22nd Annual Open Government Summit

Office of the Attorney General

ATTORNEY GENERAL
HOPE
STATE OF RHODE ISLAND

Access to Public Records Act & Open Meetings Act

Attorney General
Peter F. Neronha

July 31, 2020

Dear Open Government Summit Attendee:

Thank you for participating in the 22nd annual Open Government Summit. While this year's event looks a little different from past years, the opportunity to learn more about promoting transparency in state and local government is more important than ever.

When government decisions are debated in public and made open to inspection, the result is a more engaged citizenry that is invested in its community. Through this Summit, our goal is to provide you, as practitioners, with the tools you need to effectively operate in accordance with the Access to Public Records Act and the Open Meetings Act. We will also provide guidance regarding compliance with these important laws in the face of the unique challenges presented by COVID-19.

There will be forks in the road. There will be times when you will need to use your discretion to determine whether information should be made publicly available or withheld when necessary to protect an important interest. We recommend that in addition to asking whether you *could* withhold the information, think about whether you *should* do so.

Contained in this digital booklet are training materials from today's event, including applicable laws and recent findings by our Office. Please reach out to our Office at any time with questions, or to schedule an open government training for your organization or in your community:

opengovernment@riag.ri.gov
401-274-4400, ext. 2020

You can also access a variety of resources on our website at **http://www.riag.ri.gov/CivilDivision/OpenGovernmentUnit.php**, including a video of the 2020 Open Government Summit.

Thank you for your interest and commitment to ensuring that state and local government are open and accessible to the people of Rhode Island.

Sincerely,

Peter F. Neronha
Attorney General

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ATTORNEY GENERAL
PETER F. NERONHA

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Updated: July 03, 2020

ACCESS TO PUBLIC RECORDS ACT FINDINGS – 2020

PR 20-01 **Providence Journal v. Executive Office of Health and Human Services**

The Complainant alleged EOHHS violated the APRA when it withheld documents responsive to its APRA request pursuant to three APRA exemptions: R.I. Gen. Laws §§ 38-2-(4)(A)(I)(a), 38-2-42(4)(E), and 38-2-2(4)(K). This Office set forth the relevant law and engaged in a lengthy *in camera* review of over 1,000 pages of responsive documents submitted by EOHHS. Based on our *in camera* review, we concluded that EOHHS properly withheld a number of documents and improperly withheld one document. Additionally, there are a number of documents for which we cannot yet determine whether withholding the documents was proper under the APRA. Our evaluation of EOHHS's asserted basis for withholding those documents would benefit from additional information and analysis in light of the legal standards set forth in our finding, and we accordingly instructed EOHHS to provide supplemental information as described in the finding.

Issued January 2, 2020

PR 20-02 **Kennedy v. Cranston Public School Department**

The Complainant alleged that the School Department violated the APRA in connection with his thirteen (13) APRA requests by failing to give specific reasons for denying him access to certain records and by failing to indicate the procedures for appealing the denial. Based on our review of the School Department's responses to each request, the School Department cited specific APRA exemptions as the basis for withholding responsive records in whole or in part. We also found that the School Department's response of "None" to certain requests fairly conveyed that it did not maintain documents responsive to those requests. As the School Department conceded that its denials were void of any language concerning the School Department's APRA appeal procedures, we found that the School Department violated the APRA when it failed to indicate in writing its procedures for appealing the denial. We did not find evidence of a willful and knowing, or alternatively reckless, violation, nor did we find injunctive relief appropriate.

VIOLATION FOUND.

Issued January 13, 2020

PR 20-03 **Lopez v. City of Providence**

The Complainant alleged that the City violated the APRA when it improperly denied two (2) APRA requests seeking approved permits and email communications related to the "Small Cell Siting Act." The City responded to both requests indicating that it did not maintain responsive documents. The Complainant does not dispute the City's contention that no approved permits exist that are responsive to the Complainant's first request. The City submitted an affidavit

attesting to the search efforts undertaken to locate email communications potentially responsive to the Complainant's second request and we were not provided with evidence to refute the City's attestations that it conducted a reasonable search and no responsive emails exist. Accordingly, we found no violation.
Issued January 13, 2020

PR 20-04 **Albanese v. North Kingstown Harbor Management Commission**
The Complainant alleged that the Town violated the APRA when it responded to her request by asking her to send her request to the Town solicitor. The undisputed evidence indicated that the Town forwarded the Complainant's request to the Town solicitor before the instant Complaint was filed and the Complainant received the requested records four (4) business days after her initial request. We found no violation.
Issued January 13, 2020

PR 20-05 **Caldwell v. Providence Police Department**
The Complainant alleged the Department violated the APRA when it did not produce a specific audio recording in response to Complainant's APRA request. We determined there was no evidence to suggest that the Department maintains the specific audio recording the Complainant seeks and the Complainant did not contest that the Department conducted a reasonable search. Accordingly, we found no violation.
Issued January 13, 2020

PR 20-06 **Farinelli v. City of Pawtucket**
The Complainant alleged that the City violated the APRA when it responded to her requests for arrest reports with reports that did not include the report creation date, modification date, and who approved the report. The undisputed evidence indicated that the Complainant received the reports she requested and that as of November 2018, arrest reports generated by the Police Department did not normally include the report creation date, modification date, and who approved the report. We concluded that there was no violation because the Complainant received the requested reports and did not specifically seek the creation date, modification date, and who approved the report, though we noted that the Complainant is free to submit a new request seeking this information. We accordingly found no violations.
Issued January 14, 2020

PR 20-07 **Farinelli v. City of Pawtucket**
The Complainant alleged the City violated the APRA when it withheld two (2) police reports she requested. The City argued that these reports pertained to criminal investigations that did not result in arrests and that disclosure of these

reports would constitute an unwarranted invasion of personal privacy. This Office previously issued a finding related to the first of the requested reports, determining that the City did not violate the APRA when it withheld this report because the privacy interests outweighed any public interest in disclosure. We reaffirmed that decision and concluded that the City did not violate the APRA by withholding this report. Based on our *in camera* review of the second report and corresponding attachments, we found that the City did violate the APRA by withholding this report in its entirety because it implicated a significant public interest that outweighed the privacy interests that were implicated, and certain information implicating privacy interests could be redacted. There was insufficient evidence to support a finding of a willful and knowing, or reckless violation, but this Office directed the City to provide the second report, subject to permissible redactions, at no cost to the Complainant.
VIOLATION FOUND.
Issued January 14, 2020

PR 20-07B In PR 20-07, this Office determined that the City violated the APRA by withholding in its entirety a police report related to an officer-involved shooting death. We directed the City to disclose the report and its attachments to the Complainant, subject to certain permissible redactions discussed in our prior finding. After the issuance of our finding, the City provided the Complainant with the documents in redacted form. Complainant contended that the City's redactions were improper. We determined that the City's redactions fit within those discussed in PR 20-07, except for one redaction. We directed the City to provide the Complainant with a copy of the relevant page remedying that redaction issue within ten (10) business days.
Issued March 17, 2020

PR 20-08 **Providence Journal v. Governor's Office**
The Complainant alleged the Governor's Office violated the APRA when it withheld documents responsive to its APRA request for documents related to the proposed extension of the IGT contract. Based on this Office's *in camera* review, we concluded that the Governor's Office properly withheld a number of documents and improperly withheld a number of other documents. There was insufficient evidence to support a finding of a willful and knowing, or reckless violation, but this Office directed the Governor's Office to produce documents and/or provide a supplemental submission to this Office with additional information regarding why particular documents should be exempt.
VIOLATION FOUND.
Issued January 29, 2020

PR 20-09 **Marcello v. Town of Scituate**

The Complainant proffered several allegations that the Town violated the APRA in connection with his multi-part APRA request. The Complainant alleged that the Town "heavily redacted" a number of documents and failed to reference the particular APRA provision(s) upon which it relied in making the redactions. Additionally, Complainant alleged that the Town's request for an extension violated R.I. Gen. Laws § 38-2-3(e) because the extension was not "particularized" to his specific request, and that the Town's request for prepayment in the amount of $150.00 violated the APRA. Based on the totality of the evidence, this Office found that the Town's response letter cited the specific APRA provisions pursuant to which it was redacting documents that were responsive to Complainant's request. Consistent with our finding in *Finnegan v. Town of Scituate*, PR 19-22 addressing a similar request, we found that the redactions made to the documents provided in response to Complainant's request were permissible under R.I. Gen. Laws §§ 38-2-2(4)(a)(I)(a), (b). We also found that the Town did not violate the APRA by extending the time to respond to the Complainant's request or by assessing prepayment. Accordingly, we found that the Town did not violate the APRA in connection with Complainant's request.

Issued January 31, 2020

PR 20-10 **Farinelli v. City of Pawtucket**

The City requested that we reconsider our October 28, 2019 finding in *Farinelli v. City of Pawtucket*, PR 19-17, in which we determined that the City violated the APRA by withholding the "city or town of residence" of City police officers. *See* R.I. Gen. Laws § 38-2-2(4)(A)(b). We reaffirmed our prior determination that the plain language of the APRA requires disclosure of the city or town of residence of all public employees, including police officers. Accordingly, we found that the City is required to disclose this information.

VIOLATION FOUND.

Issued February 26, 2020

PR 20-11 **Lamendola v. East Greenwich School Committee [APRA-OMA]**

OM 20-11 The Complainant alleged the School Committee violated the APRA when it improperly redacted certain information on an invoice for legal services. The undisputed evidence demonstrated that the School Committee provided Complainant with the unredacted invoice as he requested. As such, any request for injunctive relief is moot. Additionally, we were provided with no evidence that the School Committee's initial redaction, even assuming it was improper, would have constituted a willful and knowing, or reckless, violation. Accordingly, we declined to further address the merits of the Complainant's APRA allegation.

