State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

January 12, 2018
OM 18-01

Mr. David Caldwell

Ms. Elizabeth McNamara

RE: Caldwell v. East Greenwich Town Council
McNamara v. East Greenwich Town Council

Dear Mr. Caldwell and Ms. McNamara:

The investigation into your Open Meetings Act ("OMA") complaints against the East Greenwich Town Council ("Town Council") is complete. You filed the instant OMA Complaints on behalf of yourself and the *East Greenwich News*, respectively, regarding the Town Council's alleged meeting by rolling quorum on August 23, 2017, and the Town Council's meeting on August 28, 2017. Because you both raise similar legal and factual issues regarding these alleged OMA violations, we address both of your complaints in this finding.[1] While you each may raise unique facts – and we will supplement those facts below as necessary – the relevant facts are nearly identical and undisputed.

We accordingly proceed to examine both issues raised – (1) the alleged rolling quorum held outside the public purview on August 23, 2017; and, (2) the alleged insufficient meeting agenda for the August 28, 2017 meeting – seriatim.

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 the law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Town Council violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

[1] We note that Mr. Caldwell raised both issues, whereas Ms. McNamara only raised the allegedly insufficient August 28, 2017 Town Council meeting agenda.

1. Rolling Quorum on August 23, 2017

As you allege in your Complaint, in relevant part:

> "On August 23, [2017,] three members of the East Greenwich Town Council, including [Town Council President Suzanne] Cienki, met at Town Hall in violation of the OMA.
> According to two separate reporters, two of the members of the Town Council admitted as much. [Town Council member] Andrew Deutsch admitted it to Bob Plain of RI Future. The following two Twitter postings document the admission: '3 members of the EG Town Council met in the town manager's office yesterday, Deutsch said, but not at the same time.' And '1 town councilor would leave the office so that there were only 2 in the meeting at a time, Deutsch said.' Subsequently, [Town Council Vice President] Sean Todd admitted it to the *East Greenwich Pendulum*: 'the town manager met with councilors in groups of no more than two at a time.'
> ***
> Mr. Todd also provided the first insight into what the meeting might have been about, offering a nonsensical defense against the alleged OMA violation: '[T]here was a legal issue involving a former employee that occurred on that date, and according to town council Vice President Sean Todd, the town manager met with councilors . . . to inform them of the situation, not to conduct town council business.'"

The Town Council submitted a substantive response through its solicitor, David M. D'Agostino, Esquire, which states, in pertinent part:

> "The Complainant points to newspaper articles and Twitter references of statements by Councilors reported and recounted in and from these sources. Setting aside the fact that reliance of such second-hand statements inherently involves hearsay, nothing in the statements the Complainant refers to suggests that a meeting of a 'public body' (i.e. the Town Council) was taking place. Also, nothing in the statements – if accurately reported in the source documents – suggests that any ***council*** business was taking place[.]
> The statements of Council Vice President Todd, if accurate, bear this out when he stated, 'the Town Manager met with councilors . . . to inform them of the situation, not to conduct council business.' And the 'meeting' to which Councilor Deutsch and Council Vice President Todd refer to is a meeting with the Town Manager – not a meeting of the Council.
> Nothing in the OMA prevents the flow of information from the Town Manager to members of the Council, even if that information flows in a 'private meeting.' ***
> The cases cited by Complainant certainly refer to a rolling quorum and the OMA is clear in its prohibitions of such mechanism as an impermissible method to conduct the business of the governing body, in this case, the Town Council. But

> let's be clear on two (2) clarifying points: One, the Town Manager is responsible for all administration functions, including the, 'affairs of . . . any department' – not the Council; and Two, the Town Manager herself is not a 'governing body' or ('public body') as contemplated by the OMA. Reporting to Councilors on administrative matters that are wholly within the purview of the Town Manager, as opposed to matters under the purview of the legislative body (i.e. the Council), cannot be, and is not, a violation of the OMA.
> Nothing in the Complainant's numerous assertions suggest that a meeting of the Council was taking place on August 23, 2017, or that the meetings between the Town Manager and one or another Councilor (when no three Councilors were present at the same time) was an effort to convene a Council meeting outside of the requirements of the OMA. Another fair reading of the statements set out by the Complainant state that 'no council business' was being conducted and that in fact (and if accurate) no 'meeting' of a 'quorum' of the 'public body' took place on August 23, 2017." (Emphasis in original).

