

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



**2013 ANNUAL REPORT  
OPEN MEETINGS ACT  
AND  
ACCESS TO PUBLIC RECORDS ACT  
ATTORNEY GENERAL PETER F. KILMARTIN**

# ACCESS TO PUBLIC RECORDS ACT



ANNUAL REPORT 2013

**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 2013.

**STATISTICS**

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	41
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	27
VIOLATIONS FOUND:	13
WARNINGS ISSUED:	11
LITIGATION INITIATED:	2
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	3
ISSUED:	2
APRA REQUESTS TO THE ATTORNEY GENERAL:	56
OPEN GOVERNMENT TRAININGS:	17

**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 13-01	<u>Reilly v. Providence Economic Development Partnership</u>
PR 13-08	<u>Catanzaro v. East Greenwich Police Department</u>
PR 13-11	<u>O'Rourke v. Bradford Fire District</u>
PR 13-12	<u>DiDomenico v. Cumberland Police Department</u>
PR 13-17	<u>MacDougall v. Quonochontaug Central Beach Fire District</u>
PR 13-20	<u>Collette v. Town of Charlestown</u>
PR 13-23	<u>Buckley v. Rhode Island Turnpike and Bridge Authority</u>
	<u>Flanders v. Rhode Island Turnpike and Bridge Authority</u>
	<u>Marsh v. Rhode Island Turnpike and Bridge Authority</u>

PR 13-24 Costantino v. Smithfield School Committee  
PR 13-25 Riggs v. East Bay Energy Consortium

**VIOLATIONS FOUND/LAWSUIT FILED**

PR 13-13B Law Offices of Michael Kelly v. City of Woonsocket  
PR 13-19B Boss v. Woonsocket Superintendent's Office

\* \* \*

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

## ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2013

- PR 13-01**      **Reilly v. Providence Economic Development Partnership**  
The Providence Economic Development Partnership ("PEDP") violated the APRA when it exempted certain documents in whole. This Department concluded that the documents were reasonably segregable and that disclosure of the non-exempt information would shed light on government operations. The PEDP did not violate the APRA when it withheld a checklist because that document fell within the working papers exemption. See R.I. Gen. Laws § 38-2-2(4)(K).  
VIOLATION FOUND.  
*Issued January 7, 2013.*
- PR 13-02**      **Felise v. East Bay Energy Consortium**  
**OM 13-02**      The East Bay Energy Consortium ("EBEC") is not required to post its minutes on the Secretary of State's website because it is not an entity as defined by R.I. Gen. Laws § 42-46-7(d); thus, the EBEC did not violate the Open Meetings Act. The EBEC also had "good cause" pursuant to R.I. Gen. Laws § 38-2-7(b) to extend its response time to the public records request at issue an additional twenty (20) business days.  
*Issued January 18, 2013.*
- PR 13-03**      **McQuade v. Rhode Island State Police**  
The Rhode Island State Police did not violate the APRA when it withheld from disclosure an initial incident report that involved the Complainant, but did not result in an arrest.  
*Issued March 1, 2013.*
- PR 13-04**      **CCF, LLC v. Rhode Island Department of Transportation**  
The Complainant alleged the Rhode Island Department of Transportation ("RIDOT") withheld or refused to produce responsive records. Since this Department was neither presented nor discovered any evidence to support the conclusion that RIDOT did not produce all documents responsive to the Complainant's APRA request, this Department concluded that the RIDOT did not violate the APRA.  
*Issued March 6, 2013.*
- PR 13-05**      **Chariho Regional School v. Kingston Hill Academy**  
The Kingston Hill Academy ("KHA") did not violate the APRA when it charged the Complainant a "return to storage" fee. Similar

to Direct Action for Rights and Equality v. Gannon, 819 A.2d 651 (R.I. 2003)(“costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested documents”), the reasonable time to return documents to their original storage area “should be borne by the requesting party.” See also R.I. Gen. Laws § 38-2-4(b). KHA did not violate the APRA by charging Complainant for “photocopies” that it had requested. Under R.I. Gen. Laws §§ 38-2-3(g) and (k), even if minutes were electronically available, upon the request of a person or entity to obtain photocopies, a public body would be required to provide photocopies.

*Issued March 21, 2013.*

**PR 13-06**

**The Providence Journal v. University of Rhode Island, et al.**

The University of Rhode Island, Community College of Rhode Island, and Rhode Island College did not violate the APRA when it did not provide the names of students and the amount of tuition waived for each student. The identities of the persons receiving or benefitting from a tuition waiver is protected by federal law and the Colleges and University provided the amounts of tuition waived for each student, without providing their identity.

*Issued March 29, 2013.*

**PR 13-07**

**Zompa v. West Warwick Police Department**

The West Warwick Police Department did not violate the APRA when it withheld from disclosure an incident report that involved the Complainant, but did not result in an arrest.

*Issued April 8, 2013.*

**PR 13-08**

**Catanzaro v. East Greenwich Police Department**

The East Greenwich Police Department violated the APRA when it failed to timely respond to the Complainant’s APRA request. 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 specific reason(s), or extending the time period necessary to comply. R.I. Gen. Laws § 38-2-7. Although this Department declined to find the violation was “reckless” because no prior Department of Attorney General finding examined the “reckless” standard, nor did the APRA define “reckless,” we advised the Police Department and all

public bodies of legal authority concerning what may constitute a reckless violation.

