



State of Rhode Island and Providence Plantations

**OFFICE OF THE ATTORNEY GENERAL**

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*Attorney General*

**VIA EMAIL ONLY**

January 31, 2020

ADV OM 20-01

ADV PR 20-01

Mr. Dennis J. Charland  
Vice President  
North Scituate Volunteer Fire Department #1

**RE: In re: North Scituate Volunteer Fire Department #1**

Dear Vice President Charland:

In your capacity as Vice President of the North Scituate Volunteer Fire Department #1 (“Department”) you have requested an Access to Public Records Act (“APRA”) advisory opinion. You seek this Office’s advice concerning whether the Department is a “public body” under the APRA. Your correspondence also raises questions about obligations and requirements related to the Open Meetings Act (“OMA”), which we construe as a request for an advisory opinion regarding whether the Department is a “public body” under the OMA.

Based on the evidence presented, we conclude that the Department is a “public body” under the APRA but is not a “public body” under the OMA.

When we examine an APRA or OMA issue, we must begin with the plain language of the APRA and the OMA and relevant caselaw interpreting these statutes.

**Whether the Department is a “Public Body” Under the APRA**

The APRA defines a “public body” as:

“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 any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.” R.I. Gen. Laws § 38-2-2(1) (emphasis added).

We have previously noted that the last clause of this provision contemplates an agency-type relationship with a governmental entity. *See Reilly & Olneyville Neighborhood Association v. Providence Department of Planning and Development and/or Providence Redevelopment Agency*, PR 09-07B.

In *Schmidt v. Ashaway Fire District & Volunteer Fire Association*, PR 97-09, we found that the Ashaway Volunteer Fire Association, Inc., was a “public body” under the APRA. In making this conclusion, we noted that “the determining factor [] is whether or not such private entity is *acting on behalf of* a public agency. To make such a determination, one must look at the nature of the functions of the private entity [] and the governmental entity[.]” (Emphasis in original). Because the Association had been delegated fire protection services by the Fire District, we found that the Association was “acting on behalf of” the Fire District and was, therefore, a “public body” under the APRA.

So too here. Although the Department asserts that the Town of Scituate has taken a “hands off approach” to the Department, the evidence before us indicates that the Town has delegated fire protection services to the Department. The Department notes that its operations – which cover approximately 40% of the Town – “are of the same scope as when hiring a vendor to supply a service to the Town.” *See* <http://northscituatefd.org/welcome-to-the-north-scituate-fire-department/>. Further, the Town’s website lists and links to the Department’s website under its “Fire & Rescue” tab. *See* [http://www.scituateri.org/departments/fire\\_and\\_rescue/index.php](http://www.scituateri.org/departments/fire_and_rescue/index.php). The Federal District Court for the District of Rhode Island noted in 2012 that “Scituate does not have a municipal fire department; instead it relies upon non-profit, ‘volunteer’ non-municipal fire companies to provide fire suppression and emergency medical services to the Town.” *Chopmist Hill Fire Dept. v. Town of Scituate*, 2011 WL 2521104, at \*1 (D.R.I. June 28, 2012). It is therefore evident, based on the facts presented, that the Department is acting on behalf of or in place of the Town with respect to fire protection services. *See* R.I. Gen. Laws § 38-2-2(1). Like the Fire District in *Schmidt*, this agency-type relationship places the Department within the APRA’s “public body” umbrella. *Schmidt*, PR 97-09.

We accordingly conclude that the Department is a “public body” under the APRA. We suggest that the Department visit our website to view our Open Government Users’ Guide and video of our Open Government Summit to ensure compliance with the APRA. <http://www.riag.ri.gov/CivilDivision/OpenGovernmentUnit.php>. This Office is also available to answer questions or provide an in-person training.

#### *Whether the Department is a “Public Body” Under the OMA*

An entity may be a “public body” under the APRA but not a “public body” under the OMA as the two statutes have different definitions of a “public body.” For purposes of the OMA, a “public body” is defined as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government[.]” R.I. Gen. Laws § 42-46-2(3).

We have previously noted that determining whether a particular entity is or is not a “public body” is “a fact-intensive question not subject to ‘bright line’ rules.” See *Oliveira v. Independent Review Committee*, OM 04-10.

The Rhode Island Supreme Court examined this issue in *Solas v. Emergency Hiring Council*, 774 A.2d 820, 823 (R.I. 2001), which considered whether the OMA applied to an entity formed by two executive orders of then-Governor Lincoln Almond to “manage and control the state’s hiring practices and its fiscal resources.” The Emergency Hiring Council consisted of five senior executive branch staff members who met on a biweekly basis “to determine whether creating a new position in state government or filling a vacancy is absolutely necessary.” *Id.* at 824. It was the Governor’s intent that “no person or persons other than the Council shall have the authority to make any determinations in this regard.” *Id.* (internal quotation omitted). Based on these facts the Supreme Court concluded the Council was subject to the OMA:

“[T]he EHC [Emergency Hiring Council] is composed of a group of high level state officials that convenes to discuss and/or act upon matters of great interest to the citizens of this state. In addition, our reading of the executive orders creating the council persuades us that the EHC possesses significant supervisory and executive veto power over creating or filling state employment positions. At the very least the council functions in an advisory capacity in state hirings. Whether supervisory or advisory, both functions are regulated by the act. As the plain language of the statute provides, a council’s exercise of advisory power is enough to bring it under the act’s umbrella.” *Id.* at 825.