After further inquiry from this Department, the Town Council submitted affidavits from Town Council Vice President Sean Todd, Town Councilor Andrew Deutsch, and Town Council President Suzanne McGee Cienki. All three affidavits were nearly identical, describing how a personnel issue at the Finance Department resulted in a "No Trespass" notice being served on a former Town employee. Vice President Todd's affidavit is representative:

> "13. Because of the nature and context of the incident, and that a 'No Trespass' notice was served on a (former) Town employee, I wanted to be sure that I had a report of the incident directly from the Town Manager.
> 14. On the afternoon of August 23, 2017, I met with the Town Manager to review the background of the incident *** so that I would be fully-informed of the situation.
> 15. At no time did I meet with the Town Manager and more than two (2) Councilors. I recall that Council President Cienki was present as well as Councilor Deutsch, at various times in Town Hall during the afternoon. The situation was fluid and there was [sic] a lot of internal employee disruptions taking place over the incident[.]
> 16. Finally, I was working on August 23, 2017, and did not have time to spend at Town Hall for any extended period."

We acknowledge your rebuttals.[2]

The OMA requires that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5." R.I. Gen. Laws § 42-46-3. Consistent with this Department's previous findings and with applicable case law, the OMA is implicated whenever a quorum of a public body meets. See R.I. Gen. Laws § 42-46-3; Fischer v. Zoning Board for the

[2] You were permitted the opportunity to rebut both the Town Council's initial substantive response as well as the affidavits the Town Council submitted in response to this Department's inquiry.

Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, 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." R.I. Gen. Laws § 42-46-2(a); see also Zarella et al. v. East Greenwich Town Planning Board, OM 03-02. A "quorum" is defined as "a simple majority of the membership of a public body." R.I. Gen. Laws § 42-46-2(d).

Although the above definitions are seemingly straightforward, it is noteworthy that a quorum may be created, and a meeting "convened," by unconventional means. In particular, this Department has previously recognized the "rolling" or "walking" quorum, where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions. See In Re: South Kingstown School Committee Electronic Mail Policy, ADV OM 04-01 (series of email communications among a quorum of a Committee would satisfy the quorum requirement and implicate the OMA); In Re: Pawtucket City Council, ADV OM 05-01 (warning against the "walking quorum," where public business is conducted in a series of individual encounters that may not constitute a quorum, but which collectively do so); D'Andrea v. Newport School Committee, OM 98-11 (violation of the OMA when Committee members used head signals to vote on a matter); International Brotherhood of Police Officers v. Barrington Town Council, OM 96-01 (OMA prohibited communication by fax to obtain the endorsement of Council members of a newspaper editorial); Dempsey v. Rhode Island Ethics Commission, OM 94-14 ("[d]espite the caller's best intentions, a phone call may result in a substantive discussion which should be conducted in the public forum"). Importantly, our findings have centered on the nexus between these one-on-one conversations and whether they serve as a chain of communication sufficient to constitute a collective discussion. See Guarino, et al. v. Rhode Island Atomic Energy Commission, OM 14-07 ("[I]f a quorum of members of a public body creates a chain of communication and responses, through any electronic media, about any matter over which a public body has supervision, jurisdiction, control or advisory power, other than to schedule a meeting, the OMA may be violated."). Moreover, our previous findings have left open the possibility that a non-public body individual could serve as a conduit between public body members if they supplied the missing link connecting collective discussion between and among public body members.

As an initial matter, we note that the Town Manager is not a "public body" under the OMA and therefore is not subject to the OMA's requirements. See R.I. Gen. Laws § 42-46-2(3). Any suggestion that the Town Manager violated the OMA must fail as a matter of law.

