



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**

July 16, 2015

OM 15-13

PR 15-40

Mr. Albert V. Ranaldi, Jr.

**RE: Ranaldi v. Town of Narragansett**

Dear Mr. Ranaldi:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Town of Narragansett (“Town”) is complete. By email correspondence dated January 4, 2015, you allege the Town violated the OMA by not posting scheduled meetings for the “Ad Hoc working group on URI-Narragansett student rental issues” (hereafter “Ad Hoc Working Group”) on the Secretary of State’s website for its meetings dated August 25, 2014, September 10, 2014, September 29, 2014, October 6, 2014, October 27, 2014, November 10, 2014, December 1, 2014, and December 8, 2014.<sup>1</sup> Although your complaint acknowledges that “each meeting was posted on the Town’s website within the “calendar” section, you nonetheless allege “these meetings were never publicly posted according to the State’s Open Meetings Act.” See R.I. Gen. Laws § 42-46-6. With respect to this allegation, you contend these meetings were improperly posted on the Secretary of State’s website under the parent entity, “Narragansett, Town of,” rather than under the Ad Hoc Working Group. You further contend that the meeting minutes do not indicate the members of the Ad Hoc Working Group present or absent for meetings and that you were not provided minutes for the September 10, 2014 meeting.

In response to your complaint, we received a substantive response from the Town’s legal counsel, Mark A. McSally, Esquire. Attorney McSally states, in pertinent part, “there was not a meeting held September 10, 2014, or October 6, 2014.” Attorney McSally further provides copies of the agenda, notice posted to the Secretary of State’s website, and minutes for the Ad Hoc Working Group’s September 29, 2014, October 6, 2014, October 27, 2014, and December 8, 2014 meetings. Attorney McSally also addresses your complaint regarding the meeting minutes not indicating the members present or absent and writes:

---

<sup>1</sup> It would seem that this complaint should have been directed against the Ad Hoc Working Group, rather than the Town, but since this issue was not raised, and since the Ad Hoc Working Group is apparently a subgroup of the Town Council, we continue our analysis.

“[i]n reviewing the second allegation of the complaint regarding the failure to list members of the public body present or absent at the meeting, it would appear that, while this may be technically accurate for the August 25, 2014, meeting and the September 29, 2014, meeting, the minutes do contain the names of people speaking and a list of attendees through a sign-in sheet.”

We acknowledge your rebuttal dated February 9, 2015, wherein you relate that Attorney McSally’s “response did show that the Town posted the meeting notices to the Secretary of State (SOS) website.” Accordingly, as suggested earlier, you take no issue with the fact that the Town posted meeting notices on the Secretary of State’s website, however, you contend that the notices were improperly “posted under the parent entity “Narragansett, Town of,” and not under the Ad Hoc Working Group. As a result, you contend that “any citizen interested in this group’s activities would be hard pressed to find the working group’s agendas on the [Secretary of State’s] website.” (Emphasis added). You aver that “this action was an attempt to disguise the activities of the working group and circumvents the public policy of OMA (42-46-1)” and that “a citizen would likely conclude that the working group’s agendas were not posted to the [Secretary of State’s website].” (Emphasis added).

In examining whether an OMA violation has occurred, we are mindful that our mandate is not to determine whether this Department believes that 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 Town violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA provides that only “aggrieved” citizens may file a complaint regarding an alleged OMA violation. See R.I. Gen. Laws § 42-46-8(a). In Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), the trial court found that the Lottery Commission’s notice was deficient due to its failure to post a meeting notice within the forty-eight (48) hour time frame pursuant to R.I. Gen. Laws § 42-46-6(b). 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 ha[d] 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 Supreme Court explained that:

“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. (Emphases added).

Similar to Graziano, you have not demonstrated that you are aggrieved as a result of the alleged improper posting. Specifically, our review of the evidence finds that out of the eight (8) meetings that you direct our attention to, you attended two of these meetings (October 27, 2014 and December 8, 2014) and two (2) of these meetings (September 10, 2014 and October 6, 2014) did not occur. In this Department's letter acknowledging your complaint, we pointed out that you attended the October 27, 2014 Ad Hoc Working Group meeting and that you should "provide this Department with evidence as to how you were aggrieved by the lack of notice." You provided no response explaining how you were aggrieved with respect to this meeting date (October 27, 2014), or any other meeting date.

Rather than demonstrate how you (specifically) were aggrieved by the alleged lack of notice, the totality of the evidence leads us to conclude that you were not aggrieved by any alleged lack of posting on the Secretary of State's website. For instance, rather than directing this Department to the specific manner in which you were harmed or aggrieved, your complaint is replete with references that "[a]ny citizen interested in this group's activities would be hard pressed to find the working group's agendas on the [Secretary of State's] website." As further support for our conclusion, your February 9, 2015 rebuttal advises that:

"a citizen would likely conclude that the working group's agendas were not posted to the [Secretary of State's website] and thus in violation of the State's Open Meetings Act. This is exactly what I concluded but continued to see meeting agendas posted on the Town website. Ultimately, I had to submit a complaint to your office to receive proof that the Town has been posting this working group's agendas to the [Secretary of State's website]." (Emphasis added).

While we have great respect for the OMA and your situation, we have carefully reviewed the evidence presented and can find no situation where you indicate that you were aggrieved by the alleged lack of posting on the Secretary of State's website. Instead, your complaint makes clear that you "continued to see meeting agendas posted on the Town website," and although the timeframe when you viewed these notices is unclear, there is no question that the "burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice." Graziano, 810 A.2d at 222. Respectfully, we must conclude that you have failed to establish this burden.

With respect to your remaining allegations, you contend that you were not provided access to the Ad Hoc Working Group's September 10, 2014 minutes, but the evidence was uncontradicted that no meeting occurred on this date. Accordingly, the Access to Public Records Act was not violated. See R.I. Gen. Laws § 38-2-3(h). You also contend that the Ad Hoc Working Group violated the OMA when it failed to record minutes that contained a record of those members present or absent at the scheduled meeting dates. With respect to the Ad Hoc Working Group's meetings dated August 25, 2014 and September 29, 2014, we agree. The failure to do so

violated the OMA. See R.I. Gen. Laws § 42-46-7(a)(2) (“The minutes shall include, but not need be limited to \* \* \* The members of the public body recorded as either present or absent.”)

Upon a finding that a complaint brought pursuant to the OMA is meritorious, 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: (1) “[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];” or (2) “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 [the OMA].” R.I. Gen. Laws § 42-46-8.

Here, no evidence has been presented or gleaned that the instant violation was willful or knowing, and while injunctive relief may be appropriate to remedy the Ad Hoc Working Group’s minutes, we prefer to allow the Ad Hoc Working Group the opportunity to remedy this matter on its own. To the extent that the Ad Hoc Working Group can re-create or recall the members present/absent for its August 25, 2014 and September 29, 2014 meetings, the Ad Hoc Working Group should amend its minutes to remedy this matter. This, of course, assumes that the Ad Hoc Working Group still constitutes a legal entity. We ask that legal counsel advise this Department within thirty (30) days of this finding concerning the status of its remedial efforts.

Although the Attorney General will not file suit in this matter at this time, 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 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. We are closing our file as of the date of this finding, although we reserve the right to reopen this matter if the Ad Hoc Working Group does not remedy this matter as discussed herein.

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

Very truly yours,



Michael W. Field  
Assistant Attorney General

Cc: Mark A. McSally, Esquire