July 28, 2017

Dear Open Government Summit Attendee:

I would like to thank you for attending the 19th annual Open Government Summit and I would also like to thank Roger Williams University School of Law for hosting such an important event.

Rhode Island’s Open Meetings Act and Access to Public Records Act are critical to ensuring that this State’s government operations remain open and accountable to the public. It has long been this Department’s philosophy that education concerning the Open Meetings Act and the Access to Public Records Act advances the goal that government remains open and accountable to the public.

To this end, the Department of Attorney General is committed to public outreach and education concerning the requirements of the Open Meetings Act and the Access to Public Records Act. Members of the Attorney General’s Office are available to conduct open government trainings and I encourage you to contact the Office to arrange training sessions for a city/town or regional area. Additionally, this Department continues to issue, upon request from legal counsel for public bodies, two types of advisory opinions concerning any pending matter that may implicate either the Open Meetings or Access to Public Records Acts: oral/telephonic advisory opinions, which are not binding upon the Department of Attorney General, and written advisory opinions, which express the opinion of this Department.

I also encourage you to take advantage of the resources available at the Department of Attorney General website, www.riag.ri.gov. Our popular Attorney General’s Guide to Open Government in Rhode Island is located in the “Access to Public Records Act and Open Meetings Act” section and can be printed for distribution. Also, a video copy of this Open Government Summit will be archived on our website for future viewing and I am particularly grateful to ClerkBase for providing this video and live-streaming service to our State.

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

Very truly yours,

Peter F. Kilmartin
Attorney General
## INDEX

### SECTION I
The Access to Public Records Act

<table>
<thead>
<tr>
<th>Findings – (2017)</th>
<th>1-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to Public Records Act Statute</td>
<td>14-25</td>
</tr>
</tbody>
</table>

### SECTION II
The Open Meeting Act

<table>
<thead>
<tr>
<th>Findings – (2017)</th>
<th>26-34</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Meetings Act Statute</td>
<td>35-45</td>
</tr>
</tbody>
</table>

### SECTION III
Procedures & Forms

<table>
<thead>
<tr>
<th>Public Records Request Guidelines</th>
<th>46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Records Request Form</td>
<td>47</td>
</tr>
</tbody>
</table>

| Rules and Regulations Regarding Training Under the Access to Public Records Act | 48-49 |
| Certificate of Compliance | 50 |
| Open Meetings Act & Access to Public Records Act Checklist | 51-56 |
SECTION I

Access to Public Records Act
ACCESS TO PUBLIC RECORDS
ACT FINDINGS – 2017

PR 17-01  **Ryan v. Oakland Mapleville Fire District**
Complainants alleged that the OMFD violated the APRA when it failed to adequately respond to three multi-part APRA requests. The evidence indicated that a number of the APRA requests were not proper requests for documents cognizable under the APRA, but instead interrogatories for which responsive documents had already been provided. See **Block v. Block Island Volunteer Fire Department**, PR 15-45. The evidence also revealed that for each remaining APRA request the OMFD reasonably and adequately searched for responsive documents and either produced numerous responsive documents or credibly stated, after a reasonable search, that they did not have or maintain responsive documents. See R.I. Gen. Laws §§ 38-2-3(a), (h). We found no evidence that the OMFD improperly withheld any responsive documents. Accordingly, we found no violations. **Issued January 13, 2017.**

PR 17-02  **Grasso v. Town of Charlestown**
The Complainant alleged that the Town violated the APRA when it failed to fully respond to his APRA request by disclosing a document containing pagination irregularities that suggested pages were missing. We found no evidence that would lead us to conclude that additional portions of the requested document existed. We emphasized that the Town produced the document in the exact manner and format in which it was maintained. Accordingly, we found no violation. **Issued February 07, 2017.**

PR 17-03  **Harris v. City of Providence**
The Complainant alleged the City violated the APRA when it produced some documents in response to her APRA request, yet provided additional documents in response to a request filed by another individual that the Complainant claimed was responsive to her APRA request. The Complainant’s APRA request sought: “[a]ll logs maintained by the Providence Police Department of all calls received **” Upon review of the other individual’s request, his request specifically sought “all incident reports and/or calls for service for the entity known as **” Having compared the two requests, we found that they were not similar and sought different documents. There was no violation of the APRA. **Issued February 6, 2017.**
PR 17-04  
**Clark v. Glocester Police Department**
Complainant alleged that the GPD violated the APRA with respect to two separate APRA requests when: (1) it twice failed to specify the reasons for the denial; (2) it twice failed to indicate in writing that no reasonably segregable portion was releasable; (3) it once failed to indicate the procedures for appealing the denial; and (4) it twice withheld documents based on the purpose for which the records were sought. The evidence revealed that both APRA responses cited a specific APRA exemption and thus we concluded that the GPD did specify the reasons for the denial. However, we also found that the GPD twice failed to indicate in writing that no reasonably segregable portion of the requested document was releasable and additionally once failed to indicate the procedures for appealing the denial. We found no evidence that the documents were withheld based on the purpose for which they were sought. VIOLATION FOUND. *Issued February 24, 2017.*

PR 17-05  
**Piskunov v. Town of Narragansett**
The Complainant alleged that the Town violated the APRA when it withheld the requested last ten internal affairs reports completed by the Town Police Department. Consistent with *Direct Action for Rights and Equality v. Gannon (DARE)*, 713 A.2d 218 (R.I. 1998), citizen-initiated complaints were more likely to further the public interest than other kinds of internal affairs reports. Here, the evidence indicated that of the last ten internal affairs reports completed, only three were citizen-initiated complaints and two of those complaints were either withdrawn or not pursued by the complainant. The evidence also revealed that the Complainant failed to articulate any public interest. Accordingly, based upon the undisputed evidence presented, we failed to find any evidence that the balancing scale tipped in favor of public disclosure and, as a result, found no violation. *Issued February 22, 2017.*

PR 17-06  
**Piskunov v. Town of Burrillville**
The Complainant alleged that the Town violated the APRA when it withheld requested documents and when it failed to indicate the procedures for appealing the denial. The evidence revealed that the Town released the requested documents during the pendency of this matter. We found no evidence of a willful and knowing, or reckless, violation, however, we concluded that the Town violated the APRA by failing to indicate the procedures for appealing the denial. VIOLATION FOUND. *Issued February 22, 2017.*
PR 17-07  **Harris v. City of Providence**
Complainant alleged that the City violated the APRA when it: (1) redacted handwritten notes on released documents; (2) failed to produce a City’s employee’s calendar; (3) failed to produce certain payroll documents for a particular City employee; and (4) charged an allegedly excessive fee for search, review, and redaction of the produced documents based on the short elapsed time between pre-payment and production. Based on our in camera review, we found that the redacted handwritten notes were not responsive to the Complainant’s APRA request and thus the redaction did not violate the APRA. Additionally, based on the City’s uncontroverted affidavits, we found no evidence that the calendar document existed. With respect to the requested payroll documents, we found that the City’s search was reasonably calculated to discover all responsive documents. Finally, we found that undisputed evidence demonstrated that the City’s charge for search, review, and redaction corresponded to work done before the estimate was sent to the Complainant. Accordingly, we found no violation.  *Issued February 24, 2017.*

PR 17-08  **J. Brian Day v. City of Pawtucket**
The Pawtucket Police Department did not violate the APRA when it denied a request for the residential address of a person involved in a motor-vehicle accident. The information requested was available through non-APRA avenues, and if a public record under the APRA in this circumstance, the residential address must be a public record under the APRA in all circumstances. No recognized public interest was asserted for disclosure.  *Issued February 27, 2017.*

PR 17-09  **Thomson v. Town of Johnston**
Complainant alleged that the Town violated the APRA when it produced only the face sheet and not the narratives of the requested internal affairs reports. Based on our prior finding in WPRI v. Woonsocket Police Department, PR 12-17, we found that the request for “the last 10 Internal Affairs reports” should be interpreted to include both the face sheet and their accompanying narratives. Accordingly, we found that the Town violated the APRA when it did not consider the narratives to be responsive to the APRA request. However, because it was unclear if the Complainant still sought the internal affairs reports, and because the content of the internal affairs reports was not the subject of our review, we left the subsequent determination of whether and in what manner the responsive narrative reports must be disclosed to be made by the Town consistent with the APRA and our finding in Piskunov v. Town of Narragansett, PR 17-05.  *VIOLATION FOUND. Issued March 09, 2017.*
PR 17-10  **Farinelli v. City of Pawtucket**  
The Complainant alleged that the City violated the APRA when it failed to produce certain documents responsive to her request. Specifically, the APRA request sought the last twelve internal affairs reports and, although the City provided twelve internal affairs reports, the Complainant alleged that other, more recent, internal affairs reports should have been included. The evidence revealed that the Complainant was already in possession of the sought documents and, in some instances, that the sought documents were not responsive to her APRA request. We found no evidence of a willful and knowing, or reckless, violation.  
Issued March 09, 2017.