The Town provides uncontroverted evidence in affidavit form that the Town Manager had separate communications with various Town Council members. None of these separate communications individually contained a quorum of the Town Council.[3] While the absence of a quorum during one

[3] We note, with some puzzlement, that the affidavits all state that the affiant met with the Town Manager and no more "than two (2) Councilors." Read literally, this could mean that three Town Council members met with the Town Manager, constituting a quorum of the Town Council. As you stated in your rebuttal, such a statement is clearly in error. See December 1, 2017 Rebuttal, n.

meeting does not preclude a "rolling" or "walking" quorum as discussed above, according to the affidavits produced by the Town Council – as well as the information supplied by Mr. Caldwell – there is no evidence that any of the Town Council members discussed or were told the thoughts, actions, or opinions of any other members of the Town Council. Instead, it appears that the Town Manager relayed "background" information about an incident and you provide no evidence to the contrary and/or no evidence of a collective discussion. This is corroborated by the media accounts of the meetings that you reference in your Complaint and in your rebuttal.[4] Importantly, there is no evidence that the Town Manager served as a conduit that connected communications with Town Council members. Nor is there any evidence of any nexus between the communications. See Guarino, OM 14-07. Based on the evidence presented, we cannot find that a collective discussion between or among Town Council members occurred and, accordingly, do not find a rolling or walking quorum. Without a quorum, the OMA is not implicated and, as such, we find no violations. See R.I. Gen. Laws § 42-46-3.

2. The August 28, 2017 Meeting Agenda

You both raised the alleged insufficiency of the same item on the August 28, 2017 meeting agenda. Mr. Caldwell's Complaint states, in relevant part:

> "The following item was listed on the [August 28, 2017] meeting agenda: 'Town Manager's Report.' But concealed within this agenda item was a twenty-five minute report consisting of a fiscal analysis of the fire department, by a consultant hired by the town.
> *** I will refer back to the standard set by *Tanner* – which occurred in East Greenwich.
> If 'Interview for Potential Board and Commission Appointments' does not 'reasonably describe' interviewing candidates and then voting on their appointments, it is preposterous to suggest that 'Town Manager's Report' reasonably describes a twenty-five minute presentation of a fiscal analysis of a specific department by an outside consultant.
> This violation denied interested parties the opportunity to prepare to respond to the report."

---

3 ("I don't think that's what they meant to say."). We surmise – based on the representations made in the Town Council's substantive response – that the affiants intended to say that no more than two Town Council members at any one time met with the Town Manager. This interpretation is also consistent with your complaint, which quotes various social media accounts.

[4] Your December 1, 2017 rebuttal also relates that "[w]e shouldn't forget the very strongest piece of evidence: a journalist reported, via one of the three Town Council participants, that all three were at the Town Manager's office, and one would stop out at a time." Putting aside your characterization of this evidence, this averment supports our conclusion.

Solicitor D'Agostino responded in the Town Council's substantive response as follows, in pertinent part:

> "This assertion assumes that fiscal projections, forecasting and addressing future fiscal need [sic] of the Town are not within the Town Manager's purview. But they are.
> ***
> The fiscal impact statement is part and parcel of the Town Manager's role in keeping the Council advised of the financial condition of the Town and the Town's future (fiscal) needs. ***
> The Complainant's assertion (that he lacked the opportunity to respond to the report) belies the fact that there was simply nothing to respond to. A fiscal impact statement is a presentation involving objectivity. It is a presentation of facts. In this case, the fiscal impact statement showed what the employee cost of the collective bargaining agreement for fire fighters was over the period of time 2013 – 2019. Under the Charter, it is the duty of the Town Manager to provide this information to the Council. That the Manager chose to present this information through a third party, does not change or transmogrify the responsibility or duty. Lastly, it is important to emphasize that no discussion was had and no decision took place following the presentation of the fiscal impact statement. Additionally, the Town Manager may report on any subject within her purview and the OMA does not proscribe [sic] the method or means by which this is accomplished."

