

28TH ANNUAL OPEN GOVERNMENT SUMMIT

Your guide to the Access to Public Records
Act & Open Meetings Act

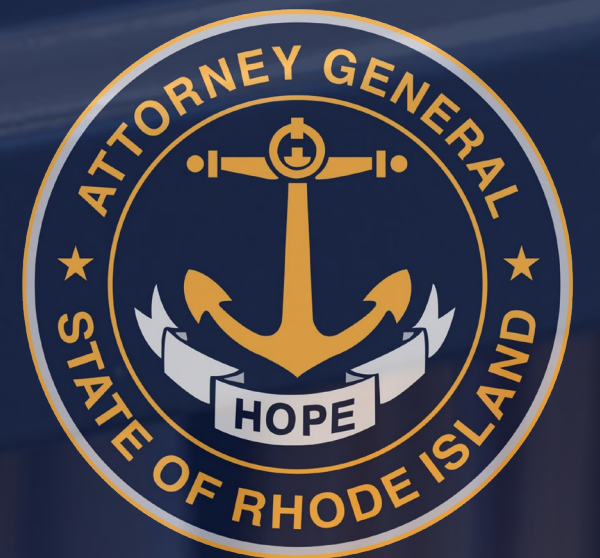


Access to Public Records Act

Questions during the Summit?

Submit via email: agsummit@riag.ri.gov or

Bluesky [@peterneronha.bsky.social](https://bsky.app/profile/peterneronha.bsky.social)





What is the APRA?

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

RI Gen. Laws § 38-2-1



Is it a Public Body?

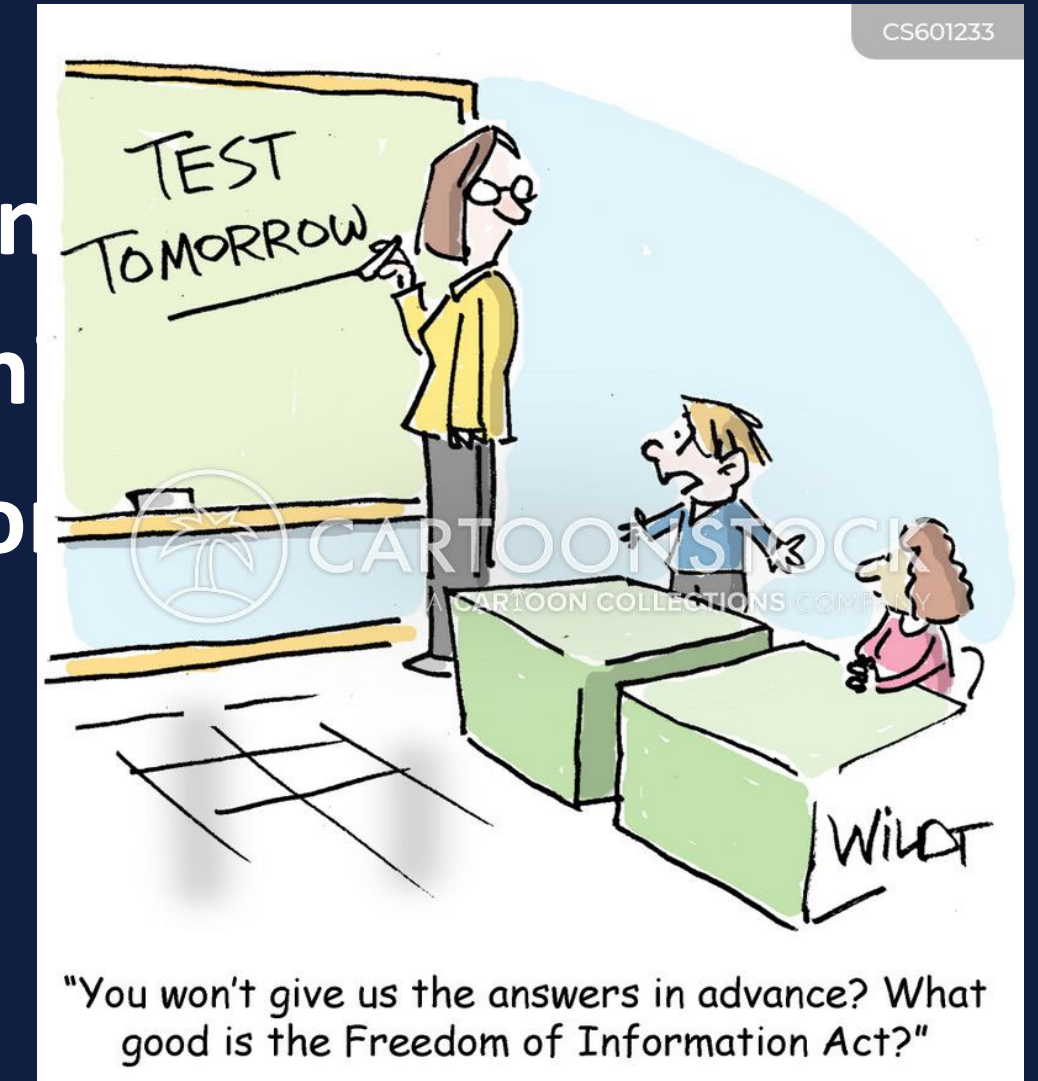
Any department or agency of RI state or local government
“or any other public or private agency, person, partnership,
corporation, or business entity acting on behalf of and/or
in place of any public agency.”

R.I. Gen. Laws § 38-2-2(1)

Key Corporation v. Greenville Public Library, 288 A.3d 974 (R.I. 2023)

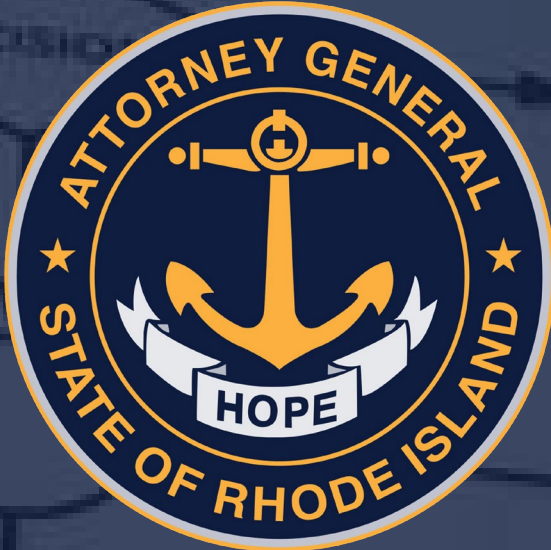
Langseth v. Buttonwoods Beach Association, PR 23-46;

Providence Journal v. RICCA, PR 21-11



PROCEDURE

APRA Procedures



APRA Procedures

- “Each public body shall establish written procedures regarding access to public records.”
- No written request required if available per APA or prepared for/readily available to the public.

R.I. Gen. Laws § 38-2-3(d)

Kelly v. Kingston Hill Academy, PR 25-57



Procedures Must Include

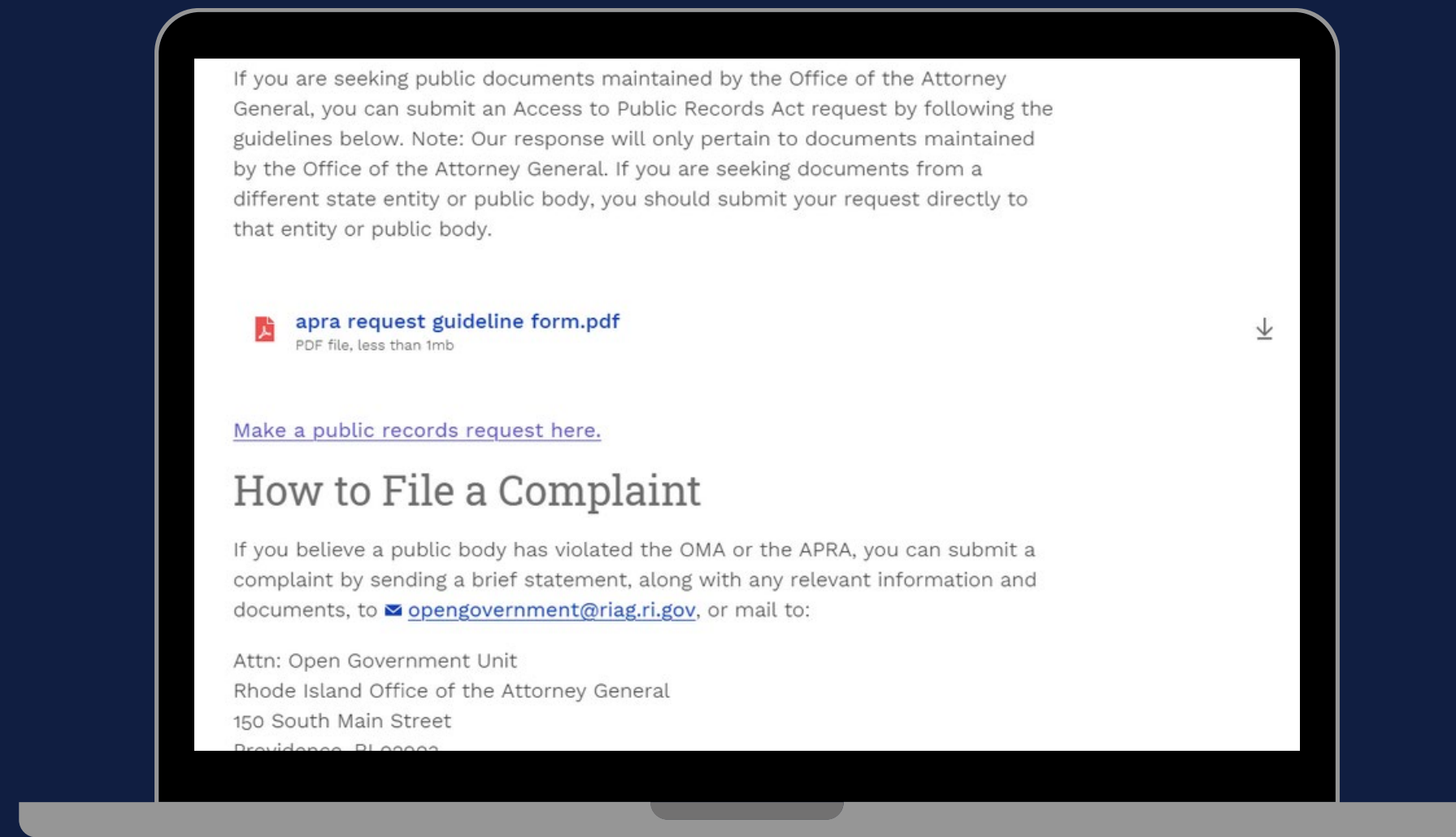
- Identification of designated public records officer or unit
- How to make a request
- Where to make a request
- No requirement that request be made on public body's form, provided identifiable as request
- Accept requests via email/electronic portal (See ADV PR 23-01)

R.I. Gen. Laws § 38-2-3(d)



Procedures

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



Reason or Identity of Person Making Request

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



RI Gen. Laws § 38-2-3(j)



Request Public Records

If you are seeking public documents maintained by the Office of the Attorney General, you can submit an Access to Public Records Act request by following the guidelines below.

[If you are seeking a background check, visit here.](#)

Note: Our response will only pertain to documents maintained by the Office of the Attorney General. If you are seeking documents from a different state entity or public body, you should submit your request directly to that entity or public body.

Note: As described in this Office's [APRA Guidelines](#), you do not need to provide identifying information when submitting an APRA request. To submit a request using this portal you do need to provide an email address, but if you would prefer not to provide an email address, you can submit a request using one of the other methods provided in this Office's [APRA Guidelines](#).

This web form utilizes a CAPTCHA function to prevent spam submissions. If you are experiencing difficulty using this form, please call 401-274-4400 to report the difficulty and you can submit an APRA request using any of the other methods described in this Office's APRA Guidelines.

