

DEPARTMENT OF ATTORNEY GENERAL

Peter F. Kilmartin, Attorney General



ACCESS TO PUBLIC RECORDS ACT

&

OPEN MEETINGS ACT



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

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Dear Open Government Summit Attendee:

I would like to thank you for attending the Open Government Summit 101 and to thank the Community College of Rhode Island for hosting this important event.

Today's Open Government Summit 101 is intended to provide an introductory review of Rhode Island's Open Government laws – the Access to Public Records Act and the Open Meetings Act. It is my firm belief that we achieve a more open and accessible government by educating members of public bodies concerning their open government responsibilities. To this end, it is the obligation of all public bodies to ensure that appropriate documents and meetings be open to the public in a timely manner.

My Administration is committed to public outreach and education concerning the requirements of the Open Meetings and Access to Public Records Acts. Members of the Attorney General's Office will be available to conduct open government trainings and I encourage you to contact the Office to arrange a training session for a city/town or regional area. Additionally, this Department will continue to issue, upon request from legal counsel for public bodies, advisory opinions concerning any pending matter that may implicate either the Open Meetings or Access to Public Records Acts. The Department will continue to issue two types of advisory opinions: oral/telephonic advisory opinions, which are not binding upon the Department of Attorney General, and written advisory opinions, which express the opinion of this Department.

I also encourage you to take advantage of the resources available at the Department of Attorney General website, www.riag.ri.gov. Our popular *Guide to Open Government in Rhode Island* is located in the "Access to Public Records/Open Meetings Act" section and can be printed for distribution. Our Department has also created, for your quick reference, checklists for both the Open Meetings Act and the Access to Public Records Act, which are available on-line and in this booklet.

I am extremely proud of this Department's mission and I look forward to working with you to ensure that the State of Rhode Island and local government remains open and accountable to the public. If either the Department or I can assist you to accomplish our common goals, do not hesitate to contact us.

Very truly yours,

Peter F. Kilmartin
Attorney General

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SECTION I



ACCESS TO PUBLIC RECORDS ACT

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2016

- PR 16-01 **Clark v. West Gloucester Fire District**
The Complainant alleged that the WGFD failed to specify the reasons for its denial, failed to indicate whether responsive documents did not exist, and argued that the requested documents maintained in a third party's personnel file should be deemed public records. Although the Fire District's denial referenced the incorrect APRA exemption, its denial was specific and we determined that "good cause" existed so the requested third party personnel file records were not deemed publicly accessible. *Issued January 8, 2016.*
- PR 16-02 **Collette v. Town of Hopkinton**
Complainant alleged that the Town violated the APRA when it denied him access to requested documents. Based on all the evidence presented, we found that the privacy interests implicated by disclosure clearly outweighed the public interest and, therefore, disclosure would "constitute a clearly unwarranted invasion of personal privacy." See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). We also concluded that several documents fell within Exemption (K) - "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products" that have not been "submitted at a public meeting of a public body." See R.I. Gen. Laws § 38-2-2(4)(K). *Issued February 2, 2016.*
- PR 16-03 **Jackson v. Coventry School Department**
Complainant requested and was denied access to copies "of all resumes received by the Coventry Schools Administration's advertised position for a Financial Director as well as any resumes received from other sources" on the grounds that disclosure would "constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq." See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). The resumes at issue concerned only the resumes of individuals who applied, but were not selected for employment by the School Department, and acknowledged that all past and present employment information would be redacted. After reviewing all the evidence presented and balancing the public interest in disclosure against the privacy interests implicated, we found that the privacy interests outweighed the public interest and concluded that the School Department did not violate the APRA. See Jackson v. Town of Coventry, PR 14-35. *Issued February 16, 2016.*

PR 16-04

Shapiro v. Town of Warren

Complainant alleged that the Town violated the APRA when it failed to provide a written response to his April 1, 2015 APRA request and when it failed to provide all documents responsive to his April 1, 2015 APRA request. We found that the Town violated the APRA when it failed to respond to the aspect of the APRA request seeking attorney invoices. With respect to Complainant's second allegation, we found no evidence that the Town failed to provide Complainant with additional responsive documents within the Town's custody or control and that the Town's search and retrieval for documents responsive to Complainant's April 1, 2015 APRA request was adequate and sufficient under the circumstances. VIOLATION FOUND. *Issued February 18, 2016.*

