



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

February 17, 2014
OM 14-08

Ms. Constance A. Hathaway

RE: Hathaway v. Rhode Island Atomic Energy Commission

Dear Ms. Hathaway:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Rhode Island Atomic Energy Commission (“RIAEC” or “Commission”) is complete. By correspondence dated March 27, 2013, you allege the RIAEC violated the OMA on several occasions. For ease of reference, we take each of your allegations in turn below.¹

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to determine whether this Department believes that an infraction has occurred or to examine the wisdom of a given statute, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining

¹ The Department of Attorney General (“Department”) acknowledges receipt of your supplemental complaint. There, you allege that the Commission approved by-laws that contradict the OMA. You do not allege a specific OMA violation occurred as a result of the Commission’s application of these by-laws; thus, there is nothing before us to review. You also allege that the Commission participated in collective communication through a series of email chains in violation of the OMA. This specific allegation is addressed in Guarino v. Rhode Island Atomic Energy Commission, OM 14-07, and incorporated by reference herein. Lastly, you seek to incorporate the allegations contained in Mr. Guarino’s complaint into the complaint at hand. You fail to show how you are aggrieved with respect to those allegations. For this reason, we only address those allegations set forth in your complaint for which you are aggrieved, and we address Mr. Guarino’s complaints in a related finding. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).

whether the RIAEC violated the OMA.² See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

I. September 7, 2012 Meeting. You allege that the RIAEC convened into executive session at the September 7, 2012 meeting without properly conducting an open call. In response to this allegation, we received a substantive affidavit from Dr. Bahram Nassersharif, Commissioner and Acting Chair of the RIAEC. Dr. Nassersharif stated, in pertinent part:

The minutes of September 7, 2012 filed with [the] Secretary of State clearly indicate that a motion to go into executive session was made by Commissioner Dr. Nassersharif and seconded by Commission[er] Chair Dr. Mecca and subsequently the motion passed unanimously. The minutes also indicate that the subject matter of the executive session was to address the process used to recruit for the position recently made vacant by the retirement of a RINSC [Rhode Island Nuclear Science Center] employee. The RIAEC complied with the spirit of the requirements for open call pursuant to R.I. Gen. Laws § 42-46-4; should any technical violations be found they were not willful or knowing. The RIAEC made a good faith effort in following all requirements of the OMA[;] however[,], they did so without the benefit and advice of legal counsel.

The OMA requires a public body to hold an “open call” in open session prior to convening into executive session:

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. See R.I. Gen. Laws § 42-46-4(a) (emphases added).

After reviewing the minutes from the September 7, 2012 meeting, we conclude that a motion was made to convene into executive session and was passed unanimously. It is clear from the

² Please be advised that, by law, this Department represents the State and its agencies, and is delegated jurisdiction to enforce certain laws, such as the OMA and the Access to Public Records Act (“APRA”), by the General Assembly. As such, in this instance, the Department has authority only to investigate whether the RIAEC violated the OMA. The Department does not have authority to investigate any claims that you may have relating to employment status apart from any OMA allegations. For all other claims that are not related to the APRA or the OMA, you may wish to contact a private attorney on those matters.

minutes, however, that the RIAEC did not, on the record in open session, cite “to a subdivision of § 42-46-5(a)” nor make “a statement specifying the nature of the business to be discussed” before convening into executive session. No reference to such subdivision was included in the open session minutes. Thus, we find the RIAEC violated the OMA when it did not properly conduct and record an open call to convene into executive session for its September 7, 2012 meeting.

II. December 10, 2012 Meeting. You allege that the RIAEC convened into executive session at the December 10, 2012 meeting without properly conducting an open call. You also allege there is evidence of email discussions among members of the RIAEC collectively discussing and correcting minutes of meetings before a “draft” version was sent to the Secretary of State, in violation of Rhode Island General Laws § 42-46-5(b).³

We start with your first allegation. In response, Dr. Nassersharif states, in pertinent part:

The minutes of December 10, 2012 clearly indicate that a motion to go into executive session was made by Commissioner Dr. Nassersharif and seconded by Commission[er] Dr. Gromet and subsequently the motion passed unanimously. The minutes filed with [the] Secretary of State also indicate that the subject matter of the executive session was to address a number of concerns arising from the short notice of the Executive Director of RINSC [Rhode Island Nuclear Science Center], interim responsibilities and the process of filling the upcoming vacancy...