The Complainant also alleged that the School Committee violated the OMA at several meetings when an agenda item did not sufficiently specify the nature of the

business to be discussed and when the School Committee failed to report certain executive session votes in open session. We declined to address the merits of the allegations concerning one meeting because the School Committee provided undisputed evidence that the 180-day statute of limitations expired before Complainant filed his complaint with this Office. *See* R.I. Gen. Laws § 42-46-8(b). For the other meetings, we found that the challenged agenda items did not violate the OMA. However, we concluded that the School Committee did not properly report out in open session a vote that occurred in the August 13, 2019 executive session. We did not find injunctive relief appropriate, nor did we find evidence of a willful or knowing violation.
VIOLATION FOUND.
Issued February 28, 2020

PR 20-12 **Boria Osler v. Dept of Corrections**

The Complainants alleged that the Department violated the APRA when it denied their requests for specific menus reflecting previously served inmate meals. The Department maintained that the menus were exempt from disclosure under exemption (F) as "security plans" and exemption (K) as "preliminary drafts." Based on the record before us, we determined that the requested menus did not fall within the ambit of either exemption (F) or (K). Accordingly, the Department violated the APRA by withholding these specific menus. We directed the Department to provide Complainants with the requested menus. We did not find evidence of a willful and knowing, or reckless violation.
VIOLATION FOUND.
Issued March 9, 2020

PR 20-13 **Almedia v. City of Providence**

The Complainant alleged that the City violated the APRA when it withheld a particular police incident report under R.I. Gen. Laws § 38-2-2(4)(D). Based on our *in camera* review of the document, we observed that the incident report contained sensitive personal information about multiple individuals and pertained to a matter where an arrest was not made. We were also not provided with evidence that disclosure would further the public interest. We accordingly found that the City permissibly withheld the incident report.
Issued March 9, 2020

PR 20-14 **<u>DePault v. Rhode Island Highschool Football Coaches Association</u>**

The Complainant alleged that the Association violated the APRA when it failed to respond to his records request. We found that the Association is a private volunteer organization made up of football coaches from both public and private schools. Crucially, there was no evidence that the Association was acting on behalf of or in place of a public body. Based on these undisputed facts, we found that the Association was not a "public body" under the APRA. Thus, we found no violation.
Issued March 17, 2020

PR 20-15 **<u>Thompson v. Town of North Kingstown</u>**

The Complainant alleged that the Town violated the APRA when it withheld requested executive session minutes and failed to respond formally to two of his public records requests. We found that the Town permissibly withheld the sealed executive session minutes under the APRA's exemption for sealed executive session minutes. Although we credited the Town's attempt to determine whether the requested executive session meeting minutes could be unsealed and provided to the Complainant, we found that the Town did not formally deny two of the Complainant's requests in writing. This violated the APRA. *See* R.I. Gen. Laws § 38-2-7(a). We did not find evidence of a willful and knowing, or reckless, violation.
VIOLATION FOUND.
Issued March 17, 2020

PR 20-16 **<u>Zambrano v. City of Warwick</u>**

The Complainant alleged that the City violated the APRA when it failed to respond to his public records request. The City acknowledged that it failed to do so but explained that the request email was mistakenly deleted as suspected spam. Once the City became aware of the mistake, it responded to the request. While the City's failure to timely respond to the request violated the APRA, we found no evidence of a willful and knowing, or reckless, violation.
VIOLATION FOUND.
Issued March 17, 2020

PR 20-17 **<u>Finnegan v. Scituate Board of Canvassers</u>**

The Complainant alleged that the Board violated the APRA when it denied his request for a transcript of a public hearing. The Board asserted it purchased the transcript from a third-party stenographer and, as such, it constituted "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)." Based on the totality of the evidence provided and applicable precedent, we concluded that the transcript would customarily not be released to the public by the person from whom it was obtained and did not constitute a public record. Accordingly, we found no violation.
Issued March 26, 2020

PR 20-18 **Marcello v. Scituate School Department**

The Complainant alleged that the School Department violated the APRA by not responding to his APRA request. The undisputed evidence revealed that the School Department did timely respond to his APRA request but that the email response went to the Complainant's spam email folder. We thus found no violation.
Issued March 26, 2020

PR 20-19 **Albanese v. North Kingstown Harbor Management Commission**

The Complainant alleged that the Commission violated the APRA when it provided a letter without attachments. We found that the Commission did not violate the APRA because the request did not specify that it sought attachments and the undisputed evidence established that the Commission provided a letter it believed responded to the substance of Complainant's request but the precise letter requested by the Complainant did not exist. We found no violation.
Issued March 27, 2020

PR 20-20 **Lamendola v. East Greenwich School Department**

The Complainant alleged the Department violated the APRA when it denied his request for unredacted legal bills and invoices from a law firm engaged to represent the Department. Based upon the evidence presented, the Department provided the requested invoices to the Complainant with limited redactions to three (3) attorney narratives, asserting that the narratives reflect legal advice, which is exempt from disclosure pursuant to Rhode Island General Laws §§ 38-2-2(4)(E) and (K). Based on this Office's *in camera* review of the invoices, we concluded the redacted narratives contain information encompassed within the attorney-client and/or work product privileges incorporated within Exemption (E). Accordingly, we found no violation.
Issued March 27, 2020

PR 20-21 **Giramma v. Narragansett Police Department**

The Complainant alleged that the Police Department violated the APRA when it withheld an incident report. We reviewed the withheld document *in camera* and determined that it related to a domestic incident involving a minor where no arrest was made. Because the report contains sensitive personal information about multiple private individuals, we found a significant privacy interest implicated in disclosure. We did not discern any apparent public interest in disclosure. We accordingly found that the Police Department did not violate the APRA by withholding the incident report.
Issued March 27, 2020

PR 20-22 **<u>J.H. Lynch & Sons v. Rhode Island Department of Transportation</u>**

This Office previously concluded that RIDOT violated the APRA when it failed to timely produce or exempt all documents responsive to Complainant's request. This Office issued a finding requiring RIDOT to provide any responsive documents it maintains at no cost, describe its search efforts, and address whether its violation should be considered willful and knowing or, alternatively, reckless. *See* PR 19-06. After receiving the supplemental submissions, this Office determined that injunctive relief was not appropriate and we did not find sufficient evidence of a willful and knowing, or reckless, violation.

Issued March 30, 2020

PR 20-23 **<u>Brien v. City of Woonsocket</u>**

The Complainant alleged the City violated the APRA when it withheld documents responsive to his APRA request for records related to certain real property. This Office concluded that the City violated the APRA when its initial response to Complainant's request did not provide any specific reasons for the denial and instead only made the general assertion that the withheld documents were not public records. This Office directed the City to provide a supplemental submission providing any and all documents responsive to the Complainant's request for an i*n camera* review and addressing why the City's belated assertion of Exemption B should not be deemed waived. The City should also address whether any APRA violation committed by the City was knowing and willful, or reckless.

VIOLATION FOUND.

Issued March 30, 2020

PR 20-23B In PR 20-23, this Office concluded that the City violated the APRA when its initial response to Complainant's request did not provide any specific reasons for the denial and instead only made the general assertion that the withheld documents were not public records. We directed the City to provide a supplemental submission providing any and all documents responsive to the Complainant's request for an *in camera* review and addressing why the City's belated assertion of an exemption should not be deemed waived. The City provided a supplemental submission explaining that it had conducted a search and, despite previously asserting the requested documents were exempt, did not actually maintain any responsive records that had not already been provided to the Complainant. We accordingly determined that the City violated the APRA by failing to indicate that it not did maintain responsive records when responding to the request, but that no injunctive relief was necessary. Although a close question, we declined to find that the violation in this instance was willful and knowing, or reckless.

Issued June 8, 2020

PR 20-24 **John Doe v. City of Warwick**

The Complainant alleged that the City violated the APRA when it failed to respond to his request. The City acknowledged the error, noting that a City employee mistakenly deleted the email from a "John Doe" thinking it was spam. However, the City made the undisputed assertion that once it became aware of the mistake, it responded to the request by providing the requested documents. While the City's failure to timely respond to the request violated the APRA, we found insufficient evidence of a willful and knowing, or reckless, violation and no need for injunctive relief.

VIOLATION FOUND.

Issued March 31, 2020

PR 20-25 **Oliver v. Executive Office of Health and Human Services**

The Complainant alleged EOHHS violated the APRA when it sought a twenty (20) business day extension to respond to Complainant's APRA request. The Complainant did not refute EOHHS's assertion that his initial APRA request was broader than the documents Complainant specifically sought in his complaint. Based on the undisputed evidence before us, we found that EOHHS did not violate the APRA when it extended the time to respond to Complainant's initial APRA request.

Issued April 6, 2020

PR 20-26 **de Ramel v. Rhode Island Airport Corporation**

The Complainant alleged that the RIAC violated the APRA when it withheld a legal opinion drafted by RIAC's outside counsel. We found that the document – an attorney-drafted legal memorandum providing legal advice to the client, RIAC – was permissibly exempted under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). We also found that there was no evidence that the RIAC had waived the attorney-client privilege for this document. We found no violation.