VIOLATION FOUND.

*Issued May 6, 2013.*

PR 13-09

**Hazelwood v. Town of West Greenwich**

This Department found that although a proper request was made pursuant to the Town's policy for making an APRA request, the Town did not violate the APRA when it could not produce a document that did not exist.

*Issued May 21, 2013.*

PR 13-10

**Radtke v. Rhode Island Department of Public Safety**

The Department of Public Safety did not violate the APRA when it withheld from disclosure an incident report that did not result in an arrest. See R.I. Gen. Laws § 38-2-2(4)(D)(c).

*Issued May 21, 2013.*

PR 13-11

**O'Rourke v. Bradford Fire District**

The Bradford Fire District (the "District") violated the APRA when it failed to respond to Complainant's APRA request within ten (10) business days. The District did not violate the APRA, however, when it did not produce a document that did not exist, and where no evidence was presented as to the document's existence.

VIOLATION FOUND.

*Issued May 31, 2013.*

PR 13-12

**DiDomenico v. Cumberland Police Department**

The Cumberland Police Department violated the APRA when it failed to deny an APRA request in writing. See R.I. Gen. Laws § 38-2-7. Instead, the Police Department orally denied the APRA request. Although this Department's precedent suggested that the withheld documents, i.e., incident reports, were exempt from public disclosure, the Police Department later provided the withheld documents, and accordingly, it was unnecessary to address whether the instant incident reports were public records.

VIOLATION FOUND.

*Issued July 3, 2013.*

PR 13-13

**Law Office of Michael Kelly v. City of Woonsocket**

Although the City eventually provided the Complainant with most documents responsive to its APRA request, the City violated the APRA when it failed to timely respond to the Complainant's APRA

request. See R.I. Gen. Laws § 38-2-7(a). The City was allowed ten (10) business days to provide a response explaining why this Department should not find the violation knowing and willful, or alternatively, reckless. The City further violated the APRA when it failed to provide the Complainant with documents responsive to Request No. 8, or in the alternative, provide the Complainant with a reason exempting these documents. See id. The City was allowed ten (10) business days to explain its lack of response to Request No. 8 and provide this Department with a response as to why the City's lack of response to Request No. 8 should not be found knowing and willful, or alternatively, reckless. A supplemental finding will follow.

VIOLATION FOUND.

*Issued July 3, 2013.*

**PR 13-13B**     **Law Offices of Michael Kelly v. City of Woonsocket**

After reviewing submissions from both the City and the Complainant, this Department determined sufficient evidence to conclude that the City knowing and willfully violated the APRA when: 1) it failed to timely respond to the December 21, 2012 APRA request, and 2) it failed to respond to Request No. 8. Accordingly, this Department filed a lawsuit against the City seeking civil fines and injunctive relief.

LAWSUIT FILED.

*October 17, 2013.*

**PR 13-14**     **Pontarelli v. RI Department of Elementary & Secondary Ed.**

The Rhode Island Department of Elementary and Secondary Education did not violate the APRA when it denied the Complainant's APRA request for certain documents. The subject documents were either already in the Complainant's possession, not responsive, or exempt since the privacy interests outweighed the public interest.

*Issued July 3, 2013.*

**PR 13-15**     **Shoemaker v. Rhode Island Department of Health**

The DOH did not violate the APRA when it refused to provide the names and addresses of children and their parents living in the Middletown and Newport area because the disclosure would constitute a "clearly unwarranted invasion of personal privacy." See R.I. Gen. Laws § 38-2-3(b). Nor was there any evidence to indicate that disclosure would advance the "public interest" or otherwise shed light on any government activity. Additionally, the



information is contained in KIDSNET, a confidential, computerized child health information system and R.I. Gen. Laws § 38-2-2(4)(S) exempts from public disclosure “[r]ecords, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.”

*Issued July 24, 2013.*

**PR 13-16**      **Duxbury v. Town of Coventry**

The Town did not violate the APRA by charging thirteen (13) hours for search and retrieval and producing fifteen (15) documents. The evidence, namely an employee’s contemporaneous notes, revealed that the search and retrieval was reasonable, although complicated by the numerous storage areas, damage to documents during a flood, and slow computers. These factors did not alter the fact that the Town expended thirteen (13) hours searching and retrieving documents and no allegation was made that the Town’s search did not encompass thirteen (13) hours.

*Issued July 25, 2013.*

**PR 13-17**      **MacDougall v. Quonochontaug Central Beach Fire District**

**OM 13-24**

**ADVOM 13-04**   **In re: Quonochontaug Central Beach Fire District**

The Fire District requested an OMA advisory opinion concerning whether its subcommittees were subject to the OMA. Because no specific facts were provided regarding the subcommittees, this Department offered general advice. The Complainant filed numerous OMA complaints, dating back to 2008, and numerous APRA complaints. The Fire District violated the APRA when it failed to respond to several APRA requests and violated the OMA by failing to comply with the Act’s requirements.