The Rhode Island Supreme Court again considered the issue of what constitutes a public body in *Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education*, 151 A.3d 301, 307–08 (R.I. 2016). There, the Rhode Island Board Council on Elementary and Secondary Education (“RIDE”) created a Compensation Review Committee (“CRC”), which was tasked with reviewing requested and proposed salary adjustments to Rhode Island Department of Elementary and Secondary Education employees. *Id.* at 302–03. The CRC was described as an “‘informal, *ad hoc* working group with a strictly advisory role’ and with no legal status or authority[,]” and which did not have regular meetings. *Id.* at 303. The Rhode Island Supreme Court held that the CRC was not a public body, stating:

“Unlike the EHC in *Solas*, the CRC in this case does not meet on a regular basis, nor was the CRC created by an executive order. Instead, the undisputed evidence in this case is that the CRC acted as an informal, strictly advisory committee. Although the CRC was composed of a group of high-level state officials and operated under a charter, these two factors alone are insufficient to place them into the ‘public body’ umbrella. Importantly, the CRC’s sole function is to advise the commissioner of RIDE, who in turn has to make a recommendation to the council. At this point in the process, if the commissioner decided to present any proposal to

the council for the council's required approval, the public would have an opportunity to be informed of and object to such proposal." *Id.* at 308.

This Office has opined previously on whether a fire entity was subject to the OMA. In *In re: Prudence Island Volunteer Fire Department*, ADV OM 16-03, we found that the Prudence Island Volunteer Fire Department ("PIVFD") was not a "public body" because it was a non-profit corporation, it did not have any taxing authority, and it did not provide salaries, medical benefits, or pensions for its members. Although it obtained some revenue from the Town of Portsmouth, we noted that it also received private donations and federal and state grants. Additionally, we observed that positions within the PIVFD, including the Board of Control and the Chief, are elected by members of the PIVFD. *Id.* For these reasons, we concluded that the PIVFD was not a "public body" under the OMA. *Id.*

Here, the Department submitted various documents to assist our analysis, including the Department's Articles of Incorporation and By-Laws, as well as a detailed statement by Department Vice President Dennis Charland describing the organization, duties, and operations of the Department. Based on these specific facts, we find that the Department is not a "public body" within the meaning of the OMA.

The submitted documents establish that the Department shares numerous characteristics with other fire entities we have previously found not to be "public bod[ies]" under the OMA. Like the PIVFD, the Department was founded as a non-business nonprofit volunteer organization. *See In re: Prudence Island Volunteer Fire Department*, ADV OM 16-03. While the Department does receive some financial support from the Town of Scituate, we have previously observed "that fact alone does not render them subject to the Act." *Schmidt*, PR 97-09. The Department also receives private donations and state and federal grants. Critically, like the PIVFD, the Department does not have any taxing authority. *See In re: Prudence Island Volunteer Fire Department*, ADV OM 16-03. Additionally, there is no indication that the Town of Scituate retains any control over the Department. Indeed, much like the Fire Association in *Schmidt*, the Department is "membership controlled" and thus membership is not subject to a governmental or public approval process. *See* By-Laws, Article IV.

For these reasons, and consistent with caselaw and our precedent, we conclude that the Department is not a "public body" under the OMA.

### Conclusion

This advisory opinion is based upon the specific facts as you related. If the facts should differ in any respect, it may affect this Office's interpretation and ultimate opinion regarding whether the Department is a "public body" subject to the APRA or the OMA.

Additionally, this advisory opinion does not abrogate any rights that the Office of the Attorney General is vested with pursuant to R.I. Gen. Laws §§ 38-2-8, 42-46-8, and is strictly limited to this Office's interpretation of the APRA and the OMA. This opinion does not address the Department's

In re: North Scituate Volunteer Fire Department #1

ADV PR 20-01

ADV OM 20-01

Page 5

responsibilities under any other state law, rule, regulation, or ordinance, nor does it shield the Department or its members from a complaint filed in the Superior Court by a citizen or entity pursuant to R.I. Gen. Laws §§ 38-2-8, 42-46-8.

We hope that this advisory opinion is of assistance as this Office is committed to ensuring that public bodies comply with the APRA and the OMA.

Sincerely,

PETER F. NERONHA  
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness

Special Assistant Attorney General