Issued April 9, 2020

PR 20-27 **Dionne v. City of Woonsocket**

The Complainant alleged the City violated the APRA when it denied his request for Police and Fire candidate ranking lists pursuant to R.I. Gen. Laws § 38-2-2(4)(L). Based on our *in camera* review of the ranking lists, we determined that the lists did not fall within Exemption L and that the City violated the APRA by withholding the records pursuant to that exemption. In responding to the Complaint, the City asserted that the records were also exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). In light of this Office's precedent and the personal information contained in the records, we found good cause to not consider that exemption waived and to analyze whether disclosure of the lists would constitute an unwarranted invasion of personal privacy pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Based on our review, we determined that disclosure of the lists in

their entirety implicated privacy interests that outweighed the public interest asserted by the Complainant. We directed the City provide Complainant with the requested records, but with the names of the individual candidates and other personally identifiable information redacted.
VIOLATION FOUND.
Issued April 9, 2020

PR 20-28 **Miech v. South Kingstown School Department**
The Complainant alleged that the School Department violated the APRA by withholding two (2) documents responsive to his request for certain final actions taken with respect to investigative processes. This Office determined that it was permissible for the School Department to withhold one responsive document where the privacy interests implicated by disclosure outweighed any public interest and where redaction could not sufficiently address the privacy interests. This Office found that the School Department violated the APRA by withholding a second document in its entirety, and determined that the School Department should provide Complainant with this document because the public interests in disclosure outweighed the privacy interests, but that the School Department may redact the name of the employee and other personally identifiable information. We did not find evidence of a willful and knowing, or reckless, violation.
VIOLATION FOUND.
Issued April 9, 2020

PR 20-29 **Lyssikatos v. City of Pawtucket**
The Complainant alleged that the City of Pawtucket ("City") violated the APRA by failing to answer his request for the definition of the term "unknown," as that term was used in documents previously provided by the City. We determined this did not constitute a violation because the APRA does not mandate that a public body respond to questions or interrogatories. The Complainant also alleged that the City improperly withheld information related to National Crime Information Center ("NCIC") checks. Pursuant to the FBI's Security Policy, access to the NCIC system database is restricted to authorized personnel and these records may not be publicly disseminated. Accordingly, we concluded that the City did not violate the APRA when it denied Complainant's request.
Issued April 19, 2020

PR 20-30 **Kennedy v. Cranston Police Department**
The Complainant alleged the Department violated the APRA by failing to provide him with the entire police report and associated documents related to an incident where a minor child was arrested. Our *in camera* review of the requested police records confirmed that they fall within the purview of R.I. Gen. Laws § 14-1-64, which exempts certain juvenile records from public disclosure. Accordingly, we

determined that the Department did not violate the APRA by withholding the records.
Issued April 17, 2020

PR 20-31 **Mercurio v. Cranston Police Department**
The Complainant alleged the Department violated the APRA when it denied his request for an incident report related to a specific alleged hit-and-run incident where no arrest occurred. Based on the evidence, including our *in camera* review, we concluded that the privacy interests implicated by disclosing the incident report outweigh any public interest, and therefore the Department did not violate the APRA by denying the request.
Issued April 20, 2020

PR 20-32 **Taylor v. City of Providence**
The Complainant alleged that the City violated the APRA when it withheld from disclosure the names of unsuccessful applicants for a City position. Consistent with precedent, we found significant privacy interests in disclosure of an unsuccessful applicant's name. We also found that disclosure of the names in this context would do little to shed light on the workings of government. We accordingly found that the privacy interest outweighed the public interest. We found no violation.
Issued April 20, 2020

PR 20-33 **Restivo v. Rhode Island Department of Health**
The Complainant alleged that RIDOH violated the APRA when it invoked the twenty (20) business day extension of time to respond under the APRA and characterized his request as "voluminous." Based on our review, we found that RIDOH's extension letter also advised Complainant that completing search and retrieval of his request would take several hours and require prepayment of costs. We determined that RIDOH's extension, taken as a whole, was particularized to Complainant's request and the evidence supported RIDOH's characterization of the request as voluminous. Accordingly, we found no violation.
Issued April 20, 2020

PR 20-34 **Jenkins v. Town of Narragansett**

The Complainant alleged the Town violated the APRA when it first requested prepayment for search and retrieval of potentially responsive documents and then sought a second prepayment to review the retrieved documents. Based on the totality of the evidence before us, the Town's prepayment estimates did not violate the APRA. Complainant also alleged the Town violated the APRA when it denied her request for application materials related to unsuccessful Town Manager applicants. We concluded that the privacy interests of the unsuccessful applicants outweighed the public interest in disclosure, therefore the Town did not violate the APRA when it withheld the documents related to unsuccessful applicants.
Issued April 24, 2020

PR 20-35 **Jenkins v. Narragansett Police Department**
Langer v. Narragansett Police Department

The Complainants alleged that the Department violated the APRA when it denied their requests for certain incident reports involving specifically identified individuals. It was undisputed that none of the reports resulted in an arrest. Based on our review, we concluded that the public interest in disclosure of these reports did not outweigh the privacy interests of the individuals named therein. Accordingly, the Department did not violate the APRA when it denied Complainants' requests.
Issued April 22, 2020

PR 20-36 **Providence Journal v. Central Falls Detention Facility Corporation**

The Complainant alleged that the CFDFC violated the APRA when it withheld from disclosure documents regarding the medical treatment of an inmate. The APRA permits nondisclosure of "[a]ll records relating to a *** doctor/patient relationship, including *all medical information relating to an individual* in any files." R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) (emphasis added). Because it was undisputed that any documents responsive to the Complainant's request would necessarily include "medical information relating to an individual[,]" we found nondisclosure permissible. We found no violation.
Issued April 28, 2020

PR 20-37 **Finnegan v. Scituate Prevention Partnership**
OM 20-24

The Complainant alleged the Partnership violated the APRA when the Town indicated that it did not have records responsive to Complainant's request for documents related to a cell phone for the Partnership Coordinator. Based on the undisputed evidence, neither the Partnership nor the Town maintained documents responsive to Complainant's request. As such, we found no violation. Complainant next alleged the Partnership violated the OMA by failing to post agendas and minutes on the Secretary of State's website for several meetings. We concluded

based on the totality of the evidence that the Partnership is not a public body under the OMA. Accordingly, we found no violation.
Issued April 22, 2020

PR 20-38 **Sherman v. Joint Committee on Legislative Services**
The Complainant alleged the JCLS violated the APRA when it improperly withheld documents responsive to his request pursuant to Exemption (M) and when it misapplied the privacy balancing test. In responding to this complaint, JCLS presented undisputed evidence that it did not maintain documents responsive to Complainant's request and asserted that it mistakenly failed to articulate that in its initial denial. The JCLS maintained that even if it maintained responsive records, such records would be exempt under the cited exemptions. We found that the JCLS violated the APRA by failing to indicate that it did not possess the requested documents. Injunctive relief was not appropriate given JCLS's undisputed representation that it does not maintain responsive documents and we did not find sufficient evidence of a willful and knowing, or reckless violation.
VIOLATION FOUND.
Issued April 28, 2020

PR 20-39 **Owens v. Rhode Island Department of Health**
The Complainant alleged that RIDOH violated the APRA when it: (1) failed to timely respond to her request;(2) withheld responsive documents in their entirety; and (3) failed to state that the withheld documents were not reasonably segregable. Based on the undisputed evidence, we determined that RIDOH failed to respond to the APRA request within the timeframes set forth in R.I. Gen. Laws §§ 38-2-3(e) and 38-2-7(b) and did not include in its denial a statement that no reasonably segregable portion of the withheld documents was releasable. Accordingly, RIDOH violated the APRA. We determined that the responsive documents were required to be kept confidential by state statute and thus were permissibly withheld under the APRA. We did not find evidence of a willful and knowing, or reckless violation, although we directed RIDOH to reimburse Complainant the prepayment fee she paid.
VIOLATION FOUND.
Issued May 1, 2020

PR 20-40 **Moore v. Office of the Postsecondary Commissioner**
The Complainant alleged that the OPC violated the APRA when it: (1) asserted that it did not maintain certain documents responsive to some of his requests about a job position; and (2) withheld a public employee's resume under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Although the Complainant asserted that the OPC should maintain certain documents regarding the job position, the undisputed evidence indicated that the OPC did not maintain the requested records. We accordingly found no violation with respect to that allegation. However, pursuant to the

balancing test and prior findings and caselaw, we found that the OPC violated the APRA by withholding a public employee's resume in its entirety. We accordingly found a violation and ordered the OPC to produce the withheld resume, subject to certain redactions.
VIOLATION FOUND.
Issued May 7, 2020

PR 20-41 **Finnegan v. Town of Scituate**

The Complainant alleged that the Town violated the APRA when it: (1) failed to cite the statutory exemption in its denial; (2) withheld notes that were allegedly "submitted" at a Town Council meeting; and (3) did not provide for an administrative appeal. Based on the undisputed evidence, we found that the Town's response fairly tracked the language of Exemption (K) such that the Town gave specific reasons for the denial. We also found that there was no evidence that the withheld notes were "submitted" at a Town Council meeting. We thus found no violations with respect to these allegations. However, we found that the Town violated the APRA by not providing procedures for an administrative appeal to the chief administrative officer. We found insufficient evidence of a willful and knowing, or reckless, violation and no need for injunctive relief.
VIOLATION FOUND.
Issued May 8, 2020

PR 20-42 **August v. Rhode Island Public Transit Authority**

The Complainant alleged that RIPTA violated the APRA when it: (1) failed to provide monthly ridership reports in its initial response to his request for "all ridership reports"; and (2) when it redacted student and faculty identification numbers on the monthly ridership reports. Based on the undisputed evidence, RIPTA failed to identify, provide, or otherwise exempt the monthly ridership reports within ten (10) business days of Complainant's request. Accordingly, RIPTA violated the APRA by failing to timely identify all responsive records when initially responding to the request. The undisputed evidence indicates that the identification numbers on the reports are identifiable to specific individually identifiable students and faculty. Therefore, we concluded that there was some privacy interest in these numbers and it was permissible for RIPTA to redact the identification numbers because the privacy interests implicated in these records outweigh any public interest that would be served from disclosure. We directed Complainant to notify RIPTA if he still seeks the reports in a redacted manner and, if so, RITPA is directed to provide the remaining monthly ridership reports to Complainant in a redacted manner at no cost. We did not find evidence of a willful and knowing, or reckless violation.
VIOLATION FOUND.
Issued May 8, 2020

PR 20-43 **Davis v. Rhode Island State Police**

The Complainant alleged that the RISP violated the APRA by redacting certain information from the requested records. The RISP asserted that the implicated privacy interests outweighed the public interest in disclosure of this information, such that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. We applied the balancing test and concluded that the RISP did not violate the APRA by providing the documents in redacted form. Accordingly, we found no violations.