First	Last
<input type="text"/>	<input type="text"/>

Email *

Phone

Street Address		
<input type="text"/>		
Address 2		
<input type="text"/>		
City/Town	State/Province	ZIP/Postal Code
<input type="text"/>	<input type="text" value="- None -"/>	<input type="text"/>
Country		
<input type="text" value="- None -"/>		

Requested records maintained by the Office of the Attorney General

Preferred format of response

Is it an APRA Request?

- Provide Documents
- Not Narratives/
Summaries

Caldwell v. Rhode Island College, PR 23-02



Within 10 Business Days After Receiving a Request

- **EXTEND:** extend the time period for an additional twenty (20) business days, **or**
- **DENY:** deny access to records within ten (10) business days, **or**
- **GRANT:** provide the records within ten (10) business days.

R.I. Gen. Laws § 38-2-7



Calculating 10 Business Days

- When calculating response time, the date of receipt **does not count**:
 - Date of receipt = Day 0
- Requests sent outside of normal business hours, on weekends or state holidays shall be deemed received on the **next** business day.

Dupuis v. Rhode Island Airport Corporation, PR 25-64



Extension

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

R.I. Gen. Laws § 38-2-3(e)

Robinson v. Rhode Island Department of Transportation, PR 25-05



2 Key Steps When Responding to an APRA Request

1. Does public body maintain responsive records?
2. If public body does maintain responsive records, are those records public in whole or in part (i.e., redacted)?
 - a. Documents maintained by public body are presumed to be public unless fit within one of the 28 APRA exemptions.



Are Records Subject to APRA?

“Material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

R.I. Gen. Laws § 38-2-2(4)

Pontarelli v. Rhode Island Dept. of Education, 176 A.3d 472 (R.I. 2018)

Murray v. Western Coventry Fire District, PR 24-41



Are the Records Maintained?

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

R.I. Gen. Laws § 38-2-3(a)

Corrente, Robert v. Warwick Police Department, PR 25-17

Caldwell v. Rhode Island College, PR 24-05



Duty to Conduct a Reasonable Search



DuBois v. City of Pawtucket, PR 25-08





Duty to Conduct a Reasonable Search

- No requirement to reorganize, consolidate, or compile data not maintained in the requested form.
- **Exception**: data in an electronic format and not unduly burdensome.

R.I. Gen. Laws § 38-2-3(h)

Paiva v. Department of Corrections, PR 25-52





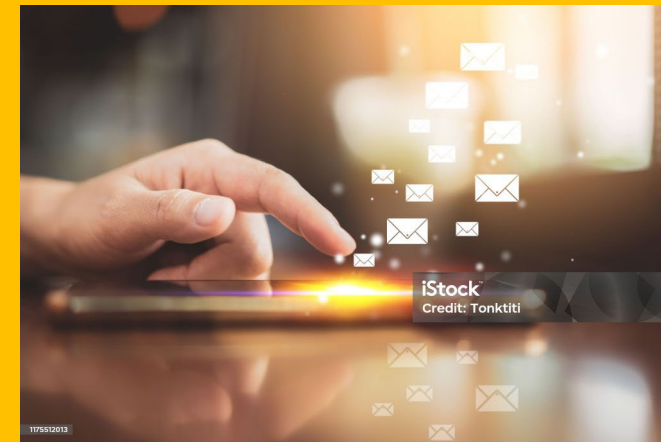
Scenarios

1. Documents maintained by a contractor or vendor for the benefit of a public body.



Novak v. Western Coventry Fire District, PR 21-08

2. A public body member's private email.



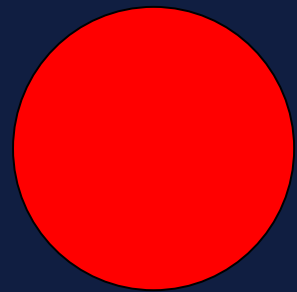
Filippi v. New Shoreham Tourism Council, PR 21-21



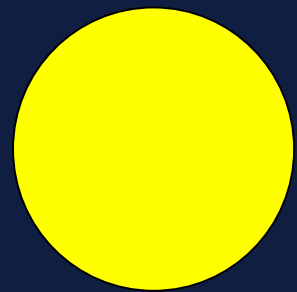
The Exemptions:

R.I. Gen. Laws § 38-2-2(4)

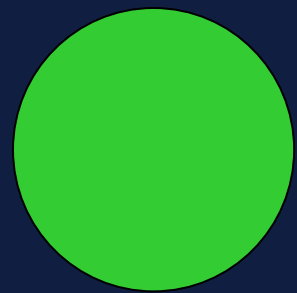
28 Exemptions



Confidential



Exempt



Public

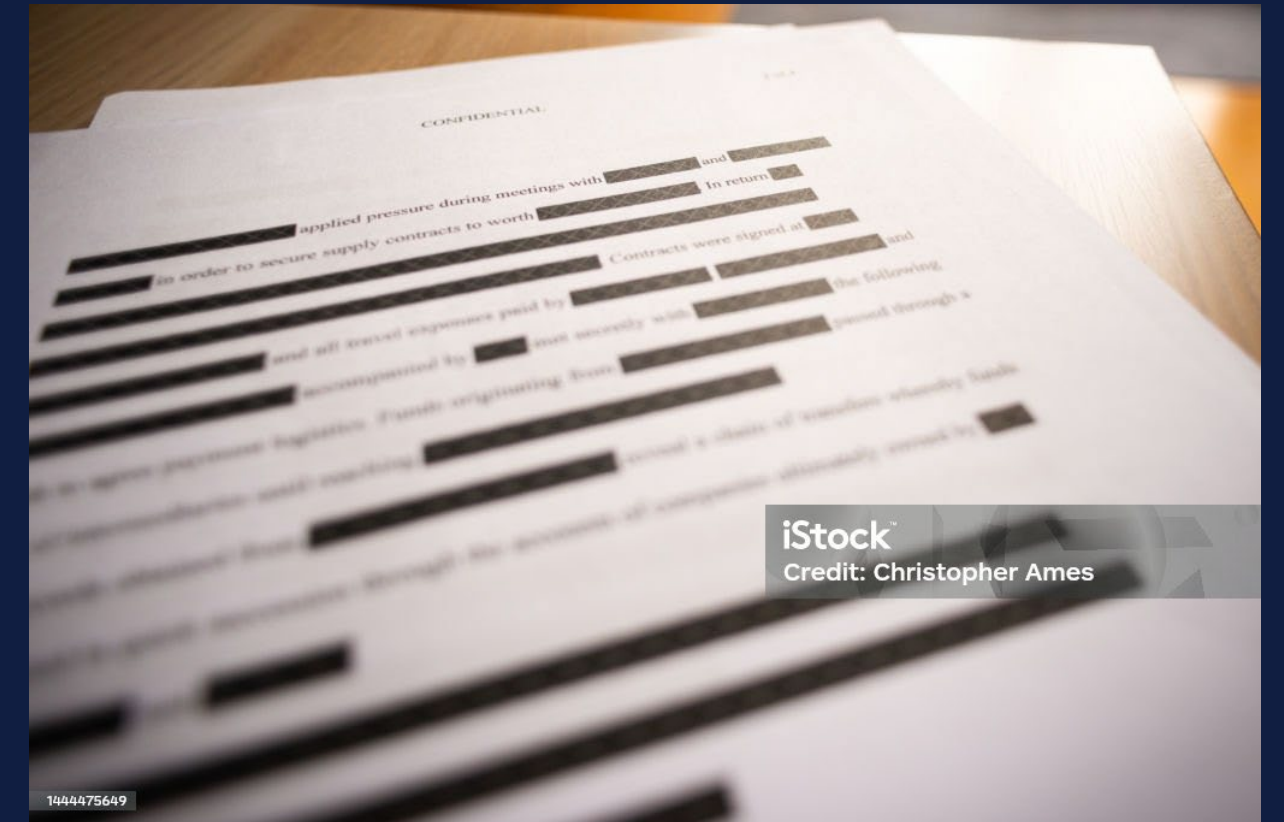


The Exemptions

- Any reasonably segregable portion of a public record shall be available.
- If entire document is exempt, must state in writing that no reasonably segregable information exists.

R.I. Gen. Laws § 38-2-3(b)

Wuthmann v. Cumberland P.D., PR 24-38



Exemption (A)(I)(a)

“All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files.”

Lamendola v. East Greenwich School Committee, PR 25-19;

Bell v. Rhode Island Airport Corporation, PR 25-12



Exemption (B)

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

In re City of Providence, ADV PR 25-01

Providence Journal Co. v. Convention Center Authority,
PR 21-11;

Food Marketing Institute v. Argus Leader Media, 139
S.Ct. 2356 (2019);



Exemption (E)

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

White v. Office of the Governor, PR 24-33

Amaral v. BHDDH, DOA, PR 24-13;

Providence Journal v. Office of the Governor, PR 20-08



Exemption (E)

- Deliberative Process Privilege
- Law Enforcement Privilege
- Work Product Privilege
- Attorney/Client Privilege

**Non-exhaustive list*



Exemption (K)

“Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical or scholarly issues, whether in electronic or other format.”

Kilcullen v. University of Rhode Island, PR 25-06

White v. Office of the Governor, PR 24-33



Exemption (K)

Exception:

above listed documents submitted at a public meeting shall be public

Murray v. Town of Coventry, PR 22-19

Finnegan v. Town of Scituate, PR 20-40



Exemption (M)

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

Belmore v. City of Newport, PR 25-51

Tomasello v. Town of Narragansett, PR 24-20



Exemption (P)

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

Minson v. Cumberland School Department, PR 26-04

Schuler v. Rhode Island Resource Recovery Corporation, PR 25-77



Exemption (S)



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



Exemption (S)

Examples:



R.I. Gen. Laws § 14-1-64: All police records relating to the arrest of a minor

R.I. Gen. Laws § 39-21.1-4, 17: 911 Telephone calls and records

R.I. Gen. Laws § 5-37.3-3: Health Care Information

R.I. Gen. Laws § 12-1-4: BCI Records



Exemption (Z)

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



Exemption (A)(I)(b)

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



Exemption (A)(I)(b)

Public Employee Information

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



Exemption (A)(I)(b)

2021 Update



- For the purposes of this section, the city or town of residence shall not be deemed public for peace officers, and shall not be released.
- Peace Officers include:
 - Police Officers
 - Rhode Island Conservation Officers
 - Department of Environmental Management Officers
 - Fire Marshalls
 - Correctional Investigators/Officers
 - Any Federal Law Enforcement