**VIOLATION FOUND.**

*Issued July 31, 2013.*

**PR 13-18**      **Go Local Providence v. City of Providence**

The City of Providence did not violate the APRA when it responded to a request for records on the tenth business day. The complaint was filed prematurely, before the expiration of the ten (10) business days, and failed to consider that Memorial Day was a non-business day.

*Issued August 21, 2013.*

PR 13-19

**Boss v. Woonsocket Superintendent's Office**

There was insufficient evidence to establish that the Superintendent's Office failed to respond to Complainant's APRA request dated November 19, 2012. With respect to Complainant's APRA request dated December 1, 2012, this Department found that the Superintendent's Office violated the APRA when it failed to timely respond to this APRA request. See R.I. Gen. Laws § 38-2-7(a). The Superintendent's Office was allowed ten (10) business days to provide an explanation as to why its untimely response should not be considered knowing and willful, or reckless. See R.I. Gen. Laws § 38-2-9(d). A supplemental finding will follow.

VIOLATION FOUND.

*Issued August 28, 2013.*

PR 13-19B

**Boss v. Woonsocket Superintendent's Office**

After reviewing submissions from both the Superintendent's Office and the Complainant, this Department determined sufficient evidence to conclude that the Superintendent's Office knowingly and willfully violated the APRA when it failed to timely respond to the December 1, 2012 APRA request. Accordingly, this Department filed a lawsuit against the Superintendent's Office seeking civil fines.

LAWSUIT FILED.

*Issued October 30, 2013.*

PR 13-20

**Collette v. Town of Charlestown**

The Town's legal counsel, as attorney and agent for the Town, cannot shield documents responsive to an APRA request that has been directed to the Town even if the Town itself (as opposed to its agent) does not physically maintain the requested documents. Consistent with the APRA, a principle who is subject to the APRA cannot shield documents that would otherwise be public records simply because the documents are in the possession of the agent. We conclude that the Town's legal counsel is "acting on behalf of and/or in place of" the Town for purposes of the APRA. R.I. Gen. Laws § 38-2-2(1). Accordingly, the Town's response that it did "not have or maintain the requested records" was a violation of the APRA.

VIOLATION FOUND.

*Issued September 5, 2013.*

- PR 13-21**      **Azar v. Town of Lincoln**  
Since there was no evidence of a working DVD or a “written transcript” at the time of Complainant’s APRA request, the Town of Lincoln did not violate the APRA.  
*Issued September 10, 2013.*
- PR 13-22**      **Costantino v. Smithfield School Committee**  
Based on the fact that the executive session minutes the Complainant requested were sealed, and that the Complainant did not question the propriety of the January 5, 2009 executive session, the Smithfield School Committee did not violate the APRA by denying access to these records. Under the APRA, properly sealed executive session minutes are not public. See R.I. Gen. Laws § 38-2-2(4)(J).  
*Issued September 23, 2013.*
- PR 13-23**      **Buckley v. Rhode Island Turnpike and Bridge Authority**  
**Flanders v. Rhode Island Turnpike and Bridge Authority**  
**Marsh v. Rhode Island Turnpike and Bridge Authority**  
The Rhode Island Turnpike and Bridge Authority violated the Access to Public Records Act (“APRA”) when it failed to include written procedures regarding access to public records on its website in accordance with Rhode Island General Laws § 38-2-3(d). There was no evidence offered to suggest that the Turnpike and Bridge Authority committed a knowing and willful, or reckless, violation. Further, injunctive relief is not appropriate since the evidence demonstrates the APRA procedures are now on the Turnpike and Bridge Authority’s website, and each Complainant was provided a copy of these procedures. Thus, this Department will not file suit in this matter.  
VIOLATION FOUND.  
*Issued November 7, 2013.*
- PR 13-24**      **Costantino v. Smithfield School Committee**  
The Smithfield School Committee violated the APRA when its denial failed to provide “the specific reasons for the denial.” R.I. Gen. Laws § 38-2-7(a). This Department has previously held that “a statement that the information sought ‘is not public information’ is not sufficient to comply with the Act’s mandate.” See Nye v. Town of Westerly, PR 95-21. The School Committee violated the APRA when it failed to include the procedures for appealing the denial.  
VIOLATION FOUND.  
*Issued November 25, 2013.*

**PR 13-25**  
**OM 13-30**

**Riggs v. East Bay Energy Consortium**

The Complainant alleged several Open Meetings Act ("OMA") and APRA ("Access to Public Records Act") violations against the East Bay Energy Consortium ("EBEC"). While this Department found no OMA violations, this Department did find that the EBEC violated the APRA when it failed to post its APRA procedures on its website pursuant to Rhode Island General Laws § 38-2-3(d). The EBEC was allowed thirty (30) business days to post such procedures on its website in accordance with this Department's finding.

**VIOLATION FOUND.**

*Issued November 27, 2013.*

**PR 13-26**

**Farley v. Cranston School Department**

The Cranston School Department did not violate the APRA when the Complainant failed to comply with the School Department's APRA procedure. Notwithstanding the fact that the Complainant's email request did not comport with the School Department's written APRA procedure, the content of the email did not request records, but rather sought certain action. Finally, the Complainant's email provided insufficient information for the School Department to even conduct a search. For these reasons, the School Department did not violate the APRA.