We acknowledge your rebuttals.

Before we can reach the merits of this allegation we must, as a threshold matter, determine whether either of you have standing to bring your complaints on this issue.[5]

The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a). In Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), the Rhode Island Supreme Court examined the "aggrieved" provision of the OMA. There, an OMA lawsuit was filed concerning notice for the Lottery Commission's March 25, 1996 meeting wherein its Director, John Hawkins, was terminated. At the Lottery Commission's March 25, 1996 meeting, Mr. Hawkins, as well as his attorney, Ms. Graziano, were both present. Finding that the Lottery Commission's notice was deficient, the trial justice determined that the Lottery Commission violated the OMA and an appeal ensued.

On appeal, the Rhode Island Supreme Court found that it was unnecessary to address the merits of the OMA lawsuit because "the plaintiffs Graziano and Hawkins have no standing to raise this issue" since "both plaintiffs were present at the meeting and therefore were not aggrieved by any defect in the notice." Id. at 221. The Court continued that it:

---

[5] The Town Council appears to have raised this issue.

> "has held on numerous occasions that actual appearance before a tribunal constitutes a waiver of the right of such person to object to a real or perceived defect in the notice of the meeting. * * * It is not unreasonable to require that the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect. While attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue, no such contention has been set forth in the case at bar. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice." Id. at 221–22.

Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the complainants must demonstrate that they were "in some way disadvantaged or aggrieved by such defect" in the notice. Id. at 221. Importantly, the test is not whether the public is aggrieved, but whether the complainant, as an individual, is aggrieved. See Riggs v. East Bay Energy Consortium, PR 13-25, OM 13-30.

Having examined this issue closely, we conclude that at least Ms. McNamara has standing to bring the instant allegations.[6] We note that Ms. McNamara admits that she attended the meeting. However, consistent with Graziano, "attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue[.]" Graziano, 810 A.2d at 222. Although we consider this standing issue to be a close call, we conclude that Ms. McNamara makes such a showing here:

> "Had the lengthy report on the fiscal comparison of firefighter contracts been on the agenda, I would have gotten a copy of the report[7] and been able to review it and report on it intelligently after it was presented at Monday's Town Council meeting. However, it was not on the agenda and I was not able to report on it in any critical way. Nor was I able to question the town manager or anyone on the town council about it.
> In addition, even if I had not gained access to the report but had at least been alerted to its planned presentation, I could have informed my readers of such. I did write a preview story for the meeting, the purpose of such to inform my readers of what would be discussed."

Consistent with precedent and prior findings, we conclude that Ms. McNamara has sufficiently articulated how the insufficient item on the August 28, 2017 meeting agenda caused her a lack of preparation and ability to prepare for the meeting. Accordingly, we find that Ms. McNamara is aggrieved pursuant to the OMA and has standing to bring this allegation.

---

[6] We accordingly need not – and do not – decide whether Mr. Caldwell has standing to bring this allegation.

[7] It is unclear to us that this averment is accurate or that a report was publicly available prior to the Town Council meeting.

The OMA requires all public bodies provide supplemental public notice of all meetings at least forty-eight (48) hours in advance of the meeting. See R.I. Gen. Laws § 42-46-6(b). "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." Id. (Emphasis added). The level of specificity that must be detailed for each agenda item depends on the facts and circumstances surrounding each item.

In Tanner v. Town of East Greenwich, 880 A.2d 784 (R.I. 2005), the Rhode Island Supreme Court examined this OMA provision. The Court determined that the agenda item "Interviews for Potential Boards and Commission Appointments" did not adequately apprise the public of the nature of the business to be discussed at a Town Council meeting. Specifically, after conducting interviews as indicated on the notice, the East Greenwich Town Council proceeded to vote to appoint various individuals to the planning and zoning boards for the Town.