R.I. Gen. Laws § 12-7-21



Balancing Test

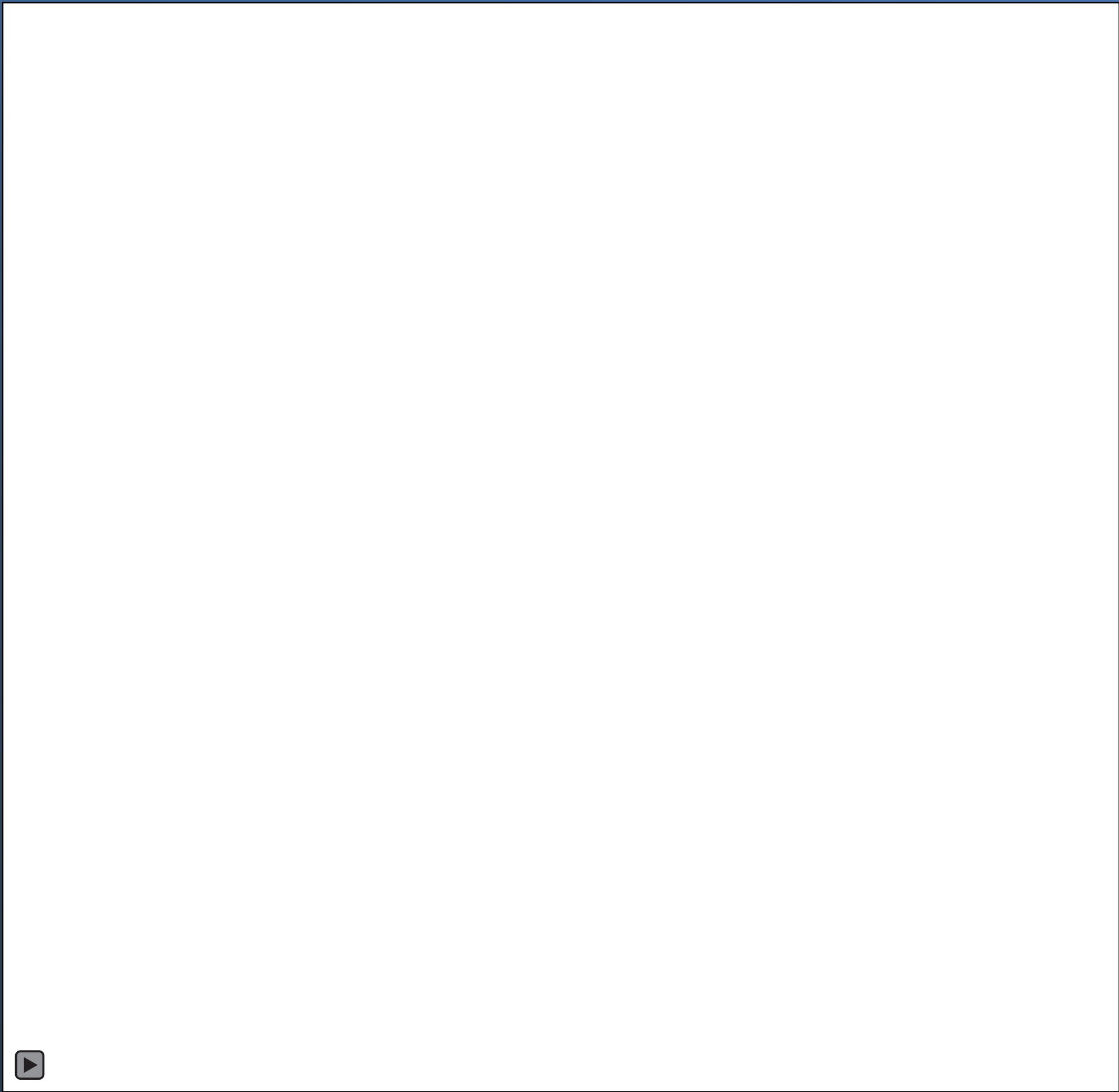
Does the privacy interest of the individual outweigh the public's interest in disclosure?

Holmes v. South Kingstown Police Department, PR 25-38

Jenkins v. Narragansett Police Department, PR 25-25

Anderson v. Town of Jamestown, PR 23-54





Privacy Interest

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

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



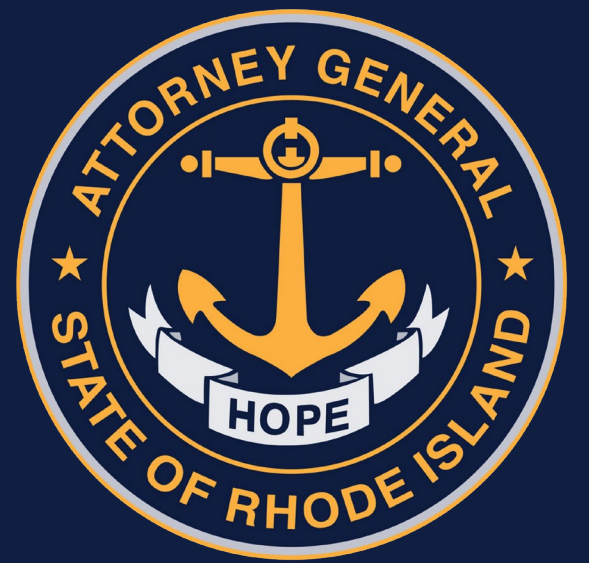
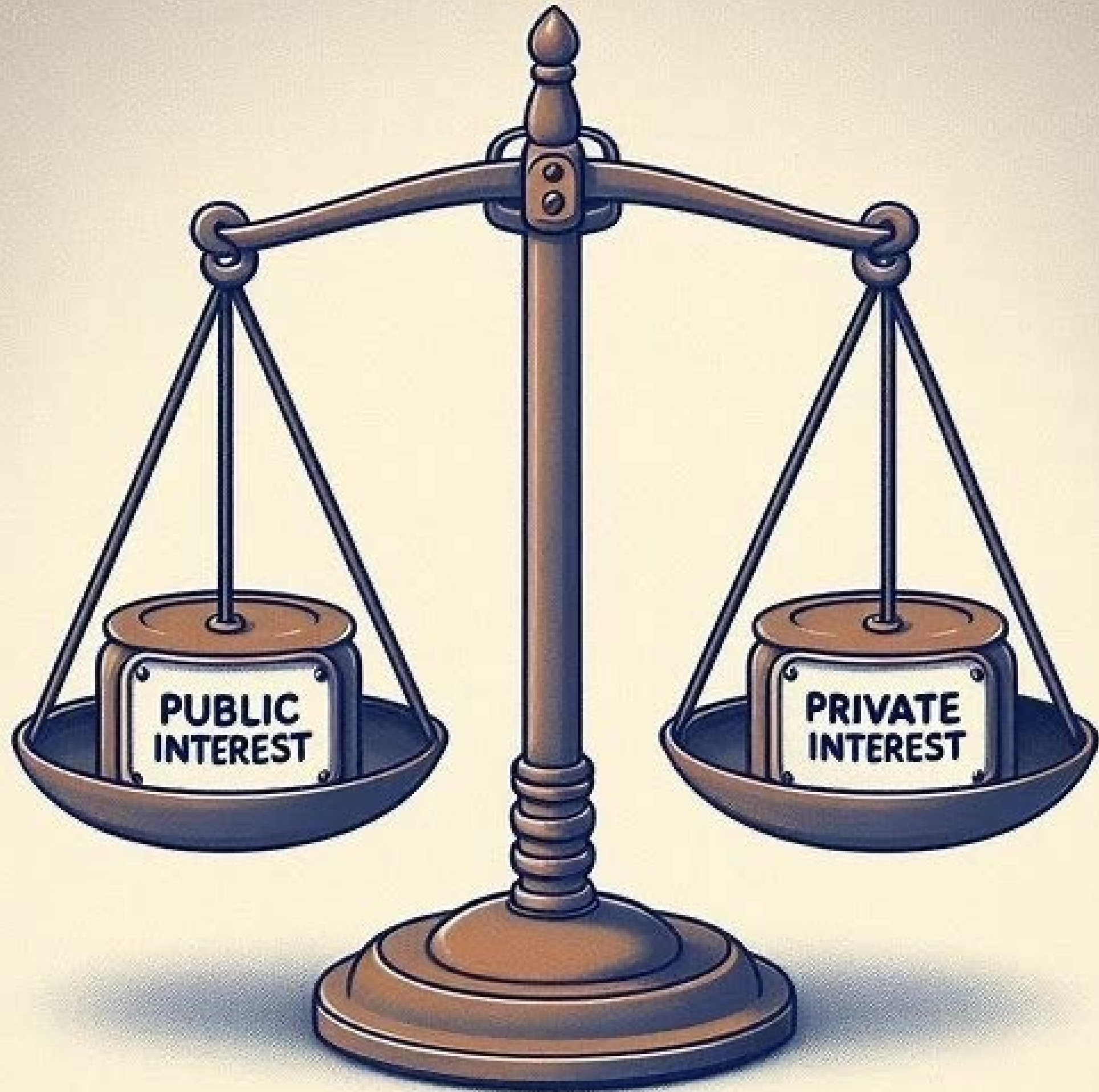
Public Interest

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

Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)

Solas v. Providence Public School District, 25-13





Internal Affairs Reports

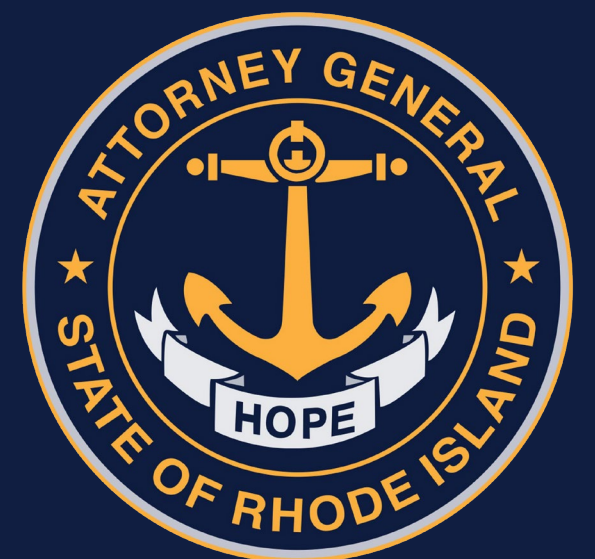
When considering whether a report is exempt under the APRA, each report must be reviewed on a case-by-case basis, applying the balancing test. *Example factors to consider that may be helpful when conducting the balancing test may include:

- Whether report(s) are likely to shed light on overall government functions
- Whether allegations of misconduct were determined to be founded
- Rank and positions of official(s) investigated
- Nature and severity of alleged misconduct
- Any particular public interest in disclosure apparent or identified by requestor
- Any evidence of government impropriety in investigating the allegations
- Whether redaction can ameliorate any privacy concerns

**This is a non-exhaustive list of considerations that may be relevant when conducting the balancing test.*

Farinelli v. City of Pawtucket, PR 24-07

Lyssikatos v. Pawtucket, PR 21-12



Exemption (D)

Law Enforcement

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



Exemption (D)

Law Enforcement

- (a) reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings
- (b) deprive a person of the right to a fair trial
- (c) reasonably be expected to constitute an unwarranted invasion of personal privacy
- (d) reasonably be expected to identify a confidential source
- (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions or
- (f) reasonably be expected to endanger the life or physical safety of any individual



Body-worn Camera Recordings

- Normal APRA process and potential exemptions apply
 - Must redact rather than withhold if possible
 - May assess costs for review and redaction

Ahlquist v. Woonsocket Police Department, PR 25-14

Leslie v. City of Providence, PR 25-10

Real World Media LLC v. Providence Police Department, PR 21-07



Law Enforcement Records

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

R.I. Gen. Laws § 38-2-2(4)(D)

Damon v. City of Newport, PR 21-26



Adult Arrest Logs

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

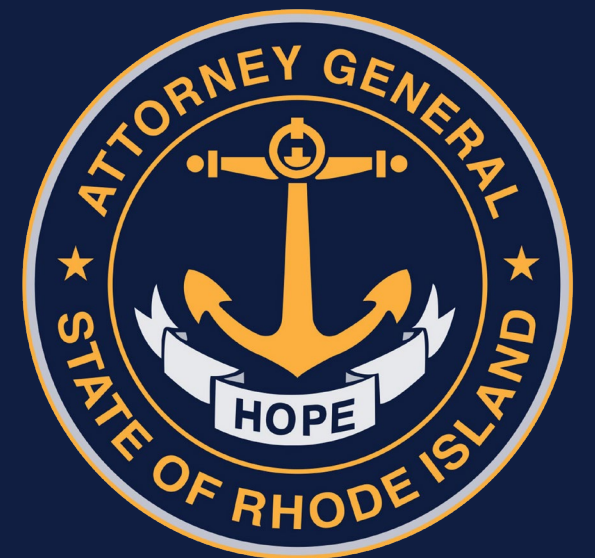
R.I. Gen. Laws § 38-2-3.2



Adult Arrest Logs

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

R.I. Gen. Laws § 38-2-3.2



Scenarios

1. Requester seeks case files concerning their children.

Daniel, et al. v. Department of Children, Youth and Families, PR 26-05



Scenarios

2. Request seeks records involving a police call for service where no arrest was made.

Blanchet v. Cranston Police Department, PR 25-35;
Holmes v. South Kingstown Police Department, PR 25-38.