Issued May 8, 2020

PR 20-44 **Amaral v. City of Providence**

The Complainant alleged that the City violated the APRA when it: (1) asserted it did not maintain certain responsive records; and (2) withheld three email threads under Exemption (B). Regarding the first allegation, we found that the undisputed evidence indicated that the City did not maintain the requested responsive records and thus found no violation on that allegation. However, regarding the second allegation, we found that the email threads contained responsive portions and that these portions were not "trade secrets and commercial or financial information" under Exemption (B). Accordingly, the City violated the APRA by withholding the responsive portions of the emails. Although we found insufficient evidence of a willful and knowing, or reckless, violation, we instructed the City to provide the responsive portions of the email threads and permitted the City to redact the nonresponsive portions.

VIOLATION FOUND.

Issued May 11, 2020

PR 20-45 **Rhode Island Center for Justice v. Rhode Island Department of Corrections**

The Complainant alleged the DOC violated the APRA when it denied a request pursuant to R.I. Gen. Laws § 38-2-2(4)(E) and § 38-2-2(4)(F) and failed to state whether any portions of the documents were reasonably segregable. Having reviewed the withheld documents *in camera,* we determined that at least some portions of the documents fell within R.I. Gen. Laws § 38-2-2(4)(F), but that DOC failed to comply with the APRA's requirement to state in writing that no portion of the requested documents is reasonably segregable. We therefore concluded that the DOC violated the APRA by failing to state whether any reasonably segregable portions of the requested documents could be released. Although we found no evidence of a willful and knowing, or reckless violation, we directed DOC to review the documents at issue and determine whether there are reasonably segregable portions that must be released under the APRA.

VIOLATION FOUND.

Issued May 11, 2020

PR 20-46 **Katz v. Town of Tiverton**

The Complainant alleged that the Town violated the APRA when it withheld executive session minutes and audio recordings, which the Complainant argued had been unsealed by the Town Council's adoption of a certain policy regarding executive session minutes. The Town asserted that the minutes and recordings were properly withheld because they were sealed and under the Town Council's policy, unsealing the subject minutes was contingent upon an "administrative review period" and none of the records had yet been unsealed. Upon our review of the evidence, including the relevant policy, this Office determined that it was permissible for the Town to withhold the minutes under Exemption (J) because there was no evidence that any of the requested minutes had been unsealed. We thus found no violation.

Issued May 14, 2020

PR 20-47 **Fitzmorris v. Office of the Auditor General**

The Complainant alleged that the Office of Auditor General violated the APRA when it failed to respond to his public records request. The undisputed evidence indicated that the request, which was sent by mail, was not received because of the Auditor General's failure to update its website and APRA procedures with the proper/current mailing address. We found the Office Auditor General violated the APRA by failing to provide updated and accurate APRA procedures on its website. Based on the totality of the circumstances, we did not find sufficient evidence of a willful and knowing, or reckless, violation or that injunctive relief was appropriate.

VIOLATION FOUND.

Issued May 14, 2020

PR 20-48 **Farinelli v. City of Pawtucket**

The Complainant alleged that the City violated the APRA when it withheld two (2) internal affairs reports. Based on the record, including our *in camera* review of the two withheld reports, we conducted the balancing test for both reports, considering the privacy and public interests implicated by disclosure. We found that the City did not violate the APRA by withholding the first internal affairs report, but that the second report should have been disclosed in redacted form. We accordingly found that the City's nondisclosure of the second internal affairs report in its entirety violated the APRA and instructed the City to disclose a redacted version of the second internal affairs report at no cost.

VIOLATION FOUND.

Issued May 27, 2020

PR 20-49 **Payne, et al. v. Town of Barrington**

The Complainants alleged the Town violated the APRA based on: (1) the Town's prepayment estimate for search, retrieval, and review of certain potentially

responsive documents; (2) the Town withholding certain records pursuant to the client/attorney exemption; and (3) the Town claiming that no responsive records existed for certain parts of the Complainants' request. Based on the evidence presented, including the breadth of Complainants' request, we concluded that the Town's prepayment estimate did not violate the APRA. Based on our *in camera* review of the withheld documents, we found that they were permissibly withheld pursuant to the client/attorney relationship exemption, although we directed the Town to either produce or provide a supplemental submission regarding one withheld email. Finally, we did not find that the Town violated the APRA by asserting that no responsive records exist as to certain requests. Accordingly, we found no violations.
Issued May 29, 2020

PR 20-49B This Office previously concluded that the Town did not violate the APRA in connection with the Complainants' multi-part APRA request. *See* PR 20-49. We did require the Town to produce or provide a supplemental submission regarding a single withheld email, which the Town subsequently produced to Complainants in accordance with our finding. After the finding was issued, Complainants provided a supplemental submission offering new, or "clarified," evidence or arguments in support of their position that the Town committed a knowing and willful, or reckless, violation of the APRA and requested that this Office reconsider its previous determination. Based on our review of Complainants' submission, the Complainants did not identify any circumstances that would warrant re-opening our investigation or that led us to question the conclusions we reached. Accordingly, we declined to reconsider our previously issued finding.
Issued July 2, 2020

PR 20-50 **Moretti v. Town of Narragansett**
The Complainant proffered several allegations that the Town violated the APRA in connection with two (2) APRA requests he submitted. Based on the totality of the evidence before us, we found that the Town violated the APRA with respect to one of Complainant's allegations, namely, that the Town improperly required the Complainant to submit his Second Request on a specific Town form and that the Town failed to substantively respond to the Second Request within ten (10) business days. We did not find injunctive relief to be appropriate, nor did we find sufficient evidence of a willful and knowing, or reckless violation. We also did not find that the Town violated the APRA with regard to the Complainant's allegations pertaining to his First Request.
VIOLATION FOUND.
Issued June 9, 2020

PR 20-51 **Wilson v. Hope Academy Charter School**

The Complainant alleged the School violated the APRA when it failed to establish and post written APRA procedures on its website. The School conceded that written APRA procedures were not posted on its website pursuant to R.I. Gen. Laws § 38-2-3(d) as of the time when Complainant submitted the Complaint. Accordingly, we found the School violated the APRA. We did not find injunctive relief appropriate given the uncontested evidence that the School has now posted its APRA procedures on its website. Nor did we find sufficient evidence of a willful and knowing, or reckless, violation.

VIOLATION FOUND.

Issued June 18, 2020

PR 20-52 **Lamendola v. East Greenwich School District**

The Complainant alleges the District violated the APRA when it withheld documents related to a "staff investigation." Based on our *in camera* review, we concluded that the District did not violate the APRA by withholding a number of documents pursuant to R.I. Gen. Laws §§ 38-2-2(4)(A)(I)(a), (M). Additionally, there are a number of documents for which we questioned whether withholding the documents was proper under the APRA. Accordingly, we instructed the District to either produce those documents or provide a supplemental submission regarding those withheld documents. At this time, we did not find evidence of a willful and knowing, or reckless, violation.

Issued June 26, 2020

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 employees 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 ($.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 herein; 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.

38-2-8. **Administrative appeals.** — (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.

38-2-9. **Jurisdiction of superior court. —**

(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.

38-2-16. **38 Studios, LLC investigation.** — Notwithstanding any other provision of this chapter or state law, any investigatory records generated or obtained by the Rhode Island state police or the Rhode Island attorney general in conducting an investigation surrounding the funding of 38 Studios, LLC by the Rhode Island economic development corporation shall be made available to the public; provided, however:

(1) With respect to such records, birthdates, social security numbers, home addresses, financial account number(s) or similarly sensitive personally identifiable information, but not the names of the individuals themselves, shall be redacted from those records prior to any release. The provisions of § 12-11.1-5.1 shall not apply to information disclosed pursuant to this section.

SECTION II

OPEN MEETINGS ACT

Attorney General
Peter F. Neronha

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OM 20-01 **Wahl, et al v. Indian Lake Shores Fire District**

The Complainants allege that the Fire District violated the OMA when it failed to timely post minutes of its August 18, 2019 meeting on the Secretary of State's website. The Fire District conceded that its August 18, 2019 meeting minutes were not timely posted on the Secretary of State's website, and accordingly we found a violation. This Office did not find evidence of a willful or knowing violation, nor did we find injunctive relief appropriate since the minutes have now been posted.
VIOLATION FOUND.
Issued January 2, 2020

OM 20-02 **Bergner v. Town of South Kingstown**

The Complainant alleged that the Town's Economic Development Committee Data Subcommittee ("Subcommittee") violated the OMA when it failed to post notice or an agenda for a meeting. The Town maintained that the Subcommittee is not a "public body" subject to the provisions of the OMA and advised that the Subcommittee was subsequently disbanded. Due to the fact that the Subcommittee is now disbanded, we concluded that we need not determine whether the now-disbanded subcommittee constituted a public body because we find that, even if the subcommittee violated the OMA, there is no need for injunctive relief and no evidence of a willful or knowing violation.
Issued January 13, 2020

OM 20-03 **Mahoney v. Scituate Town Council**

The Complainant alleged the Town Council violated the OMA when the agendas for its April 11, 2019 and May 16, 2019 meetings failed to inform the public that the Town Council would vote to remove members of the Scituate Housing Authority Board of Commissioners. Based on the parties' submissions and the minutes for the subject meetings, we determined that the pertinent agenda item for the April meeting adequately informed the public that a public hearing regarding the housing authority and its commissioners would occur. However, this Office found that the agenda for the May meeting did not adequately inform the public that a vote removing the housing authority commissioners would occur. Accordingly, the Town Council violated the OMA in connection with its May meeting. However, based on the totality of the evidence, we did not find sufficient evidence to support a willful or knowing violation, nor did we find injunctive relief appropriate.
VIOLATION FOUND.
Issued January 13, 2020