The Court concluded that although the standard is "somewhat flexible," the contents of the notice "reasonably must describe the purpose of the meeting or the action proposed to be taken." Id. at 797-98. The Court added that a flexible "approach accounts for the range and assortment of meetings, votes, and actions covered under the OMA, and the realities of local government, while also safeguarding the public's interest in knowing and observing the workings of its governmental bodies." Id. at 797. Although the Court provided no bright line rule regarding the level of specificity of a posted notice, the Court determined the appropriate inquiry is "whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted." Id.

The Rhode Island Supreme Court re-examined this provision in Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013). The relevant facts of that case are as follows. In November of 2008, defendants received a letter from counsel for Congregation Jeshuat Israel requesting an extension of the time in which to substantially complete certain improvements to Congregation Jeshuat Israel's property that had been approved by a previous zoning board decision. Id. at 1172. That previous decision expressly contained a condition to the effect that there be substantial completion of the improvements within two years. Id. The agenda item for the February 23, 2009 meeting stated:

> "IV. Communications:
> Request for Extension from Turner Scott received 11/30/08 Re: Petition of Congregation Jeshuat Israel"

At the meeting, the board voted unanimously to approve the request for an extension of time, which required that the "improvements must be started and [be] substantially complete [by] February 23, 2011." Id. at 1173. On August 21, 2009, the plaintiffs filed a complaint in Superior Court alleging that the agenda item violated the OMA because it was "a 'vague and indefinite' notice to the public and one lacking in specificity." Id. The Superior Court granted defendants' motion for summary judgment. Id. On appeal, the Supreme Court looked to Tanner and noted that R.I. Gen. Laws § 42-46-6(b) requires the "public body to provide fair notice to the public under the circumstance, or

such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon." Id. at 1175 (internal quotations omitted). The Court held that the agenda item was "completely silent as to which specific property was at issue; the agenda item provided no information as to a street address, a parcel or lot numbers, or even an identifying petition or case number." Id. (Emphasis in original). The agenda item "fails to provide any information as to exactly what was the reason for the requested extension or what would be its duration." Id. at 1176.

The Rhode Island Supreme Court more recently addressed this issue in Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al., 151 A.3d 301 (R.I. 2016). The pertinent agenda item stated: "7.b. Approval of RIDE's Executive Pay Plan and Organizations Chart." Next to this agenda item was a description that noted "Enclosure 7b." Id. at 303.

The Supreme Court analyzed the sufficiency of this agenda item as follows:

> "After a careful review of the record and consideration of the undisputed facts before us, it is this Court's opinion that the agenda provided by defendants, as it relates to the September 8, 2014 meeting, falls short of satisfying the statutory requirements of notice set forth in § 42–46–6(a). Although the notice placed on the Secretary of State's website undeniably informed the public that '[a]pproval of RIDE's Executive Pay Plan' was on the agenda for the council meeting, there was no indication that more than one pay plan would be considered. Moreover, there was also no indication that the additional pay plans (ultimately considered and decided by the council at the meeting) would relate to retrospective fiscal years dating back to 2012. Additionally, while the 7b enclosure that should have been attached would have informed the public that the meeting would involve pay plans from fiscal year 2012 and forward, it is undisputed that the enclosure was not available on the Secretary of State's website as required by § 42–46–6.
>
> It is our opinion that based on the totality of the circumstances of this case—including that the term 'plan' was in the singular and that the stated 'Enclosure 7b' was not actually available on the Secretary of State's website—adequate public notice was lacking. The public had the statutory right to receive a more complete notice of what would be discussed and decided at the council meeting; this is especially true where the matters relate to expenditures of taxpayer monies. The agenda did not provide the public with fair notice 'of the nature of the business to be discussed' where it completely omitted any information that one could construe to mean that more than one pay plan would be discussed." Id. at 306.

Accordingly, the Supreme Court concluded that the agenda item violated the OMA. Id.

