DEPARTMENT OF ATTORNEY GENERAL

Peter F. Kilmartin, Attorney General

ACCESS TO PUBLIC RECORDS ACT
&
OPEN MEETINGS ACT

State of Rhode Island and Providence Plantations

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Peter F. Kilmartin, Attorney General

January 9, 2017

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

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 Glocester 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. I*ssued 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

alternatively, reckless. A supplemental finding will be issued. VIOLATION FOUND. *Issued May 5, 2016.*

PR 16-16B **Smith v. The Compass School**
Given the evidence presented to us, including the fact that the Complainant received a complete response to his APRA request nearly five (5) months from the date of request, in combination with the School's acknowledgment that it "understood and appreciated that [it] was subject to the APRA," we found that the School willfully and knowingly, or recklessly, violated the APRA. Accordingly, this Department filed a civil lawsuit against the School seeking civil fines. LAWSUIT FILED. *Issued November 2, 2016*

PR 16-17 **Chiaradio v. Town of Westerly**
The Complainant alleged the Town violated the APRA when it denied part of her APRA request, which sought copies of itemized invoices from two (2) law firms engaged to represent the Town. Based upon the evidence presented, the Town provided the Complainant with redacted copies of the invoices. Rhode Island General Laws § 38-2-2(4)(A)(I)(a) exempts from public disclosure "all records relating to a client/attorney relationship." Upon this Department's in camera review of the legal invoices, we conclude the redacted narratives contained information related to the client/attorney relationship and that these portions are not reasonably segregable. Indeed, the Town has already provided the reasonably segregable portions of the legal bills with the attorney narratives redacted. We found no violation. *Issued May 5, 2016.*

PR 16-18 **Lyssikatos v. City of Pawtucket**
The Complainant failed to present evidence that the public interest in disclosure outweighed the privacy interest of an unfounded internal affairs report relating to a specific incident. Accordingly, the requested document was exempt from public disclosure. R.I. Gen. Laws § 38-2-2(4)(I)(A)(b). *Issued May 13, 2016.*

PR 16-19 **Niquette v. Woonsocket Police Department**
The Complainant alleged the Woonsocket Police Department violated the APRA when it improperly denied his APRA request. The Complainant requested records concerning an incident where law enforcement officers were dispatched to his house, but which did not concern the Complainant. This Department has consistently held that where an arrest has not taken place, there is a presumption that initial

incident reports are exempt from public disclosure. See R.I. Gen. Laws § 38-2-2(4)(D). The Complainant did not identify the public interest in the disclosure of these documents and no public interest is readily discernible from our review. Our review of the report reveals it contains, at least some, personal and sensitive information. These privacy interests therefore outweigh the public interest in disclosure of such a report. For these reasons, we found no violation. *Issued May 23, 2016.*

PR 16-20 **GoLocal Prov v. City of Providence**

The Complainant alleged that the City of Providence ("City") violated the APRA when it failed to provide responsive documents to the Complainant's APRA request. The City determined that the Complainant's APRA request asked for a "list" and "breakdown" of certain information, and the City maintained it did not have responsive documents to that request. After thoroughly reviewing the Complainant's APRA request, this Department concluded that the City did not violate the APRA because the Complainant's APRA request could reasonably be interpreted to ask for a "list" and "breakdown" of certain information. Under R.I. Gen. Laws § 38-2-3(h), no public body is required to create lists that do not exist at the time of the APRA request. See also Direct Action for Rights & Equality v. Gannon, 713 A.2d 218, 225 (R.I. 1998). *Issued May 26, 2016.*

PR 16-21 **Plain v. Office of the Governor**

The Complainant alleged that the Office failed to comply with R.I. Gen. Laws § 38-2-3(e) when it extended the time to respond to an APRA request without providing "good cause" to extend the time to respond. We found that the Office had "good cause" to extend the time to respond due to several other pending APRA requests, many of which were broad and required the review of thousands of documents. Considering the volume, breadth and sequence of the APRA requests, we found no violation. *Issued June 3, 2016.*

PR 16-22 **Ryan v. Town of Burrillville**

The Complainant filed an APRA complaint, contending that various documents were not provided. Our review of the voluminous record determined that the Town conducted an adequate and appropriate search to find responsive records and no evidence was presented or discovered that the Town was withholding requested records. Instead, our review found that records had either been provided, where not responsive, or that requested documents/information was not maintained. *Issued June 3, 2016.*

PR 16-23 **Marcos v. Cumberland Police Department**

After an *in camera* review of two separate "incident reports," this Department concluded that the Police Department did not violate the APRA when it withheld incident report #15-3388-OF of December 11, 2015 per R.I. Gen. Laws § 38-2-2(4)(D)(a). This Department did conclude, however, that the Police Department violated the APRA when it withheld incident report #13-789-OF. The Police Department already disclosed the related arrest report in redacted form, and thus the "strong presumption" that disclosure of an incident report would invade the subject's privacy is not applicable. See In re: Cumberland Police Department, ADV PR 03-02. This Department directed the Police Department to disclose incident report #13-789-OF in redacted form in accordance with State law and the APRA. VIOLATION FOUND. *Issued June 6, 2016.*

PR 16-24 **GoLocal Prov v. Rhode Island Commerce Corporation**

The Complainant alleged that the Rhode Island Commerce Corporation ("RICC") failed to comply with R.I. Gen. Laws § 38-2-3 (e) by failing to respond to a March 24, 2016 APRA request within ten (10) business days. 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. The RICC responded on April 7, 2016, and thus we concluded that the RICC responded to the Complainant in a timely manner. *Issued June 20, 2016.*

PR 16-25 **Salvatore v. Town of South Kingstown and South Kingstown School Department**

The Town of South Kingstown violated the APRA when its response to the Complainant's APRA request did not include the right of appeal pursuant to R.I. Gen. Laws § 38-2-7(a). The South Kingstown School Department violated the APRA when its response provided a narrative answer rather than providing the documents. The School Department also violated the APRA when it failed to provide both the specific reasons for the denial and the right of appeal. This Department found no evidence that the Town or the School Department committed a willful and knowing, or reckless violation. This Department concluded, however, that disclosure of the responsive legal bills during the requested time frame was appropriate and allowed the School Department ten (10) business days to provide these invoices, in a redacted manner. VIOLATION FOUND. *Issued July 7, 2016.*

PR 16-26 **Paterson v. Rhode Island Department of Environmental Management**

The DEM responded to the Complainant's APRA request in a timely manner. Accordingly, there was no violation. *Issued July 12, 2016.*