The RIAEC complied with the spirit of the requirements for open call pursuant to R.I. Gen. Laws § 42-46-4; should any technical violations be found they were not willful or knowing. The RIAEC made a good faith effort in following all the requirements of the OMA however they did so without the benefit and advice of legal counsel.

Complainant fails to describe how she was aggrieved by the alleged violations of the OMA.

Here, the minutes from the December 10, 2012 meeting indicate you were in attendance. The open session minutes also indicate that the subject of the executive session was to “address[] a number of concerns arising from the short notice of Dr. Tehan, interim responsibilities and the process of filling the upcoming vacancy in the Director’s Position.” In your reply to the RIAEC’s response, you state that “[a]s a member of the public, [you] had a right to be made aware of the RI-AEC’s deliberations. [You are], therefore, within the zone of interests protected by the OMA and [are] granted statutory standing to file [your] Complaint with the Attorney General.” Although you arguably do not show how you are aggrieved since you were in

³ You also allege that there is evidence of email discussions among members of the RIAEC prior to January 2, 2013. Evidence of such discussions was presented and discussed in Guarino v. Rhode Island Atomic Energy Commission, OM 14 -07, and is incorporated by reference herein.

attendance at the meeting, we nonetheless agree that you have a statutory right to know under which subdivision the RIAEC is entering executive session and such right is not mitigated by your presence at the meeting. The open session minutes indicate that the RIAEC convened into executive session to “address[] a number of concerns arising from the short notice of Dr. Tehan, interim responsibilities and the process of filling the upcoming vacancy in the Director’s Position.” There is no evidence that the RIAEC articulated “a subdivision of § 42-46-5(a)” on the record. No reference to such subdivision was included in the open session minutes. Thus, we find the RIAEC violated the OMA when it did not properly conduct and record an open call to convene into executive session for its December 10, 2012 meeting.

We now turn to your second allegation with regard to emails, specifically, that “there is evidence that the Commission has used email communication to collectively discuss and correct minutes of meetings before a ‘draft’ version is sent to the Secretary of State,” in violation of Rhode Island General Laws § 42-46-5(b). In response, Dr. Nassersharif states, in pertinent part:

[I]t has always been the standard operating procedure of the RIAEC to review draft minutes before they were posted to the Secretary of State website or reviewed and approved as final minutes by the next scheduled RIAEC meeting. Prior to making a change as to who would keep minutes of RIAEC minutes [sic], a staff member of the RINSC [Rhode Island Nuclear Science Center] kept the minutes but due [to] numerous errors and inaccuracies, the RIAEC designed [sic] a Commission member to take over this role.

The RIAEC complied with the spirit of the requirements for minutes pursuant to... § 42-46-7; should any technical violations be found they were not willful or knowing. The RIAEC made a good faith effort in following all requirements of the OMA however they did so without the benefit and advice of legal counsel.

Rhode Island General Laws § 42-46-5(b) states:

No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussion are not prohibited.

While you present this Department with a series of emails, none of those emails appear to address discussing or correcting meeting minutes.⁴ Thus, without any evidence before us as to existence of emails specific to your allegation, we find no violation.

III. January 2, 2013 Meeting. You raise several allegations pertaining to the January 2, 2013 meeting. For ease of reference, we take each allegation in turn below. Before we begin our analysis, we acknowledge that, according to the minutes of the January 2, 2013 meeting, you

⁴ The emails address certain allegations discussed in Guarino v. Rhode Island Atomic Energy Commission, OM 14-07.

were in attendance. Nonetheless, because you claim that your job qualifications were discussed in executive session without proper notice to you, we conclude that Graziano is not applicable and we proceed with the merits of your allegations.