Cost and Delivery Procedures

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



R.I. Gen. Laws § 38-2-4

Chrostowski v. Town of South Kingstown, PR 24-50



Cost and Delivery Procedures

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

R.I. Gen. Laws § 38-2-3(k)

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

R.I. Gen. Laws § 38-2-3(a)

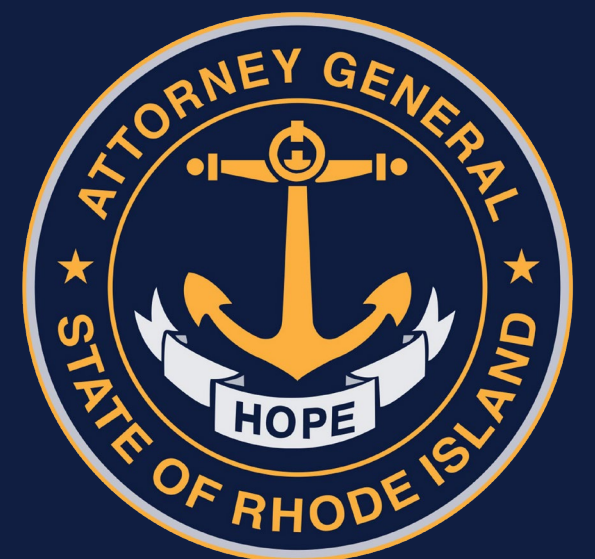
D.A.R.E. v. Gannon, 819 A.2d 651, 661 (R.I. 2003)



Cost and Delivery Procedures

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

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



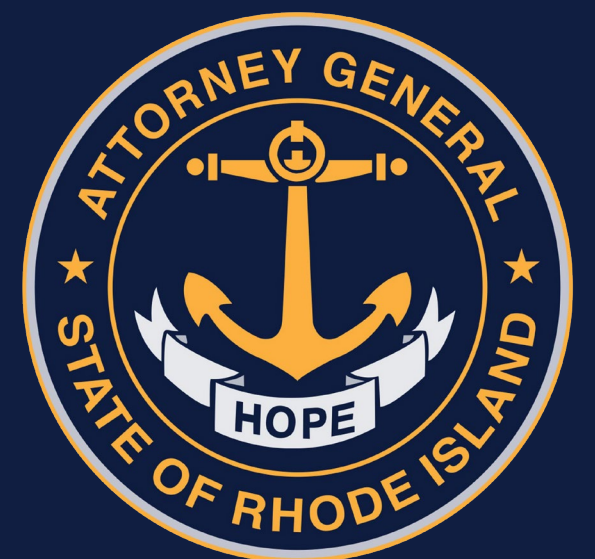
Cost and Delivery Procedures

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

R.I. Gen. Laws § 38-2-4(b)

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

R.I. Gen. Laws § 38-2-7(b)



Cost and Delivery Procedures

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

R.I. Gen. Laws § 38-2-7



Cost and Delivery Procedures:

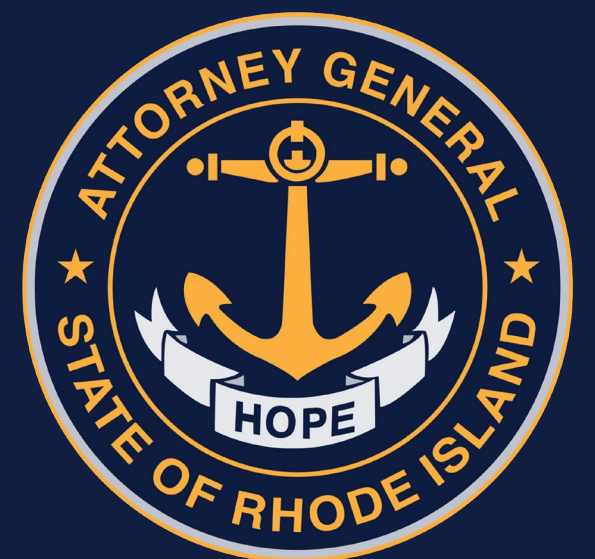
Detailed Itemization of Costs

“Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.”

R.I. Gen. Laws § 38-2-4(d)

Pattillo v. Rhode Island Department of Health, PR 25-36

Rhode Island Housing Justice Organizing Committee v. RIPTA, PR 23-59

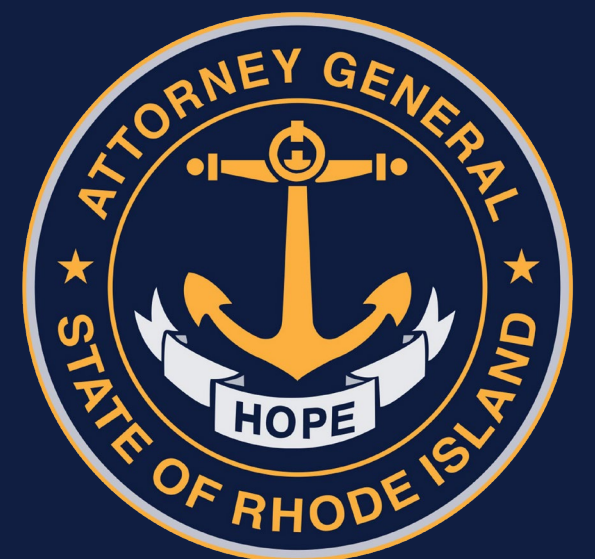


Cost and Delivery Procedures

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

Real World Media, LLC v. Providence Police Department,

PR 21-07; *R.I. Gen. Laws § 38-2-3(k)*



Cost and Delivery Procedures

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

R.I. Gen. Laws § 38-2-3(g)



What Constitutes a Denial?

- Failing to timely respond or assess prepayment
- Withholding documents in whole
- Withholding documents in part (i.e. redacted)
- Stating responsive documents are not maintained or that no responsive documents exist

**Non-exhaustive list of example denials.*



Procedures for Denying Access to Records

- Denial must be in writing, and
- State the specific reason(s) for the denial, and
- Indicate the procedure(s) for an appeal in R.I. Gen. Laws § 38-2-8
- Exemptions can be waived if not raised in a denial

R.I. Gen. Laws § 38-2-7

Ronald J. Cooper, III v. Coventry Police Department, PR 22-24

Angelo v. Town of Westerly, PR 21-05



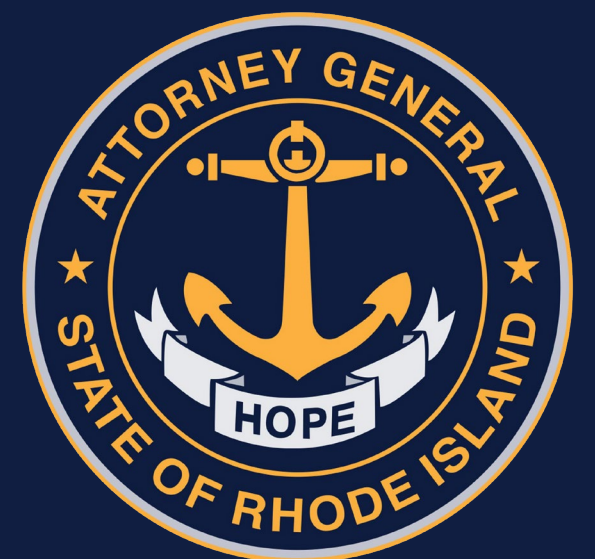
Procedures for Denying Access to Records

“A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall *** state that it does not have or maintain the requested records.”

R.I. Gen. Laws § 38-2-7(c)

Barrett v. Foster Glocester Regional School District, PR 24-11

Caldwell v. Rhode Island College, PR 24-05



Sample Appeal Procedures

Language

This decision can be appealed pursuant to R.I. Gen. Laws § 38-2-8(a), which provides that “[a]ny person or entity denied the right to inspect the record of a public body may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate.” Any appeal may be submitted to this Office in the same manner as APRA requests may be submitted to this Office pursuant to this Office’s APRA procedures and should be directed to the “Open Government Unit.”

*Modify this language as needed for your public body’s procedures



Procedures for Appealing a Denial

- Appeal to the chief administrative officer of the public body.
- The chief administrative officer shall review the record and make a final determination whether or not to allow public inspection within ten (10) business days after receipt of appeal.

R.I. Gen. Laws § 38-2-8(a), (b)

Robinson v. Rhode Island Department of Transportation, PR 25-05



Complaints

- The Attorney General investigates alleged violations of the APRA.
- Submit complaints to: opengovernment@riag.ri.gov
- The Attorney General will investigate the complaint and issue a finding.
- If the Attorney General determines that the allegations are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court.
- A complainant may also file a complaint in the Superior Court.

R.I. Gen. Laws § 38-2-8(b)



Superior Court Remedies

- **\$2,000** for a willful and knowing violation
- **\$1,000** for a reckless violation
- Injunctive relief
- Attorney fees and costs

R.I. Gen. Laws § 38-2-9(d)



Communication is Key

Communication with a requester can often promote understanding and resolve disputes.



Training

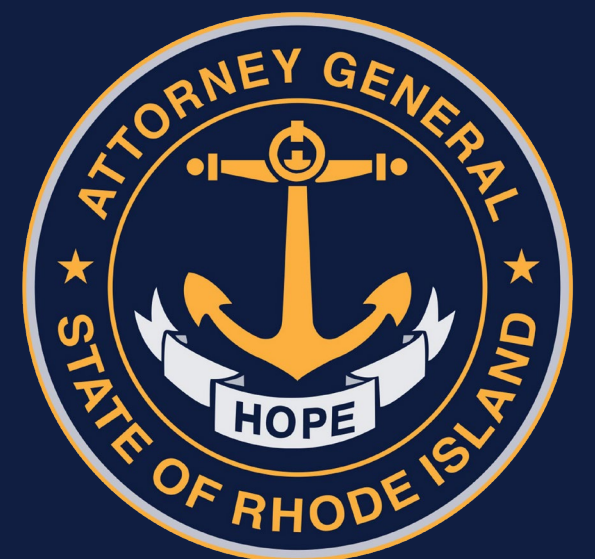
Chief Administrative Officers of all public bodies must certify by January 1st of each year that all employees who have authority to grant/deny access to records have received training.