PR 16-27 **Farinelli v. City of Pawtucket**

The Complainant alleged the City violated the APRA when it denied her May 5, 2015 APRA request, wherein she sought a copy of a completed investigation report of the Internal Affairs complaint involving a particular officer. The Complainant also contended that the City violated the APRA when it failed to timely respond to her April 16, 2015 APRA request and when the City required that all her future questions be submitted in the form of APRA requests. The Complainant informed this Department that she was in receipt of the Internal Affairs report and did not need this Department to release it to her. As such, since the Complainant had a copy of the Internal Affairs report, this Department need not determine whether the Internal Affairs report is a "public record" or whether the City violated the APRA when it denied access. Injunctive relief was not appropriate and we determined there was no evidence of a willful and knowing, or reckless, violation. We also found that the City did not violate the APRA with respect to the allegation that the City failed to timely respond to her April 16, 2015 APRA request. The evidence demonstrated that the City did not receive her APRA request until May 5, 2015. Finally, the City did not violate the APRA with respect to the Complainant's final allegation. *Issued July 14, 2016.*

PR 16-28 **Lapierre v. City of Woonsocket**

The City of Woonsocket violated the APRA when it failed to respond to an aspect of the APRA request seeking a document that it did not maintain. Because the Complainant received the second document she was seeking from the City, it was unnecessary to determine whether the City violated the APRA when it misaddressed the envelope since injunctive relief was moot. There was no evidence that the misaddressed envelope or the failure to respond to one aspect of the request was a willful and knowing, or reckless, violation.
VIOLATION FOUND. *Issued July 18, 2016.*

PR 16-29 **Brien v. Woonsocket Housing Authority**

The Complainant sought copies of all reports prepared by a search consultant who was hired to evaluate applications and resumes of candidates for the position of the Woonsocket Housing Authority's Executive Director. There were two responsive documents, one that

lists the names of applicants and identified these individuals into different categories, and second, a scoring grid of various applicants. We concluded that the disclosure of the information contained in these documents that refers to unsuccessful candidates for the position of Executive Director would constitute a clearly unwarranted invasion of these candidates' personal privacy. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b); Jackson v. Town of Coventry, PR 14-35. The WHA did not violate the APRA when it provided the Complainant with the business addresses of the Board of Commissioners. *Issued July 22, 2016.*

PR 16-30 **NBC 10 v. Rhode Island Department of Public Saftey**
The Department of Public Safety did not violate the APRA when it redacted the identities and contact information for third parties - but released the substantive information related to these third parties - and when it redacted the subject-matter of one incident or circumstance involving the subject of the report. In both cases, the Complainant provided little to no public interest in disclosure and this interest did not outweigh the privacy interest. The remaining portions of the report were released by the DPS unredacted. *Issued July 28, 2016.*

PR 16-31 **Tavares v. Newport Housing Development**
Complainant filed a complaint against the Housing Development alleging that it had violated the APRA when it failed to respond to his October 26, 2015 and November 20, 2015 APRA requests, as well as his December 16, 2015 administrative appeal. The Housing Authority responded that it never received the above-referenced documents, and upon receipt of the complaint, provided the responsive documents. Since the Complainant received the requested records, injunctive relief was not appropriate (and moot), and this Department found no evidence of a willful and knowing, or reckless, violation. *Issued July 28, 2016.*

PR 16-32 **Katz v. Employees Retirement System**
The ERSRI did not violate the APRA when it denied a request that would have required the ERSRI to perform a calculation that it had not performed. Because the ERSRI did not perform this calculation, and thus had no documents responsive to this calculation, the APRA did not require the ERSRI to create documents or calculations that did not exist. *Issued July 28, 2016.*

PR 16-32B **Katz v. Employees Retirement System**
This supplemental finding addressed whether Complainant's rebuttal altered our finding in Katz v. Employees Retirement System, PR 16-32.

The evidence demonstrated that Complainant's APRA request sought data that was not part of the computer program's usual outputs. Calculating a new output would require substantial computer reprogramming at a considerable cost. We found that the APRA did not require a public body to bear this undue burden. See R.I. Gen. Laws § 38-2-3(h). Accordingly, we found no violation. *Issued November 23, 2016.*

PR 16-33 **Harris v. City of Providence**

The Complainant alleged that the City violated the APRA when it withheld, based upon the attorney-client relationship, documents responsive to her APRA request. Based upon this Department's in camera review of the three (3) emails, consisting of two (2) pages, we concluded that the documents were properly withheld under R.I. Gen. Laws § 38-2-2(4)(A)(I)(a) ("[a]ll records relating to a client/attorney relationship"). As such, we found no violation. *Issued July 28, 2016.*

PR 16-34 **Piskunov v. Town of New Shoreham**

The Town did not violate the APRA when it did not provide documents that it did not maintain. No evidence was presented that the requested documents were maintained by the Department at the time of the APRA request. See R.I. Gen. Laws § 38-2-3(h). *Issued August 24, 2016.*

PR 16-35 **O'Gorman v. Town of Coventry**

Complainant alleged that the Town violated the APRA when it failed to provide access to a document responsive to her May 13, 2016 APRA request. We found no evidence that the requested document existed. Consistent with previous cases that found no APRA violation for failure to produce records that do not exist, we concluded that the Town had not violated the APRA. *Issued August 29, 2016.*

PR 16-36 **Piskunov v. Town of Coventry**

Complainant alleged that the Town violated the APRA when it failed to provide a reason for requesting a time extension to his February 13, 2016 APRA request. We found that the Town's failure to provide a reason why it was requesting a time extension violated R.I. Gen. Laws. § 38-2-3(e). Based on the specific facts presented, including the fact that the Complainant did not challenge the validity of the Town's request for an extension, we found no evidence of a willful and knowing, or reckless, violation. VIOLATION FOUND. *Issued August 29, 2016.*

PR 16-37 **Harris v. City of Providence**

The Complainant alleged the City violated the APRA when it stated that it maintained no documents responsive to her APRA request. The APRA request sought "all registration signup sheets for the Providence Summer Midnight Basketball Program from May 26 through August 8, 2015." There was no evidence that the City had or maintained the requested records, nor did it appear that The Salvation Army was acting on behalf of, or in place of, the City such that The Salvation Army would be within the ambit of the APRA. Even if we concluded that The Salvation Army fell within the scope of the APRA for purposes of this request, we would still find no violation as the privacy interests outweigh the public interest in disclosure. *Issued September 1, 2016.*

PR 16-38 **Piskunov v. Town of North Providence**

Complainant alleged that the Town violated the APRA when it failed to respond to his February 13, 2016 APRA request. Because the Town later released the requested documents to Complainant, we concluded that we only needed to determine if the Complainant's allegation represented a willful and knowing, or reckless, violation of the APRA such that the Town would be subject to civil penalties. Based on the specific facts presented, including the fact that the Complainant did not comply with the Police Department's procedures for submitting an APRA request, we found no evidence of a willful and knowing, or reckless, violation. *Issued September 13, 2016.*