OM 20-04 **McCarthy v. Narragansett Town Council**

The Complainant alleged that the Town violated the OMA when it convened into executive session on multiple occasions to discuss the disposition of town owned property. During the pendency of this Complaint, this Office issued *Fortin v. Narragansett Town Council*, OMA 19-41, which found that the same executive sessions did not violate the OMA. We accordingly found no violations.
Issued January 17, 2020

OM 20-05 **Payette v. Scituate Town Council**

The Complainant alleged that the Town Council violated the OMA when an agenda item did not sufficiently specify the nature of the business to be discussed. The evidence indicated that the Town Council discussed and voted on the purchase of a new police vehicle – as described in the agenda item – but then also discussed and voted on the allocation of a smaller sum to effectuate the reassignment of police vehicles. Because the reassignment of police vehicles was not noticed on the agenda, we found that the Town Council violated the OMA. *See* R.I. Gen. Laws § 42-46-6(b). However, we did not find evidence of a willful or knowing violation, nor did we find injunctive relief appropriate.
VIOLATION FOUND.
Issued January 17, 2020

OM 20-06 **Benjamin v. South Kingstown School Committee**

The Complainant alleged that the School Committee violated the OMA when it: (1) convened into executive session to discuss candidates for the open superintendent position; (2) did not disclose votes taken in executive session; and (3) convened a rolling quorum about the superintendent position at a retreat. Based on the undisputed evidence, we found that the executive session permissibly fell with the ambit of R.I. Gen. Laws § 42-46-5(a)(1). We also concluded that the nondisclosure of the executive session votes was permissible under R.I. Gen. Laws § 42-46-4(b) because the School Committee presented evidence that disclosure of the votes would jeopardize future strategy and negotiation. Finally, because the uncontroverted affidavits indicated that no discussion occurred about the superintendent position during the School Committee retreat, we found that no "meeting" on this issue occurred during the retreat. *See* R.I. Gen. Laws § 42-46-2(1). We accordingly found no violations.
Issued January 29, 2020

OM 20-07 **Lopez v. Westerly Housing Authority**

The Complainant alleged that the Board violated the OMA when it discussed his job performance during executive session at its April 9, 2019 meeting without prior notification to him pursuant to R.I. Gen. Laws § 42-46-5(a)(1). It was undisputed that the Board did not provide the requisite notice to the Complainant of his rights pursuant to R.I. Gen. Laws § 42-46-5(a)(1). Accordingly, the Board violated the

OMA. We did not find injunctive relief appropriate because the Complainant was present during the April 9 executive session discussion, the vote of "No Confidence" took place during open session, and the Board re-noticed and re-discussed the Complainant's job performance at a subsequent meeting. Based on the evidence presented, we did not conclude that the Board's conduct rose to the level of a willful or knowing violation.
VIOLATION FOUND.
Issued January 30, 2020

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

The Complainant alleged that the Fire District failed to post meeting notices that included the date the notice was posted for three meetings, and untimely filed meeting minutes for one meeting. The Fire District did not contest these allegations and we found that these actions violated the OMA. The Complainant also alleged that the Fire District violated the OMA when it voted to amend its agenda and then voted on the added item. Our review of the evidence indicated that the Fire District permissibly added an item to the agenda for discussion purposes only under R.I. Gen. Laws § 42-46-6(b). Although the Fire District subsequently voted on a different agenda item, we found no evidence that the Fire District voted on the item it had added to the agenda. On that allegation, we found no violation. Based on the totality of the circumstances, we did not find sufficient evidence of a willful or knowing violation, or that injunctive relief was appropriate.
VIOLATION FOUND.
Issued January 30, 2020

OM 20-09 **Courtney v. Jamestown Housing Authority**

The Complainant alleged that the Housing Authority failed to provide unofficial meeting minutes and failed to properly post notice of the meeting. The undisputed evidence indicated that the Housing Authority failed to make unofficial meeting minutes available within thirty-five days of a meeting, in violation of the OMA. The Housing Authority also failed to post the supplemental meeting notice in three locations, which violated the OMA. Based on the totality of the circumstances, we did not find sufficient evidence of a willful or knowing violation or that injunctive relief was appropriate.
VIOLATION FOUND.
Issued January 31, 2020

OM 20-10 **Langseth v. Buttonwoods Fire District**

The Complainant alleged that the Fire District violated the OMA at its June 1, 2015 meeting when it voted to extend a Lease that was not listed on the agenda and when the minutes failed to indicate each Fire District member's individual vote. The undisputed evidence revealed that the Fire District did not take a vote concerning the Lease. However, the evidence showed that the Fire District discussed the Lease

despite not listing this discussion on the agenda, in violation of the OMA. Accordingly, this Office found that the Fire District violated the OMA when the agenda for its June 1, 2015 meeting failed to adequately inform the public of the business to be discussed. This Office did not find injunctive relief to be appropriate and did not find sufficient evidence of a willful or knowing violation.
VIOLATION FOUND.
Issued January 31, 2020

OM 20-11 **Lamendola v. East Greenwich School Committee**
PR 20-11 The Complainant alleged the School Committee violated the APRA when it improperly redacted certain information on an invoice for legal services. The undisputed evidence demonstrated that the School Committee provided Complainant with the unredacted invoice as he requested. As such, any request for injunctive relief is moot. Additionally, we were provided with no evidence that the School Committee's initial redaction, even assuming it was improper, would have constituted a willful and knowing, or reckless, violation. Accordingly, we declined to further address the merits of the Complainant's APRA allegation.

The Complainant also alleged that the School Committee violated the OMA at several meetings when an agenda item did not sufficiently specify the nature of the business to be discussed and when the School Committee failed to report certain executive session votes in open session. We declined to address the merits of the allegations concerning one meeting because the School Committee provided undisputed evidence that the 180-day statute of limitations expired before Complainant filed his complaint with this Office. *See* R.I. Gen. Laws § 42-46-8(b).

For the other meetings, we found that the challenged agenda items did not violate the OMA. However, we concluded that the School Committee did not properly report out in open session a vote that occurred in the August 13, 2019 executive session. We did not find injunctive relief appropriate, nor did we find evidence of a willful or knowing violation.
VIOLATION FOUND.
Issued February 28, 2020

OM 20-12 **Stewart v. West Greenwich Town Council**
The Complainant alleged that the Town Council violated the OMA when the agenda for its January 15, 2020 meeting was posted on the Secretary of State's website less than 48 hours before the meeting. The Town Council conceded that it failed to timely post the meeting. Accordingly, the Town Council violated the OMA. Based on the totality of the circumstances, we did not find injunctive relief appropriate, nor did we find evidence to support a willful or knowing violation.
VIOLATION FOUND.
Issued March 5, 2020

OM 20-13 **Stewart v. West Greenwich Planning Board**

The Complainant alleged that the Board failed to post official or approved minutes on the Secretary of State's website for two meetings within 35 days of those meetings. The Board conceded that it did not timely file its minutes. Accordingly, the Board violated the OMA. We did not find injunctive relief appropriate because the minutes were already posted on the Secretary of State's website, nor did we find evidence to support a willful or knowing violation.

VIOLATION FOUND.

Issued March 5, 2020

OM 20-14 **Pierson v. Coventry Town Council**

The Complainant alleged that the Council violated the OMA at its October 15, 2019 meeting when it improperly convened into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) to discuss the Town Manager search without discussing the job performance, character, or physical or mental health of any specific person(s). The Complainant also alleged the Council voted to increase the Town Manager salary offer outside of open session and failed to report the vote in open session. The Council acknowledged that no specific Town Manager candidate was discussed during the October 15 executive session. Our *in camera* review of the executive session minutes revealed that the Council reached a "consensus" regarding raising the advertised salary offer, which was not disclosed upon the Council's reconvening into open session. For these reasons, we found the Council violated the OMA. We did not find a willful or knowing violation at this time. We instructed the Council to unseal the relevant executive session minutes and disclose any votes taken.

VIOLATION FOUND.

Issued March 13, 2020

OM 20-15 **GoLocalProv v. Providence City Council**

The Complainant alleged that the City Council violated the OMA when a working group convened outside the public purview. Based on the undisputed evidence, we found that no quorum of the City Council was present at the working group meeting and thus the OMA was not implicated with respect to the City Council. With respect to the working group, we found that it was not a "public body" under the OMA based on the totality of the undisputed facts, including that it is an informal ad hoc group that does not have any delegated authority. We accordingly found no violation.

Issued March 13, 2020

OM 20-16 **Scott v. Scituate School Committee**

The Complainant alleged the School Committee violated the OMA on February 4, 2020 when it provided school tours to potential custodial vendors that constituted

a rolling quorum pertaining to a new custodial contract. The undisputed evidence revealed that the February 4 "meeting" was a mandatory pre-bid meeting for potential vendors and no School Committee members were present. Without evidence that a quorum of the School Committee convened a meeting, the OMA is not implicated. Accordingly, we found no violation.
Issued March 17, 2020

OM 20-17 **Howard v. RITBA Foundation**
The Complainant alleged that the Foundation violated the OMA by failing to post notice and agendas on the Secretary of State's website for several meetings. Guided by Rhode Island Supreme Court precedent, we concluded based on the totality of the evidence that the Foundation is not a public body under the OMA. Accordingly, we found no violations.
Issued March 17, 2020

OM 20-18 **Angelo v. Westerly Town Council**
The Complainant alleged that the Town Council violated the OMA when it convened into executive session to discuss the disposition of property. The evidence indicated that the subject property was "publicly held property" within the meaning of R.I. Gen. Laws § 42-46-5(a)(5) and that the Town Council's discussions related to its disposition. We also found that the evidence supported the Town Council's assertion that advanced public information about the Town Council's discussion would be detrimental to the interest of the public. We accordingly found that the discussion permissibly fit within the OMA's executive session exemption and thus found no violation.
Issued March 17, 2020

OM 20-19 **Mosher v. South Kingstown School Committee**
The Complainant alleged that the School Committee violated the OMA when a quorum of its members engaged in a collective discussion over social media, specifically Facebook, outside of a properly noticed public meeting. Based on the totality of the evidence, we concluded that the evidence did not establish that a quorum of the School Committee discussed a topic over which School Committee has supervision, control, jurisdiction, or advisory power, and thus the OMA was not implicated. Accordingly, we found no violation.
Issued March 26, 2020

OM 20-20 **O'Connell v. West Warwick Pension Board**
The Complainant alleged the Board violated the OMA when several items on the agenda for its January 13, 2020 meeting failed to specify the nature of the business to be discussed. This Office determined that the pertinent agenda items did not adequately inform the public of the business to be discussed by the Board. Accordingly, the Board violated the OMA in connection with its January meeting.