PR 17-11  **Moses Afonso Ryan, Ltd. v. City of East Providence**  
The City of East Providence denied the Complainant’s APRA request basing its denial on its conclusion that “the documents you requested were from a meeting of individuals which does not constitute an agency or public body as defined by R.I.G.L. §38-2-2.” This denial has absolutely no basis in law and other than the conclusory sentence, the City makes no effort in its denial or in its response to this Department to explain the legal basis for this denial. As such, this Department directed that the City respond to the APRA request in a manner consistent with the APRA and this finding, and that the City provide a supplemental response to this Department addressing why the violation that we have found should not be considered a “knowing and willful” or “reckless” violation, subjecting the City to monetary penalties.  
VIOLATION FOUND.  
Issued April 12, 2017.

PR 17-11B  **Moses Afonso Ryan, Ltd. v. City of East Providence**  
In Moses Afonso Ryan, Ltd v. City of East Providence, we reviewed the Complainant’s Access to Public Records Act (“APRA”) complaint against the City of East Providence (“City”) and concluded that the City violated the APRA when it improperly denied the Complainant’s APRA request.  
See R.I. Gen. Laws § 38-2-7. The City was allowed to provide an explanation as to why the violation should not be considered knowing and willful, or reckless.  
See R.I. Gen. Laws § 38-2-9(d). After reviewing the City’s supplemental response and the evidence presented, it appeared that the City’s decision to deny access was the result of comingling the APRA and the Open Meetings Act, which led to the City’s conclusion that the APRA request was not made to a public body. While we rejected this reasoning, we are satisfied that the violation was not willful and knowing, or reckless.  
Issued, June 22, 2017.
PR 17-12  **Pierson v. Coventry Board of Canvassers**  
The Board of Canvassers violated the APRA when it failed to respond to an APRA request within ten (10) business days. This Department rejected the Board of Canvassers chief argument that the APRA request sought answers to questions or interrogatories, and therefore, fell outside the APRA. The Board of Canvassers was directed to respond to the APRA request. VIOLATION FOUND.  
Issued April 14, 2017.

PR 17-13  **Piskunov v. Town of Glocester**  
The Complainant alleged that the Town violated the APRA when it withheld requested documents. During the pendency of this matter, the Town offered to produce the requested documents but conditioned access upon pre-payment. Rhode Island General Laws § 38-2-7(b) provides, in relevant part, that “[a]ll copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner.” Since the Town no longer challenges the denial, and because the Town did not produce the requested records in a timely manner, we found that the Town violated R.I. Gen. Laws § 38-2-7(b). Consistent with this finding and with the APRA, this Department directed the Town to produce the requested documents within ten (10) business days of this finding. VIOLATION FOUND.  
Issued April 13, 2017.

PR 17-14  **Hicks v. Rhode Island Commission on the Deaf and Hard of Hearing**  
Complainant alleged that the RICDHH violated the APRA when it failed to respond to two oral and one written request for documents. Complainant also alleged that the RICDHH failed to maintain written APRA procedures. The undisputed evidence indicated that although the two oral requests were arguably not proper requests pursuant to the APRA, the RICDHH did not have any formal APRA procedures and we therefore treated the oral requests as APRA requests. We also found that the written request was clearly an APRA request as it was labeled as such. The RICDHH’s failure to respond to any of these requests violated the APRA. We also found that the RICDHH’s failure to maintain written APRA procedures violated the APRA. As such, this Department directed the RICDHH to provide a supplemental response addressing why the violations we found should not be considered “knowing and willful” or “reckless” violations. VIOLATION FOUND.  
Issued April 17, 2017.
Oliver v. Rhode Island Commission on the Deaf and Hard of Hearing
The Complainant alleged that the RICDHH violated the APRA when it failed to respond to her email asking for documents. Although we expressed doubts that the email was a cognizable request for documents pursuant to the APRA, the evidence indicated that the RICDHH did not have an APRA policy and, accordingly, we treated Complainant’s email as an APRA request. Because the RICDHH did not respond in any capacity to this email we found that the RICDHH violated the APRA, but did not find a willful and knowing, or reckless, violation. VIOLATION FOUND. Issued April 17, 2017.

Harris v. City of Providence
The City did not violate the APRA when it exempted from public disclosure a videotape played at a public meeting depicting an assault on a private individual. The Complainant presented no evidence or argument that the public interest would be advanced through disclosure and R.I. Gen. Laws 38-2-2(4)(K)’s mandate that documents submitted at a public meeting are public records and must be disclosed applies only to the categories of documents set forth in R.I. Gen. Laws 38-2-2(4)(K). Issued April 18, 2017.

Harris v. City of Providence
The Complainant alleged the City violated the APRA when it withheld unfiled deposition transcripts. The City claimed it purchased the transcripts from a third party court reporter and, as such, considered them to be ‘trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.’ See R.I. Gen. Laws § 38-2-2(4)(B).” We concluded that unfiled deposition transcripts in a civil case are not public records under the APRA based on Federal Rule of Civil Procedure 30(f)(3), (4) and R.I. Superior Court Rule of Civil Procedure 30(f)(2), which govern depositions in civil cases, and on the ruling in Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992), which was approved in The Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I. 2011). Issued April 18, 2017.
PR 17-18 Karlsson v. Rhode Island Department of Education
The Rhode Island Department of Education (“RIDE”) did not violate the APRA since the evidence established that RIDE did not receive the Complainant’s APRA request. While it was unclear why RIDE did not receive the Complainant’s APRA request, the Complainant did not provide any rebuttal to contradict RIDE’s assertion. Moreover, RIDE’s response once becoming aware of the APRA request – to respond within one day – supported RIDE’s position that it was unaware of the Complainant’s APRA request prior to this Department’s inquiry. Based upon the evidence presented, we could not conclude RIDE violated the APRA. Issued April 26, 2017.

PR 17-19 Farinelli v. City of Pawtucket
The City of Pawtucket did not violate the APRA when it sought (and received) clarification concerning one of four categories in an APRA request. Moreover, a City employee’s response to a follow-up inquiry did not constitute a denial on behalf of the City where the City employee did not have “the authority to grant or deny persons or entities access to records.” R.I. Gen. Laws § 38-2-3.2. Issued April 28, 2017.

PR 17-20 Farinelli v. City of Pawtucket
The City of Pawtucket did not violate the APRA when it withheld the audio recordings of two telephone calls placed to the Police Department by the complainant wherein the complainant accused a specific and identifiable person of committing a crime. Applying the balancing test, the identifiable individual maintained significant privacy interests and no cognizable public interest was identified that would be advanced through disclosure. Issued April 28, 2017.