*Issued December 4, 2013.*

**PR 13-27**

**LeMoult v. Town of Barrington**

The Complainant alleged that a Town of Barrington's representative on the East Bay Community Development Corporation Board ("EBCDC") was a "person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency," therefore, the failure to keep minutes of the EBCDC meetings was a violation of the APRA. R.I. Gen. Laws § 38-2-2(1); R.I. Gen. Laws § 38-2-3(c). The evidence demonstrated that this Town representative was a representative of the Town serving on the EBCDC Board. There was no evidence that an agency relationship existed. Additionally, the Town did not violate the APRA when it did not provide the Complainant with records concerning a "database" used by the Town to examine the housing needs of its residents when the evidence demonstrated that the Town does not maintain its own database on housing needs, but rather relies on the United States Department of Housing and Urban Development (HUD) Comprehensive Housing Affordability

Strategy (CHAS) data, so there was no other "public record" to provide.

*Issued December 24, 2013.*

**ACCESS TO PUBLIC RECORDS ACT**  
**ADVISORY OPINIONS - 2013**

**ADV PR 13-01**

**In re Rhode Island Resource Recovery Corporation**

The RIRRC sought advice concerning whether the disclosure of an aged accounts receivable document would implicate R.I. Gen. Laws § 38-2-6. The Department opined that disclosure did not fall within the prohibition for "use [of] information obtained from public records \* \* \* to obtain a commercial advantage over the party furnishing that information to the public body." This provision has been superceded by statute.

*Issued January 15, 2013.*

**ADV PR 13-02**

**Request for Advisory Opinion**  
**(cellular telephone billing records)**

The Department of Attorney General declined to address the general advisory request whether the General Treasurer's and her Chief of Staff's cellular telephone bills, and in particular the telephone numbers called or received, are public records. The subject telephone bills were not provided and the general nature of the request, as well as the timing of the request, made a more specific advisory request impracticable.

*Issued January 28, 2013.*

# OPEN MEETINGS ACT



## ANNUAL REPORT 2013

**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 2013.

**STATISTICS**

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	51
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	34
VIOLATIONS FOUND:	15
WARNINGS ISSUED:	14
LITIGATION INITIATED:	1
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	2
ISSUED:	4
OPEN GOVERNMENT TRAININGS:	17

**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 13-01	<u>Cosper v. Mental Health Advocate Search Committee</u>
OM 13-03	<u>Cardoza v. Portsmouth Open Space Committee</u>
OM 13-07	<u>Kerwin v. Rhode Island Higher Education Assistance Authority</u>
OM 13-08	<u>Kerwin v. Rhode Island Higher Education Assistance Authority</u>
OM 13-10	<u>Kerwin v. Rhode Island Higher Education Assistance Authority</u>
OM 13-13	<u>Newton et. al. v. East Greenwich Fire District</u>
OM 13-14	<u>Block v. RI Board of Elections</u>
OM 13-15	<u>Hevey v. Coventry Town Council</u>
OM 13-16	<u>Gilkenson v. Cranston City Council</u>
OM 13-19	<u>Carney v. Charlestown Town Council</u>
OM 13-21	<u>Macomber v. Warren Town Council</u>

- OM 13-24 MacDougall v. Quonochontaug Central Beach Fire District  
OM 13-25 Block v. Board of Elections  
OM 13-29 Valley Breeze v. Pawtucket School Committee

**VIOLATIONS FOUND/LAWSUIT FILED**

- OM 13-27B Common Cause v. I-195 Redevelopment District Commission

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



## OPEN MEETINGS ACT FINDINGS - 2013

- OM 13-01**     **Cosper v. Mental Health Advocate Search Committee**  
The Mental Health Advocate Search Committee ("Search Committee") violated the OMA when it failed to disclose the vote taken in executive session. R.I. Gen. Laws § 42-46-4(b). The Search Committee also violated the OMA when it failed to include in the open session minutes a record by individual members of any vote taken. R.I. Gen. Laws § 42-46-7(a)(3).  
VIOLATION FOUND.  
*Issued January 4, 2013.*
- OM 13-02**     **Felise v. East Bay Energy Consortium**  
**PR 13-02**     The East Bay Energy Consortium ("EBEC") is not required to post its minutes on the Secretary of State's website because it is not an entity as defined by R.I. Gen. Laws § 42-46-7(d); thus, the EBEC did not violate the Open Meetings Act. The EBEC also had "good cause" pursuant to R.I. Gen. Laws § 38-2-7(b) to extend its response time to the public records request at issue an additional twenty (20) business days.  
*Issued January 18, 2013.*
- OM 13-03**     **Cardoza v. Portsmouth Open Space Committee**  
The Portsmouth Open Space Committee ("POSC") violated the OMA when it held a discussion of the Complainant's job performance in executive session without prior written notice to the Complainant and without notice that such a discussion could be held in open session. See R.I. Gen. Laws § 42-46-5(a)(1). The POSC also violated the OMA when it failed to vote to convene into executive session, and failed to state on the record that: 1) Complainant's job performance would be discussed in executive session and 2) Complainant was provided advanced written notice that her job performance would be discussed in executive session and failed to record such open call in the minutes. See R.I. Gen. Laws §§ 42-46-4(a); 42-46-5(a)(1). The POSC further violated the OMA when the agenda for the May 22, 2012 meeting did not state the nature of the business to be discussed in executive session. See R.I. Gen. Laws § 42-46-6(b). Based on the evidence presented, however, this Department did not find the violations willful or knowing.  
VIOLATION FOUND.  
*Issued January 4, 2013.*