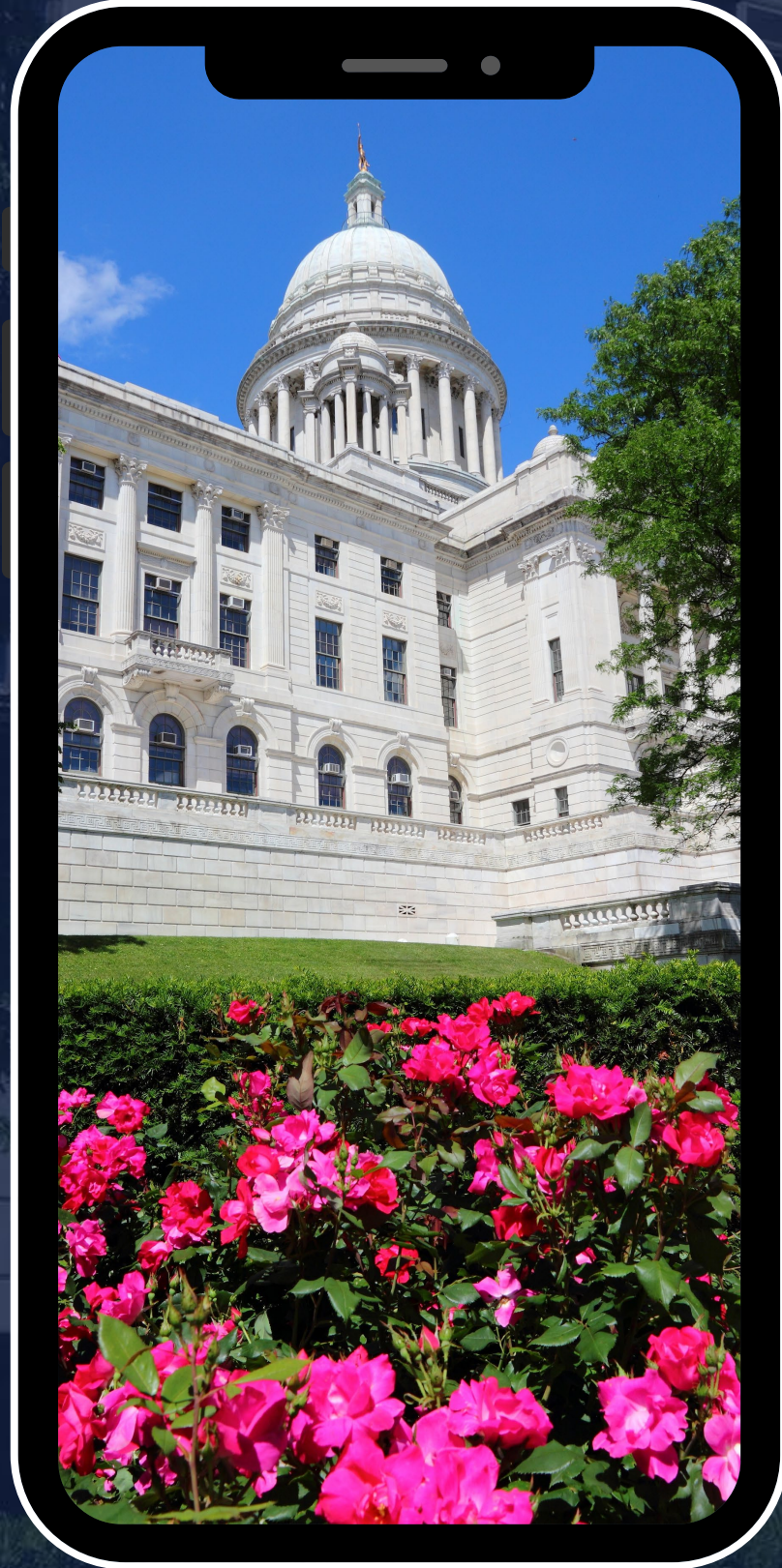
R.I. Gen. Laws § 38-2-3.16



Resources

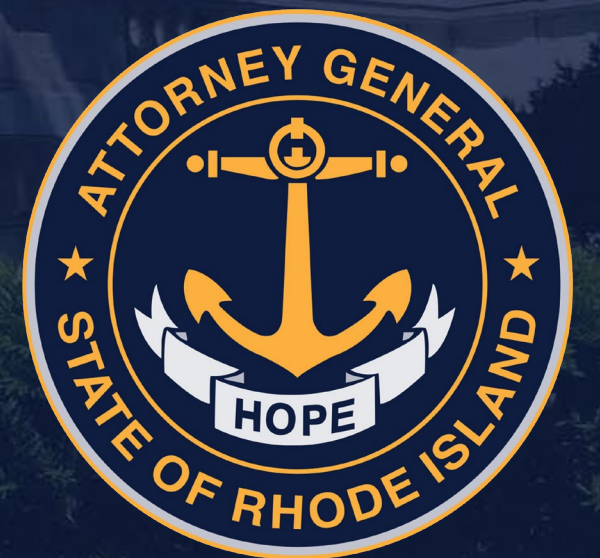
- Attorney General's Website (<http://www.riag.ri.gov/>)
 - Findings
 - Video presentation of Open Government Summit
 - Open Government Summit Digital Booklet
 - APRA Law
- Attorney General's Office
 - 401 274 4400
 - opengovernment@riag.ri.gov
- APRA Checklist





Questions during the Summit?

Submit via email: agsummit@riag.ri.gov or
Bluesky [@peterneronha.bsky.social](https://bsky.app/profile/peterneronha.bsky.social)



Please Stand By

The Summit will return momentarily.

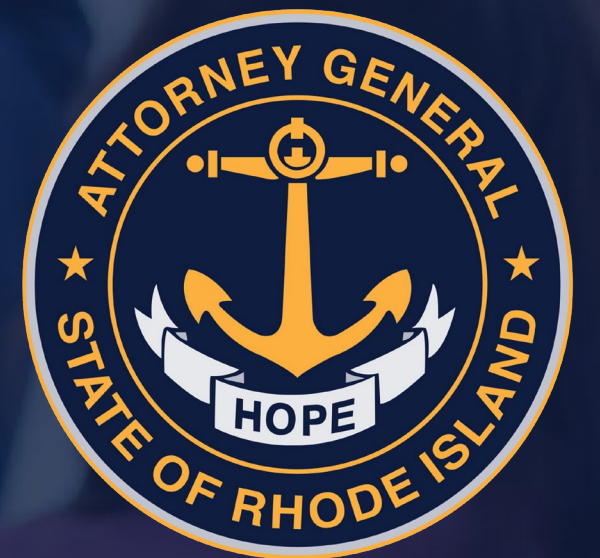


Open Meetings Act

Questions during the Summit?

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Bluesky [@peterneronha.bsky.social](https://bsky.app/profile/peterneronha.bsky.social)





What is the OMA?

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

R.I. Gen. Laws § 42-46-1



What does the OMA require?

- Open meetings
- Limited circumstances for closed meetings
- Notice
 - Annual
 - Supplemental
- Meeting minutes



Three Threshold Elements that Trigger the OMA

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



What is a Public Body?

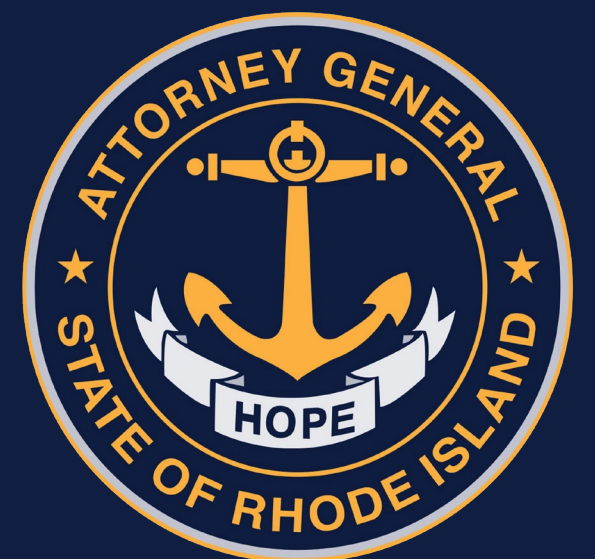
“department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government”

R.I. Gen. Laws § 42-46-2(c)

Amaral v. Cumberland Community Accessibility Advisory Board, OM 25-39;

Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016);

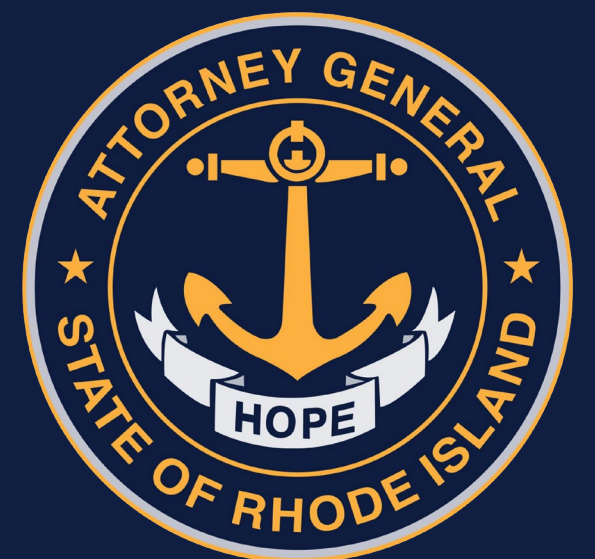
Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001)



What is a Public Body?

- There is no bright-line test
- We consider a number of factors, including:
 - The authority that created the entity
 - If the entity has set membership
 - If the entity has regular meetings
 - Any powers or decision-making authority that have been delegated to the entity

In re Foster Center Volunteer Fire Company, ADV OM 23-02;
Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016)

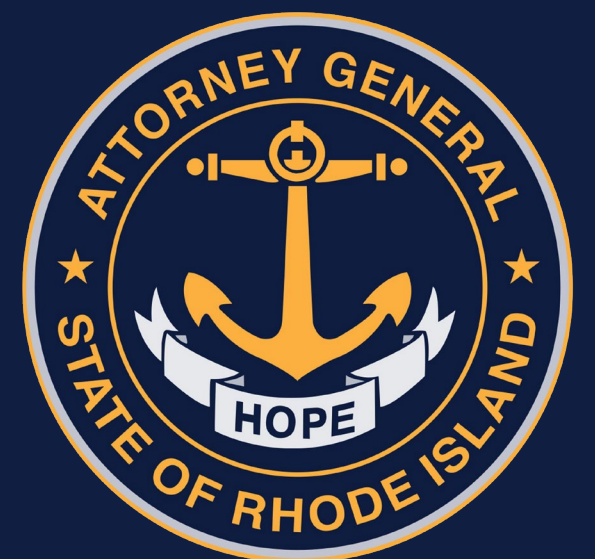


What is a Quorum?

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

R.I. Gen. Laws § 42-46-2(d)

Pezza v. Foster Gloucester Regional School Committee, OM 25-09



“Rolling” or “Walking” Quorum

- A series of meetings each less than a “quorum,” but that collectively represent a “quorum.”
- Quorums can be created not only by members of a public body, but through a third person.

Crowley v. City of Warwick Public Schools Budget Commission, OM 25-50;

Drix v. Providence City Council, OM 23-08



Listserve

“Listserve” (email distribution lists through which subscribers receive information on a particular topic) do not per se violate the OMA.

Moffitt v. Chariho School Committee, OM 25-30;

Anonymous v. Coventry Town Council, OM 25-18





“Now will everybody please turn to page 5 of the hidden agenda.”

What is a Meeting?

“The convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.”

R.I. Gen. Laws § 42-46-2(a)

Solas v. South Kingstown Planning Board, OM 26-07

Cook v. Tiverton Town Council, OM 20-23





Pop Quiz

Scenario #1



A member of a five-person planning board sends a group text to all members about how they intend to vote to approve a permit application at an upcoming meeting. Two members reply to the group text and say why they also intend to vote to approve.

Scenario #2



The Chair of a five-person housing authority sends an email informing members that the clerk will be sending out budget proposals to review. They request in the email that no one reply-all.



10:04

5G

< Inbox



Constituent Carl



To: CouncilorFred@OMAville.gov;
CouncilorDenise@OMAville.gov;
CouncilorMary@OMAville.gov;
CouncilorScott@OMAville.gov;
CouncilorJose@OMAville.gov >

Main St Potholes

Dear Town Council Members,

The potholes on Main St are out of control!
Something needs to be done about them.