PR 16-05

MacDougall v. Quonochontaug Central Beach Fire District

Complainant alleged that the Fire District violated the APRA when: 1) it failed to comply with this Department's "Decision and Order" in MacDougall v. Quonochontaug, PR 13 - 17; OM 13-24; 2) when it failed to properly respond to certain portions of his January 18, 2014 APRA request; and 3) when the Fire District's response to several of Complainant's 2012 - 2013 APRA requests were not signed by someone certified to respond pursuant to R.I. Gen. Laws § 38-2-3.16. This Department concluded that the Fire District violated the APRA when it failed to provide all responsive documents to Complainant's January 18, 2014 APRA request and that the Fire District violated the APRA when someone not certified pursuant to R.I. Gen. Laws § 38-2-3.16 responded or otherwise authorized the Fire District's response to the 2012-2013 requests. VIOLATION FOUND. *Issued February 22, 2016.*

PR 16-06

Law Offices of Richard Humphrey v. Department of Health

The Complainant alleged the DOH violated the APRA when it refused to provide records responsive to its APRA request seeking a copy of the Intoxilyzer I-9000 Training Manual. Among the twenty-seven (27) exceptions to the APRA is R.I. Gen. Laws § 38-2-2(4)(B), which exempts from public disclosure, "[t]rade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature." In The Providence Journal v. Convention Center Authority, 774 A.2d 40, 47 (R.I. 2001), the Rhode Island Supreme Court examined R.I. Gen. Laws § 38-2-2(4)(B) and explained that commercial information provided to the Government was exempt from disclosure "if it is of a kind that would customarily not be released to the public by the person from whom it was

obtained.” Based upon the evidence presented, we concluded that the Intoxilyzer I-9000 Training Manual, which is copyrighted, is “of a kind that would customarily not be released to the public by the person from whom it was obtained.” The DOH did not violate the APRA. *Issued February 23, 2016.*

PR 16-07

Warwick Post v. Warwick School Department
Warwick Beacon v. Warwick School Committee
Howell v. City of Warwick

All APRA requests sought two reports (“Reports”), which were presented to the School Committee in executive session and concerned the School Committee’s review of the handling of accusations of inappropriate conduct. The APRA exempts from public disclosure “[a]ll investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.” R.I. Gen. Laws § 38-2-2(4)(P). Warwick submitted the Reports constituted “investigatory records,” but failed to address the “statute, rule or regulation” that served as the basis for the School Committee’s investigation, and thus implicated Exemption (P). Warwick’s failure to identify the “statute, rule or regulation” that was possibly violated was fatal to its assertion that the portions of the Reports constituted “investigatory records of public bodies * * * pertaining to possible violations of statute, rule or regulation.” We concluded that the information contained in the Reports that address how the school administration handled this matter must be disclosed. VIOLATION FOUND. *Issued March 2, 2016.*

PR 16-08

Conservation Law Foundation v. Office of the Governor

The Governor’s Office violated the APRA when it provided the Complainant with one avenue for appeal, but omitted the other options for appeal. R.I. Gen. Laws § 38-2-8(a). The Governor’s Office did not violate the APRA when it failed to provide the Complainant the basis for its waiver denial. The Governor’s Office did not violate the APRA when it required pre-payment before providing access to documents for review. R.I. Gen. Laws § 38-2-7(b). After our in camera review of the withheld and redacted documents, with the exception of one-word, we find no violation. With respect to the documents withheld in whole, our review finds this category contains drafts and other documents (e-mails, memorandum, and other records) reflecting the deliberative process. R.I. Gen. Laws §§ 38-2-2(4)(E),(K). VIOLATION FOUND. *Issued March 10, 2016.*

PR 16-09

Scalzi v. Town of North Smithfield

The Complainant alleged that the Town violated the APRA when it failed to include all documents responsive to her APRA request dated March 30, 2015. The APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or copy such records. See R.I. Gen. Laws § 38-2-3(a). Accordingly, our inquiry concerns not whether the Town has provided all requested documents, but rather whether the Town has conducted an adequate and appropriate search to determine whether the Town maintains the requested records. In fact, the linchpin of our inquiry concerns the reasonableness of the Town's search. The evidence demonstrated that the Town spent approximately four (4) hours conducting a search of 110 files and produced records responsive to the APRA request. There is no evidence that the Town's search was inadequate. Accordingly, we found no violation. *Issued March 17, 2016.*

PR 16-10

The Town of North Providence v. Salvatore Mancini Resource and Activity Center

The Complainant alleged the SMRAC violated the APRA when it failed to respond to its APRA request dated May 15, 2015. During the pendency of this matter, the SMRAC filed a Petition for a Writ of Mandamus in the Rhode Island Superior Court against the Town. The Town answered the Petition and filed a Counterclaim. Among the averments set forth in the Town's Counterclaim is that "[a] dispute has arisen between the Town and the Center as to whether the Center is a private agency acting on behalf of and/or in place of the Town of North Providence in providing services to the senior citizens of the Town, within the meaning of R.I.G.L § 38-2-1 and 38-2-2, et. seq.," the APRA. This Department has consistently taken the position that when a complaint is filed in Superior Court alleging the same APRA or Open Meetings Act allegation that is raised in a complaint, this Department's investigation into the APRA or Open Meetings Act complaint must yield to the Superior Court's jurisdiction. See Graziano v. Personnel Appeals Board, OM 97-21; Narragansett Improvement Company, et al. v. Town of North Smithfield, OM 09-11. Because the issue presented by this complaint is the same issue that is pending before the Superior Court, this Department will take no action on this matter. *Issued March 24, 2016.*