PR 17-21 Farinelli v. City of Pawtucket
The City did not violate the APRA when it withheld disclosure of the “original” police narratives pertaining to a specific and identifiable death determined to be a suicide. While the City had disclosed the modified or updated narrative approximately two years ago, “the fact that ‘an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information.’” United States Department of Justice v. Reporters Committee, 489 U.S. 749, 770 (1989). Even assuming that the disclosure would advance some “public interest,” the complaint and rebuttal were replete with evidence that disclosure would invade significant privacy interest. Moreover, because the document concerned a specific and identifiable person/incident, it was not susceptible to redaction. Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 559 (R.I. 1989). Issued April 28, 2017.
PR 17-22  **Farinelli v. City of Pawtucket**

The Complainant challenges the City response that responsive e-mails were “overly redacted” and/or not provided. Of the 68 e-mails that were provided in a redacted manner, 63 of these e-mails were in the Complainant’s possession prior to making the instant APRA request. Accordingly, it was unnecessary for us to determine whether the City violate the APRA when it provided redacted e-mails. See Farinelli v. City of Pawtucket, PR 16-27. Having reviewed the remaining e-mails in camera, we determined that these e-mails were exempt under the APRA and/or otherwise within the Complainant’s possession prior to making the instant APRA request. Issued April 28, 2017.

PR 17-23  **Sharp v. Department of Corrections**

The Complainant alleged that the DOC violated the APRA when it did not provide him access to documents responsive to his request for records on the escape of John Gary Robichaud from the ACI. This escape occurred in the early 1970s. Based on our review of the produced documents and the evidence presented, we failed to find any evidence that would lead us to conclude that additional portions of the requested documents exist within the DOC that are being withheld, or that the DOC search was in anyway inadequate. The Complainant did not present, nor did we find, any evidence to establish that the DOC had additional documents that were responsive to the APRA request that it refused to provide. It was significant that the documents sought were from the early 1970s. Accordingly, based upon our review of the record, we found no violation. Issued May 10, 2017.

PR 17-24  **Greenbaum v. Providence Police Department**

The denial of internal affairs reports relating to a particular incident did not violate the APRA. The Complainant provided no public interest and the privacy interests of the affected individuals outweighed this non-asserted interest. Issued May 10, 2017.

PR 17-25  **Greenbaum v. City of Providence**

The City of Providence violated the APRA when its extension provided nearly verbatim the language set forth in R.I. Gen. Laws § 38-2-3(e) and was not “particularized to the specific request made.” The Complainant took no issue with the fact that the City had “good cause” to assert an extension. Because injunctive relief was inappropriate and because there was no evidence of a willful and knowing, or reckless, violation, this Department took no further action. VIOLATION FOUND. Issued May 10, 2017.
**PR 17-26**  
*Nye v. State of Rhode Island*

The Complainant alleged a violation based on the failure to timely respond within ten (10) business days, however, after review, this allegation was determined to be unfounded and a timely response was provided. Moreover, the Complainant alleged that other aspects of the public body’s response violated the APRA. We determined that the estimated search and retrieval cost was reasonable and accurately communicated, and that the Complainant’s remaining allegations did not violate the APRA. *Issued May 11, 2017.*

**PR 17-27**  
*Koutsogiane v. Cumberland Fire District*

The Complainant made an APRA request seeking copies of expenses/costs for medical and dental insurance for all personnel for the months of June, July and August 2016. Based upon the evidence presented, the Fire District responded with records, but for the months of May, June and July, instead of June, July and August. The Fire District provided the Complainant with copies of the August records after he filed a complaint with this Department. This Department has previously determined it is unnecessary for us to consider whether a public body violated the APRA – and therefore seek injunctive relief – where a complainant receives the subject documents after filing an APRA complaint. *See Farinelli v. City of Pawtucket, PR 16-27.* Rather, we limit our inquiry to whether the public body willfully and knowingly, or recklessly, violated the APRA. We found no such evidence in the instant case. *Issued May 11, 2017.*

**PR 17-28**  
*Harris v. City of Providence*

The Complainant alleged the City violated the APRA when it improperly withheld records responsive to her APRA request. The Complainant’s APRA request sought administrative and court pleadings and all settlement agreements from January 1, 2010 in which a particular person was the attorney of record. The City timely responded and produced a number of documents. In support of the APRA complaint that the City did not produce all responsive documents, the Complainant submitted copies of documents from three (3) cases where the City was a named defendant. Our review of the docket sheets in those three (3) cases, however, revealed that the particular person at the subject of the APRA request was not listed as the attorney of record in any those cases. This Department has previously held that the failure of a public body to produce records that do not exist or that are not responsive to an APRA request does not violate the APRA. *See e.g., Harris v. City of Providence, PR 16-37; see also R.I. Gen. Laws §§ 38-2-3(a), (h). Accordingly, we found no violation. Issued May 11, 2017.*
DeWolf v. Town of Coventry
The Town of Coventry did not violate the APRA when the evidence revealed that although the Complainant did not comply with the Town’s APRA procedures, the Town responded in a timely manner. The Complainant’s rebuttal did not challenge that her APRA request was not made consistent with the Town’s promulgated APRA procedure, and she admitted that she “did not notice [the Town’s public records request form] when [she] wrote [her] request.” Accordingly, since the APRA request was not made in a manner consistent with the applicable APRA procedures, we find that the Town did not violate the APRA. See Rosenfield v. North Kingstown School Department, PR 14-02 (“This Department has previously determined that an APRA request must first comport with a public body’s APRA policy before we can decide whether a violation has occurred, and we see no reason to depart from the plain language of the APRA and our findings.”). Issued May 12, 2017.

TJ v. City of Providence
The Complainant filed two (2) APRA requests with the City on the same date. With respect to the City’s response to one of the APRA requests, the evidence revealed that the City timely responded indicating that it did not maintain the document responsive to that request. We failed to find any evidence that would lead us to conclude that the requested document was maintained by the City, or that the City’s search was in any way inadequate. We found no violation with respect to that allegation. With respect to the other APRA request, we found that the City violated the APRA when its extension provided nearly verbatim the language set forth in R.I. Gen. Laws § 38-2-3(e) and was not “particularized to the specific request made.” Because injunctive relief was inappropriate and because there was no evidence of a willful and knowing, or reckless, violation, this Department took no further action. VIOLATION FOUND. Issued May 17, 2017.

Levitt v. Department of Corrections
There was no evidence that the DOC unreasonably conducted its search and retrieval, which consisted of two hours, the first hour being free. Because the Complainant did not tender pre-payment, as a matter of law, the DOC could not have denied access. R.I. Gen. Laws § 38-2-7(b). The DOC did deny the Complainant access to what it interpreted as a request for identifiable attendance records, but such records are exempt from disclosure under the APRA. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b); Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998). Issued June 14, 2017.
PR 17-32  Crenshaw v. Community College of Rhode Island
Complainant alleged that the CCRI violated the APRA when it failed to produce documents responsive to his request. We have previously stated that the APRA governs the public’s right to access public documents, but does not mandate or require that public bodies answer questions. See Gagnon v. City of East Providence, PR 12-23; see also Setera v. City of Providence, PR 95-20. The instant request asked an interrogatory that sought to elicit a narrative answer. Also, the request was not made pursuant to the CCRI’s APRA policy and procedures. For these reasons, we found that the request was not a cognizable request under the APRA and, accordingly, found no violation. Issued June 16, 2017.

PR 17-33  Greenbaum v. City of Providence
It was undisputed that we had previously investigated, addressed, and resolved Complainant’s prior allegations regarding his January 15, 2016 APRA request in Greenbaum v. Providence Police Department, PR 17-24. Complainant now sought to raise a new allegation of violation regarding the same APRA request, which he failed to previously raise. We noted that the piecemeal filing of separate complaints relating to the same APRA request is discouraged. See Clark v. West Glocester Fire District, PR 14-29, n.1; see also Clark v. West Glocester Fire District, OM 16-14, PR 16-51. While we did note the possibility that, in some limited situations where a complainant has articulated a sufficient reason for doing so, a complainant may file multiple complaints regarding the same APRA request, we found that here the Complainant failed to articulate any reason for splitting his claim. Accordingly, we declined to further review the matter. Issued June 19, 2017.