First, you allege that the RIAEC convened into executive session at the January 2, 2013 meeting without properly conducting an open call. In response to this allegation, Dr. Nassersharif states, in pertinent part:

The Commission chair requested a meeting take place on January 2, 2013 to review the recent recruitment and selection process for the [H]ealth Physicists [sic] position. This was a continuation of the investigation into actions taken by former executive director and hiring process. The minutes of January 2, 2013 clearly indicate that a motion to go into executive session was made by Commissioner Chair Mecca and seconded by Commissioner Dr. Nunes and subsequently the motion passed unanimously. The minutes filed with [the] Secretary of State also indicate that the subject matter of the executive session was to discuss [the] report on [the] hiring process.

The RIAEC complied with the spirit of the requirements for open call pursuant to R.I. Gen. Laws § 42-46-4; should any technical violations be found they were not willful or knowing. The RIAEC made a good faith effort in following all requirements of the OMA[;] however[,] they did so without the benefit and advice of legal counsel.

As explained *supra*, the OMA requires a public body to hold an “open call” in open session prior to convening into executive session:

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. See R.I. Gen. Laws § 42-46-4(a) (emphases added).

After reviewing the minutes from the January 2, 2013 meeting, we conclude that a motion was made to convene into executive session and was passed unanimously. The minutes also indicate that, prior to convening into executive session, the RIAEC stated on the record that the purpose for convening into executive session was “to review a report on Dr. Mecca’s findings on the [hiring process].” Even assuming the RIAEC provided a sufficient statement of the nature of the business to be discussed, the RIAEC failed to cite to a specific exemption of R.I. Gen. Laws §

42-46-5(a) as required under R.I. Gen. Laws § 42-46-4(a). Thus, we find the RIAEC violated the OMA when it did not properly articulate and record an open call to convene into executive session for its January 2, 2013 meeting.

Second, you allege that your job qualifications were discussed in executive session, without prior written notice to you, in violation of Rhode Island General Laws § 42-46-5(a)(1). In response to this allegation, Dr. Nassersharif states, in pertinent part:

The items on the meeting agenda were recurring old business items and the executive (closed) session which arose from the agenda item – an investigation by Office of Human Resources, Department of Administration of the Health Physics recruitment and selection process – pursuant to R.I. Gen. Laws § 42-46-5[a](4)...Discussion was related to report on the hiring and recruitment process for the Health Physicist position[,] not specific individuals and work performance issues. Therefore advance notice to any specific person (Complainant) or persons was not required. The Complainant's employment was discussed at this meeting in the context of the flawed hiring process. Although the RIAEC voted to recommend[] termination of the Complainant, only the Department of Administration on behalf of the RINSC [Rhode Island Nuclear Science Center] could take termination action against the Complainant. The Complainant remains an employee of the RINSC to date.

The remedy required for a violation of R.I. Gen. Laws § 42-46-5(a)(1) for failure to provide written notice to the Complainant would be to render any action against the person affected null and void. To reiterate, the RIAEC does not have the authority to terminate an employee and the Complainant is still in her position at the RINSC.

Should any technical violations be found they were not willful or knowing. The RIAEC made a good faith effort in following all requirements of the OMA[;] however, they did so without the benefit and advice of legal counsel.

The OMA requires written public notice of a meeting of a public body. See R.I. Gen. Laws § 42-46-6(b). The OMA requires personal or actual written notice to a person when a public body convenes in executive session to discuss that person's "job performance, character, or physical and mental health." See R.I. Gen. Laws § 42-46-5(a)(1). In these circumstances, personal or actual written notice is required to advise the affected person that he or she has a right to have the executive session discussion held in open session. The OMA, however, does not provide for the affected person to elect to have the discussion in executive session. Further, this Department has determined that a "passing reference" to a person's job performance not amounting to a discussion does not violate the notice requirement under the OMA. See Albro v. West Greenwich Town Council, OM 12-20.