However, based on the totality of the evidence, we did not find sufficient evidence to support a willful or knowing violation, nor did we find injunctive relief appropriate.
VIOLATION FOUND.
Issued March 31, 2020

OM 20-21 **Albanese v. North Kingstown Town Council**
The Complainant alleged that the Town Council violated the OMA when it convened into executive session without listing the executive session on the agenda. The undisputed evidence indicated that the Town Council listed the executive session items on its agenda. We found no violation.
Issued April 2, 2020

OM 20-22 **Finnegan v. Scituate Town Council**
The Complainant alleged that the Council convened a meeting outside the public purview related to placing an employee on administrative leave and that an email from the Town Solicitor to the Council constituted a "rolling quorum." Based on the undisputed evidence, there was no evidence a quorum of the Council engaged in a collective discussion about the topic. Additionally, there was no evidence any councilmembers responded to the Solicitor's email or otherwise engaged in a collective discussion about it. We accordingly found no violation.
Issued April 6, 2020

OM 20-23 **Cook v. Tiverton Town Council**
The Complainant alleged that the Town Council violated the OMA when it engaged in a discussion related to Town business after a Town Council meeting. Based on the evidence before us, we found insufficient evidence of a collective discussion between a quorum of the Town Council. Although there was evidence that two councilmembers voiced concerns after the meeting had concluded, we did not find that these isolated remarks constituted a collective discussion among a quorum of the Town Council. We found no violation.
Issued April 17, 2020

OM 20-24 **Finnegan v. Scituate Prevention Partnership**
PR 20-37 The Complainant alleged the Partnership violated the APRA when the Town indicated that it did not have records responsive to Complainant's request for documents related to a cell phone for the Partnership Coordinator. Based on the undisputed evidence, neither the Partnership nor the Town maintained documents responsive to Complainant's request. As such, we found no violation. Complainant next alleged the Partnership violated the OMA by failing to post agendas and minutes on the Secretary of State's website for several meetings. We concluded based on the totality of the evidence that the Partnership is not a public body under the OMA. Accordingly, we found no violations.
Issued April 22, 2020

OM 20-25 **Perron v. Central Falls School District Board of Trustees**
The Complainant alleged that Board violated the OMA when it: (1) discussed her job performance, character, or physical or mental health during an executive session without providing her advanced written notice; and (2) convened into executive session on November 21, 2019 under R.I. Gen. Laws 42-46-5(a)(1) without stating in open call and recording in its meeting minutes that the affected person (the Complainant) had been notified. With respect to the first allegation, the Complainant specified six possible executive sessions when she believed she may have been discussed. Based on the undisputed evidence, including the executive session minutes (reviewed *in camera*), we found the evidence did not support Complainant's allegation that her job performance, character, or physical or mental health were discussed during one of the six executive sessions. We thus found no violation. However, with respect to the second allegation, we found that the Board failed to state in open call and record in its November 21, 2019 meeting minutes that the person to be discussed during the executive session had been notified. We thus found a violation, though we did not find a need for injunctive relief or sufficient evidence of a willful or knowing violation.
VIOLATION FOUND.
Issued April 24, 2020

OM 20-26 **Jones v. Kingston Hill Academy Board of Trustees**
The Complainant alleged that the Board violated the OMA in connection with its June 26, 2019 emergency meeting when: (1) the meeting minutes did not sufficiently state why the meeting was necessary; (2) its vote to appoint a new Interim President was outside the scope of the emergency purpose for the meeting; (3) it improperly convened into executive session during the emergency meeting to discuss the job performance of an individual when that individual requested the discussion be held in open session; and (4) some Board members convened a rolling quorum via email to facilitate the emergency meeting. Based on the undisputed evidence, we found that the Board's statement recorded in the minutes regarding the reasons for the emergency meeting was permissible. We further determined that

the Board's discussion and vote to appoint a new Interim President at the emergency meeting came within the ambit of the issue that necessitated the emergency meeting. We declined to address the merits of Complainant's allegation regarding not holding the executive session discussion in open session because it was undisputed that Complainant was not the person being discussed and we therefore concluded Complainant was not "aggrieved" with regard to this allegation. Finally, we did not find evidence that a "meeting" of a quorum of the Board occurred outside the public purview. We accordingly found no violations.
Issued April 30, 2020

OM 20-27 **Katz v. Board of Elections**

The Complainant alleged that the Board violated the OMA when an agenda item failed to sufficiently specify the nature of the business to be discussed and when meeting minutes failed to accurately describe what occurred at the meeting. Based on our review of the evidence, including the meeting audio, we found that the agenda item provided fair and adequate notice to the public. We also found that the meeting minutes contained all the elements required by the OMA and that they fairly described the Board's discussion. We found no violations.
Issued May 1, 2020

OM 20-28 **Katz v. Tiverton Board of Canvassers**

The Complainant alleged that the Board violated the OMA when two of its three members met outside the public purview to discuss and/or decide issues related to retaining special counsel, and that these discussions resulted in an agenda item related to the Board being placed on the Town Council agenda. Based on our review of the evidence, including the affidavits of the two Board members and the Board clerk, we did not find evidence of a collective discussion between Board members about these topics outside of a public meeting. We accordingly found no violation.
Issued May 22, 2020

OM 20-29 **Childs, et al. v. Bonnet Shores Fire District**

The Complainants alleged that the Fire District failed to abide by several provisions of the OMA. The Fire District maintained as a threshold matter that it is not a "public body" under the OMA. We found that the Fire District, which has the power to tax and fulfills traditional governmental roles, is a "public body" subject to the OMA's requirements. We found that the Fire District discussed topics that were not appropriate for executive session under R.I. Gen. Laws § 42-46-5(a)(1) during its May 12, 2018 executive session. We also found that the Fire District failed to file certain meeting minutes and failed to file its annual notice. Although we did not find sufficient evidence of a willful or knowing violation, we instructed the Fire District to disclose the May 12, 2018 executive session minutes. We also noted that the Fire District is expected to comply with the OMA's requirements going forward.

VIOLATION FOUND.

Issued May 26, 2020

OM 20-30 **Dubois v. Woonsocket City Council**

The Complainant alleged that the City Council violated the OMA by discussing "CVS and legislation relating to it" without those items being properly noticed on the meeting agenda. We reviewed the record, including video of the meeting, and determined that the Council did not discuss business related to "CVS and legislation related to it," and that CVS was only briefly mentioned in passing as part of a larger discussion relating to an item that was noticed on the agenda. Accordingly, we found no violation.

Issued June 5, 2020

OM 20-31 **Towne v. Narragansett Town Council**

The Complainant alleged the Town Council violated the OMA when an agenda item for its November 18, 2019 meeting failed to specify the nature of the business to be discussed with regard to the renewal of a certain business's liquor license. This Office determined that the subject agenda item did not adequately inform the public of the business to be discussed and voted on by the Town Council. We accordingly found that the Town Council violated the OMA. While we did not find evidence of a willful or knowing violation, we instructed the Town Council to re-notice and re-vote on the agenda item within thirty days.

VIOLATION FOUND.

Issued June 9, 2020

OM 20-32 **Castelli v. Coventry Town Council**

The Complainant alleged that the Town Council violated the OMA by having an insufficiently specific agenda for its February 10, 2020 meeting. Specifically, the Complainant argued that the agenda items "President's Comments" and "District One Update by Councilwoman Dickson" did not sufficiently describe the nature of

the business to be discussed. Based on the undisputed evidence, we concluded that matters related to Town business were discussed pursuant to each of these agenda items and that the agenda items did not provide notice of the substance of what would be discussed. Accordingly, we found that the Town Council violated the OMA. We did not find sufficient evidence of a willful or knowing violation and did not find a need for injunctive relief, as no action was taken pursuant to either agenda item.
VIOLATION FOUND.
Issued June 11, 2020

OM 20-33 **Katz v. Tiverton Library Board of Trustees**
The Complainant alleged the Board violated the OMA by convening a rolling quorum outside the public purview through two separate email threads. Based on our review of the subject emails and undisputed facts, we found no evidence of a rolling quorum, and accordingly found no violation.
Issued June 19, 2020

OM 20-34 **Finnegan v. Scituate Housing Authority**
The Complainant alleged that the Scituate Housing Authority ("SHA") failed to timely post official and/or approved minutes for its October 1, 2019 meeting on the Secretary of State website. The SHA did not dispute that it failed to post official and/or approved minutes within 35 days of the meeting as required by the OMA. Based on the undisputed facts, we found the SHA violated the OMA. We did not find injunctive relief appropriate because the evidence indicated that the SHA has now posted minutes for the October 1, 2019 meeting that have been approved. In the circumstances of this case, we also did not find sufficient evidence of a willful or knowing violation.
VIOLATION FOUND.
Issued June 23, 2020

OM 20-35 **Englehart v. Rhode Island Industrial Facilities Corporation**
The Complainant alleged that the RIIFC cited inapplicable reasons to enter executive session regarding two items on its October 24, 2019 agenda. The Complainant did not contest that two of the four purposes listed for entering each executive session applied. As such, we did not find that the RIIFC improperly entered executive session. Additionally, we found that the undisputed evidence indicated that it was permissible for RIIFC to enter executive session pursuant to the third cited reason. RIIFC acknowledged that it inadvertently cited a fourth purpose but we did not find a violation in these circumstances where the undisputed record indicated that the executive session was permissible pursuant to three other purposes and where RIIFC indicated it would take measures going forward to avoid inadvertently citing additional inapplicable purposes for entering executive session.
Issued July 3, 2020

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.