PR 17-34  Novak v. Western Coventry Fire District
The Complainant alleged the Fire District untimely filed some of its official and unofficial minutes on the Secretary of State’s website. The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, this Department found that the Complainant was not an “aggrieved” party and therefore had no standing to bring his complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20; Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12. As such, we found no OMA violation. Since the Complainant was in possession of the requested documents, we need only examine whether the alleged failure to provide such documents represented a willful and knowing, or reckless violation. We responded in the negative. VIOLATION FOUND. Issued July 12, 2017.
**Paiva v. Town of Cumberland**
The Complainant alleged the Town of Cumberland (“Town”) violated the APRA when it improperly redacted and denied his APRA request seeking records concerning the death of a third party. In In re: Cumberland Police Department, ADV PR 03-02, this Department concluded that “when a law enforcement agency investigates a complaint and determines that an arrest is not warranted, there exists a strong presumption that records arising out of that investigation fail to meet the threshold requirement established by R.I. Gen. Laws § 38-2-2(4)(i)(D)(c).” Whatever public interest exists in disclosure – and based on these facts and our review of the documents we doubt it is much – the privacy interest outweighs the public interest. We found no violation. *Issued June 23, 2017.*

**DiGregorio v. Town of North Kingstown**
Complainant alleged that the Town violated the APRA when it failed to produce certain documents responsive to his request and failed to explain the denial. This Department has held on numerous occasions that the failure of a public body to produce records that do not exist does not violate the APRA. See Murphy v. City of Providence, PR 15-07. Since no evidence existed that additional documents responsive to Complainant’s request other than the document already provided existed at the time of the request, we found no violation. We also found that by indicating that the only document responsive to Complainant’s request was the provided document, the Town complied with the APRA. See R.I. Gen. Laws § 38-2-7; see also Smith v. Warwick Public School Department, PR 15-13. For these reasons, we found no violation. *Issued July 10, 2017.*
Complainant alleged that the DOA and the OHHS violated the APRA when they failed to timely respond to or specifically deny her requests/correspondences. After reviewing the voluminous evidence in this matter, we found that the allegations concerned three interrelated but legally distinct correspondences. Because we found that none of these correspondences were addressed to the DOA, we found no violation with respect to DOA. With respect to the OHHS, we found that the first correspondence was treated as an APRA request and was tolled by a request for prepayment pursuant to R.I. Gen. Laws § 38-2-7(b). It was undisputed that the Complainant did not tender the prepayment. With respect to the Complainant’s second correspondence, we found that the nature of the request – made during roughly ninety seconds of a free-flowing hour-long conversation – was not susceptible to determination by this Department. Since we could not discern the nature of the second request, we could not find that OHHS’s response violated the APRA. With respect to the Complainant’s third correspondence, assuming that it was an APRA request, we noted that the Complainant filed her Complaint prior to the expiration of the OHHS’ time to respond. We accordingly found that Complainant’s allegations of violation were not ripe. Therefore, we found no violations. We were also advised – and the Complainant did not contest this representation – that subsequent to the filing of this complaint, the OHHS has provided all requested responsive documents. *Issued July 12, 2017.*
CHAPTER 2
ACCESS TO PUBLIC RECORDS

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

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

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

(2) “Chief administrative officer” means the highest authority of the public body.

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

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

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

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

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.
(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

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

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

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

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

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

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.
(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical or scholarly issues, whether in electronic or other format; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

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

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

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

(O) All tax returns.

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

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

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

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

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.
(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

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

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

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

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

(Z) Any Individually identifiable evaluations of public school teachers made pursuant to state or federal law or regulation.

(AA) All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

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

(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.
(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

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

(d) Each public body shall establish written procedures regarding access to public records but shall not require written requests for public information available pursuant to R.I.G.L. section 42-35-2 or for other documents prepared for or readily available to the public. These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body's website if such a website is maintained and be made otherwise readily available to the public. The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to subsection (e). A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records.

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

(f) If a public record is in active use or in storage and, therefore, not available at the time a person or entity requests access, the custodian shall so inform the person or entity and make an appointment for the person or entity to examine such records as expeditiously as they may be made available.
(g) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. Any public body which maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, as requested.

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

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

(j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.

(k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity’s choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

38-2-3.1. **Records required.**— All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a “real-time translation reporter.”
38-2-3.2. **Arrest logs.**

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

1. Full name of the arrested adult;
2. Home address of the arrested adult, unless doing so would identify a crime victim;
3. Year of birth of the arrested adult;
4. Charge or charges;
5. Date of the arrest;
6. Time of the arrest;
7. Gender of the arrested adult;
8. Race of the arrested adult; and
9. Name of the arresting officer unless doing so would identify an undercover officer.

(b) The provisions of this section shall apply to arrests made within five (5) days prior to the request.

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

38-2-4. **Cost.**

(a) Subject to the provisions of section 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents ($0.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records or retrieving records from storage where the public body is assessed a retrieval fee.
(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.

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

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

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

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

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

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

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.
38-2-7. Denial of access.

(a) Any denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended in accordance with the provisions of subsection 38-2-3(e) of this chapter. All copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under section 38-2-4.

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


(a) Any person or entity denied the right to inspect a 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. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.
(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

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


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

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

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

(d) The court shall impose a civil fine not exceeding two thousand dollars ($2,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars ($1,000) against a public body found to have recklessly violated this chapter and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff’s case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff’s favor shall not be a prerequisite to obtaining an award of attorneys’ fees and/or costs if the court determines that the defendant’s case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

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

38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.
38-2-12. **Severability.** — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

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

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

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

Open Meetings Act
OPEN MEETINGS
ACT FINDINGS – 2017

OM 17-01  Novak v. Coventry Charter Review Commission
The OMA requires that the “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.” See R.I. Gen. Laws § 42-46-7(b)(1). The Coventry Charter Review Committee (“CCRC”) violated the OMA when the October 27, 2015 meeting minutes were not made available to the Complainant when he visited the Coventry Town Hall on January 8, 2016. We concluded that the Complainant did not demonstrate that he was aggrieved as a result of his allegation concerning improper notice for the January 7, 2016 meeting as the evidence revealed he attended the meeting at issue. See R.I. Gen. Laws § 42-46-8(a). VIOLATION FOUND. Issued February 21, 2017.

OM 17-02  Novak v. Western Coventry Fire District
The Fire District violated the OMA when it untimely filed a number of its unofficial and official and/or approved minutes on the Secretary of State’s website for a number of its Board of Directors and Standard Administrative Procedures meetings. See R.I. Gen. Laws § 42-46-7(b)(2) and (d). While its failure to do so violated the OMA, we did not find a willful or knowing violation, considering the totality of the circumstances. One of the considerations was that, unlike other public bodies who may extend the time to file their unofficial minutes, a fire district may not extend the timeframe for filing its unofficial minutes. See R.I. Gen. Laws § 42-46-7(b)(2). VIOLATION FOUND. Issued February 21, 2017.

OM 17-03  Miller, et al. v. Chariho School Committee
Nine complainants filed a thirty-seven page complaint alleging numerous OMA violations committed by the School District. After reviewing all the evidence submitted, the sole violation we found was that the School District took a vote in executive session to amend the executive session minutes of a prior meeting and the vote recorded in the executive session minutes (on the motion to amend) was different than the vote recorded in the open session minutes. If possible, the School District was advised to amend its minutes to reconcile this discrepancy. VIOLATION FOUND. Issued March 2, 2017.
OM 17-04  **Bruckner v. Lincoln School Committee**
The Complainant alleged that the School Committee violated the OMA by improperly sharing her correspondence during executive session. The Complainant was unable to attend the meeting in question for unrelated reasons. The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002) (Noting that the burden of demonstrating such a grievance is upon the party who seeks to establish standing to object). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant did not demonstrate that she was “in some way disadvantaged or aggrieved” by the executive session discussion, and, as such, had no standing to object. Accordingly, we found no violation. *Issued March 14, 2017.*