Here, you contend that your job qualifications were discussed in executive session without prior written notice to you in violation of R.I. Gen. Laws § 42-46-5(a)(1). In response, Dr. Nassersharif argues that the executive session:

arose from the agenda item – an investigation by Office of Human Resources, Department of Administration of the Health Physics recruitment and selection process – pursuant to R.I. Gen. Laws § 42-46-5[a](4)... Discussion was related to report on the hiring and recruitment process for the Health Physicist position[,] not specific individuals and work performance issues. Therefore advance notice to any specific person (Complainant) or persons was not required. The Complainant's employment was discussed at this meeting in the context of the flawed hiring process. Although the RIAEC voted to recommend[] termination of the Complainant, only the Department of Administration on behalf of the RINSC could take termination action against the Complainant. The Complainant remains an employee of the RINSC to date.

Dr. Nassersharif argues that the executive session convened pursuant to § 42-46-5(a)(4), which allows a public body to convene in closed session for “[a]ny investigative proceedings regarding allegations of misconduct, either civil or criminal.” This Department has previously observed that “investigate” is variously defined as “[t]o follow up step by step by patient inquiry or observation,” “to search into,” “to examine and inquire with care and accuracy,” “to find out by careful inquisition,” and “examination.” Black’s Law Dictionary (6th Edition), p. 825. See Re: Request for Open Meetings Act Advisory Opinion, ADV OM 00-01. “Investigation” is defined as “[t]he process of inquiring into or tracking down through inquiry.” Id. In addition “proceeding” is defined as the “regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment.” Id. at 1204. Respectfully, there is no evidence or argument presented to explain how this executive session discussed an investigative proceeding. The RIAEC only presents evidence that such an executive session was convened to discuss “flawed hiring process.” This does not amount to an investigative proceeding under R.I. Gen. Laws § 42-46-5(a)(4).

You, on the other hand, contend that the RIAEC convened in executive session under R.I. Gen. Laws § 42-46-5(a)(1), which allows a public body to convene into executive session to discuss “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.” In his affidavit, Dr. Nassersharif states that your “employment was discussed at this meeting in the context of the flawed hiring process.” An *in camera* review of the executive session minutes reveals that your job qualifications were mentioned within the context of a broader topic, i.e. the “flawed” hiring process. It is our opinion that any references made with respect to your employment and/or qualifications were passing references at best, within the larger scheme of the mechanics of the hiring process. As such, this discussion, by itself, was insufficient to trigger the notice provision set forth in R.I. Gen. Laws § 42-46-5(a)(1). See Albro v. West Greenwich Town Council, OM 12-20.

Nonetheless, we recognize that a vote was taken in executive session to reopen the Health Physicist position, effectively terminating your employment. A review of the evidence shows such termination was not because of your job performance, but because of the alleged unsatisfactory process by which you were hired. We acknowledge the termination letter dated January 31, 2013 to you from Dr. Stephen Mecca, Chair of the RIAEC. It is this Department's understanding, however, that despite a vote to reopen the Health Physicist position, the position was never reopened.⁵ More importantly, no formal action was taken against you, and it is further this Department's understanding that, as of the date of this finding, you are still employed in your role as the Health Physicist.⁶ Since R.I. Gen. Laws § 42-46-5(a)(1) requires notice only to an "affected" person, and we find no evidence that you were "affected" by the executive session, we thus decline to find an OMA violation under these particular set of circumstances.⁷

Third, you allege that, immediately after the conclusion of the January 2, 2013 meeting, there was a discussion of RIAEC members outside public purview to discuss a telephone call "off the record." In response, Dr. Nassersharif states, in pertinent part:

The minutes of this meeting indicate that Chairman Mecca had to take a call from the state Human Resources office[.] [U]pon his return to the open meeting he asked members of the RIAEC to stay to be informed of the outcome of his telephone conversation with Human Resources. The Chairman was not aware that apprising the RIAEC members of the confidential personnel information provided by the state human resources office could potentially be a violation of the OMA.

*** The subject matter of the 'off the record' discussion was not a meeting pursuant to R.I. Gen. Laws § 42-46-2(a) as the topic discussed was not a matter over which the RIAEC has supervision, control, jurisdiction or advisory power.

⁵ In an email dated February 6, 2013, Dr. Nunes states, "To date the Commission has not held a formal vote to approve this action. Furthermore in discussion with Human Resources they have made it clear that the state has no intention of reopening this position."