PR 16-39 **Cote v. City of Warwick**

Complainant alleged that the City violated the APRA when it redacted information in its response to his May 24, 2016 APRA request. Consistent with our prior finding in Higgins v. Lonsdale Fire District, PR 15-20, we found that the requested W2 forms of public employees were not public records subject to the APRA. Accordingly, the City did not violate the APRA. *Issued September 23, 2016.*

PR 16-40 **Koutsogiane v. Cumberland Fire District**

The Cumberland Fire District did not violate the APRA as the evidence revealed that the Complainant's August 26, 2015 complaint raised no issue with the Fire District's exercising an extension to respond to the Complainant's APRA request. Rather, the APRA complaint simply contended that as of the date of the complaint, the Complainant had "not received any of the requested materials." The reason the Complainant had "not received any of the requested materials" was because the Fire District timely extended the time to respond to the

Complainant's APRA request. On this basis, we found no violation. *Issued September 23, 2016.*

PR 16-41 **Piskunov v. City of Cranston**

The Complainant alleged that the City violated the APRA when it withheld requested documents without providing the specific reasons for the denial and without indicating the procedures for appealing the denial. The evidence revealed that the City released the requested documents during the pendency of this matter. We found no evidence of a willful and knowing, or reckless, violation, noting that the City provided the requested documents within the extended thirty (30) business day time period. We also found that the City provided specific reasons for the denial. However, we concluded that the City violated the APRA by failing to indicate the procedures for appealing the denial. VIOLATION FOUND. *Issued October 6, 2016.*

PR 16-42 **Caldwell v. City of Cranston**

The Cranston Police Department did not violate the APRA when it withheld some documents responsive to an incident report and provided other documents related to an incident report in a redacted manner. No evidence was presented that disclosure would advance the APRA "public interest" as described by the United States and Rhode Island Supreme Courts. *Issued October 7, 2016.*

R 16-43 **Farinelli v. Town of Foster**

Complainant alleged that the Town violated the APRA when it failed to respond to his APRA request. The evidence indicated that the Town timely responded to the APRA request by stating that it did not have the requested documents. We also found that Complainant's suggestion that the Police Department violated the APRA was unfounded, because even if Complainant had properly made an APRA request to the Police Department, his complaint was not ripe for review. *Issued October 14, 2016.*

PR 16-44 **Clark v. West Glocester Fire District**

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 October 14, 2016.*

PR 16-45 **The Providence Journal v. R.I. Department of Corrections**
Complainant alleged that the DOC violated the APRA when it declined to produce documents responsive to its APRA request. The evidence indicated that the DOC properly withheld documents due to the privacy interests that outweighed the public interest in disclosure. We also found that the documents were not reasonably segregable and contained individually identifiable medical and health care information subject to federal health care confidentiality law. *Issued October 28, 2016.*

PR 16-46 **Nye v. Rhode Island Department of Public Safety**
This Department concluded that the DPS did not violate the APRA because its search and retrieval relating to the Complainant's APRA request was reasonably calculated to discover all responsive documents. The APRA request sought arrest records and "any related documents, due to any body attachments," in a particular civil case. The DPS provided six (6) pages in an unredacted manner. The Complainant insisted that an "arrest record" existed, but the evidence was clear and undisputed that no "arrest record" existed. *Issued November 22, 2016.*

PR 16-47 **Save the Bay v. Rhode Island Department of Environmental Management**
Based upon the evidence presented, the subject document responsive to Save the Bay's APRA request was generated by the Chief of DEM's Office of Compliance and Inspection, in consultation with DEM attorneys (and on occasion with attorneys from the Department of Attorney General) to evaluate and strategize potential DEM legal action. "The general rule is that communications made by a client to his attorney for the purposes of seeking professional advice, as well as the responses by the attorney to such inquiries, are privileged communications not subject to disclosure." State v. Von Bulow, 475 A.2d 995, 1004 (R.I. 1984). Accordingly, we concluded the requested document was exempt from disclosure as a document "relating to a client/attorney relationship." R.I. Gen. Laws § 38-2-2(4)(A)(I)(a). Moreover, because the document was created, at least in part, by DEM's legal counsel, no reasonably segregable portion is available for public inspection. See R.I. Gen. Laws § 38-2-3(b). There was no violation. *Issued December 2, 2016.*

CHAPTER 2

ACCESS TO PUBLIC RECORDS

38-2-1. Purpose. — The public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

38-2-2. Definitions. — As used in this chapter:

(1) "Agency" or "public body" means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in section 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

(2) "Chief administrative officer" means the highest authority of the public body.

(3) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) (I) (a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files;

(b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name,

gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of any public retirement systems as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would

disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

(E) Any records which would not be available by law or rule of court to an opposing party in litigation.

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All 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.

(Q) Records of individual test scores on professional certification and

licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(V) Printouts from TELE -TEXT devices used by people who are deaf or hard of hearing or speech impaired.

(W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country; at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.

(X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.

(Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island General Law § 9-1.1-6.

(Z) Any Individually identifiable evaluations of public school teachers made pursuant to state or federal law or regulation.

(AA) All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. —

(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of

the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

(c) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.

(d) Each public body shall establish written procedures regarding access to public records but shall not require written requests for public information available pursuant to R.I.G.L. section 42-35-2 or for other documents prepared for or readily available to the public.

These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body's website if such a website is maintained and be made otherwise readily available to the public. The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to subsection (e). A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records.

(e) A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

(f) If a public record is in active use or in storage and, therefore, not available at the time a person or entity requests access, the custodian shall so inform the person or entity and make an appointment for the person or entity to examine such records as expeditiously as they may be made available.

(g) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. Any public body which maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, as requested.

(h) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made

except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

(i) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.

(j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.

(k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

38-2-3.1. Records required.— All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a "real-time translation reporter."

38-2-3.2. Arrest logs. - (a) Notwithstanding the provisions of subsection 38-2-3(e), the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the public body:

(1) Full name of the arrested adult;

(2) Home address of the arrested adult, unless doing so would identify a crime victim;

(3) Year of birth of the arrested adult;

(4) Charge or charges;

(5) Date of the arrest;

(6) Time of the arrest;

(7) Gender of the arrested adult;

(8) Race of the arrested adult; and

(9) Name of the arresting officer unless doing so would identify an undercover officer.

(b) The provisions of this section shall apply to arrests made within five (5) days prior to the request.

38-2-3.16. Compliance by agencies and public bodies. - Not later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access

to records under this chapter have been provided orientation and training regarding this chapter. The attorney general may, in accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements of this section.