-Carl

The dangers of replying all



10:06

5G

< Inbox



Councilor Fred



To: ConstituentCarl@gmail.com;
CouncilorDenise@OMAville.gov;
CouncilorMary@OMAville.gov;
CouncilorScott@OMAville.gov;
CouncilorJose@OMAville.gov >

Re: Main St Potholes

Thanks for sharing your concern Carl. I totally agree! In fact, we should repave the entire street immediately

-Councilor Fred

The dangers of replying all



10:08

5G

< Inbox



Councilor Denise



To: CouncilorFred@OMAville.gov;
ConstituentCarl@gmail.com;
CouncilorMary@OMAville.gov;
CouncilorScott@OMAville.gov;
CouncilorJose@OMAville.gov >

Re: Main St Potholes

No way! Repaving the entire street would be way too expensive. Let's just have the Town maintenance department use the existing surplus in their current fiscal year funds to fill the potholes

-Councilor Denise

The dangers of replying all



10:11

5G

< Inbox



Councilor Mary



To: Councilor Denise@OMAville.gov;
CouncilorFred@OMAville.gov;
ConstituentCarl@gmail.com;
CouncilorScott@OMAville.gov;
CouncilorJose@OMAville.gov >

Re: Main St Potholes

I agree let's just have maintenance use the surplus \$\$ to fill the potholes

-Councilor Mary

The dangers of replying all



10:11

5G

< Inbox



Constituent Carl



To: CouncilorMary@OMAville.gov;
CouncilorDenise@OMAville.gov;
CouncilorFred@OMAville.gov;
CouncilorScott@OMAville.gov;
CouncilorJose@OMAville.gov >

Re: Main St Potholes

Filling the potholes would be a big help, thank you!

-Constituent Carl

The dangers of replying all



10:24

5G

< Inbox



Councilor Fred



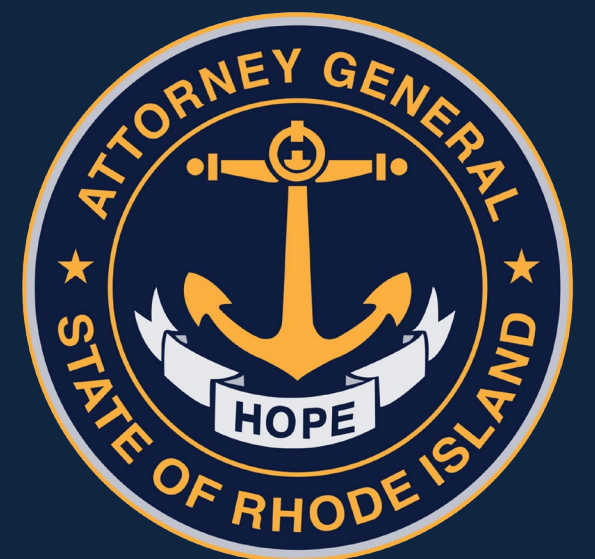
To: ConstituentCarl@gmail.com;
CouncilorMary@OMAville.gov;
CouncilorDenise@OMAville.gov;
CouncilorScott@OMAville.gov;
CouncilorJose@OMAville.gov >

Re: Main St Potholes

Ok, seems we all agree, instructing the maintenance department to use their surplus funds to fill the potholes makes sense and no need to do a total repaving. Let's add this to the agenda for our next meeting

-Councilor Fred

The dangers of replying all



Scenarios

1. Members of a Conservation Commission watch “The Real Housewives of Rhode Island” together



2. Two members of Town Council meet with two members of School Committee



Scenarios

3. Board of Canvassers goes on a site visit



Clem v. North Smithfield Planning Board and North Smithfield Conservation Commission, OM 20-53

4. Social Media Comments



Anonymous v. Coventry Town Council, OM 25-18

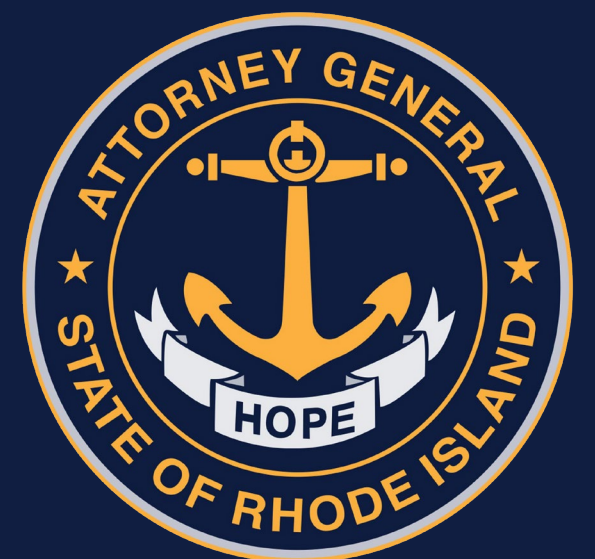


Virtual/Telephone

- Can a public body use virtual platforms or telephone conferencing to conduct a meeting?
 - § 42-46-5(b)(1): Discussions of a public body via electronic communication, including telephone, are permitted only to schedule a meeting

Pierson v. Coventry Town Council, OM 26-02;

Fandetti v. Bonnet Shores Land Trust, OM 24-13



Virtual/Telephone

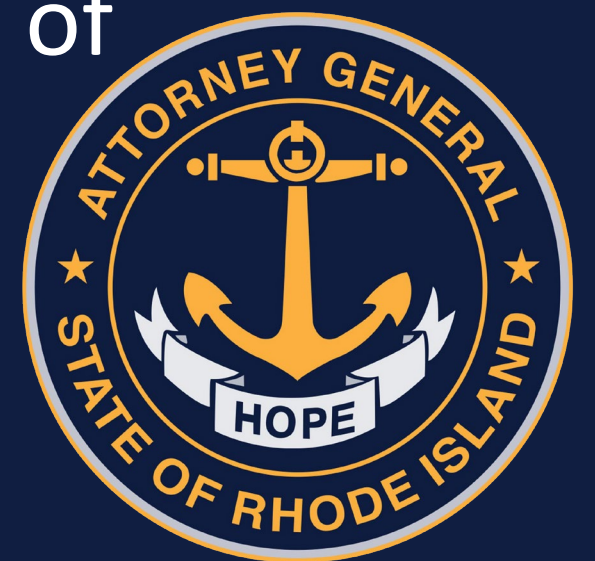
- A member of a public body may participate by use of electronic communication or telephone if:
 - on active duty in the armed services
 - has a disability and cannot otherwise participate
- Subject to rules/regulations and waiver process governed by Governor's Commission on Disabilities

R.I. Gen. Laws § 42-46-5(b)(2),(3) & (4)



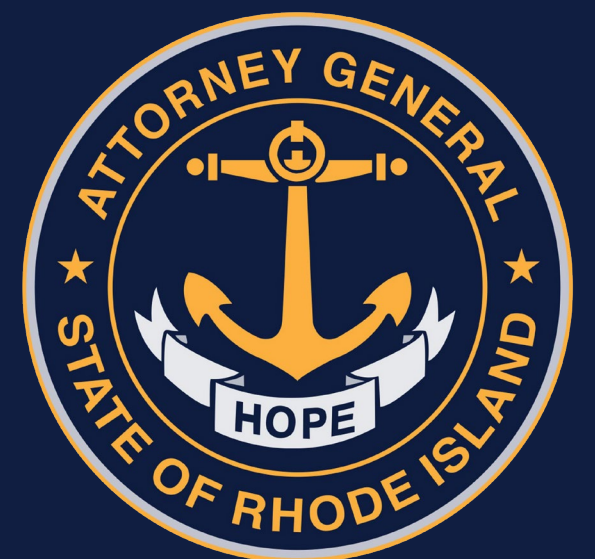
Hybrid and Virtual Meetings

- Executive orders pertaining to open meetings, which allowed virtual and hybrid meetings, expired on March 31, 2022.
- This means that all members of public bodies must be physically present for meetings, unless they meet a specific exemption set forth in the OMA
- Further, members of the public must be permitted to attend meetings of public bodies in person and observe the conducting of those meetings



Hybrid and Virtual Meetings

- While the OMA requires that members of public bodies must be physically present, public bodies may livestream their meetings to the public
- Public bodies may permit members of the public to participate remotely in open meetings, so long as such remote participation can be heard/observed by everyone in attendance of the in-person meeting
- The University of Rhode Island Board of Trustees have slightly different rules, set out in RIGL §42-46-5(b)(5)



Hybrid and Virtual Meetings

- If a public body advertises a meeting as being remote, it needs to provide remote access.
- If a public body does not wish to provide or guarantee remote access, it needs to be clear in its agenda that remote access is not guaranteed.

Jenkins v. Bonnet Shores Fire District Council, OM 25-02



Executive Session



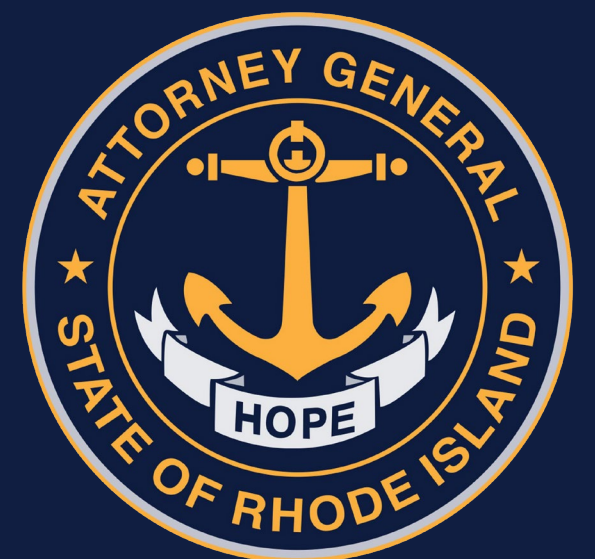
Executive Session

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

R.I. Gen. Laws § 42-46-3

- Purposes for which may be closed.

R.I. Gen. Laws § 42-46-5(a)(1)-(10)



Convening in and out of Executive Session

- During open session: Motion to convene into executive session, pursuant to R.I. Gen. Laws § [appropriate section here], to [repeat whatever is on the agenda here]
- During closed session, at conclusion of substantive closed session business: Motion to reconvene into open session
- During open session: report out any votes taken; motion to seal the executive session minutes (optional)

R.I. Gen. Laws § 42-46-4(a), (b)



Remember: the invitation into executive session lies with the public body

R.I. Gen. Laws § 42-46-5(a)(1)

McFadden v. Exeter-West Greenwich School Committee, OM 19-13

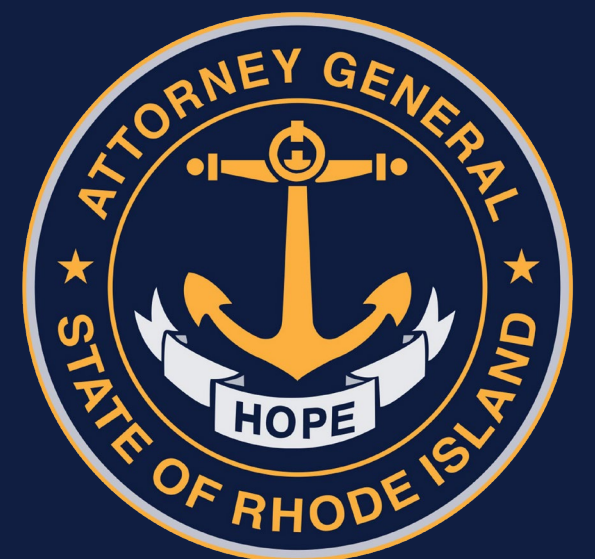


R.I. Gen. Laws § 42-46-5(a)(1)

- Discussions of job performance, character, or physical or mental health of affected person or persons
 - advanced written notice
 - advised that the person may require the discussion to be held at an open meeting
 - state in open call and open minutes that notice provided

Nataly v. Exeter Town Council, OM 25-32;

Sullivan v. Coventry School Committee, OM 21-05





R.I. Gen. Laws § 42-46-5(a)(2)

Sessions or work sessions pertaining to collective bargaining or litigation

Banfield v. Narragansett Town Council, Buffi v. Narragansett Town Council, OM 26-08



R.I. Gen. Laws § 42-46-5(a)(4)

Investigative proceedings
regarding allegations of civil or
criminal misconduct

R.I. Gen. Laws § 42-46-5(a)(4)



