



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

July 16, 2015

OM 15-12

Ms. Nancy Howard

**RE: Howard v. Portsmouth Agriculture Advisory Committee**

Dear Ms. Howard:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Portsmouth Agriculture Advisory Committee (“Committee”) is complete. By email correspondence dated April 16, 2015, you allege the Committee violated the OMA when it had not made available at the office of the public body, the open session minutes for the following meeting dates: November 4, 2010; November 11, 2011; May 22, 2012; May 29, 2013; January 29, 2014; September 14, 2014; January 28, 2015 and February 11, 2015. You further allege that the minutes for the November 20, 2013 meeting have not been made available since these minutes are identical to the October 20, 2013 meeting minutes.

In response to your complaint, we received a substantive response from the Committee’s legal counsel, Kevin P. Gavin, Esquire, who also provided an affidavit from the chairperson of the Committee, Ms. Ann Fiore. Ms. Fiore states, in pertinent part:

“The Committee’s role and function is to advise the Portsmouth Town Council and other departments and entities concerning all matters and issues relevant to farming and agriculture in the Town of Portsmouth. We are strictly an advisory committee and we serve on a voluntary basis. A majority of the Committee’s membership must be actively involved in agriculture in the Town. I have been a member of the Committee since 2009.

\* \* \*

I have reviewed and searched for records and information in the Portsmouth Town Clerk’s office and in personal possession, and consulted with Town

Planner Gary Crosby and current Committee secretary Sanne Kure-Jensen, regarding the meetings or alleged meetings \* \* \*

Regarding the alleged meeting of November 11, 2011: there was no meeting of the Committee on that date and there are no 'missing' minutes.

\* \* \*

Regarding the meeting of May 22, 2012: There was a special meeting of the Committee held on that date for the purpose of drafting a letter to the Town Council to express the Committee's positions regarding issues involving the Glen Farm and Elmhurst School properties owned by the Town. I could not locate any minutes for that meeting and it appears that, through inadvertence, no minutes were initially prepared or filed for that meeting by the secretary. On May 7, 2015, I located a copy of the letter submitted to the Town Council as a result of that Committee meeting, and I drafted unofficial minutes and filed them with the Town Clerk's office.

Regarding the meeting of November 20, 2013: the meeting was cancelled due to a lack of a quorum. There was no meeting and there are no 'missing' minutes.

Regarding the meeting of January 29, 2014: it appears that unofficial minutes were prepared by the secretary but not initially filed with the Clerk's office. Prior to the filing of Ms. Howard's complaint, it had been my understanding, and the secretary's understanding, that unofficial meeting minutes were not filed unless and until they had been officially voted on and approved by the Committee. On May 7, 2015, I was able to locate unofficial minutes for the January 29, 2014 meeting, and I filed the minutes with the Clerk's office.

Regarding the meeting of September 14, 2014: there was no Committee meeting on that date. \* \* \*

Regarding the meeting of January 28, 2015: this meeting was cancelled due to a snow storm. There was no meeting and there are no 'missing' minutes.

Regarding the meeting of February 11, 2015: there was no quorum for this meeting, and therefore, no actual meeting of the Committee. The secretary did, however, prepare draft minutes of the discussion that took place among the members who were present. On May 7, 2015, I received these draft 'minutes' and I filed them with the Clerk's office.

There was never any knowing, willful or reckless violation of any provision of the OMA by the Committee or any of its members in connection with the preparation and filing of any of these meeting minutes.”<sup>1</sup>

We note that you did not file a rebuttal.

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 substitute this Department’s independent judgment concerning whether an infraction has occurred, 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 whether the Committee violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires “[a]ll public bodies shall keep written minutes of all their meetings.” R.I. Gen. Laws § 42-46-7(a). Rhode Island General Laws § 42-46-7(b)(1) states that “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 \* \* \* .” R.I. Gen. Laws § 42-46-7(b)(1).