38-2-4. Cost. — (a) Subject to the provisions of section 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents ($.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records or retrieving records from storage where the public body is assessed a retrieval fee.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body upon request, shall provide an estimate of the costs of a request for documents prior to providing copies.

(d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

(e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended in accordance with the provisions of subsection 38-2-3(e) of this chapter. All copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under section 38-2-4.

(c) A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the request in accordance with this chapter, state that it does not have or maintain the requested records.

38-2-8. Administrative appeals. — (a) Any person or entity denied the right to inspect a record of a public body may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

(d) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

38-2-9. Jurisdiction of superior court. —

(a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of any party, or sua sponte by the court made in accordance with the rules of civil procedure of the superior court.

(d) The court shall impose a civil fine not exceeding two thousand dollars ($2,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars ($1,000) against a public body found to have recklessly violated this chapter and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or costs if the court determines that the defendant's case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

38-2-10. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

38-2-12. Severability. — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

38-2-13. Records access continuing. — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

38-2-14. Information relating to settlement of legal claims. — Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

38-2-15. Reported violations. — Every year the attorney general shall prepare a report summarizing all the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

SECTION II

OPEN MEETINGS ACT

OPEN MEETINGS ACT FINDINGS – 2016

OM 16-01 **Marcello v. Scituate Town Council**

The Scituate Town Council did not violate the OMA when it discussed matters appropriate for closed session under R.I. Gen. Laws § 42-46-5(a)(2) – "[s]essions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation." Complainant further alleged that the Council violated the OMA when it failed to disclose a record of the votes taken in closed session. Rhode Island General Laws § 42-46-4(b) provides, in relevant part, "a vote taken in closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussion conducted under § 42-46-5(a)." Based on the evidence presented, there was insufficient evidence to conclude that the Council violated the OMA when it failed to disclose the executive session vote as of the date the complaint was filed. *Issued February 2, 2016.*

OM 16–02 **MacDougall v. Quonochontaug Central Beach Fire District**

Complainant alleged that the Fire District violated the OMA when it failed to post the annual notices of six (6) subcommittees on the Secretary of State's website. Since there was insufficient evidence to determine whether Complainant was aggrieved by the alleged lack of notice, we found no violation. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). *Issued February 22, 2016.*

OM 16-03 **Tanner v. Bristol 4th of July Committee**

Complainant alleged that the Committee violated the OMA when the agenda for the Committee's January 6, 2016, meeting failed to adequately state the nature of the business to be discussed, in violation of R.I. Gen. Laws § 42-46-6(b). At the January 6, 2016 meeting, the Committee discussed and voted to shorten the Bristol Fourth of July Parade route, however, at no point in the agenda was the discussion and vote noticed, in violation of the OMA. The Committee acknowledged the deficiency in notice and took steps to remedy the violation. VIOLATION FOUND. *Issued February 23, 2016.*

OM 16-04 **Mathews v. Newport City Council**

The Complainant alleged the City Council violated the OMA during one of its meetings when a quorum of the members met just prior to the start of the meeting to discuss a matter over which the City Council had supervision, control, jurisdiction or advisory power. R.I. Gen. Laws § 42-46-2(a). Statements from the four (4) Council members who

were outside the meeting venue deny any such improper discussion. Additionally, the telephone records produced evidence text messages were sent/received by two (2) of the four (4) Council members just prior to the commencement of the meeting indicating they were both running late. This also led this Department to the conclusion that it would have been virtually impossible for a quorum of the City Council to have had a substantive conversation concerning City Council business in the time frame in question. Based upon the evidence presented, we cannot conclude that a quorum of City Council members discussed a matter over which the City Council had "supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(a). *Issued March 22, 2016.*

OM 16-05 **Comley v. Little Compton School Committee**

The Complainants alleged the School Committee convened into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) to discuss potential litigation, yet the School Committee also discussed "the extra paycheck for 2013-14." Based upon the evidence presented, it did not appear that the School Committee members had a collective discussion about the extra paycheck issue amongst each other. We cannot conclude that the School Committee collectively discussed and/or acted upon a matter over which the public body had supervision, control, jurisdiction, or advisory power. R.I. Gen. Laws § 42-46-2(a). As such, we found no violation of the OMA. Regarding the Complainants' four (4) other allegations, the statute of limitations for this Department to file a lawsuit expired before this Department received the complaint. Thus, consistent with our precedent, this Department did not render a finding as to those alleged OMA violations. See R.I. Gen. Laws § 42-46-8(b). *Issued March 24, 2016.*

OM 16-06 **Grieb v. Aquidneck Island Planning Commission**

The Complainant alleged the AIPC violated the OMA with respect to improper notice for its February 24, 2015 and March 28, 2015 meetings. There was no question that the Complainant attended both meetings and the OMA provides that only "aggrieved" citizens may file a complaint regarding an alleged violation. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002)(The Rhode Island Supreme Court found that it was "unnecessary" to address the merits of the OMA lawsuit because the plaintiffs had no standing to raise this issue since both plaintiffs were present at the meeting and were therefore not aggrieved by any defect in the notice.) The AIPC did not violate the OMA as there was no evidence that it discussed a subject-matter, other than what was

noticed on the agenda, outside the public purview. *Issued March 31, 2016.*

OM16-07 **Nova v. The Compass School**

The Compass School violated the OMA when it held a strategic planning session meeting on February 7, 2015, yet failed to keep written minutes in violation of R.I. Gen. Laws § 42-46-7. The School violated the OMA when its agenda item for its March 25, 2015 and April 1, 2015 meetings indicated it would convene into executive session pursuant to "RIGL 42-46-5(a)(1) director, as relates to director search," yet it appears the School generally discussed the position and requirements for a new director. The executive session meeting minutes for both meetings contain too little information to substantiate the School's argument for executive session, and thus we found that the subject-matter for those two meetings was not appropriate for executive session. The School did not violate the OMA as the minutes reflect in the open call a recording of the affirmative vote of its members to convene into executive session for both meetings. The School did not violate the OMA when, upon reconvening into open session during the March 25, 2015 meeting, it did not record the vote because the evidence revealed no vote was taken and the School properly recorded the votes in its April 1, 2015 open session meeting. As a remedy, the School must disclose its March 25, 2015 and April 1, 2015 executive session minutes. VIOLATION FOUND. *Issued April 15, 2016.*

OM 16-08 **Wilk v. Cumberland Fire District**

The Complainant alleged the Cumberland Fire District ("CFD") violated the OMA when the agenda for one of its meeting did not include a time the meeting was to commence. The Complainant did not attend the meeting in question, nor did he attend any of the CFD's meetings. This Department sent correspondences to the Complainant inquiring whether the reason Complainant did not attend the meeting was because he did not know the time of the meeting, or because he generally does not attend these meetings. We received no response. 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). See also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002) (The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice). Here, pursuant R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant did not demonstrate that he

was "in some way disadvantaged or aggrieved by such defect" in the notice, and, as such, had no standing to object to the notice in accordance with Graziano. Accordingly, we found no violation. *Issued April 18, 2016.*