- OM 13-04**     **Brien v. Woonsocket City Council**  
The Woonsocket City Council did not violate the OMA when it convened in executive session to discuss and review bid proposals for a wastewater contract with the City.  
*Issued February 14, 2013.*
- OM 13-05**     **Warfel v. New Shoreham Shellfish Commission**  
There was no quorum of members collectively discussing or acting upon, through Facebook posts, any matter over which the Shellfish Commission has supervision, control, jurisdiction, or advisory power. See R.I. Gen. Laws § 42-46-2(a). Thus, the Shellfish Commission did not violate the OMA.  
*Issued March 1, 2013.*
- OM 13-06**     **Rogers v. Foster Town Council**  
The Complainant alleged the Foster Town Council (“Town Council”) violated the OMA when its 7:00 p.m. December 13, 2012 meeting was incorrectly advertised on the Secretary of State’s website for 1:00 a.m. The Complainant also alleged that during the meeting the Town Council appointed a subcommittee, yet that action was not listed on the agenda. Since the Complainant attended the December 13, 2012 meeting, and did not demonstrate that he was aggrieved by either allegation, this Department concluded he did not have standing to raise these allegations. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).  
*Issued March 14, 2013.*
- OM 13-07**     **Kerwin v. Rhode Island Higher Education Assistance Authority**  
Complainant alleged the Rhode Island Higher Education Assistance Authority (“RIHEAA”) committed four (4) violations of the OMA. This Department concluded that the RIHEAA did not violate the OMA as there was no evidence that a quorum of board members engaged in rolling quorum discussions in advance of its May 13, 2011 meeting. The RIHEAA did not violate the OMA as its May 13, 2011 executive session agenda was specific enough to adequately inform the nature of the business to be discussed. The RIHEAA did not violate the OMA when a quorum of the board members remained after the conclusion of its July 22, 2011 meeting because this Department determined, based upon the evidence presented, that no substantive discussion occurred amongst the board members. The RIHEAA violated the OMA when it

discussed matters in executive session during its June 17, 2011 and July 22, 2011 meetings that were improper under R.I. Gen. Laws § 42-46-5(a)(7).

VIOLATION FOUND.

*Issued March 18, 2013.*

**OM 13-08 Kerwin v. Rhode Island Higher Education Assistance Authority**

The Rhode Island Higher Education Assistance Authority ("RIHEAA") violated the OMA when it failed to articulate the subdivision of R.I. Gen. Laws § 42-46-5(a) upon which its November 9, 2012 executive session was based. The Complainant further alleged that the RIHEAA violated the OMA when it improperly heard an agenda item out of order and that the RIHEAA posts agendas with a blanket statement suggesting their intent to convene into executive session at undetermined times. Since the Complainant presented no evidence that he was aggrieved or in any way disadvantaged by these two potential allegations, this Department did not address these allegations. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).

VIOLATION FOUND.

*Issued March 18, 2013.*

**OM 13-09 Boss v. Woonsocket Budget Commission**

Pursuant to Rhode Island General Laws § 45-9-6(a), the Woonsocket Budget Commission ("Budget Commission") is only subject to the OMA under five (5) circumstances. The only allegation that implicated the OMA was the agenda for the August 9, 2012 meeting, which did not violate the OMA. The agenda description "Vote on Revised Fiscal Year 2013 School Budget" sufficiently specified the nature of the business to be discussed. An agenda need not include a verbatim list of every potential aspect that might be discussed in relation to a budget in order to comport with the OMA.

*Issued April 17, 2013.*

**OM 13-10 Kerwin v. Rhode Island Higher Education Assistance Authority**

The Rhode Island Higher Education Assistance Authority ("RIHEAA") did not violate the OMA during its April 20, 2012 executive session since the evidence revealed board members asked legal counsel direct and poignant questions concerning legal issues surrounding the Complainant's termination. The RIHEAA violated the OMA when, prior to the subject meeting, board members

engaged in discussions of public business through a walking or rolling quorum outside the public purview. Since the evidence also revealed no deliberative discussions occurred and no action was taken prior to the April 20, 2012 meeting, there was nothing to declare null and void and injunctive relief was not appropriate.

VIOLATION FOUND.

*Issued April 30, 2013.*

**OM 13-11 Mudge v. North Kingstown School Committee**

The School Committee did not violate the OMA when it convened an emergency meeting on August 27, 2012. Based upon the evidence presented, the School Committee's convening of a meeting on less than forty-eight (48) hours notice was "necessary to address an unexpected occurrence that requires immediate action to protect the public." R.I. Gen. Laws § 42-46-6(c). Additionally, the School Committee did not violate the OMA since there was no evidence that a quorum of the School Committee discussed public business outside the purview of the public prior to the emergency meeting, nor was there evidence that members had communications through a conduit, such as the Superintendent, to constitute a rolling or walking quorum outside the public purview.