OM 17-05  **Stranahan v. West Warwick Board of Canvassers**
The Complainant alleged that the BOC violated the OMA when it failed to notice a second BOC meeting on July 20, 2016 and when it posted an insufficient agenda item for the BOC’s meeting on August 9, 2016. The Complainant attended both meetings in question. The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant did not demonstrate that he was “in some way disadvantaged or aggrieved” by the alleged violations. Indeed, this Department’s review of the audio recording of the August 9, 2016 meeting indicated nothing that could be fairly construed to show that the Complainant was unprepared for or unable to respond to the agenda items discussed. As such, the Complainant had no standing to object. Accordingly, we found no violation. *Issued April 3, 2017.*
OM 17-06  **Appolonia v. West Warwick Board of Canvassers**  
The Complainant alleged that the BOC violated the OMA when it discussed and voted on a matter that was not specifically listed on the meeting’s agenda. Specifically, we examined whether the BOC’s denial of a motion for issuance of a subpoena was adequately noticed by the meeting’s agenda item “STRANAHAN VS. PADULA HEARING-STATUS.” Based on the Rhode Island Supreme Court’s decisions in Tanner v. Town of East Greenwich, 880 A.2d 784 (R.I. 2005), Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013), and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al., 151 A.3d 301 (R.I. 2016), we found that the agenda item here did not sufficiently specify the nature of the business to be discussed and therefore violated the OMA. We further noted that the BOC’s quasi-judicial status did not exempt it from the OMA’s requirements and that the BOC’s request for flexibility in conducting meetings is already provided for by the OMA. **VIOLATION FOUND.**  

Issued April 3, 2017.

The Town Council did not violate the OMA as there was no evidence that a quorum of its members discussed outside the public purview (on June 7, 2016) the disclosure of a press release and/or a Resolution. Rather, the undisputed evidence revealed that the Town Clerk/Town Manager authorized the release of the press release. There was also no evidence that the Town Council discussed the Resolution prior to its June 8, 2016 meeting outside the public purview in violation of the OMA, and in fact, the evidence revealed that this matter was noticed on a prior Town Council agenda. Lastly, the Town Council provided adequate and sufficient public notice for its June 8, 2016 agenda. **Issued April 3, 2017.**

OM 17-08  **Esposito, et al v. Scituate School Committee and Superintendent Search Subcommittee**  
Complainants alleged numerous OMA violations. With respect to the sufficiency of an agenda item for the School Committee’s meeting, Complainants attended the meeting in question and had the opportunity to voice their concerns on this issue and, accordingly, we found that Complainants were not aggrieved and thus had no standing to object to the agenda. See R.I. Gen. Laws § 42-46-8(a). With respect to the allegations regarding failure to post written notice and meeting minutes for the Search Subcommittee’s meeting, we examined whether the Search Subcommittee was a “public body” under the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli
v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the Search Subcommittee’s scope of delegated authority. The evidence demonstrated, inter alia, that the Search Subcommittee screened all the applicants for the superintendent position, interviewed candidates, and eliminated from consideration various applicants, ultimately advancing only one candidate to the School Committee. Accordingly, the Search Subcommittee took action, an exercise of authority which is markedly distinguishable from the “informal, strictly advisory” role the entity had taken in Pontarelli, 151 A.3d at 308. As such, we found that the Search Subcommittee is a “public body” subject to the OMA's requirements and, consequently, we found that the Search Subcommittee violated the OMA when it failed to post written notice and meeting minutes for its meeting. See R.I. Gen. Laws §§ 42-46-6(b), 42-46-7(a). However, we found injunctive relief inappropriate and did not find any evidence of a willful and knowing violation. VIOLATION FOUND. Issued April 11, 2017.

OM 17-09  
**Pierson v. Coventry Board of Canvassers and Registration**

Complainant alleged that the BOC violated the OMA when it failed to timely post its agenda for its September 15, 2016 meeting. While the Complainant attended the meeting, the evidence indicated that the late notice left the Complainant little time to arrange his schedule and that he missed a good portion of the meeting’s substance. Accordingly, we found that the Complainant was aggrieved. See R.I. Gen. Laws § 42-46-8(a). Turning to the merits, we found that the drawing of names to determine the ballot order was an “action” over which the BOC has “supervision, control, jurisdiction, or advisory power[,]” and accordingly that a BOC “meeting” was convened on September 15, 2016. See R.I. Gen. Laws § 42-46-2(1). Although we found that the BOC violated the OMA, we noted that the BOC’s attempts to rectify its violation by giving notice in writing to each of the candidates who might have been affected by the meeting, including the Complainant, mitigated against a finding that the BOC willfully or knowing violated the OMA. VIOLATION FOUND. Issued April 14, 2017.

OM 17-10  
**Nye v. State of Rhode Island**

The Complainant alleged that various meetings were not posted on the Secretary of State’s website, but the Complainant readily acknowledged he had no intention of attending all meetings except for a May 3, 2016 meeting. With respect to the May 3, 2016 meeting, the Complainant read a newspaper article on either the day of the meeting or the day before the meeting indicating that a meeting would be held. For these reasons, we determined that the Complainant was not aggrieved and therefore found no violation. See Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002). Issued April 14, 2017.
OM 17-11  **Dion v. Central Coventry Fire District**
The Central Coventry Fire District ("Fire District") violated the OMA when it untimely filed three (3) of its meetings minutes on the Secretary of State’s website. See R.I. Gen. Laws § 42-46-7(b)(2). With respect to the Complainant’s allegation that the minutes for two (2) of its meetings did not reflect the votes of the members of the Fire District, we found no violation. Our review of the evidence presented revealed no meetings were held on those two (2) dates. VIOLATION FOUND. *Issued April 25, 2017.*

OM 17-12  **Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing**
The Complainant alleged that the RICDHH violated the OMA when it failed to timely post meeting minutes on the Secretary of State’s website for nine meetings. The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant provided no indication that he was aggrieved during the time period when the meeting minutes should have been posted but were not. As such, the Complainant had no standing to object. Accordingly, we found no violation. *Issued April 27, 2017.*

OM 17-13  **Farley v. Newport Housing Authority and Newport Development Corporation**
The Complainant alleged the Newport Housing Authority and the Newport Development Corporation ("Authority and Corporation") violated the OMA when it did not post notice for its July 14, 2016 meeting. We found no violation since the Complainant did not provide any evidence that a meeting in fact occurred on that date nor did the Complainant provide any evidence to contradict the Authority and Corporation’s assertion that a meeting was not held in July. With respect to the Complainant’s allegation that the June 9, 2016 meeting minutes were not posted on the Secretary of State’s website, we concluded no violation. The Complainant alleged that the Authority and Corporation, as a quasi-public municipal entity, fell within the purview of R.I. Gen. Laws § 42-46-7(d). Rhode Island General Laws § 42-46-7(d) states, in pertinent part, “[a]ll public bodies with the executive branch of the state government and all state public and quasi-public boards, agencies and corporations *** shall file a copy of the minutes of all open meetings with the secretary of state for inspection *** within thirty-five (35) days of the meeting . . .” (emphases added). As we have noted on previous
occasions, this particular provision does not apply to municipal entities. To conclude that municipal entities do not fall within the purview of R.I. Gen. Laws § 42-46-7(d), but that municipal quasi-public entities do fall within that purview would lead to an illogical result and contradict the plain language of the OMA. See Macomber v. Warren Town Council, OM 13-21. Issued April 28, 2017.

OM 17-14 **Avanzato v. North Kingstown Town Council**
The Town Council Town Manager Search Citizen Panel violated the OMA during its January 20, 2016 meeting when the discussions were not appropriate for executive session. Our review found no discussion concerning the job performance, character, or physical/mental health of any applicants. See R.I. Gen. Laws § 42-46-5(a)(1); Medeiros v. Tiverton Town Council, OM 00-14 (the Town Council violated the OMA by discussing the formation of potential interview questions in executive session since these discussions fall outside R.I. Gen. Laws § 42-46-5(a)(1)); Moon v. East Greenwich Fire District, OM 96-23 (closed session to open job applications was improper). Because we concluded that the executive session discussion was not appropriate for executive session we required the release the January 20, 2016 executive session meeting minutes. No action was taken during this meeting, and accordingly, further injunctive relief was inappropriate. VIOLATION FOUND. Issued May 12, 2017.