OM16-09 **Hodge v. Rhode Island Department of Health**

The Complainant, a member of the Board of Examiners for Interpreters for the Deaf ("Board") alleged various allegations, many of which were outside the purview of the OMA. With respect to the OMA, the Complaint alleged that the Board's February 12, 2014 and June 11, 2014 minutes were not timely posted to the Secretary of State's website, and that the Board's July 23, 2014 minutes did not contain an item that Complainant wanted memorialized within those minutes. 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(s) occurred. Complainant's OMA allegations were filed with our office on March 30, 2015, outside of the 180-day statute of limitations for our Office to review those allegations. Therefore, we decline to address the merits of Complainant's allegations. *Issued April 28, 2016.*

OM16-10 **Cushman v. Warwick City Council**

The Complainant alleged Warwick City Council violated the OMA when a quorum of its members met at an unannounced meeting and signed a correspondence addressed to members of the Warwick delegation to the Rhode Island General Assembly. Based upon the evidence presented, it appears that a June 15, 2015 letter was circulated amongst a quorum of City Council members who were instructed to read and, if desired, sign the letter. Although the members of the City Council who signed the letter indicated that the letter was merely circulated amongst the members and that "no meeting of a group of Council members occurred at a single point in time where they collectively discussed the letter," the City Council violated the OMA by passing around a correspondence concerning a matter over which the City Council had supervision, control, jurisdiction, or advisory power, and indicating support by signing their names to the June 15, 2015 letter. R.I. Gen. Laws § 42-46-2(1). VIOLATION FOUND. *Issued June 9, 2016.*

OM 16-11 **Tanguay v. City of Warwick**

The City of Warwick violated the OMA when it failed to record complete meeting minutes for two vicious dog hearings on May 9, 2012 and October 7, 2015. The documents submitted by the City

included the date, the three panel members present and the vote for specific requirements, however, neither set of minutes contained the "time" the meeting was convened and the May 9, 2012 minutes reference a 2-1 vote, yet failed to contain a "record by individual members of any vote taken" as required by R.I. Gen. Laws § 42-46-7(a)(3). VIOLATION FOUND. *Issued July 18, 2016.*

OM 16-12 **Anderson v. Little Compton School Committee**

The School Committee violated the OMA when it voted on the issue of appointment of a Superintendent while in executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1). The plain language of the OMA and our previous findings have held that when a public body chooses to convene into executive session under this exemption, it must discuss only and not take a vote while in executive session. The School Committee violated the OMA when it failed to record in its open session minutes for its July 20, 2015 meeting that advanced written notice was provided to the three (3) applicants being interviewed for consideration and appointment for Superintendent. With respect to the allegation that the School Committee violated the OMA when it failed to articulate that the affected persons had received advanced written notice and that the School failed to articulate in open session the open call pursuant to R.I. Gen. Laws § 42-46-4, this Department found that the Complainant was not aggrieved and therefore we did not address the merits of these allegations. The School Committee further violated the OMA when it failed to record and enter into its open session minutes for the July 20, 2015 meeting, the reason for holding a closed meeting, by a citation to a subdivision of R.I. Gen. Laws § 42-46-5(a), and a statement specifying the nature of the business to be discussed. The Complainant further alleged that the School Committee violated the OMA when it failed to disclose in its minutes, as well as in the July 20, 2015 open session, a "record by individual members of any vote taken." Because the evidence demonstrated that the Complainant was already aware of the individual member vote, and had already obtained a record from the School Committee concerning the individual member votes, we concluded that the Complainant was not aggrieved by this allegation. VIOLATION FOUND. *Issued November 14, 2016.*

OM 16-13 **Costa, et al v. Rhode Island Statewide Independent Living Council**

This Department determined that the RISILC and its leadership subcommittee is a public body for purposes of the OMA and this finding, and that the RISILC violated the OMA by failing to post minutes to the Secretary of State's website for the May 20, 2015, June

24, 2015, June 25, 2015, July 8, 2015, August 5, 2015 and August 19, 2015 meetings. We also concluded that the August 19, 2015 meeting agenda item, labeled "Office Space and Staff," was insufficient and violated the OMA since a payroll matter was discussed during this topic. Other allegations raised either did not violate the OMA and/or the Complainants were not aggrieved. VIOLATION FOUND. *Issued November 17, 2016.*

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2016

ADV OM 16-01 **In Re: Coventry School Committee**

The School Committee sought guidance as to whether the participation of a School Committee member in the audience of a subcommittee meeting convened a "meeting" of the School Committee within the meaning of R.I. Gen. Laws § 42-46-2(a). Although we found insufficient information to offer an opinion on the precise situation at hand, this Department generally opined that quorums of a committee at a subcommittee meeting do not constitute a "meeting" of the committee under the OMA if the subcommittee restricts its discussion and/or actions to matters exclusive to subcommittee business. See In Re Bristol Warren Regional School Committee, ADV OM 07-01. We further cautioned that due care must be taken to distinguish subcommittee business from committee business by clearly defining the subcommittee's role and scope of authority. *Issued August 3, 2016.*

ADV OM 16-02 **In Re: Statewide Independent Council**

This Department determined that the RISILC and its leadership subcommittee is a public body for purposes of the OMA. *Issued November 17, 2016.*

CHAPTER 46

OPEN MEETINGS

42-46-1. Public policy. — It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

42-46-2. Definitions. — As used in this chapter:

(1) "Meeting" means 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. As used herein, the term "meeting" expressly include, without limiting the generality of the foregoing, so-called "workshop," "working," or "work" sessions.

(2) "Open call" means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of § 42-46-5 is being involved.

(3) "Public body" means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.

(4) "Quorum," unless otherwise defined by applicable law, means a simple majority of the membership of a public body.

(5) "Prevailing plaintiff' include those persons and entities deemed "prevailing parties" pursuant to 42 U.S.C. § 1988.

(6) "Open forum" means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.

42-46-3. Open meetings. — Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

42-46-4. Closed meetings. — (a) 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.

(b) All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).

42-46-5. Purposes for which meeting may be closed — Use of electronic communications — Judicial proceedings — Disruptive conduct. —

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(1) Any discussions of the 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.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including but not limited to state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes (i) of conducting student disciplinary hearings or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

(10) Any discussion of the personal finances of a prospective donor to a library.

(b) 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 discussions are not prohibited.

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) any waiver decisions shall be a matter of public record.

(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

42-46-6. Notice. –

(a) All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the secretary of state at the beginning of each calendar year in accordance with subsection (f).