*Issued May 20, 2013.*

**OM 13-12 Silva v. Little Compton Budget Committee**

The Little Compton Budget Committee ("Budget Committee") did not violate the OMA or the APRA when the Complainant requested a copy of the February 5, 2013 meeting minutes on February 8, 2013. The OMA requires "unofficial minutes shall be available, to the public at the office of the public body, within thirty-five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier." R.I. Gen. Laws § 42-46-7(b). Accordingly, the Budget Committee did not violate the OMA or the APRA by failing to provide the requested minutes at the time the request was made since the minutes did not exist at the time the request was made. See also R.I. Gen. Laws § 38-2-3(h).

*Issued May 21, 2013.*

**OM 13-13 Newton et. al. v. East Greenwich Fire District**

The East Greenwich Fire District ("Fire District") violated the OMA when its agenda for its October 25, 2012 meeting failed to inform the public that the Fire District would vote to expend public money to authorize the mailing of referendum-related postcards. There was no evidence, however, of a willful or knowing violation.

Further, injunctive relief was not appropriate because the Fire District reconsidered and re-voted to authorize the expenditure at a subsequent meeting.

VIOLATION FOUND.

*Issued May 23, 2013.*

**OM 13-14**    **Block v. RI Board of Elections**

The Rhode Island Board of Elections violated the OMA when its February 27, 2013 meeting agenda did not adequately inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b).

VIOLATION FOUND.

*Issued June 3, 2013.*

**OM 13-15**    **Hevey v. Coventry Town Council**

This Department found that, in this specific instance, provisions of the Town Charter and the OMA did not conflict; thus, the Coventry Town Council violated the OMA when it failed to provide forty-eight (48) hours notice before its meeting held on April 9, 2013. See R.I. Gen. Laws § 42-46-6(b). This Department did not, however, find a willful or knowing violation and the Town Council reconsidered and re-voted. Accordingly, injunctive relief was not appropriate.

VIOLATION FOUND.

*Issued June 13, 2013.*

**OM 13-16**    **Gilkenson v. Cranston City Council**

The Cranston City Council violated the OMA during its March 25, 2013 meeting when ordinances were introduced and referred to other committees under the generic agenda item "New Business." Although R.I. Gen. Laws § 42-46-6(b) would have allowed the City Council to amend its agenda to add additional items to be referred to other "appropriate committees," there was no evidence that the City Council amended its agenda to add and refer items to other committees.

VIOLATION FOUND.

*Issued June 19, 2013.*

**OM 13-17**    **McFadden v. Exeter West Greenwich School Committee**

The School Committee did not violate the OMA when it did not provide notice to a School Committee member that his conduct would be discussed in open session. The School Committee also did not violate the OMA by failing to include certain language in

the December 12, 2012 minutes because that language was included in the January 8, 2013 minutes.

*Issued June 20, 2013.*

**OM 13-18**     **Balbat v. Westerly Housing Authority Board of Commissioners**  
**Holden-Shea v. Westerly Housing Authority Board of**  
**Commissioners**

The Westerly Housing Authority Board of Commissioners ("Board") did not violate the OMA during its February 21, 2013 meeting since the agenda included a statement specifying the nature of the business to be discussed. The Board did not violate the OMA when the agenda contained no provision advising of the Board's intent to go into an executive session since the OMA does not specifically address the question of whether a public body must inform the public in advance as to whether a meeting will be held in open or closed session. See R.I. Gen. Laws § 42-46-6; Pine v. Charlestown Town Council, 1997 WL 839926 (R.I. Super.) ("at most," the notice may indicate that the "public body may seek. . . to go into closed executive session").

*Issued June 20, 2013.*

**OM 13-19**     **Carney v. Charlestown Town Council**

The Town Council violated the OMA when it voted to fill a vacancy on the Chariho School Committee through secret ballot vote. Since the Town Council disclosed each members' vote at the next Town Council meeting, injunctive relief was not appropriate.

VIOLATION FOUND.

*Issued June 28, 2013.*

**OM 13-20**     **Morgan v. Foster Board of Canvassers**

The Foster Board of Canvassers ("Board") did not violate the OMA when it elected a new Chairperson of the Board during its September 6, 2012 meeting because the Board's agenda provided sufficient notice. The Board did not violate the OMA because there was no evidence that members of the Board had discussions concerning the subject matter of the September 6, 2012 meeting outside the public purview. This Department did not address Complainant's allegation that the September 6, 2012 meeting was not properly posted since the Complainant did not demonstrate that she was aggrieved or in any way disadvantaged by this potential allegation. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).

*Issued June 28, 2013.*



**OM 13-21**     **Macomber v. Warren Town Council**

This Department did not address Complainant's allegation that the Warren Town Council's ("Town Council") agenda for its February 12, 2013 meeting was insufficient to inform the public of the nature of the business to be discussed since the Complainant attended the February 12, 2013 meeting and did not demonstrate that they were aggrieved or in any way disadvantaged by this potential allegation. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). The Town Council did not violate the OMA when it failed to file its minutes on the Secretary of State's website for the January 8, 2013 meeting within thirty-five (35) days of the meeting because the Town Council is not a public body defined within R.I. Gen. Laws § 42-46-7(d) and therefore is not required to file its minutes with the Secretary of State. The Town Council violated the OMA when it posted notice on February 22, 2013 for its February 23, 2013 meeting, which did not comply with the forty-eight (48) hour requirement. See R.I. Gen. Laws § 42-46-6(b). This Department did not, however, find a willful or knowing violation. VIOLATION FOUND.