OM 17-15 **Desmarais v. Manville Fire District**
There was no evidence that the Complainant sought access to minutes that allegedly were not available or not posted in accordance with R.I. Gen. Laws 42-46-7(b)(2) and (d), and based upon this evidence, this Department determined the Complainant was not aggrieved. We found no violation. Issued May 12, 2017.

OM 17-16 **Sparks v. Town of Foster**
The Town of Foster (“Town”) did not violate the OMA because, based upon the evidence presented, there was no evidence that a quorum of the Town Council members met outside the purview of a properly noticed meeting and discussed matters over which the Town Council had supervision, control, jurisdiction or advisory power. The Complainant did not provide any evidence to contradict the Town Council members’ assertion in their affidavits that no such discussions occurred. The Complainant further alleged the Town’s Zoning Board violated the OMA during a meeting when it received a letter requesting that an agenda item be continued. The Complainant did not respond or provide any evidence to counter the Town’s argument that he was not aggrieved by this alleged violation since he attended the meeting in question. As
such, we found that the Complainant lacked standing to bring this claim. Even if we concluded that the Complainant had standing to bring this claim, we have previously noted that a continuance for a meeting is not governed by the OMA. See Pezzi v. Warwick Zoning Board, OM 06-05. Issued June 16, 2017.

OM 17-17  **Ramos v. Bristol Town Council – No Violation**  
Because the Town Council re-adopted the resolution that it had passed on April 5, 2017, injunctive relief was not an appropriate remedy. Moreover, our review found no evidence of a willful or knowing violation, and indeed, the Complainant did not alleged a willful or knowing violation. For these reasons, the complaint was moot. Issued June 19, 2017.

OM 17-18  **Plunkett v. Westerly School Committee**  
The Complainant alleged the Westerly School Committee (“School Committee”) violated the OMA when the Chairman of the School Committee read a statement during the Public Comment section of one of its meeting, yet there was no item on the agenda indicating the statement would be read. Consistent with R.I. Gen. Laws § 42-46-8(a) and the standard established in Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), we concluded that the Complainant did not demonstrate that he was in some way disadvantaged or aggrieved by the School Committee’s allegedly deficient notice. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice. This failure to sufficiently articulate how the alleged deficient posting disadvantaged him individually was fatal to his claim. The Complainant was not aggrieved and therefore had no standing to bring this allegation. Issued June 21, 2017.

OM 17-19  **Brunetti, et al. v. Town of Johnston**  
Complainants alleged numerous OMA violations relating to a January 10, 2017 Town Council meeting. With respect to the alleged defect in the notice for the meeting, we found that several Complainants attended the meeting in question and that no Complainant sufficiently articulated how they were aggrieved by the alleged defect. Accordingly, we found that Complainants were not aggrieved. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). With respect to the allegations regarding insufficient venue, we noted that the OMA “does not require a public body to provide unlimited seating.” See In re Town of West Warwick, ADV OM 99-02; see also Daniels v. Warwick Long Term Facilities Planning Committee, OM 14-02. The evidence demonstrated that the venue had a capacity of eighty-seven. Additionally, the affidavits submitted by the Town revealed no evidence of preferential treatment with respect to seating,
no evidence that the Town knew the attendance would exceed the meeting space until about an hour before the meeting was scheduled to begin, and no evidence that moving the meeting to a larger space was feasible or possible. We simply found nothing in the OMA that required the Town to move its January 10, 2017 meeting beyond its scheduled location under these circumstances. With respect to the allegations that the Mayor conducted a “rolling quorum” with members of the Town Council, we similarly found no violation. Based on the undisputed facts, we found no evidence that the Mayor served as a conduit that connected the three separate communications with Town Council members and therefore found no evidence of any collective discussion that would constitute a “meeting” under the OMA. See Guarino, OM 14-07. Issued June 30, 2017.

OM 17-20  **Bleczinski v. Warwick School Committee**
The Complainant alleged that the School Committee violated the OMA when it deliberated with its attorney outside of open session. We previously addressed a nearly identical question in In re: Rhode Island Ethics Commission, ADV OM 00-03. There, we found that public body “members who merely address questions to legal counsel (and receive answers from legal counsel) will not constitute a ‘meeting’ for purposes of the OMA.” Id. Here, consistent with our previous finding, counsel for the School Committee met with the School Committee and answered questions. Based on the uncontroverted evidence, we found no indication that a collective discussion took place and thus found that no “meeting” occurred pursuant to R.I. Gen. Laws § 42-46-2(1). Accordingly, we found no violation.  Issued June 30, 2017.

OM 17-21  **Valley Breeze v. North Smithfield Town Council**
The North Smithfield Town Council did not violate the OMA when it convened into executive session for litigation purposes pursuant to R.I. Gen. Laws § 42-46-5(a)(2). A review of the executive session minutes determined that the subject-matter was appropriate for executive session. Also, the Town Council did not violate the OMA when it did not disclose the executive session vote since such disclosure would have jeopardized any strategy, negotiation, or investigation undertaken.  See R.I. Gen. Laws § 42-46-4(b). Issued July 5, 2017.
OM 17-22  

**Novak v. Western Coventry Fire District**

The Complainant alleged the Fire District untimely filed some of its official and unofficial minutes on the Secretary of State’s website. The OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, this Department found that the Complainant was not an “aggrieved” party and therefore had no standing to bring his complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20; Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12. As such, we found no OMA violation. Since the Complainant was in possession of the requested documents, we need only examine whether the alleged failure to provide such documents represented a willful and knowing, or reckless violation. We responded in the negative. *Issued July 12, 2017.*

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**OPEN MEETINGS ACT**

**ADVISORY OPINIONS – 2017**

ADV OM 17-01  

**In Re: Office of the Child Advocate Death Review Panel**

The Rhode Island Child Advocate sought an OMA advisory opinion concerning whether the Death Review Panel (“DRP”) is a “public body” subject to the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, No. 2015-332-Appeal (PC 15-928), 2016 WL 7403942 (R.I. Supreme, December 21, 2016), we looked to the DRP’s scope of authority, frequency of meetings, and composition of membership. The evidence demonstrated, *inter alia*, that the DRP consists of a varying set of members who convene only when a fatality or near-fatality of a child occurs and that the membership of the DRP is not defined and work voluntarily. Additionally, the DRP does not implement policy or legislative changes but instead makes recommendations to support prospective changes. These recommendations are published in a report that is made public by statute within thirty days of its completion. As such, based on the specific evidence presented, we found that the DRP was “an informal, strictly advisory committee.” Pontarelli, 2016 WL 7403942 at *6. Therefore, we opined that the DRP is not a “public body” under the OMA. *Issued February 28, 2017.*
CHAPTER 46
OPEN MEETINGS

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

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

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

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

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

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

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

(6) “Open forum” means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.
42-46-3. Open meetings. — Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.


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

(b) All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).

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

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

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

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

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.
(3) Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   (iii) any waiver decisions shall be a matter of public record.
(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

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


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

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. School committees may, however, add items for informational purposes only, pursuant to a request, submitted in writing, by a member of the public during the public comment session of the school committee’s meetings. Said informational items may not be voted upon unless they have been posted in accordance with the provisions of this section. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.

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

(d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen’s comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

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

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

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

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

(4) A formal process is available to provide timely notice of the revised agenda to any person who has requested that notice, and the school district has taken reasonable steps to make the public aware of this process; and
(5) The published notice shall include a statement that any changes in the agenda will be posted on the school district’s web site and the two (2) public locations required by this section and will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of the meeting.

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

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


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

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

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

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

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

(b) (1) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.
(2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website.

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

(d) All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations, and those public bodies set forth in subdivision (b)(2), shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.

(e) All minutes and unofficial minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. If a public body fails to transmit minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may file a complaint with the attorney general in accordance with §42-46-8.

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

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

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

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

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

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

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

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

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

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

42-46-10. **Severability.** — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the remaining provisions or the other applications of this chapter.
42-46-11. **Reported violations.** — Every year the attorney general shall prepare a report summarizing the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

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

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

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

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

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

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

   (e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.
(f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor’s commission on disabilities for review and approval. The governor’s commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.