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. 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. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. School committees may, however, add items for informational purposes only, pursuant to a request, submitted in writing, by a member of the public during the public comment session of the school committee's meetings. Said informational items may not be voted upon unless they have been posted in accordance with the provisions of this section. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.

(c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (f); however, nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (e) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

(d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any

public body from limiting comment on any topic at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

(e) A school committee may add agenda items not appearing in the published notice required by this section under the following conditions:

(1) The revised agenda is electronically filed with the secretary of state pursuant to subsection (f), and is posted on the school district's website and the two (2) public locations required by this section at least forty-eight (48) hours in advance of the meeting;

(2) The new agenda items were unexpected and could not have been added in time for newspaper publication;

(3) Upon meeting, the public body states for the record and minutes why the agenda items could not have been added in time for newspaper publication and need to be addressed at the meeting;

(4) A formal process is available to provide timely notice of the revised agenda to any person who has requested that notice, and the school district has taken reasonable steps to make the public aware of this process; and

(5) The published notice shall include a statement that any changes in the agenda will be posted on the school district's web site and the two (2) public locations required by this section and will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of the meeting.

(f) All notices required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of notices with the secretary of state shall take effect one (1) year after this subsection takes effect.

(g) If a public body fails to transmit notices in accordance with this section, then any aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

42-46-7. Minutes. –

(a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need 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.

(b) (1) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. 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, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where

the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

(2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website.

(c) The 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.

(d) All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations, and those public bodies set forth in subdivision (b)(2), shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.

(e) All minutes and unofficial minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. If a public body fails to transmit minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may file a complaint with the attorney general in accordance with §42-46-8.

42-46-8. Remedies available to aggrieved persons or entities. —

(a) Any 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. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.

(b) No 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, or, in the case of an unannounced or improperly closed meeting, after one hundred eighty (180) days from the public action of a public body revealing the alleged violation, whichever is greater.

(c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court 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.

(d) The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust.

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.

(e) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

(f) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner.

(g) The attorney general shall consider all complaints filed under this chapter to have also been filed under § 38-2-8(b) if applicable.

42-46-9. Other applicable law. — The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29, which has been expressly repealed.

42-46-10. Severability. — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the remaining provisions or the other applications of this chapter.

42-46-11. Reported violations. — Every year the attorney general shall prepare a report summarizing the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

42-46-12. Notice of citizen's rights under this chapter. — The attorney general shall prepare a notice providing concise information explaining the requirements of this chapter and advising citizens of their right to file complaints for violations of this chapter. The notice shall be posted in a prominent location in each city and town hall in the state.

42-46-13. Accessibility for persons with disabilities. —

(a) All public bodies, to comply with the nondiscrimination on the basis of disability requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of title 11), shall develop a transition plan setting forth the steps necessary to ensure

that all open meetings of said public bodies are accessible to persons with disabilities.

(b) The state building code standards committee shall, by September 1, 1989 adopt an accessibility of meetings for persons with disabilities standard that includes provisions ensuring that the meeting location is accessible to and usable by all persons with disabilities.

(c) This section does not require the public body to make each of its existing facilities accessible to and usable by persons with disabilities so long as all meetings required to be open to the public pursuant to chapter 46 of this title are held in accessible facilities by the dates specified in subsection (e).

(d) The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.

(f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor's commission on disabilities for review and approval. The governor's commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.

(g) The provisions of §§ 45-13-7 – 45-13-10, inclusive, shall not apply to this section.

42-46-14. Burden of proof. – In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.

SECTION III

PROCEDURES & FORMS

DEPARTMENT OF ATTORNEY GENERAL

PETER F. KILMARTIN, ATTORNEY GENERAL

150 South Main Street - Providence RI 02903

PUBLIC RECORDS REQUEST GUIDELINES

OPEN GOVERNMENT UNIT

The Department of Attorney General adheres to the Access to Public Records Act, R.I. Gen. Laws §38-2-1, *et. seq.*, and has instituted the following procedures for the public to obtain public records.

1. To reach us by telephone please call (401) 274-4400 and ask to be connected to the Open Government Unit. Requests for records must be mailed to the Open Government Unit, which is the Unit within the Department of Attorney General designated to handle these matters, except as provided in paragraph 4. The mailing address is: Department of Attorney General, ATTN: Open Government Unit, 150 South Main Street, Providence, RI 02903. Requests may also be hand delivered to the Department of Attorney General at the reception desk (150 South Main Street) and addressed to the Open Government Unit or requests may be emailed to aprarequest@riag.ri.gov.

2. The regular business hours of the Department are 8:30 a.m. to 4:30 p.m. If you come in after regular business hours, please complete the Public Records Request Form at the front desk and it will be given to the Unit the following day.

3. You are not required to provide identification or the reason you seek the information, and your right to access public records will not depend upon providing identification or reasons.

4. In order to ensure that you are provided with the public records you seek in an expeditious manner, unless you are seeking records available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public, we ask that you complete the Public Records Request Form located at the front desk, or on our website, www.riag.ri.gov or otherwise submit your request in writing. If you are seeking documents available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public and do not wish to submit a written request, you must contact an attorney in the Open Government Unit to make your request.

5. You may also obtain a copy of the Attorney General's Guide to Open Government, which can be found at: http://www.riag.ri.gov (then proceed to the link entitled "Open Government").

6. Please be advised that the Access to Public Records Act allows a public body ten (10) business days to respond, which can be extended an additional twenty (20) business days for "good cause." We appreciate your understanding and patience.

7. If you feel that you have been denied access to public records, you have the right to file a review petition with the Attorney General. You may also file a lawsuit in Superior Court.

8. The Department of Attorney General is committed to providing you with public records in an expeditious and courteous manner.

DEPARTMENT OF ATTORNEY GENERAL

PETER F. KILMARTIN, ATTORNEY GENERAL

150 South Main Street - Providence RI 02903

PUBLIC RECORDS REQUEST FORM
UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date _____ Request Number _____

Name (optional) _____

Address (optional) _____

_____

Telephone (optional) _____

Requested Records: _____

_____

_____

_____

_____

_____

_____

OFFICE USE ONLY

Request taken by: _____ Request Number _____
Date: _____ Time: _____
Records to be available on: _____ Mail _____ Pick Up _____
Records provided: _____
Costs: _____ copies _____ search and retrieval

Forward this Document to the Open Government Unit

Department of Attorney General - Public Records Request Receipt

If you desire to pick up the records, they will be available on _____ at the front desk. If, after review of your request, the Department determines that the requested records are exempt from disclosure for a reason set forth in the Access to Public Records Act, the Department reserves its right to claim such exemption.