In Pinning/Reilly v. Providence Board of Park Commissioners, OM 07-08, we addressed the sufficiency of the agenda item "Superintendent's Report." We found the description insufficient to apprise the public of the five topics discussed thereunder. Specifically, we found that

> "a member of the public would not be fairly informed of the nature of the business to be discussed based only upon the statement, 'Superintendent's Report.' In the past this Department has found similar broad agenda items, such as 'Old Business' and 'New Business,' which the instant agenda also contains, to be insufficient. See Okwara v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 00-07; Blanchard v. Glendale Board of Fire Wardens, OM 97-13. Although this finding should not be read to mean that we believe every nuance to be discussed, such as the Councilman's letter, must be advertised, we believe that some additional information should have been provided to give insight into what the Superintendent's Report would contain. If not, the 'Superintendent's Report' item is no more sufficient than an agenda item for 'New Business' or 'Old Business.'" Id.

As such, we found an OMA violation. See also Auclair v. Manville Fire District, OM 12-10, PR 12-06 (finding "Tax Collector's Report[,]" "Treasurer's Report[,]" and "Chief Peter Adam's Report" insufficient).

Here, the agenda item for the Town Council's August 28, 2017 meeting stated: "Town Manager's Report[.]" During the meeting, the "Town Manager's Report" consisted of a twenty-five minute presentation by an outside consultant on the fiscal impact statement concerning the fire department's collective bargaining agreements over the period covering 2013–2019.

Based on the totality of the circumstances, and consistent with the above precedent, we find that the agenda item did not sufficiently specify the nature of the business to be discussed and therefore violated the OMA. See R.I. Gen. Laws § 42-46-6(b). The Town Council's contention that a report by an outside consultant is "subsumed within the Town Manager's Report (as an agenda item)" is belied by the considerable case law to the contrary. Indeed, similar to the agenda item in Anolik, the agenda item here contained "vague and indefinite notice to the public" and was "lacking in specificity[.]" Anolik, 64 A.3d at 1175; see also Fagnant v. Woonsocket City Council, OM 15-17. The item "Town Manager's Report" does nothing to suggest that the fire department's collective bargaining agreements would be discussed. As such, "[t]he public had the statutory right to receive a more complete notice of what would be discussed and decided" at the Town Council meeting. Anolik, 64 A.3d at 1175. Therefore, we find that the Town Council violated the OMA. See R.I. Gen. Laws § 42-46-6(b). We note that our conclusion comports with jurisprudential trends; each of the three times our Supreme Court considered this issue it found the agenda item at issue insufficient. See Tanner, 880 A.2d at 798; Anolik, 64 A.2d at 1175; Pontarelli, 151 A.2d at 1175.

Upon a finding of an OMA violation, 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).

Here, where no action was taken under the insufficient agenda item, injunctive relief is inapposite. We also find no evidence of a willful or knowing violation. Although a Rhode Island Superior Court Judge did find similar prior violations, we note that these violations were not found until after the instant violation occurred. See East Greenwich Firefighters Association, et al. v. Gayle Corrigan, et al., KC-2017-0898 (R.I. Super. Nov. 8, 2017). As such, this judicial determination cannot be used as evidence of a willful or knowing violation in this situation and we find misplaced your insistence that the Town Council's substantive response denying the violation is itself evidence of a willful or knowing violation. We look to the time of violation in determining whether the conduct was willful or knowing, not the time of our finding. In so doing, we find no evidence that raises the Town Council's conduct over the willful or knowing bar. Mere sloppiness or recklessness is not tantamount to a willful or knowing violation. See DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994) (explaining "knowing and willful" standard). Notwithstanding, we express concern that the agenda item at issue – particularly in light of our precedent – is conspicuously insufficient. Accordingly, the Town Council is advised that its actions violated the OMA and may be used as evidence of a willful or knowing violation in a similar future situation.

Although the Attorney General will not file suit in this matter, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in 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(c). We are closing this file as of the date of this correspondence.

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

Very truly yours,

Sean Lyness
Special Assistant Attorney General

SL/kr

Cc: David D'Agostino, Esq.