⁶ We must note that, not only were you were present at this meeting, but the evidence demonstrates that you were also personally informed of the RIAEC's intended actions during a recess taken during executive session. The open session minutes even state that "during a recess in the executive session, [Dr. Mecca] informed the person hired for the HP position that he was sorry that she was the victim of a faulty process and that the Commission had decided to re-open the search but permit her to stay until the position was filled." Additionally, as soon as the open session reconvened, Dr. Mecca disclosed the topics discussed in closed session.

⁷ To underscore our conclusion, if we found a violation, R.I. Gen. Laws § 42-46-5(a)(1) would require any action taken to be declared null and void. Here, there is simply no action for this Department to declare null and void. In fact, in your rebuttal memorandum received by this Department on July 1, 2013, you even state that your "purported termination was stayed by the RI Department of Administration, later approved by Governor Chaffee [sic]."

The RIAEC has made a good faith effort to comply with the requirements of [the] OMA; however, they did so without the benefit and advice of legal counsel. Should any technical violations be found they were not willful or knowing.

The OMA is implicated whenever a quorum of a public body convenes for a meeting. See R.I. Gen. Laws § 42-46-2. A “meeting” is defined as “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.” See R.I. Gen. Laws § 42-46-2(1). Presuming there was a quorum of members present, the evidence presented shows that all RIAEC members stayed behind after the meeting “to be informed of the outcome of [a] telephone conversation with Human Resources” that relayed “confidential personnel information.” The topic allegedly “discussed” was significant enough to relay to all of RIAEC members, but it is unclear whether a “discussion” actually occurred or whether RIAEC was merely informed of the outcome of Chairman Mecca’s telephone conversation with Human Resources. Dr. Nassersharif states that the “members of RIAEC [stayed] to be informed of the outcome” of Chairman Mecca’s conversation with Human Resources. This Department has previously held that the receipt of information alone, even if a quorum of a public body receives that information, does not constitute a “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.” In Re: South Kingstown School Committee Electronic Mail Policy, ADV OM 04-01. Later in his response, Dr. Nassersharif does refer to this as a “discussion” that does not amount to a meeting. He provides no evidence or argument to support that this discussion did not fall within the purview of the OMA. You, however, provide no evidence or argument to support that this discussion did fall within the purview of the OMA; specifically, you provide no evidence that a “discussion,” rather than just mere receipt of information, took place. Thus, we decline to find a violation.

Lastly, you allege that the executive session minutes for January 2, 2013 were not sealed before the next meeting, and were not made available at that next meeting. In response, Dr. Nassersharif states, in pertinent part:

The minutes for the executive session were summarized and recorded by Commission Chair Mecca. Admittedly Chairman Mecca was unclear as to the required process to follow when recording executive meeting minutes. The minutes were sealed and not made public.

The OMA requires all public bodies to keep written minutes of all their meetings. See R.I. Gen. Laws § 42-46-7(a). With regard to executive session minutes, the OMA states that “[t]he 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.” See R.I. Gen. Laws § 42-46-7(c). There is no requirement, however, that the executive session minutes must be sealed and likewise we are unaware of any requirement (and you cite no requirement) that unsealed executive minutes be physically present at the next regularly scheduled meeting. Here, you allege that the executive session minutes for January 2, 2013 were not sealed before the next meeting and were not made available at that next meeting. In your

rebuttal, you state “that the closed session minutes of the January 2, 2013 meeting were not sealed before the next meeting and were not made available at the next meeting in violation of R.I.G.L. § 42-46-7(c).” There is no evidence or even an assertion, however, that you requested the executive session minutes from January 2, 2013. Without a request, verbal or otherwise, it is unclear how you are aggrieved. Since there is no evidence that you requested the executive session minutes, it is unnecessary for us to determine whether the minutes were sealed and we decline to find a violation.⁸