Note: If you chose to pick up the records, but did not include identifying information on this form (name, etc.), please inform the receptionist at the front desk of the date you made the request, records requested and request number.

Thank you.

Rules and Regulations
Regarding Training under the Access to Public Records Act

1. The Chief Administrative Officer, as defined by the Access to Public Records Act, must certify annually, as provided in R. I. Gen. Laws §38-2-3.16 ("compliance by agencies and public bodies"), that persons who have the authority to grant or deny Access to Public Records Act requests have received training for the upcoming calendar year. Individuals must be certified each calendar year.

2. Any person who has not received training prior to the beginning of the calendar year, but who during the calendar year becomes authorized to grant or deny Access to Public Records Act requests, shall receive training as required under the Access to Public Records Act as soon as practicable, but not less than one (1) month after being authorized to grant or deny Access to Public Records Act requests. Such time may be extended at the discretion of the Department of Attorney General for "good cause." The Chief Administrative Officer must certify to the Attorney General that training has been received when training has been completed.

3. Authorized training must be conducted by the Department of Attorney General. The Department of Attorney General will offer various training programs throughout each calendar year and such training programs will be conducted at various locations throughout the State. Public bodies or governmental entities wishing to schedule training sessions may contact the Department of Attorney General. Public entities wishing to schedule Access to Public Records Act training should make every effort to schedule training sessions to as large a group as practicable. The Department of Attorney General reserves the sole discretion to determine whether and when to schedule a training session.

4. For purposes of these Rules and Regulations the requirement for training may be satisfied by attending an Attorney General training in person or by viewing a recent video of an Access to Public Records Act presentation given by the Department of Attorney General. Any person satisfying the Access to Public Records Act training requirement must certify to the Chief Administrative Officer that he or she viewed the entire Access to Public Records Act presentation, or attended the live training program, and such certification shall be forwarded by the Chief Administrative Officer to the Department of Attorney General.

5. Certification may be e-mailed to agsummit@riag.ri.gov, or mailed to the Department of Attorney General, Attn: Public Records Unit, 150 South Main Street, Providence, Rhode Island 02903. Certification forms are available on the Department of Attorney General Website.

6. The Attorney General may annually prepare and post a list of all certifications received by the office by public bodies.

7. The Department of Attorney General may assess a reasonable charge for the certification required by R.I. Gen. Laws § 38-2-3.16, is to defray the cost of such training and related materials.

State of Rhode Island
Department of the Attorney General

CERTIFICATE OF COMPLIANCE
ACCESS TO PUBLIC RECORDS ACT SECTION 38-2-3.16
COMPLIANCE BY AGENCIES AND PUBLIC BODIES

SECTION A – TO BE COMPLETED BY CHIEF ADMINISTRATOR

This certifies that _____ of _____, has completed the Access to Public Records training on the _____ day of _____, 20____, and is in compliance with § 38-2-3.16.

The above has completed training by means of: _____ Live Presentation _____ Video Presentation

_____ Chief Administrator

_____ Department/Entity

_____ Dated

SECTION B – TO BE COMPLETED BY CERTIFIED PERSONNEL

I certify that I have viewed the video presentation and/or a live presentation and am in compliance with § 38-2-3.16 of the Access to Public Records Act. In addition, I certify that the information I have provided on this statement is true and correct.

Date of Training: _____ Signed: _____

Email Address: _____
[Email address will be used only to provide notice of future Open Government seminars]

**Please List ANY and ALL Entities for which you are certifying compliance. For instance, the Clerk's Office, the Police Department, the School Department, the entire City/Town/Department.

_____ _____

_____ _____

Upon completion please return to this office by either emailing to opengovernment@riag.ri.gov; facsimile 401-222-3016 or mail to Department of Attorney General, Open Government Unit, 150 South Main Street, Providence, Rhode Island 02903.

DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL

OPEN MEETINGS ACT CHECKLIST
OPEN GOVERNMENT UNIT

NOTICE REQUIREMENTS

Have you posted:

☐ annual notice (beginning of each calendar year only)

☐ notice include:

- the date(s), time(s), and location(s) of the meetings.

☐ notice posted:

- electronically with the Secretary of State; and
- provided to a member of the public upon request. *R.I. Gen. Laws § 42-46-6(a).*

☐ supplemental notice (minimum 48 hours before the date of the scheduled meeting)

☐ notice include:

- the date notice was posted;
- the date(s), time(s), and location(s) of the meetings; and
- a statement specifying the nature of the business for each matter to be discussed.

☐ notice posted:

- at the principal office of the public body holding the meeting, **or** if no principal office exists, at the building where the meeting is to be held;
- in at least one other prominent location within the governmental unit; and
- electronically with the Secretary of State. *R.I. Gen. Laws § 42-46-6(b) & (c).*

CONVENING INTO EXECUTIVE SESSION

Does the open call contain for each matter to be discussed in executive session:

☐ vote by a majority of the members to convene in executive session;

☐ record in the open session minutes the vote of each member on the question of holding a meeting closed to the public;

☐ state in the open call **and** record in the open session minutes the specific subsection of R.I. Gen. Laws § 42-46-5(a)(1)-(10) upon which each executive session discussion has been convened; and

☐ state in the open call **and** record in the open session minutes a statement specifying the nature of the business for each matter to be discussed. *R.I. Gen. Laws § 42-46-4(a).*

Does the executive session concern:

- ☐ discussion of the job performance, character, or physical or mental health of a person(s), provided:
  - ☐ person(s) affected shall be notified in advance in writing;
  - ☐ person(s) advised they may require discussion held in open session; and
  - ☐ during open call, state in open session **and** record in open session minutes that person(s) have been notified. *R.I. Gen. Laws § 42-46-5(a)(1).*
- ☐ sessions pertaining to collective bargaining or litigation. *R.I. Gen. Laws § 42-46-5(a)(2).*
- ☐ discussion regarding the matter of security. *R.I. Gen. Laws § 42-46-5(a)(3).*
- ☐ any investigative proceedings regarding allegations of civil or criminal misconduct. *R.I. Gen. Laws § 42-46-5(a)(4).*
- ☐ any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the public interest. *R.I. Gen. Laws § 42-46-5(a)(5).*
- ☐ any discussions related to or concerning a prospective business or industry locating in Rhode Island when an open meeting would have a detrimental effect on the interest of the public. *R.I. Gen. Laws § 42-46-5(a)(6).*
- ☐ a matter related to the question of the investment of public funds, which includes any investment plan or matter related thereto, where the premature disclosure would adversely affect the public interest. *R.I. Gen. Laws § 42-46-5(a)(7).*
- ☐ school committee sessions to conduct student disciplinary hearings or to review other matters that relate to the privacy of students and their records, provided in either case:
  - ☐ any affected student(s) shall be notified in advance in writing;
  - ☐ student(s) advised they may require discussion held in open session; and
  - ☐ during open call, state in open session **and** record in open session minutes that student(s) have been notified. *R.I. Gen. Laws § 42-46-5(a)(8).*
- ☐ any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement. *R.I. Gen. Laws § 42-46-5(a)(9).*
- ☐ any discussion of the personal finances of a prospective donor to a library. *R.I. Gen. Laws § 42-46-5(a)(10).*