*Issued July 3, 2013.*

**OM 13-22**     **Schofield v. Union Fire District of South Kingstown**  
**Schofield v. Snug Harbor Fire Company**

Based upon the evidence presented, the Complainant was unable to attend a number of open meetings held by the Union Fire District of South Kingstown ("Fire District") and the Snug Harbor Fire Company due to a "No Trespass" order issued by the South Kingstown Police Department. As a result of this no trespass order and the resulting inability to attend meetings, the Complainant contended that the Fire District and the Fire Company violated the OMA. This Department concluded that since it was the Police Department's order that barred the Complainant from the Fire District's and the Fire Company's property, the proper remedy was to challenge the Police Department's no trespass order and not the Fire District's or Fire Company's actions. For this reason, we found that the Fire District and the Fire Company did not violate the OMA.

*Issued July 11, 2013.*

**OM 13-23**     **Daly-LaBelle v. South Kingstown School Committee**

The School Committee did not violate the OMA when a quorum of its members gathered to attend and/or participate in a subcommittee meeting since the School Committee members were

members of the subcommittee and no evidence was presented that the subcommittee strayed into School Committee matters.

*Issued July 25, 2013.*

**OM 13-24**     **MacDougall v. Quonochontaug Central Beach Fire District**

**PR 13-17**

**ADVOM 13-04**   **In re: Quonochontaug Central Beach Fire District**

The Fire District requested an OMA advisory opinion concerning whether its subcommittees were subject to the OMA. Because no specific facts were provided regarding the subcommittees, this Department offered general advice. The Complainant filed numerous OMA complaints, dating back to 2008, and numerous APRA complaints. The Fire District violated the APRA when it failed to respond to several APRA requests and violated the OMA by failing to comply with the Act's requirements.

VIOLATION FOUND.

*Issued July 31, 2013.*

**OM 13-25**     **Block v. Board of Elections**

The Complainant filed an OMA complaint alleging that the Board had provided improper notice of the legislative bills to be discussed during its March 11, 2013 meeting. Because the Complainant had received prior copies of the bills, and assumed that these bills would be discussed at the March 11, 2013 meeting, the Complainant failed to demonstrate that he was aggrieved by the allegation of insufficient notice. Independent of the above, the Complainant attended the March 11, 2013 meeting and failed to demonstrate that he was aggrieved. The Board did violate the OMA when it failed to post "official and/or approved" minutes of its March 11, 2013 meeting on the Secretary of State's website within thirty-five (35) days of its meeting as required by R.I. Gen. Laws 42-46-7(d).

VIOLATION FOUND.

*Issued August 13, 2013.*

**OM 13-26**     **Boss v. Woonsocket Budget Commission**

There was insufficient evidence to establish that the Woonsocket Budget Commission ("Budget Commission") held a meeting with members of the Woonsocket School Committee to discuss the Complainant's job performance under Rhode Island General Laws § 42-46-5(a)(1). Further, Complainant alleges that the Woonsocket Budget Commission failed to post notice of the February 19, 2013 meeting within forty-eight hours as required under the OMA, but



the evidence demonstrates that Complainant had actual notice of that meeting. See R.I. Gen. Laws § 42-46-6(b). Since the Complainant does not allege any other grievance or disadvantage, the Complainant was not aggrieved in this instance. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215, 222 (R.I. 2002).

*Issued August 28, 2013.*

**OM 13-27 Common Cause v. I-195 Redevelopment District Commission**

The OMA requires that all public bodies “shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date” of the meeting. R.I. Gen. Laws § 42-46-6(b). The I-195 Redevelopment District Commission violated the OMA when it posted notice on the Secretary of State’s website for its July 8, 2013 meeting, scheduled for 5:00 p.m., on July 8, 2013, at 9:47 a.m. When the Commission posted its notice on the morning of July 8, 2013 for a meeting later that day, the Commission knew or should have known that its posting failed to comply with the OMA. Before reaching a conclusion on whether the Commission knowingly or willfully violated the OMA, we will allow the Commission ten (10) business days to address this issue. A supplemental finding will follow.

VIOLATION FOUND.

*Issued September 11, 2013.*

**OM 13-27B Common Cause v. I-195 Redevelopment District Commission**

This Department finds that the I-195 Redevelopment District Commission (“I-195 Commission”) willfully or knowingly violated the Open Meetings Act when it held a meeting on July 8, 2013 after posting public notice of the meeting on the Secretary of State’s website less than forty-eight (48) hours before the meeting, in violation of Rhode Island General Laws § 42-46-6(b). This Department filed a civil lawsuit against the I-195 Commission.

LAWSUIT FILED.