IV. March 1, 2013 Meeting. You allege that the draft minutes of the March 1, 2013 meeting are not accurate. Specifically, in your March 27, 2013 complaint, you state:

the Commission distorted its March 1, 2013 draft version of its minutes by including statements which were never stated during the meeting, comments where were never commented upon, and specifics which were never specified by the Commission during its March 1, 2013 meeting. The March 1st minutes drafted by the Commission state that Dr. Mecca summarize that [I, Connie Hathaway]: ‘did not have an undergraduate degree in Health Physics nor did she have any graduate training in Health Physics or Physics which is what the state stipulates for this position. Additionally, while Dr. Nunes participated in the hiring process, the person hired was one of his students creating a conflict of interest situation. In addition, the records filed with the state (RP-5A) were not accurate and not complete to the point that the person who was listed as an alternate did not even have any records of his submission on file.

...Dr. Mecca stated that it didn’t appear that I met the educational qualifications required for the position by the State, but he did not specifically cite what I lacked in those requirements. Dr. Nassersharif did state that Dr. Nunes had a ‘conflict of interest,’ but he did not state that I was one of Dr. Nunes’s students. The entire statement regarding ‘records filed with the State (RP-5A)’ was not stated or implied by any Commissioner during the March 1, 2013 meeting. (Emphasis in original).

In response, Dr. Nassersharif states, in pertinent part:

[T]he draft minutes were reviewed and approved at the RIAEC meeting on April 5, 2013. A motion was made by Commissioner Dr. Nassersharif to approve the minutes seconded by Commissioner Dr. Kadak. Commissioner Dr. Nunes proposed some modifications which were discussed and a motion to so amend failed to get a second; therefore, the minutes were approved 4 to 1. ***

⁸ You also contend that the RIAEC violated the OMA by discussing a telephone conversation after its January 2, 2013 meeting adjourned. This allegation will be addressed in *Guarino v. Rhode Island Atomic Energy Commission*, OM 14-07, and is incorporated herein.

The OMA does not state that the minutes of meetings must be verbatim; instead it requires that the minutes include any other information relevant to the business of the public body that any member of the public body requires be included or be reflected in the minutes. The minutes both draft and final submitted to the Secretary of State accurately reflect the minutes of the March 1, 2013 meeting.

The OMA provides limited guidance as to the substance of meeting minutes:

The minutes shall include, but 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. See R.I. Gen. Laws § 42-46-7(a)(emphasis added).

This Department has previously observed that the OMA does not specifically address the accuracy of minutes. See Pitochelli v. Johnston Town Council, OM 02-07. In Pitochelli, we declined to address the accuracy of the minutes at issue where a majority of the Town Council voted to approve the minutes. Here, you assert that the draft minutes of the March 1, 2013 minutes are not accurate. A review of the April 5, 2013 meeting minutes indicate that the Commission approved the minutes from the March 1, 2013 meeting by a majority vote. According to the minutes, Dr. Nunes proposed certain modifications to the minutes and made a motion to amend, which failed to obtain a second. Thus, because a majority of the Commission approved the March 1, 2013 minutes, and because the OMA does not specifically address the accuracy of the minutes, consistent with Pitochelli, we decline to find a violation.

To summarize, this Department has found that the RIAEC violated the OMA when it failed to properly conduct and record an open call for the following meetings: September 7, 2012; December 10, 2012; and January 2, 2013. Upon a finding of an OMA violation, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA:

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. R.I. Gen. Laws § 42-46-8(d).

Upon review of this matter, we find no evidence that the RIAEC willfully or knowingly violated the OMA. See R.I. Gen. Laws § 42-46-8(d). Moreover, since you do not allege that the subject-matter of the executive sessions were inappropriate, we conclude injunctive relief is inappropriate. Please be advised, however, that this finding serves as notice to the RIAEC that it

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is responsible for complying with the OMA, and this finding may serve as evidence of a willful or knowing violation in a future similar circumstance.

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter.

Very truly yours,

A handwritten signature in cursive script that reads "Maria R. Corvese".

Maria R. Corvese
Special Assistant Attorney General

MRC/pl

Cc: Robert S. Bruzzi, Esquire
Jennifer Sternick, Esquire
Gail Theriault, Esquire