Applying R.I. Gen. Laws § 42-46-7(b)(1) to the instant facts, and based upon the evidence presented, we make the following findings:

- The minutes for the November 4, 2010 meeting were approved on December 2, 2010. Citing R.I. Gen. Laws § 42-46-8 and the time that elapsed between the December 2, 2010 approval of the minutes and the filing of your April 16, 2015 complaint, the review of this allegation is barred by the statute of limitations. The OMA, specifically R.I. Gen. Laws § 42-46-8(b), sets forth the applicable statute of limitations in this circumstance and provides:

“[n]o 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.”

Rhode Island General Laws § 42-46-8(b) prohibits the filing of a complaint by this Department after 180 days from the date of the public approval of the meeting minutes at which the alleged violation occurred. As noted above, this Department is bound to apply the law as the General Assembly enacted it and for more than a decade this Department has declined to review OMA complaints filed after the expiration of the statute of limitations for this Department to file a lawsuit. See e.g., Block v. Rhode Island Board of Elections, OM 12-05; Costantino v. Smithfield School Committee, OM 12-12. As such, this Department will not review this allegation.

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<sup>1</sup> Attorney Gavin confirmed via email dated June 24, 2015 and June 25, 2015, that the meeting for May 29, 2013 was cancelled. Attorney Gavin also indicated that the minutes for the November 4, 2010 meeting were approved on December 2, 2010.

- There was no meeting held on November 11, 2011. The Committee, therefore, did not violate the OMA with respect to the allegation that the November 11, 2011 minutes were not timely made available to the public.
- The minutes for the meeting held on May 22, 2012 were not made available to the public in a timely manner in violation of R.I. Gen. Laws § 42-46-7(b)(1). As such, the Committee violated the OMA with respect to this allegation. As of May 7, 2015, it appears that the minutes have become available at the Office of the Town Clerk.
- There was no meeting held on May 29, 2013. The Committee, therefore, did not violate the OMA with respect to the allegation that the May 29, 2013 minutes were not timely made available to the public.
- There was no meeting held on November 20, 2013. The Committee, therefore, did not violate the OMA with respect to the allegation that the November 20, 2013 minutes were not timely made available to the public.
- The minutes for the meeting held on January 29, 2014 were not made available to the public in a timely manner in violation of R.I. Gen. Laws § 42-46-7(b)(1). As such, the Committee violated the OMA with respect to this allegation. As of May 7, 2015, it appears that the minutes have become available at the Office of the Town Clerk.
- There was no meeting held on September 14, 2014. The Committee, therefore, did not violate the OMA with respect to the allegation that the September 14, 2014 minutes were not timely made available to the public.
- There was no meeting held on January 28, 2015. The Committee, therefore, did not violate the OMA with respect to the allegation that the January 28, 2015 minutes were not timely made available to the public.
- There was no quorum for the February 11, 2015 meeting. Since a quorum is required as a threshold element in order for the OMA to apply, the Committee, therefore, did not violate the OMA with respect to the allegation that the February 11, 2015 minutes were not timely made available to the public. See Fischer v. Zoning Board for the Town of Charlestown, 1997 WL 839921 (R.I. Super.).

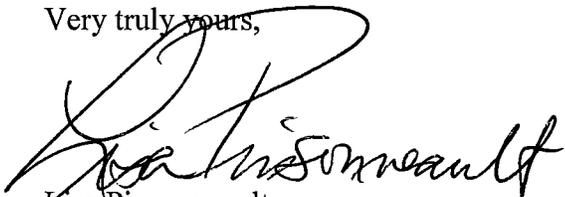
Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General “may file a complaint on behalf of the complainant in the superior court against the public body.” R.I. Gen. Laws § 42-46-8(a). “The court may issue injunctive relief” and/or “may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members” for a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d). In this instance, we find no evidence that the Committee knowingly or willfully violated the OMA. Additionally, injunctive relief is not appropriate since it appears that the two (2) minutes at issue have been made available to the public. This finding serves as notice to the Committee that the conduct

discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation.

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. Whether this provision applies where the statute of limitations has expired is a matter for the Superior Court to determine and not this Department. Please be advised that we are closing our file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault", written over a large, stylized flourish that loops back to the left.

Lisa Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: Kevin P. Gavin, Esq.