42-46-4. **Closed meetings.** — (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 tele-

phone 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.

42-46-6. Notice. —

(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, excluding weekends and state holidays in the count of 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 in accordance with § 42-46-6(b) 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 in accordance with § 42-46-6(b);

(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 in accordance with § 42-46-6(b).

(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.

42-46-7. Minutes. —

(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 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 gen¬eral 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.

SECTION III

PROCEDURES & FORMS

ATTORNEY GENERAL
PETER F. NERONHA

PUBLIC RECORDS REQUEST GUIDELINES
OPEN GOVERNMENT UNIT

The Office of Attorney General is committed to ensuring open and transparent access to our records. Consistent with the Access to Public Records Act ("APRA"), R.I. Gen. Laws § 38-2-1, *et. seq*., and to facilitate access in an expeditious and courteous manner, the Office of Attorney General has instituted the following procedures for the public to obtain public records maintained by this Office.

1. Requests for records must be made in writing, except as provided in paragraph 3, and sent to the Open Government Unit, which is the Unit within the Office of Attorney General designated to respond to requests. APRA Requests may be submitted in any of the following manners:
    - Mailed to: Office of Attorney General, Attn: Open Government Unit, 150 South Main Street, Providence, Rhode Island 02903.
    - Hand-delivered during business hours to the Office of Attorney General at the reception desk (150 South Main Street) and addressed to the Open Government Unit. The regular business hours of the Office are 8:30 a.m. to 4:30 p.m.
    - Emailed to: opengovernment@riag.ri.gov.

2. A request form is appended for your convenience and is also available on our website: www.riag.ri.gov. You are not required to use our request form, to provide identifying information, or to provide the reason you seek the records. If you do not provide any identifying or contact information, a response to your request will be available no later than 10 business days following your request at the reception desk (150 South Main Street) during normal business hours (8:30 a.m. to 4:30 p.m.).

3. If pursuant to the APRA, 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.

4. Please be advised that the APRA allows a public body ten (10) business days to respond, which can be extended an additional twenty (20) business days for "good cause." These times may be tolled pending a request for prepayment or clarification. We appreciate your understanding and patience.

5. 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. Any withholding or redaction of records constitutes a denial, as does a response from our Office that we do not maintain any records responsive to your request. You may submit a review petition in the same manner as your original request. You may also file a lawsuit in Superior Court.

6. If you have any questions regarding submitting an APRA request, you may email: opengovernment@riag.ri.gov or contact us at (401) 274-4400 and ask to be connected to the Open Government Unit. Additional materials regarding the APRA can be found at: http://www.riag.ri.gov (then proceed to the link entitled "Access to Public Records Act and Open Meetings Act").

ATTORNEY GENERAL
PETER F. NERONHA

ACCESS TO PUBLIC RECORDS ACT
REQUEST FORM

Date _____

Name (optional) _____

Address (optional) _____

_____

Telephone (optional) _____

Email Address (optional) _____

Requested Records: _____

_____

_____

_____

_____

_____

_____

Preferred Format of Response _____

Forward this Document to the Open Government Unit

Note: You are not required to provide identifying information or the reason you seek the records. If you do not provide any identifying or contact information, a response to your request will be available no later than 10 business days following your request at the reception desk (150 South Main Street) during normal business hours (8:30 a.m. to 4:30 p.m.).

ATTORNEY GENERAL

PETER F. NERONHA

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.

ATTORNEY GENERAL
PETER F. NERONHA

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 agsummit@riag.ri.gov, facsimile 401-222-3016, or mail to Office of Attorney General, Open Government Unit, 150 South Main Street, Providence, Rhode Island 02903.

ATTORNEY GENERAL
PETER F. NERONHA

ACCESS TO PUBLIC RECORDS ACT CHECKLIST[1]
OPEN GOVERNMENT UNIT

It is important to note that the APRA establishes the minimum requirements with which public bodies must comply. Public bodies are encouraged to implement policies promoting increased disclosure and transparency that are consistent with the APRA and its goal of facilitating public access to government records.

PROCEDURES *(R.I. Gen. Laws § 38-2-3(d))*

- All public bodies must establish written procedures regarding access to public records, which must be posted on the public body's website, if such a website is maintained, and made otherwise readily available to the public.
- Written procedures must include the following:
  - Identification of a designated public records officer or unit;
  - Where to make a public records request; and
  - How to make a public records request.
- A public body may require that requests be made in writing. However, requests need not be in writing if the requested records are available pursuant to the Administrative Procedures Act or are otherwise readily available to the public.
- A public body cannot require that requests be made on a specific form or that requesters provide identifying information or the reason(s) for their request.

TRAINING AND CERTIFICATION *(R.I. Gen. Laws § 38-2-3.16)*

- Any officer or employee given authority to grant or deny access to records must be trained, either by attending an Attorney General training or by watching the video of the Attorney General's Open Government Summit.
- No later than January 1 of every year, every public body and Chief Administrative Officer must certify 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.
  - Any person who becomes authorized by their employer after January 1 to grant or deny Access to Public Records Act requests shall receive training as required under the Act as soon as practicable, but not more than one (1) month after being authorized to grant or deny APRA requests. The Chief Administrative Officer must certify to the Office of Attorney General that training has been received when training has been completed.
- Certification should be accomplished using forms generated by the Attorney General and available at: http://www.riag.ri.gov/CivilDivision/OpenGovernmentUnit.php.

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[1] *This checklist is provided by the Office of Attorney General 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 neither intended to replace the Access to Public Records Act nor should it be construed as legal advice. Public bodies should defer to their legal counsel when questions regarding compliance arise. Revised July 2020.*

- Completed certification forms must be forwarded to the Office of Attorney General, Attn: Open Government Unit 150 South Main Street, Providence, Rhode Island 02903 or agsummit@riag.ri.gov.

RESPONDING TO REQUESTS[2]

- Within ten (10) business days of receipt of a request, the public body must provide one of the following responses to the requester:
  - Access to the records;
  - Denial of the request;
  - Extension of the time to respond; or
  - Estimate of the time and cost, which tolls the time to respond.

Access:

- 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 of the exemptions found in R.I. Gen. Laws § 38-2-2(A)-(AA). *(R.I. Gen. Laws § 38-2-2(4))*.
  - Even if a document is exempt from disclosure, the public body may, in its discretion, still disclose the document, unless disclosure is prohibited by some other law, regulation, or rule of court.
- Documents must be provided in any requested media that can be provided. (*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))*.
    - For example, if the public body maintains and can provide a document in word or excel and the requester requests that document in one of those particular formats, the public body cannot provide a PDF.

Denial:

- Any denial of a request for records:
  - must be in writing (even if request was made orally);
  - Provide specific reason(s) (including citation to specific exemptions, where applicable) for denial;
    - Without a showing of good cause, any exemption not specifically stated in the denial is deemed waived. *(R.I. Gen. Laws § 38-2-7(a))*.
  - If withholding entire document, must state that no reasonably segregable portion of the document can be produced. (*R.I. Gen. Laws § 38-2-3(b));* and
  - Identify procedure for appealing denial. *(R.I. Gen. Laws § 38-2-7(a))*.
- The following responses constitute denials for purposes of the APRA and the requirements set forth above:
  - A response indicating that the public body does not maintain documents responsive to the request. *(R.I. Gen. Laws § 38-2-7(c))*.
  - A response that includes any redaction of any records, in whole or in part.

[2] 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).*

Extend the time to respond *(R.I. Gen. Laws § 38-2-3(e))*

- A public body may extend the time to respond by an additional twenty (20) business days.
- The extension must:
  - Be in writing;
  - 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; and
  - Be particularized to specific request – no copying above boilerplate language from the statute.

COSTS *(R.I. Gen. Laws § 38-2-4)*

- Up to $.15 per document copied on a common or legal-size paper;
- Up to $15.00 per hour for search, retrieval, review, and redaction, with no charge for the first hour;
  - Multiple requests from the same person/entity within a 30-day time may be considered one request for purposes of calculating the first hour at no charge.
- No more than the reasonable actual cost for providing electronic records;
- 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.
- It is a best practice to provide requesters with an estimate up front so that they have an opportunity to make an informed decision about whether to proceed with the request.

ATTORNEY GENERAL
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OPEN MEETINGS ACT CHECKLIST[1]
OPEN GOVERNMENT UNIT

It is important to note that the OMA establishes the minimum requirements with which public bodies must comply. Public bodies are encouraged to conduct meetings as openly as possible, consistent with the OMA and its purpose of ensuring that public business is carried out in an open and transparent manner.

WHEN THE OMA APPLIES *(R.I. Gen. Laws § 42-46-2)*

- The OMA applies whenever a quorum of a public body convenes for a meeting. The OMA applies when all three elements are present:
  - A public body is "any department, agency, commission, board, council, bureau, or authority or any subdivision thereof of state or municipal government," in addition to certain libraries.
  - A meeting is "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."
  - A quorum is defined as "a simple majority of the membership of a public body."
    - Note: a "walking" or "rolling" quorum may be created where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions, whether in person or by electronic means.
      - Except as provided in any applicable Executive Order, discussions of a public body by telephone or electronic means are permissible only to schedule a meeting or due to a member being on active duty in the armed services or having a disability. *(R.I. Gen. Laws § 42-46-5(b))*.