R.I. Gen. Laws § 42-46-5(a)(8)

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

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



Public Notice



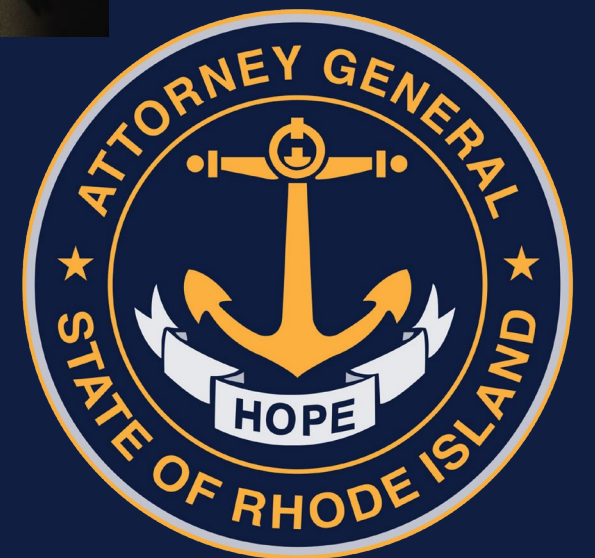
Two Types of Notice

- **Annual Notice:** at the beginning of each calendar year
- **Supplemental Notice:** a minimum of 48 hours, excluding weekends & state holidays

Davis v. Exeter Board of Canvassers, Davis v. Exeter Town Council,

OM 25-23

Novak v. Coventry Town Council, OM 23-06



Supplemental Notice Posting Requirements

- Principal office of public body
- One other prominent location within the governmental unit
- Secretary of State (electronic)

R.I. Gen. Laws § 42-46-6(c)

Dubois v. Woonsocket City Council, OM 23-04



Notice Requirements

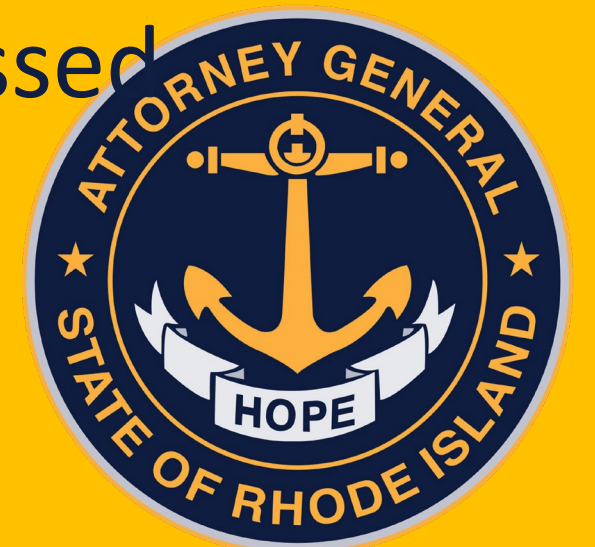
Annual

- Dates, times and location of regularly scheduled meetings
- Available to public upon request
- Posted with the Secretary of State

R.I. Gen. Laws § 42-46-6(a), (b)

Supplemental

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



Supplemental Notice Requirements

“Statement specifying business to be discussed” means:

- “whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted.”

Fact-specific inquiry, taking into account:

- Specificity of the agenda item
- Relation between agenda item and topics of discussion
- Whether notice is given of any action (votes, discussion) taken

Solas v. Rhode Island State Labor Relations Board, OM 25-26

Pontarelli v. RI Council on Elem/Second Ed., 151 A.3d 301 (R.I. 2016);

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



Typically Improper Agenda Items

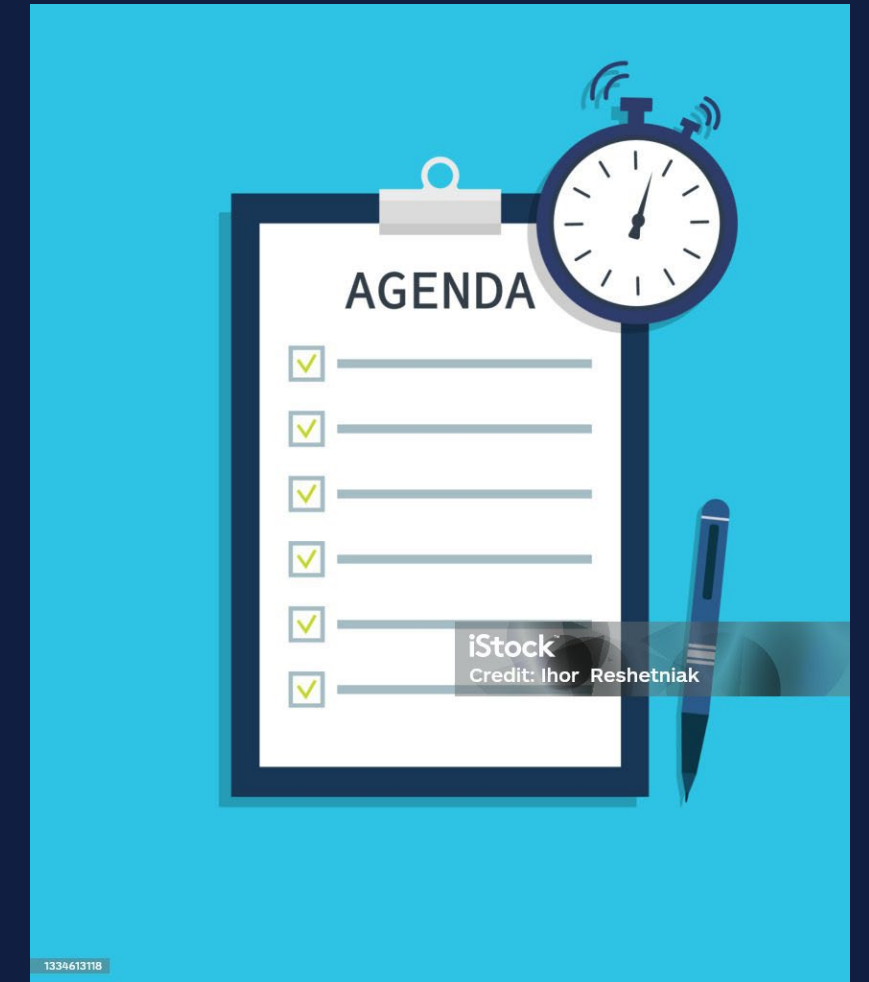
- Old Business/New Business
- Good and Welfare
- President's Report
- Any other matter brought before the Board

RIAG v. Woonsocket City Council, PC-2019-11974

Patten v. Cranston City Council, OM 25-45

Langseth v. Rhode Island Airport Corporation, OM 24-02

DiLeo v. Bonnet Shores Fire District, OM 23-23



Pop Quiz

1. “Interviews for Potential Boards and Commission Appointments”



- Where Town Council conducted interviews and voted on appointments

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

2. “IV. Communications:



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

- Extension was granted

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



Pop Quiz

3. “7.b. Approval of RIDE’s Executive Pay Plan and Organizations Chart. Enclosure 7b.”



- Multiple pay plans considered
- Enclosure not on SOS website

Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al., 151 A.3d 301 (R.I. 2016)

4. “The Board may discuss and vote upon the recall election process pertaining to Town of Tiverton Councilors Robert D. Coulter and Justin P. Katz.”



- Discussed recall election process with Tiverton Town Clerk and Board of Canvassers members

Katz v. Rhode Island Board of Elections,
OM 20-27



Executive Session Notice

- No boilerplate language
- Identify number of items to be discussed
- Statement of each item to be discussed
- Cite specific statutory section

R.I. Gen. Laws § 42-46-4(a)

Segalla v. Pawtuket School Committee, OM 25-35

Solas v. Rhode Island State Labor Relations Board, OM 25-26



Executive Session Notice Examples*

1. *R.I. Gen. Laws § 42-46-5(a)(1)*
(Town Manager performance review)
2. *R.I. Gen. Laws § 42-46-5(a)(2)*
(Police Union Negotiation)
3. *R.I. Gen. Laws § 42-46-5(a)(2)*
(potential litigation – land dispute)
4. *R.I. Gen. Laws § 42-46-5(a)(2)*
(litigation – Plaintiff v. Public Body, PC-2018-1234)

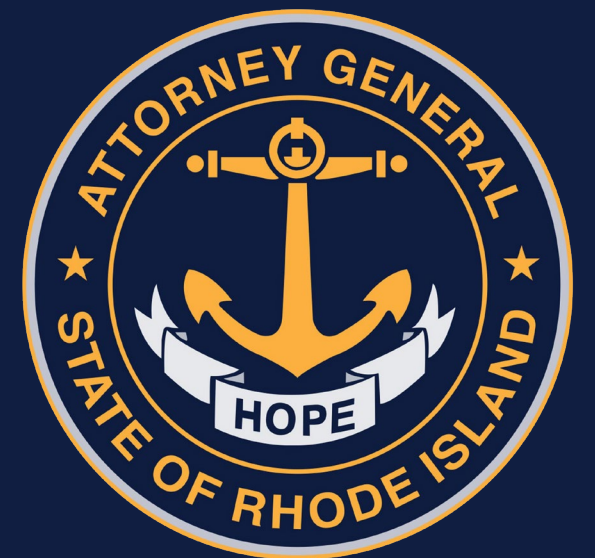
*The necessary notice information will depend on the specific circumstances and must be evaluated on a case-by-case basis.



Amending the Agenda (Not School Committees)

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

R.I. Gen. Laws § 42-46-6(b)



Amending the Agenda

No vote may be taken, except:

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

R.I. Gen. Laws § 42-46-6(b)

Novak v. Western Coventry Fire District, OM 20-08



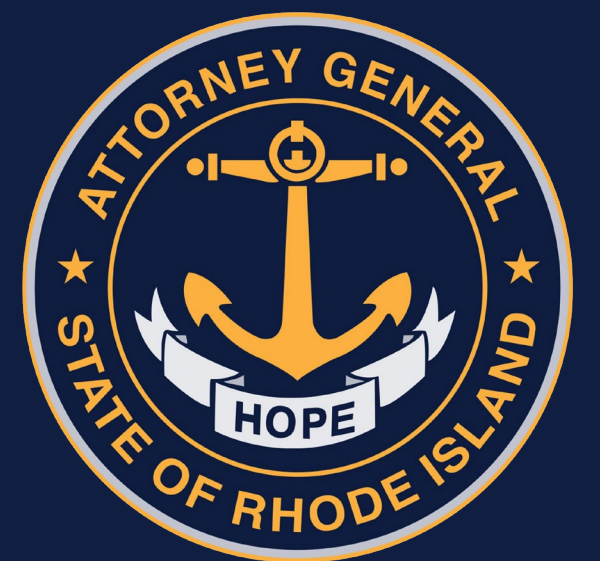
Amending the Agenda

School Committees

Pursuant to a request:

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

R.I. Gen. Laws § 42-46-6(b), (e)



Emergency Meetings

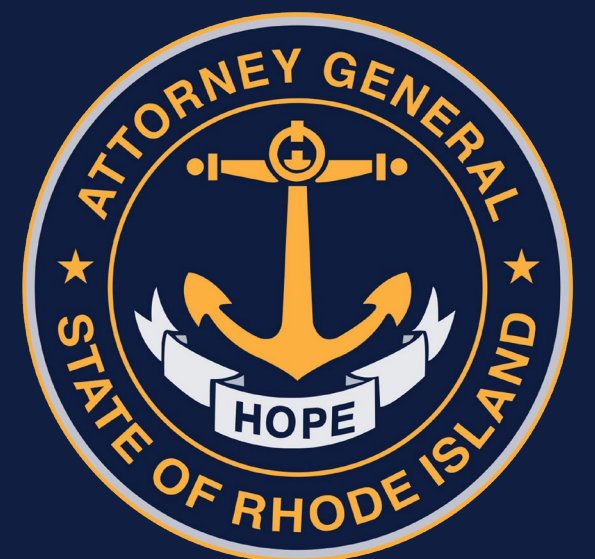
“where the meeting is deemed necessary to address an **unexpected occurrence that requires immediate action to protect the public**”

R.I. Gen. Laws § 42-46-6(c)

- notice and agenda shall be posted **as soon as is practicable** and shall be electronically filed with the secretary of state
- the public body shall state for the record and minutes **why the matter must be addressed** in less than forty-eight (48) hours and **only** discuss the issue or issues which created the need for an emergency meeting.

