 15-53 **Lacroix v. Rhode Island Higher Education Assistance Authority**

The Complainant alleged RIHEAA violated the APRA when it failed to respond to his APRA request. It appears from the record that at the time of the Complainant's APRA request, he had a lawsuit pending against the RIHEAA, wherein the Complainant was represented by legal counsel. The legal counsel for RIHEAA raised Rhode Island Supreme Court Rule of Professional Conduct Rule 4.2 as the reason for

not responding. Rule 4.2 states: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." While the Complainant claimed that the subject matter of his APRA request was unrelated to the subject-matter of his lawsuit, we have found nothing in the record that demonstrates this representation was made to RIHEAA or to its legal counsel while the December 18, 2014 APRA request was pending.
Issued November 2, 2015.

PR15-54 **Moore v. Rhode Island Board of Education**

Based upon the Rhode Island Board of Education's ("Board") detailed response to the Complainant's APRA complaint, along with the Board's other APRA responses, we cannot conclude that the Board overcharged the Complainant with respect to the search and retrieval (and redaction). This is based on the number of different categories requested and records relating to "every non-union/non-classified employee" dating back over a decade. With respect to the allegation that the Board exempted, in whole, records responsive to the request for resumes of successful applicants to thirty-seven (37) positions, R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) exempts from public disclosure, "[p]ersonnel 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...[.]" The plain language of this provision contemplates a "balancing test" whereby the "public interest" in disclosure is weighed against any "privacy interest." With respect to the requested resumes of successful applicants, the public has at least some interest in knowing that the successful applicants for a public position are qualified and capable to hold that position. We conclude that the public interest outweighs the unspecified privacy interest asserted by the Board, and that disclosure of the resumes after redacting the information contained therein that would constitute a "clearly unwarranted invasion of personal privacy," will advance that interest. We find that the Board violated the APRA when it denied the Complainant's request for the resumes en toto.

VIOLATION FOUND.

Issued November 9, 2015.

PR 15-55 **Eikeland v. Johnston Police Department**

The Complainant alleged the Johnston Police Department ("Police Department") violated the APRA when it failed to respond to his April 22, 2015 APRA request. The APRA states that each public body shall establish written procedures regarding access to public records. See R.I. Gen. Laws § 38-2-3(d). The APRA procedures must include the identification of a designated public records officer or unit, how to make a public records request, and where a public records request should be made. Id. The Police Department's APRA procedures designate its Records Division as the public records unit and explicitly states that APRA requests can be mailed or hand delivered to the Records Division. The Complainant emailed his APRA request to the Chief of Police's Administrative Assistant at her personal "Yahoo" email address. Since the Complainant's April 22, 2015 email request did not comport with the Police Department's APRA procedures, we found no violation.

Issued November 12, 2015.

PR 15-56 **Anderson v. Little Compton School Dept. and School Committee**

The Complainant alleged the Little Compton School Department and/or the School Committee violated the APRA when it improperly denied his APRA request and when the denial did not indicate the procedures for appeal. The Complainant made an APRA request to the School Department seeking the "written statement" read by School Committee Chairman at a School Committee meeting. The School Department indicated that the Complainant needed to contact the Chairman since the statement was not distributed to the School Department. The APRA provides that "[e]xcept for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body." R.I. Gen. Laws § 38-2-7(a). Here, the Department and/or the Committee failed to address the "good cause shown," and we declined to speculate on whether "good cause" had been shown in the absence of the Department's and/or the Committee's argument. We concluded that "any reason not specifically set forth in the denial" had been waived. See Boss v. Woonsocket Superintendent's Office, PR 14-31. The Department and/or Committee also violated that APRA when our review of the denial letter found no avenue for appeal cited. See R.I. Gen. Laws § 38-2-7(a)(denial must indicate "the procedures for appealing the denial"). We directed the Department and/or Committee to provide the

Complainant with a copy of the written statement within 10 business days of this finding.
VIOLATION FOUND.
Issued December 31, 2015.

ACCESS TO PUBLIC RECORDS ACT
ADVISORY OPINIONS - 2015

ADV PR 15-01 **In Re Computer Aided Dispatch System**

The Department of Public Safety requested an advisory opinion concerning whether its computer aided dispatch system report was a public record. Because of the various different types of information contained within the report, this Department advised that whether any particular entry is or is not a public record can only be determined on a case-by-case basis after review.
Issued February 17, 2015.

ADV PR 15-02 **In Re Department Business Regulation**

The Department of Business Regulation ("DBR") sought this Department's advice concerning whether a video tape submitted at a regulatory enforcement hearing being conducted pursuant to the Administrative Procedures Act is exempt from disclosure under the APRA. It is this Department's practice/policy to issue Advisory Opinions only on pending matters, and not actions that have been already taken. See Chrabaszcz v. Johnston School Department, PR 04-15. In this case, we were advised that the DBR has already denied the APRA requests for copies of the video tape. Considering our practice/policy and the fact that the DBR has already denied access to the record requested, it is far more appropriate that if this matter is to come before this Department that it take the form of a complaint where both sides can present evidence and argument to support their respective positions, rather than through a request for an Advisory Opinion that contains only the DBR's conclusion that the videotape at issue is not a public record. For these reasons, we respectfully decline to issue an Advisory Opinion.
Issued February 27, 2015.

ADV PR 15-03 **In re City of Woonsocket Wastewater Treatment Facility**

The City of Woonsocket ("City") sought this Department's advice concerning whether certain financial data contained in a

proposal submitted by a contractor in response to an RFP was a public record. It is this Department's practice/policy to issue Advisory Opinions only on pending matters. See Chrabaszcz v. Johnston School Department, PR 04-15. In this case, we were advised that the basis for the instant advisory request was "dormant," but the City still wanted the advisory opinion because "Woonsocket is about to seek a private contractor for a new water treatment plant project," so there was the "expectation" the same issue may arise again. Our determination of whether a particular document is exempt - or not - under the APRA requires a case-by-case analysis where we apply the APRA to the particular document at issue. Respectfully, to speculate on the nature of a future document at issue - and even the nature of any information that a future successful bidder may believe is exempt - would not be consistent with our precedent or the APRA. For these reasons, we declined to issue an Advisory Opinion.

Issued December 3, 2015.