NOTICE REQUIREMENTS *(R.I. Gen. Laws § 42-46-6)*

- Annual Notice (beginning of each calendar year only) *(R.I. Gen. Laws § 42-46-6(a))*.
  - Includes the date(s), time(s), and location(s) of the meetings.
  - Notice must be posted electronically with the Secretary of State **and** provided to a member of the public upon request.
- Supplemental Notice/Agenda (minimum 48 hours before the date of the scheduled meeting, **excluding** weekends and state holidays) *(R.I. Gen. Laws § 42-46-6(b))*.
  - Notice includes:
    - 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.
      - Statement must give the public fair notice of the nature of the business to be discussed or acted upon. Agenda items such as "Old Business" or "Treasurer's Report" are insufficient.

[1] *This checklist is provided by the Office of Attorney General to assist public bodies and provide guidance concerning the Open Meetings Act's requirements. This checklist does not list all Open Meetings Act requirements and is neither intended to replace the Open Meetings Act nor should it be construed as legal advice. Public bodies should defer to their legal counsel when questions regarding compliance arise. Revised July 2020.*

- Cannot take a vote on an item if agenda only states that the item will be discussed and does not indicate that it may be voted upon.
- A public body may respond to comments initiated by members of the public during an open forum but may not vote on the matter absent an emergency. A public body is not required to hold an open forum or permit open discussion but is encouraged to do so when appropriate.

➢ Notice must be posted: *(R.I. Gen. Laws § 42-46-6(c))*
  - 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.

❖ **Emergency Meetings** may be held without satisfying the usual notice requirements, provided that:
  - ➢ The majority takes an affirmative vote that the emergency meeting is necessary to address an unexpected occurrence that requires immediate action to protect the public;
  - ➢ The public body states for the record why the matter must be addressed without providing the usual notice;
    - The statement regarding why the matter must be addressed without the usual notice must be recorded in the meeting minutes.
  - ➢ Notice is posted as soon as practicable *and* electronically filed on the Secretary of State's website; and
  - ➢ The public body may only address the issue or issues which created the need for an emergency meeting.

OPEN MEETINGS *(R.I. Gen. Laws § 42-46-3).*

❖ All meetings must be open to the public unless closed in accordance with the OMA.
  - ➢ The public has a right to record open session meetings.

CLOSED MEETINGS *(R.I. Gen. Laws § 42-46-4(a))*

❖ Although not required, a meeting may be held in closed or executive session if it concerns at least one of the following:
  - ➢ A discussion of the **job performance**, character, or physical or mental health of a person(s), pursuant to *R.I. Gen. Laws § 42-46-5(a)(1),* provided that:
    - person(s) affected shall be notified in advance in writing;
    - person(s) affected advised they may require discussion held in open session; and
    - A statement in open session (**and** record in open session minutes) that affected person(s) have been notified.
  - ➢ Sessions pertaining to **collective bargaining or litigation**. *(R.I. Gen. Laws § 42-46-5(a)(2)).*
  - ➢ Discussions regarding a matter of **security**. *(R.I. Gen. Laws § 42-46-5(a)(3)).*
  - ➢ **Investigative proceedings** regarding allegations of civil or criminal misconduct. *(R.I. Gen. Laws § 42-46-5(a)(4)).*
  - ➢ 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)).*
  - ➢ 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: *(R.I. Gen. Laws § 42-46-5(a)(8)).*
    - any affected student(s) shall be notified in advance in writing;

        - affected 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 affected student(s) have been notified.
    - Hearings on, or discussions of, a **grievance filed pursuant to a collective bargaining agreement**. *(R.I. Gen. Laws § 42-46-5(a)(9))*.
    - Discussion of the **personal finances of a prospective donor to a library**. *(R.I. Gen. Laws § 42-46-5(a)(10))*.
- In order to properly convene in executive session, the following must first be performed by the public body in open session:
    - A vote by a majority of the members to convene in executive session;
    - A statement of the specific subsection of R.I. Gen. Laws § 42-46-5(a)(1)-(10) upon which **each** executive session discussion has been convened; **and**
    - A statement specifying the nature of the business for **each** matter to be discussed. *(R.I. Gen. Laws § 42-46-4(a))*.

**The above information must also be recorded in the open session minutes.*

MINUTES *(R.I. Gen. Laws § 42-46-7)*

- 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 be 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))*.
    - **Official**/approved minutes must be maintained **and** electronically filed 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))*.
- 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))*.

DISCLOSING VOTES *(R.I. Gen. Laws § 42-46-7(b))*

- 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, and

- If a vote is cast during **executive session**, the vote must be disclosed once the open session is reopened.
  - **EXCEPTION**
    - a vote taken in executive session need not be disclosed for the period 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))*.

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GUIDANCE FOR CONVENING INTO EXECUTIVE SESSION[1]

Pursuant to the Open Meetings Act ("OMA"), public bodies are required to conduct public business in an open and transparent manner. Accordingly, public bodies may only enter into executive (closed) session for limited, specific reasons and are subject to certain requirements when they do so. Some of the most common purposes for entering executive session, and the steps necessary to go from an open meeting to an executive session, are explained below. The full list of purposes for which executive session may be entered can be found at R.I. Gen. Laws § 42-46-5(a).

We emphasize that public bodies should only resort to executive session when necessary and are encouraged to consider whether business may be conducted in open session, even when the OMA may permit the matter to be discussed in closed session.

In addition to articulating in an open call the particular OMA subsection and providing a statement specifying the nature of the business to be discussed, the open session meeting minutes must also record the particular OMA subsection and the statement specifying the nature of the business to be discussed in executive session. *See* R.I. Gen. Laws § 42-46-4(a). This generally should be more specific than the categories listed below. Examples of how to convene and adjourn an executive session are included below.

Convening in and out of Executive Session

During the Open Session:

- **Councilmember A: "***Motion to convene into executive session, pursuant to R.I. Gen. Laws § [appropriate section here], to [repeat whatever is on the agenda here].*"

  Examples:

  (1) "*I move that the XYZ Council go into executive session pursuant to R.I. Gen. Laws §42-46-5(a)(1) to discuss the job performance of the Town Manager. The Town Manager was provided prior written notice that her job performance would be discussed and that she could require that discussion be held during the open session.*"

  * Meeting minutes must reflect that this statement regarding notice was made for the record[2]*

  (2) "*I move that the XYZ Council go into executive session pursuant to R.I. Gen. Laws §42-46-5(a)(2) to discuss the pending litigation of Leslie Knope v. Ron Swanson, Case Number: KC2019-1234.*"

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[2] *See* R.I. Gen. Laws § 42-46-5(a)(1).

Councilmember B: "*I second the motion.*"

This motion requires an affirmative vote of the majority of members[3]

This motion, and the vote of each member on the question of holding a closed meeting must be recorded in the minutes[4]

During the Closed Session (at the conclusion of the substantive closed session business):

(1) Motion to convene into open session

Councilmember A: *"I move that the XYZ Council reconvene into open session."*

Councilmember B: *"I second the motion."*

This motion requires an affirmative vote of the majority of members

Presiding Councilmember: *"So ordered. The XYZ Council is now in open session."*

During Open Session:

(1) Report on Actions Taken in Executive Session (Often Provided by the Presiding Member)

- The [INSERT NAME OF BODY HERE] convened in executive session pursuant to [section] to [agenda], and the following votes were taken:
  - Vote(s), if any, on whatever was noticed
  - Motion, if any, to seal the minutes of executive session
  - Motion to return to open session

Note: Any action/vote taken in closed session **SHALL be disclosed in **OPEN SESSION** unless disclosure would jeopardize any strategy, negotiation, or investigation undertaken pursuant to discussions conducted under R.I. Gen. Laws § 42-46-5(a). R.I. Gen. Laws § 42-46-4(b).*

(2) Motion to seal the executive session minutes (optional)

Councilmember A: *"I move that the minutes of the XYZ Council executive session be sealed."*

Councilmember B: *"I second the motion."*

This motion requires an affirmative vote of the majority of members

Presiding Councilmember: *"So ordered. The XYZ Council executive session minutes of* [DATE] *shall be sealed."*

Minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority votes to keep the minutes sealed. R.I. Gen. Laws § 42-46-7(c). Public bodies are encouraged to not seal minutes unless necessary.

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[3] *See* R.I. Gen. Laws § 42-46-4(a).
[4] *See id.*

Open Government Complaint Process

ATTORNEY GENERAL
PETER F. NERONHA

1

Complaint Submitted

Email: opengovernment@riag.ri.gov
or
Mail: Office of the Attorney General
Attn: Open Government Unit
150 South Main Street Providence, RI 02903

Complaint should include a short and clear statement of the specific alleged violation(s) and any relevant documentation.

2

Acknowledgement Letters

If allegations in the complaint, if assumed to be true, state a potential violation of the Act, the Office sends acknowledgment letters to complainant and legal counsel for public body outlining process and requesting a response to the allegations.

3

Public Body Response

Legal counsel for the public body provides a substantive response to complaint within 10 business days* of acknowledgment letter. Sent to the Office and complainant.

4

Complainant Rebuttal

Complainant may submit a rebuttal to the public body's response within 5* business daysof receipt that is limited to addressing issues raised in response and may not address new issues. Sent to the Office and legal counsel for public body.

5

Investigation Period

The Office investigates the allegations and may request supplemental information from the parties. Neither the public body nor the complainant may submit additional information without permission.

6

Finding Issued

The Office issues a finding that is sent to parties and published on www.riag.ri.gov.

7

Potential Superior Court Complaint Filed

If injunctive relief is appropriate or if a violation is found to be willful or knowing (OMA) or willful and knowing, or reckless(APRA), the Office may file a complaint against the public body in the Superior Court seeking civil fines.

*This process is subject to change at the discretion of the Office.
Reasonable extensions may be granted upon an appropriate showing.