*October 17, 2013.*

**OM 13-28 Payne v. Motor Vehicle For Hire Commission**

The Motor Vehicle For Hire Commission (“Commission”) did not violate the OMA during its June 19, 2013 meeting because there was no evidence that a member of the Commission took a vote by email. The Commission did not violate the OMA during its April

30, 2013 meeting since its agenda fairly informed the public of the nature of the business to be discussed and/or acted upon.  
*Issued September 19, 2013.*

**OM 13-29**     **Valley Breeze v. Pawtucket School Committee**

The School Committee violated the OMA during its August 6, 2013 open meeting because the front door to the building was locked. The School Committee acknowledges that the Administration Building is locked for safety reasons but access is obtained through a buzzer system. The Complainant alleges he rang the buzzer several times and was unable to gain access into the building. The OMA requires “[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.” R.I. Gen. Laws § 42-46-3.

VIOLATION FOUND.

*Issued September 26, 2013.*

**OM 13-30**     **Riggs v. East Bay Energy Consortium**

**PR 13-25**

The Complainant alleged several Open Meetings Act (“OMA”) and APRA (“Access to Public Records Act”) violations against the East Bay Energy Consortium (“EBEC”). While this Department found no OMA violations, this Department did find that the EBEC violated the APRA when it failed to post its APRA procedures on its website pursuant to Rhode Island General Laws § 38-2-3(d). The EBEC was allowed thirty (30) business days to post such procedures on its website in accordance with this Department’s finding.

*Issued November 27, 2013.*

**OM13-31**     **Friend v. East Greenwich Town Council**

The East Greenwich Town Council did not violate the OMA when it conducted interviews for the position of Town Manager in executive session with non-employees. See R.I. Gen. Laws § 42-46-5.

*Issued December 17, 2013.*

**OM 13-32**     **Brien v. North Smithfield Town Council**

The North Smithfield Town Council’s July 15, 2013 meeting agenda indicated it would be convening into executive session under R.I. Gen. Laws § 42-46-5(a)(2), but the Complainant alleged the two (2) items listed under that topic heading did not concern either litigation or collective bargaining. After our review of the open session and executive session minutes, we conclude the discussions

for both items properly fell within the "litigation" exception set forth in R.I. Gen. Laws § 42-46-5(a)(2). See Nielson v. Charlestown Town Council, OM 99-23; Kerwin v. Rhode Island Higher Education Assistance Authority, OM 13-10. As our prior findings have made clear, the fact that a litigation case was not pending in court is of no moment. See The Barrington Times v. Barrington School Committee, OM 09-10; Scituate Democratic Town Committee v. Scituate Town Council, OM 08-50.

*Issued December 24, 2013.*

**OM 13-33**     **Angelo v. Dunn's Corners Fire District**

There being no evidence to support the Complainant's allegation that the Truck Committee met outside the public purview prior to its May 13, 2013 meeting, we conclude that the Dunn's Corners Fire District did not violate the OMA with respect to this allegation.

*Issued December 26, 2013.*

**OM 13-34**     **Vadenais v. North Smithfield Town Council**

Based upon the evidence presented, we cannot conclude that a quorum of the North Smithfield Town Council discussed public business outside the public purview between the December 12, 2012 and the December 17, 2012 meetings, nor can we conclude that members of the Town Council had communications through a conduit, such as the Town Administrator, to constitute a rolling or walking quorum outside the public purview. Accordingly, we find no OMA violation.

*Issued December 26, 2013.*

**OPEN MEETINGS ACT**  
**ADVISORY OPINIONS - 2013**

ADV OM 13-01

**In re: Board of Regents for Elementary and Secondary Education Appeals Committee**

The Board sought advice concerning whether its Appeals Committee may deliberate in executive session at the conclusion of the presentation by the parties with its legal counsel relating to the legal ramifications of their decision. We believe that if a quorum of the Appeals Committee "deliberates" or "collectively discusses" matters over which it has supervision, control, jurisdiction, or advisory power, these deliberations must be held in open session unless otherwise exempt pursuant to R.I. Gen. Laws § 42-46-5.

*Issued March 1, 2013.*

ADV OM 13-02

**In re: The Rhode Island Interlocal Risk Mgt Trust, Inc.**

The Rhode Island Interlocal Risk Management Trust, Inc. (the "Trust") sought an advisory opinion concerning whether the Trust was a public body as that term is defined in the OMA. Based upon the totality of the evidence, including the language in the enabling clause indicating the Trust will not constitute a department of the government of the State of Rhode Island coupled with the fact that the officers of the Trust are neither employees of the State nor of any municipal entity, and are not eligible to participate in any state or municipal pension plans, we conclude the Trust is not a public body for purposes of the OMA.

*Issued May 13, 2013.*

ADV OM 13-03

**In re: Western Coventry Fire District**

Because the Western Coventry Fire District is part of the Town of Coventry, a municipality, the Fire District is not subject to Rhode Island General Laws § 42-46-7(d) and thus is not obligated to post its official or approved minutes on the Secretary of State's website.

*Issued July 19, 2013.*

ADV OM 13-04

**In re: Quonochontaug Central Beach Fire District**

The Fire District requested an OMA advisory opinion concerning whether its subcommittees were subject to the

OMA. Because no specific facts were provided regarding the subcommittees, this Department offered general advice.  
*Issued July 31, 2013.*