- PR 16-11 **Vowels v. RISE/Mayoral Academy**
The RISE/Mayoral Academy (“Academy”) violated the APRA when it failed to respond to the Complainant’s APRA request. See R.I. Gen. Laws § 38-2-7. This Department assumed, without deciding, that the Academy is subject to the APRA and nothing within the finding bars the Academy from raising this issue at a future point. Based upon the specific facts and nature of the APRA, this Department concluded that the Academy’s failure to timely respond to the APRA request was not a willful or knowing, or reckless, violation. VIOLATION FOUND. *Issued March 30, 2016.*
- PR 16-12 **Clark v. Town of Glocester / Clark v. Glocester Police Department**
This Department has long held that “in order for this Department to have jurisdiction to inquire into an APRA matter, the complainant must first have requested a record from a public body, and second, the complainant must have been denied access to the requested record.” Schmidt v. Ashaway Volunteer Fire Association et. al., PR 99-21. Because there was no evidence or indication that the Complainant had made the APRA requests at issue, he lacked standing to complain about alleged violations stemming from these APRA requests. *Issued March 31, 2016.*
- PR 16-13 **Grieb v. Aquidneck Island Planning Commission**
We concluded that the AIPC did not violate the APRA with respect to her January 19, 2015 request as the evidence revealed the Complainant was provided responsive documents. The AIPC violated the APRA by failing to respond to the Complainant’s March 3, 2015 APRA request wherein she sought the approved minutes for the AIPC’s December 16, 2014 and January 13, 2015 meetings. No evidence has been presented of a willful and knowing, or reckless violation. Also, because the Complainant now has access to both sets of approved minutes, injunctive relief was not appropriate. VIOLATION FOUND. *Issued March 31, 2016.*
- PR16-14 **Ravetti v. RI Department of Behavioral Healthcare, Developmental Disabilities and Hospitals**
The Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (“BHDDH”) violated the APRA when it failed to respond to the Complainant’s APRA request within ten (10) business days. See R.I. Gen. Laws § 38-2-7(b). The Complainant sent a March 18, 2015 request that did not conform to the BHDDH’s APRA policy and did not mention the APRA. The Complainant made a request on March 23, 2015, which was virtually

identical in substance except that the March 23, 2015 request invoked the APRA at the end of the correspondence. As such, we found no willful and knowing, or reckless violation. Injunctive relief was not appropriate because the documents sought were confidential by law. See Scripps v. Department of Business Regulation, PR 14-07 (documents deemed confidential by law exempt despite failure to respond timely). VIOLATION FOUND. *Issued April 13, 2016.*

PR 16-15 **Common Cause Rhode Island v. Rhode Island Department of Business Regulation**

The DBR violated the APRA when it failed to respond to Common Cause Rhode Island's September 23, 2015 email APRA request. See R.I. Gen. Laws § 38-2-7. Based upon the evidence presented, it appears the DBR was undergoing a transition from one email system to another. Because of this transition, it was apparent that the DBR did not receive the Complainant's first email request on September 21, 2015. It was also apparent that when the Complainant "re-submitted" its APRA request two (2) days later, on September 23, 2015, the DBR's new email system was still "experiencing technical issues stemming from the Department's migration to MS Outlook." No evidence was submitted that the DBR's failure to comply with the APRA request was anything other than a result from the DBR's transition to a new email system. The DBR violated the APRA, but all responsive documents have been provided to the Complainant, therefore, injunctive relief was not appropriate. Additionally, we found no evidence of a willful and knowing, or reckless violation. VIOLATION FOUND. *Issued April 27, 2016.*

PR 16-16 **Smith v. The Compass School**

The Complainant made an APRA request to the School seeking six (6) categories of documents. The School acknowledged the APRA request and indicated that information was being gathered. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. See R.I. Gen. Laws §§ 38-2-7, 38-2-3(e). The School violated the APRA when it failed to timely and completely respond to the APRA request. The School provided absolutely no response to categories 1, 2, or 3, provided no response to portions of category 6 and provided the documents to category 5, but did so in an untimely manner. After reviewing all the evidence presented, we have grave concerns regarding the School's untimely response and whether such omission should be considered knowing and willful, or