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

42-46-14. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.
The Department of Attorney General adheres to the Access to Public Records Act, R.I. Gen. Laws §38-2-1, et. seq., and has instituted the following procedures for the public to obtain public records.

1. To reach us by telephone please call (401) 274-4400 and ask to be connected to the Open Government Unit. Requests for records must be mailed to the Open Government Unit, which is the Unit within the Department of Attorney General designated to handle these matters, except as provided in paragraph 4. The mailing address is: Department of Attorney General, ATTN: Open Government Unit, 150 South Main Street, Providence, RI 02903. Requests may also be hand delivered to the Department of Attorney General at the reception desk (150 South Main Street) and addressed to the Open Government Unit or requests may be emailed to aprarequest@riag.ri.gov.

2. The regular business hours of the Department are 8:30 a.m. to 4:30 p.m. If you come in after regular business hours, please complete the Public Records Request Form at the front desk and it will be given to the Unit the following day.

3. You are not required to provide identification or the reason you seek the information, and your right to access public records will not depend upon providing identification or reasons.

4. In order to ensure that you are provided with the public records you seek in an expeditious manner, unless you are seeking records available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public, we ask that you complete the Public Records Request Form located at the front desk, or on our website, www.riag.ri.gov or otherwise submit your request in writing. If you are seeking documents available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public and do not wish to submit a written request, you must contact an attorney in the Open Government Unit to make your request.

5. You may also obtain a copy of the Attorney General’s Guide to Open Government, which can be found at: http://www.riag.ri.gov (then proceed to the link entitled “Open Government”).

6. Please be advised that the Access to Public Records Act allows a public body ten (10) business days to respond, which can be extended an additional twenty (20) business days for “good cause.” We appreciate your understanding and patience.

7. If you feel that you have been denied access to public records, you have the right to file a review petition with the Attorney General. You may also file a lawsuit in Superior Court.

8. The Department of Attorney General is committed to providing you with public records in an expeditious and courteous manner.
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The Department of Attorney General is committed to providing you with public records in an expeditious and courteous manner.

If you feel that you have been denied access to public records, you have the right to file a review petition with the Attorney General. You may also file a lawsuit in Superior Court.

You are not required to provide identification or the reason you seek the information, and your request will be given to the Unit the following day.

The regular business hours of the Department are 8:30 a.m. to 4:30 p.m. If you come in after regular business hours, please complete the Public Records Request Form at the front desk and mail it addressed to the Open Government Unit or requests may be emailed to aprarequest@riag.ri.gov.

Requests for records must be mailed to the Open Government Unit, which is the Unit within the Department of Attorney General designated to handle these matters, except as otherwise provided in paragraph 4. The mailing address is: Department of Attorney General, ATTN: Open Government Unit, 150 South Main Street, Providence, RI 02903. Requests may also be hand delivered to the Open Government Unit to make your request.

Requests provided in paragraph 4 may be extended an additional twenty (20) business days for "good cause.

You may also obtain a copy of the Attorney General’s Guide to Open Government, which can be found at: http://www.riag.ri.gov (then proceed to the link entitled “Open Government”).

We appreciate your understanding and patience.

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

Thank you.
RULES AND REGULATIONS
Regarding Training under the Access to Public Records Act

1. The Chief Administrative Officer, as defined by the Access to Public Records Act, must certify annually, as provided in R. I. Gen. Laws §38-2-3.16 (“compliance by agencies and public bodies”), that persons who have the authority to grant or deny Access to Public Records Act requests have received training for the upcoming calendar year. Individuals must be certified each calendar year.

2. Any person who has not received training prior to the beginning of the calendar year, but who during the calendar year becomes authorized to grant or deny Access to Public Records Act requests, shall receive training as required under the Access to Public Records Act as soon as practicable, but not less than one (1) month after being authorized to grant or deny Access to Public Records Act requests. Such time may be extended at the discretion of the Department of Attorney General for “good cause.” The Chief Administrative Officer must certify to the Attorney General that training has been received when training has been completed.

3. Authorized training must be conducted by the Department of Attorney General. The Department of Attorney General will offer various training programs throughout each calendar year and such training programs will be conducted at various locations throughout the State. Public bodies or governmental entities wishing to schedule training sessions may contact the Department of Attorney General. Public entities wishing to schedule Access to Public Records Act training should make every effort to schedule training sessions to as large a group as practicable. The Department of Attorney General reserves the sole discretion to determine whether and when to schedule a training session.

4. For purposes of these Rules and Regulations the requirement for training may be satisfied by attending an Attorney General training in person or by viewing a recent video of an Access to Public Records Act presentation given by the Department of Attorney General. Any person satisfying the Access to Public Records Act training requirement must certify to the Chief Administrative Officer that he or she viewed the entire Access to Public Records Act presentation, or attended the live training program, and such certification shall be forwarded by the Chief Administrative Officer to the Department of Attorney General.

5. Certification may be e-mailed to agsummit@riag.ri.gov, or mailed to the Department of Attorney General, Attn: Public Records Unit, 150 South Main Street, Providence, Rhode Island 02903. Certification forms are available on the Department of Attorney General Website.
6. The Attorney General may annually prepare and post a list of all certifications received by the office by public bodies.

7. The Department of Attorney General may assess a reasonable charge for the certification required by R.I. Gen. Laws § 38-2-3.16, is to defray the cost of such training and related materials.
CERTIFICATE OF COMPLIANCE
ACCESS TO PUBLIC RECORDS ACT SECTION 38-2-3.16
COMPLIANCE BY AGENCIES AND PUBLIC BODIES

SECTION A – TO BE COMPLETED BY CHIEF ADMINISTRATOR

This certifies that _______________________________ of ________________________________, has
completed the Access to Public Records training on the _____ day of _______________, 20____, and is in
compliance with § 38-2-3.16.

The above has completed training by means of: _____ Live Presentation _____ Video Presentation

__________________________________________   _______________________________
Chief Administrator                       Department/Entity

__________________________________________
Dated

SECTION B – TO BE COMPLETED BY CERTIFIED PERSONNEL

I certify that I have viewed the video presentation and/or a live presentation and am in compliance with § 38-
2-3.16 of the Access to Public Records Act. In addition, I certify that the information I have provided on this
statement is true and correct.

Date of Training: _____________________   Signed: _________________________

Email Address: ____________________________________
[Email address will be used only to provide notice of future Open Government seminars]

**Please List ANY and ALL Entities for which you are certifying compliance. For instance, the Clerk’s
Office, the Police Department, the School Department, the entire City/Town/Department.

__________________________________________   _______________________________

__________________________________________   _______________________________

Upon completion please return to this office by either emailing to opengovernment@riag.ri.gov; facsimile
401-222-3016 or mail to Department of Attorney General, Open Government Unit, 150 South Main Street,
Providence, Rhode Island 02903.
NOTICE REQUIREMENTS

Have you posted:

☐ annual notice (beginning of each calendar year only)

☐ notice include:

  • the date(s), time(s), and location(s) of the meetings.

☐ notice posted:

  • electronically with the Secretary of State; and
  • provided to a member of the public upon request.  R.I. Gen. Laws § 42-46-6(a).

☐ supplemental notice (minimum 48 hours before the date of the scheduled meeting)

☐ notice include:

  • the date notice was posted;
  • the date(s), time(s), and location(s) of the meetings; and
  • a statement specifying the nature of the business for each matter to be discussed.

☐ notice posted:

  • at the principal office of the public body holding the meeting, or if no principal office exists, at the building where the meeting is to be held;
  • in at least one other prominent location within the governmental unit; and
  • electronically with the Secretary of State.  R.I. Gen. Laws § 42-46-6(b) & (c).