MINUTES

Open and closed session minutes must be maintained and contain:

- ☐ the date, time, and place of the meeting;
- ☐ the members of the public body recorded as either present or absent;
- ☐ a record by individual member of any vote taken; and

☐ any other information relevant to the business of the public body that a member of the public body requests included. *R.I. Gen. Laws § 42-46-7(a).*

MAKING MINUTES AVAILABLE

For all public bodies:

☐ *Unofficial (unapproved) open and closed session minutes* must be available at the principal 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).*

EXCEPTIONS

- when a closed session meeting has been properly convened and a majority of the members vote to seal the minutes, or
- where a majority of the members vote to extend the time period for filing minutes and publicly state the reason for the extension. *R.I. Gen. Laws § 42-46-7(b).*

For all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:

☐ must post *unofficial minutes* on the Secretary of State's website within 21 days of the meeting, but not later than 7 days prior to the next regularly scheduled meeting, whichever is earlier. *R.I. Gen. Laws § 42-46-7(b)(2).*

For all State Executive branch public bodies; all State and quasi-public boards, agencies, and corporations; and all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:

☐ must maintain *official/approved minutes* **and** electronically file a copy of such minutes with the Secretary of State within 35 days of the meeting. *R.I. Gen. Laws § 42-46-7(d).*

EXCEPTION

- not applicable to public bodies whose responsibilities are advisory in nature. *R.I. Gen. Laws § 42-46-7(d).*

DISCLOSING VOTES

☐ all votes listing how each member voted on each issue shall be available at the office of the public body within two (2) weeks of the vote, *R.I. Gen. Laws § 42-46-7(b)*; and

☐ if a vote is cast during executive session, the vote must be disclosed once the open session is reopened. *R.I. Gen. Laws § 42-46-4(b).*

EXCEPTION

- a vote taken in executive session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to a properly closed meeting. *R.I. Gen. Laws § 42-46-4(b).*

DEPARTMENT OF ATTORNEY GENERAL
PETER F. KILMARTIN, ATTORNEY GENERAL

ACCESS TO PUBLIC RECORDS ACT CHECKLIST
OPEN GOVERNMENT UNIT

PROCEDURES

☐ All public bodies must establish written procedures regarding access to public records

EXCEPTIONS

- No written request for public information available pursuant to Administrative Procedures Act, and
- No written request for documents prepared for or readily available to the public. *R.I. Gen. Laws § 38-2-3(d).*

☐ Procedures must include:

☐ Identification of a designated public records officer or unit;

☐ How to make a public records request; and

☐ Where to make a public records request. *R.I. Gen. Laws § 38-2-3(d).*

EXCEPTION

- Written request for records cannot be on a form established by a public body if the request is readily identifiable as a request for public records, *R.I. Gen. Laws § 38-2-3(d).*

☐ Procedures must be posted on the public body's website, if such a website is maintained, and be made otherwise readily available to the public. *R.I. Gen. Laws § 38-2-3(d).*

CERTIFICATION

☐ No later than every January 1, every public body and Chief Administrative Officer must certify (using Attorney General forms) that all officers and employees who have the authority to grant or deny persons or entities access to records have been provided orientation and training during the prior year. *R.I. Gen. Laws § 38-2-3.16.*

REQUESTED DOCUMENTS

Requested documents are presumed to be public records and must be disclosed, unless:

☐ the document (in whole or in part) is exempt pursuant to one or more exemption, *R.I. Gen. Laws § 38-2-2(A)-(AA)*; or

☐ the privacy interest in a document (in whole or in part) outweighs the public interest in disclosure.

If a document is exempt, any reasonable segregable portion shall be available after the deletion or redaction of the information that is the basis of the exclusion. *R.I. Gen. Laws § 38-2-3(b).*

☐ If an entire document is exempt, must state in denial letter that no reasonable portion of the document contains segregable information. *R.I. Gen. Laws § 38-2-3(b).*

RESPONDING TO REQUEST[1]

Upon receipt of a request, you must provide one of the following responses:

Access

☐ provide access to the requested documents within 10 business days of receipt of request. *R.I. Gen. Laws § 38-2-3(e).*

- Must provide document in any media capable of providing, *R.I. Gen. Laws § 38-2-3(g); and*
- Must provide copies electronically, by facsimile, or by mail pursuant to requester's choice, unless doing so would be unduly burdensome due to the volume of records requested or the costs incurred. Person requesting delivery responsible for costs, if any. *R.I. Gen. Laws § 38-2-3(k).*

Deny

☐ deny access to the requested documents within 10 business days of receipt of request. *R.I. Gen. Laws § 38-2-7(a).*

- In writing;
- Provide specific reason(s) for denial; and
- Identify procedure for appealing denial. *R.I. Gen. Laws § 38-2-7(a).*

Extension

☐ assert extension within 10 business days of receipt of request (for additional 20 business days).

- In writing;
- Must be particularized to specific request; and
- Must be able to demonstrate extension necessary due to voluminous nature of the request, the number of requests pending, or the difficulty in searching for and retrieving or copying requested records. *R.I. Gen. Laws § 38-2-3(e).*

COSTS

Any cost assessed must fall within one of the following categories:

☐ Maximum $.15 per document copied on a common or legal size paper;

☐ Maximum $15.00 per hour for search and retrieval, with no charge for the first hour;

- Multiple requests from any person/entity within 30 day time period shall be considered one request for purposes of determining no charge for the first hour.

☐ No more than the reasonable actual cost for providing electronic records;

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[1] This section should not be used for requests seeking adult arrest logs, which require a law enforcement agency to provide a response within 48 hours after receipt of a request, unless a request is made on a weekend or a holiday, in which case the records shall be made available within 72 hours. *R.I. Gen. Laws § 38-2-3.2.*

- ☐ No more than the reasonable actual cost for retrieving records from storage, but only where the public body is assessed a retrieval fee; and

- ☐ Any other cost provision specifically authorized by law.

For all costs, an estimate must be provided upon request; and a detailed itemization of the search and retrieval costs must be provided upon request. *R.I. Gen. Laws § 38-2-4.*

NOTE:

This checklist is intended to assist public bodies and provide guidance concerning the Access to Public Records Act's requirements. This checklist does not list all Access to Public Records Act requirements and is not intended to replace the Access to Public Records Act. Revised July 2015.