Dubois v. Woonsocket City Council, OM 23-04;

Jones v. Kingston Hill Academy Board of Trustees, OM 20-26







Public Comment

- “Nothing contained in [the OMA] requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open forum session.”

R.I. Gen. Laws § 42-46-6(d)

- Public participation may be required by other applicable laws or regulations.

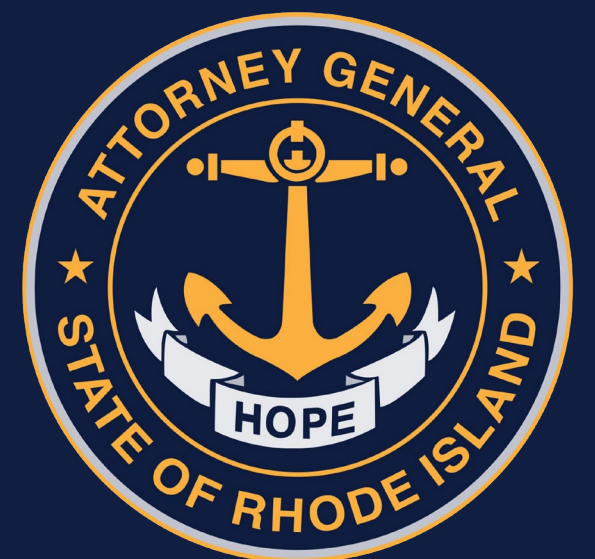


Public Comment

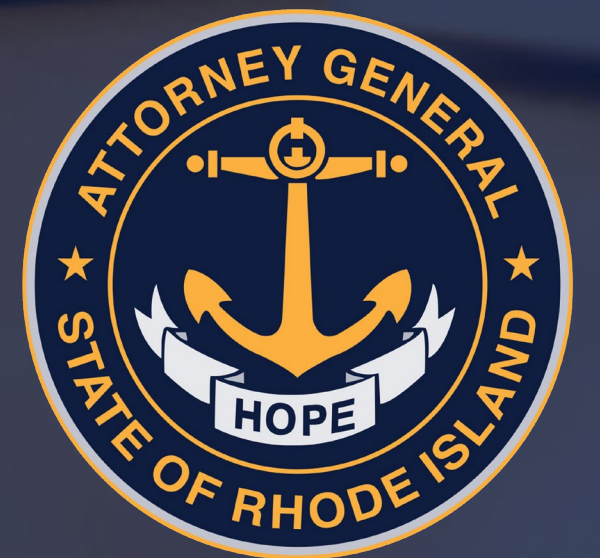
Public body may respond to comments initiated by a member of the public during a properly noticed open forum

R.I. Gen. Laws § 42-46-6(d)

Castelli v. Coventry Town Council, OM 20-32



Meeting Minutes

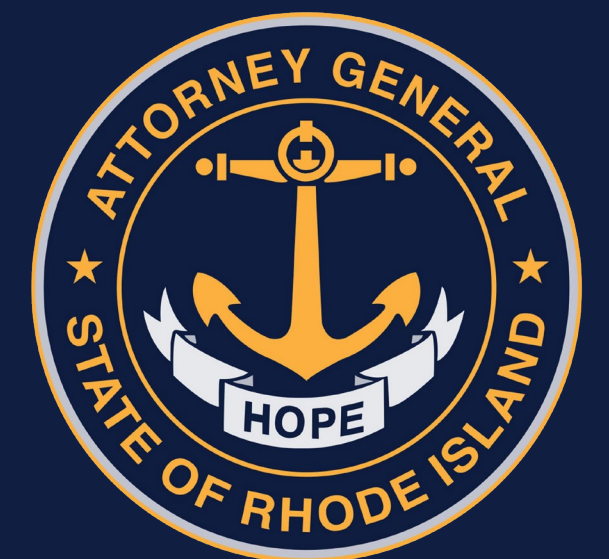


Minutes: Contents

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

R.I. Gen. Laws § 42-46-7(a)

Davis v. Town of Exeter, OM 25-25





Disclosure of Unofficial Minutes

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

*Fire companies see *R.I. Gen. Laws § 42-46-7(b)(2)*.

[Morgan v. Central Coventry Fire District, OM 24-06](#)



Disclosure of Official/Approved Minutes

All public bodies shall keep official and/or approved minutes and file a copy of all open meetings with the Secretary of State within 35 days of a meeting

Exception: Advisory Public Bodies

R.I. Gen. Laws § 42-46-7(d)

Lombardo v. Westerly Conservation Commission, OM 25-03

Town of Narragansett v. State Housing Appeals Board, OM 25-05



Accessibility

All open meetings must be accessible to persons with disabilities

R.I. Gen. Laws § 42-46-13

Governor's Commission on Disabilities v. Board of Elections, OM 20-44



Public's Right to Record

- Not specifically addressed in the OMA.
- Case law and this Office's prior findings have interpreted the OMA to permit audio or videotaping of meetings, subject to reasonable restrictions set forth by the public body.

Brier v. Barrington School Committee and Barrington School Building Committee, OM 25-29;

Belcher v. Mansi, 569 F. Supp. 379, 382-83 (D.R.I. 1983)



Complaints

- The Attorney General investigates alleged violations of the OMA.
- Submit complaints to: opengovernment@riag.ri.gov
- The Attorney General will investigate the complaint and issue a finding.
- If the Attorney General determines that the allegations are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court.
- A complainant may also file a complaint in the Superior Court.

R.I. Gen. Laws 42-46-8(a)



Superior Court Remedies

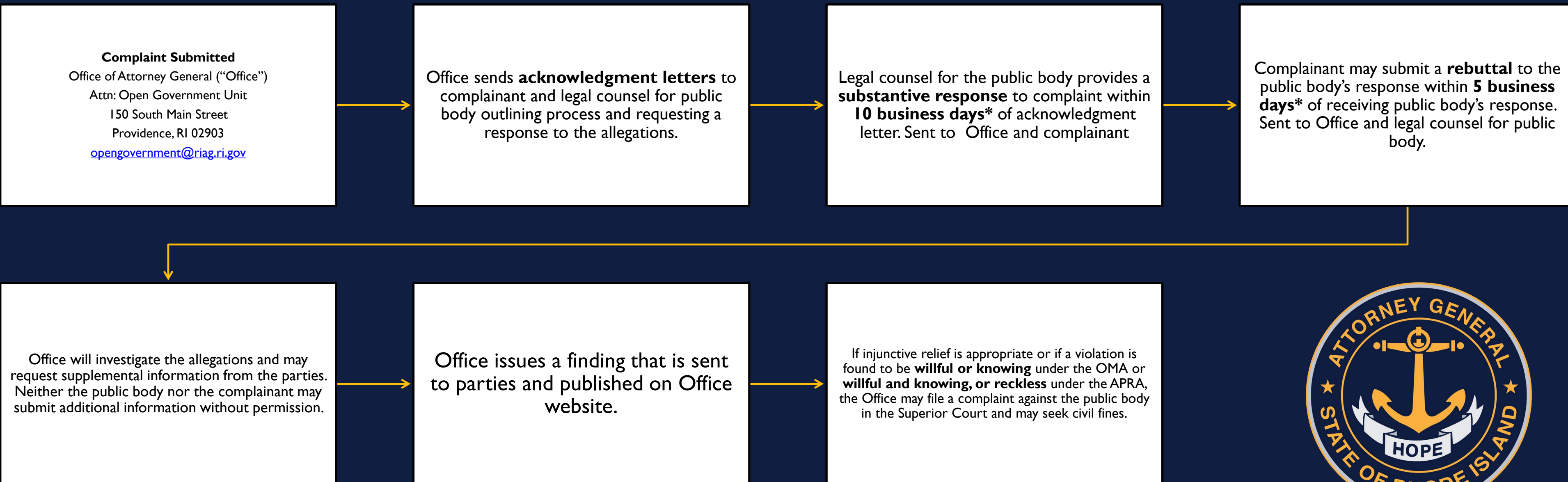
- Injunctive relief and declare actions null and void
- Civil fine up to **\$5,000** for a willful or knowing violation
- Attorney fees and costs, except for the Attorney General

R.I. Gen. Laws § 42-46-8(d)



OMA & APRA Complaint Process

*This process is subject to change at the discretion of the Office and reasonable extensions may be granted.



Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
 - Findings
 - Video presentation of Open Government Summit
 - Open Government Summit Digital Booklet
 - APRA & OMA statutes
- Attorney General's Office
 - 401 274 4400
 - opengovernment@riag.ri.gov
- APRA & OMA Checklists





STATE OF RHODE ISLAND

Attorney General Peter F. Neronha



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Protect Civil Rights

Advocate for Access to
Healthcare

Lead the Way in
Environmental
Enforcement

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Protect Rhode Island
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Stand Up for Rhode Island
Workers

Engage With Rhode Island
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Support Victims of Crime

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Healthcare

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Enforcement

**Promote Open and Transparent
Government**

Protect Rhode Island Consumers

Stand Up for Rhode Island
Workers

Promote Open and Transparent Government

We value transparency in state and local government. When government decisions are debated in public and made open to inspection, the result is a more engaged citizenry that is invested in its community.

We see the public demanding transparency from their government in the record number of open government complaints our Office receives. Our expert attorneys apply the balancing test when conducting APRA and OMA reviews. In addition to asking whether information *could* be withheld, we consider whether it *should* be withheld.

[Visit our Open Government section to file a complaint, search recent open government findings, and find out more.](#)





STATE OF RHODE ISLAND

Attorney General Peter F. Neronha



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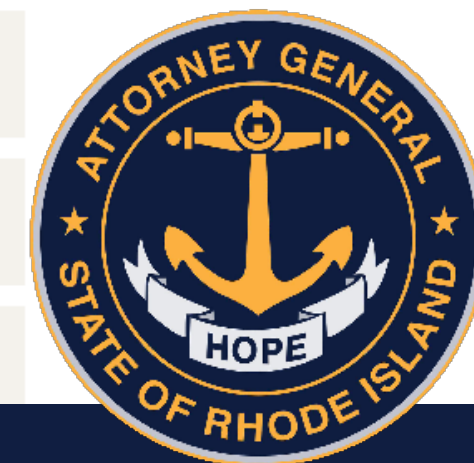
The [Open Meetings Act \(OMA\)](#) and the [Access to Public Records Act \(APRA\)](#) establish important requirements for ensuring that government in Rhode Island is carried out in an open and transparent manner. Our open government team:

- Investigates complaints against public bodies in Rhode Island for alleged violations of these statutes
- Issues findings and files lawsuits to enforce the statutes when appropriate
- Processes APRA requests to this Office for public documents
- Provides training and resources on the requirements of the OMA and the APRA, including at our signature event, the annual Open Government Summit

+ Access and search open government findings

+ Access training resources and APRA certification

+ File a complaint with the RIAG alleging violation of APRA/OMA



Resources

- Attorney General's Website (<http://www.riag.ri.gov/>)
 - Findings
 - Video presentation of Open Government Summit
 - Open Government Summit Digital Booklet
 - OMA Law
- Attorney General's Office
 - 401 274 4400
 - opengovernment@riag.ri.gov
- OMA Checklist