CONVENING INTO EXECUTIVE SESSION

Does the open call contain for each matter to be discussed in executive session:

☐ vote by a majority of the members to convene in executive session;

☐ record in the open session minutes the vote of each member on the question of holding a meeting closed to the public;

☐ state in the open call and record in the open session minutes the specific subsection of R.I. Gen. Laws § 42-46-5(a)(1)-(10) upon which each executive session discussion has been convened; and

☐ state in the open call and record in the open session minutes a statement specifying the nature of the business for each matter to be discussed.  R.I. Gen. Laws § 42-46-4(a).
Does the executive session concern:

- discussion of the job performance, character, or physical or mental health of a person(s), provided:
  - person(s) affected shall be notified in advance in writing;
  - person(s) advised they may require discussion held in open session; and
  - during open call, state in open session and record in open session minutes that person(s) have been notified. **R.I. Gen. Laws § 42-46-5(a)(1).**

- sessions pertaining to collective bargaining or litigation. **R.I. Gen. Laws § 42-46-5(a)(2).**

- discussion regarding the matter of security. **R.I. Gen. Laws § 42-46-5(a)(3).**

- any investigative proceedings regarding allegations of civil or criminal misconduct. **R.I. Gen. Laws § 42-46-5(a)(4).**

- any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the public interest. **R.I. Gen. Laws § 42-46-5(a)(5).**

- any discussions related to or concerning a prospective business or industry locating in Rhode Island when an open meeting would have a detrimental effect on the interest of the public. **R.I. Gen. Laws § 42-46-5(a)(6).**

- a matter related to the question of the investment of public funds, which includes any investment plan or matter related thereto, where the premature disclosure would adversely affect the public interest. **R.I. Gen. Laws § 42-46-5(a)(7).**

- school committee sessions to conduct student disciplinary hearings or to review other matters that relate to the privacy of students and their records, provided in either case:
  - any affected student(s) shall be notified in advance in writing;
  - student(s) advised they may require discussion held in open session; and
  - during open call, state in open session and record in open session minutes that student(s) have been notified. **R.I. Gen. Laws § 42-46-5(a)(8).**

- any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement. **R.I. Gen. Laws § 42-46-5(a)(9).**


**MINUTES**

Open and closed session minutes must be maintained and contain:

- the date, time, and place of the meeting;
- the members of the public body recorded as either present or absent;
- a record by individual member of any vote taken; and
any other information relevant to the business of the public body that a member of the public body requests included. *R.I. Gen. Laws § 42-46-7(a).*

**MAKING MINUTES AVAILABLE**

For all public bodies:

- *Unofficial (unapproved) open and closed session minutes* must be available at the principal 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).*

**EXCEPTIONS**

- when a closed session meeting has been properly convened and a majority of the members vote to seal the minutes, or
- where a majority of the members vote to extend the time period for filing minutes and publicly state the reason for the extension. *R.I. Gen. Laws § 42-46-7(b).*

For all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:

- must post *unofficial minutes* on the Secretary of State’s website within 21 days of the meeting, but not later than 7 days prior to the next regularly scheduled meeting, whichever is earlier. *R.I. Gen. Laws § 42-46-7(b)(2).*

For all State Executive branch public bodies; all State and quasi-public boards, agencies, and corporations; and all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:

- must maintain *official/approved minutes* and electronically file a copy of such minutes with the Secretary of State within 35 days of the meeting. *R.I. Gen. Laws § 42-46-7(d).*

**EXCEPTION**

- not applicable to public bodies whose responsibilities are advisory in nature. *R.I. Gen. Laws § 42-46-7(d).*

**DISCLOSING VOTES**

- all votes listing how each member voted on each issue shall be available at the office of the public body within two (2) weeks of the vote, *R.I. Gen. Laws § 42-46-7(b);* and
- if a vote is cast during executive session, the vote must be disclosed once the open session is reopened. *R.I. Gen. Laws § 42-46-4(b).*

**EXCEPTION**

- a vote taken in executive session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to a properly closed meeting. *R.I. Gen. Laws § 42-46-4(b).*
PROCEDURES

☐ All public bodies must establish written procedures regarding access to public records

EXCEPTIONS

☐ No written request for public information available pursuant to Administrative Procedures Act, and
☐ No written request for documents prepared for or readily available to the public. R.I. Gen. Laws § 38-2-3(d).

☐ Procedures must include:
  ☐ Identification of a designated public records officer or unit;
  ☐ How to make a public records request; and
  ☐ Where to make a public records request. R.I. Gen. Laws § 38-2-3(d).

EXCEPTION

☐ Written request for records cannot be on a form established by a public body if the request is readily identifiable as a request for public records, R.I. Gen. Laws § 38-2-3(d).

☐ Procedures must be posted on the public body’s website, if such a website is maintained, and be made otherwise readily available to the public. R.I. Gen. Laws § 38-2-3(d).

CERTIFICATION

☐ No later than every January 1, every public body and Chief Administrative Officer must certify (using Attorney General forms) that all officers and employees who have the authority to grant or deny persons or entities access to records have been provided orientation and training during the prior year. R.I. Gen. Laws § 38-2-3.16.

REQUESTED DOCUMENTS

Requested documents are presumed to be public records and must be disclosed, unless:

☐ the document (in whole or in part) is exempt pursuant to one or more exemption, R.I. Gen. Laws § 38-2-2(A)-(AA); or
☐ the privacy interest in a document (in whole or in part) outweighs the public interest in disclosure.

If a document is exempt, any reasonable segregable portion shall be available after the deletion or redaction of the information that is the basis of the exclusion. R.I. Gen. Laws § 38-2-3(b).
If an entire document is exempt, must state in denial letter that no reasonable portion of the
document contains segregable information. *R.I. Gen. Laws § 38-2-3(b).*

**RESPONDING TO REQUEST**¹

Upon receipt of a request, you must provide one of the following responses:

**Access**

- provide access to the requested documents within 10 business days of receipt of request. *R.I.
Gen. Laws § 38-2-3(e).*
  
  - Must provide document in any media capable of providing, *R.I. Gen. Laws § 38-2-3(g);*
  - Must provide copies electronically, by facsimile, or by mail pursuant to requester’s
choice, unless doing so would be unduly burdensome due to the volume of records
requested or the costs incurred. Person requesting delivery responsible for costs, if any.
*R.I. Gen. Laws § 38-2-3(k).*

**Deny**

- deny access to the requested documents within 10 business days of receipt of request. *R.I.
Gen. Laws § 38-2-7(a).*
  
  - In writing;
  - Provide specific reason(s) for denial; and
  - Identify procedure for appealing denial. *R.I. Gen. Laws § 38-2-7(a).*

**Extension**

- assert extension within 10 business days of receipt of request (for additional 20 business
days).
  
  - In writing;
  - Must be particularized to specific request; and
  - Must be able to demonstrate extension necessary due to voluminous nature of the request,
the number of requests pending, or the difficulty in searching for and retrieving or
copying requested records. *R.I. Gen. Laws § 38-2-3(e).*

**COSTS**

Any cost assessed must fall within one of the following categories:

- Maximum $0.15 per document copied on a common or legal size paper;
- Maximum $15.00 per hour for search and retrieval, with no charge for the first hour;
  
  - Multiple requests from any person/entity within 30 day time period shall be considered
one request for purposes of determining no charge for the first hour.
- No more than the reasonable actual cost for providing electronic records;

¹ This section should not be used for requests seeking adult arrest logs, which require a law enforcement
agency to provide a response within 48 hours after receipt of a request, unless a request is made on a weekend
or a holiday, in which case the records shall be made available within 72 hours. *R.I. Gen. Laws § 38-2-3.2.*
☐ No more than the reasonable actual cost for retrieving records from storage, but only where the public body is assessed a retrieval fee; and

☐ Any other cost provision specifically authorized by law.

For all costs, an estimate must be provided upon request; and a detailed itemization of the search and retrieval costs must be provided upon request. *R.I. Gen. Laws § 38-2-4.*

**NOTE:**

This checklist is intended to assist public bodies and provide guidance concerning the Access to Public Records Act’s requirements. This checklist does not list all Access to Public Records Act requirements and is not intended to replace the Access to Public Records Act. Revised July 2015.