# DEPARTMENT OF ATTORNEY GENERAL

*Peter F. Kilmartin, Attorney General*

# ACCESS TO PUBLIC RECORDS ACT
# &
# OPEN MEETINGS ACT
# 2014

State of Rhode Island and Providence Plantations

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

*Peter F. Kilmartin, Attorney General*

August 1, 2014

Dear Open Government Summit Attendee:

I would like to thank you for attending the 16th annual Open Government Summit and I would also like to thank Roger Williams University School of Law for hosting such an important event.

Rhode Island's Open Meetings Act and Access to Public Records Act are critical to ensuring that this State's government operations remain open and accountable to the public. It has long been this Department's philosophy that education concerning the Open Meetings Act and the Access to Public Records Act advances the goal that government remains open and accountable to the public.

To this end, the Department of Attorney General is committed to public outreach and education concerning the requirements of the Open Meetings Act and the Access to Public Records Act. 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 training sessions for a city/town or regional area. Additionally, this Department continues to issue, upon request from legal counsel for public bodies, two types of advisory opinions concerning any pending matter that may implicate either the Open Meetings or Access to Public Records Acts: 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 *Attorney General's Guide to Open Government in Rhode Island* is located in the "Open Government" section and can be printed for distribution. In addition, the Department's website has links to findings and advisory opinions issued from 2001 to the present. These findings and advisory opinions may provide guidance on specific questions that you encounter under the Open Meetings and Access to Public Records Acts. Lastly, a video copy of this Open Government Summit will be archived on our website for future viewing and I am particularly grateful to ClerkBase for providing this video and live-streaming service to our State.

On behalf of the entire Department, I again thank you for your interest and commitment to ensuring that state and local government is both transparent and accessible to the people of this State. If either the Department or I can assist you, please do not hesitate to contact us.

Very truly yours,

Peter F. Kilmartin
Attorney General

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# SECTION I

# ACCESS TO PUBLIC RECORDS ACT

# ACCESS TO PUBLIC RECORDS ACT FINDINGS – 2014

**PR 14-01** **WPRI v. Community College of Rhode Island**

The Community College of Rhode Island ("CCRI") did not violate the APRA when it denied WPRI's request for records responsive to the reason a CCRI employee was terminated. After the APRA complaint was filed, the employee's termination was reversed and the employee was reinstated. Even if we assume that WPRI had established some "public interest," we cannot conclude that the public interest outweighs the employee's privacy interest. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

*Issued January 17, 2014.*

**PR 14-02** **Rosenfield v. North Kingstown School Department**

Since the Complainant's September 19, 2013 email request for certain documents did not comport with the School Department's APRA policy, this Department found no violation.

*Issued January 29, 2014.*

**PR 14-03** **Chappell v. Rhode Island Department of Public Safety**

The Department of Public Safety ("DPS") did not violate the APRA when it refused to provide the Complainant with the city/town of residence of state police officers and civilian employees of the DPS because the Complainant demonstrated no "public interest" in disclosure. Balanced against this non-existent "public interest," this Department perceived at least some privacy and personal safety interest. See also Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998); R.I. Gen. Laws § 31-10-26.

*Issued February 6, 2014.*

**PR 14-04** **DeAscentis v. Town of Jamestown**

The Town did not violate the APRA when it withheld from disclosure the street addresses and states of residence for the Town's mooring permit holders. See R.I. Gen. Laws § 38-2-2(4)(A)(I)(b); Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998).

*Issued February 11, 2014.*

**PR 14-05** **Citizens Advocating for a Safe Environment v. Central Coventry Fire District**

The Fire District violated the APRA when it failed to timely respond to an APRA request in writing. See R.I. Gen. Laws § 38-2-7.

VIOLATION FOUND.

*Issued February 11, 2014.*

**PR 14-06** **Novak v. Western Coventry Fire District**

**OM 14-06** The Fire District violated the OMA when its 2013 annual notice did not include information required under R.I. Gen. Laws § 42-46-6(a). The Fire District did not violate the OMA when its agenda topics for the September 16 and 19, 2013 meetings adequately informed the public of the nature of the business to be discussed. The Fire District violated the OMA with respect to the September 19, 2013 agenda when it incorrectly listed the date the notice was posted as August 17, 2013, instead of September 17, 2013. The Fire District violated the APRA by failing to have a copy of its APRA procedures on its website. See R.I. Gen. Laws § 38-2-3(d).
VIOLATION FOUND.
*Issued February 13, 2014.*

**PR 14-07** **Scripps News v. Rhode Island Department of Business Regulations**

The Rhode Island Department of Business Regulations ("DBR") violated the APRA when it failed to timely respond to Complainant's APRA request dated July 10, 2013. See R.I. Gen. Laws § 38-2-7. DBR was allowed ten (10) business days to provide a response explaining why this Department should not find its failure to timely respond to Complainant's APRA request knowing and willful, or alternatively, reckless, in light of DBR's recognition of the APRA requirements and this Department's precedent. A supplemental finding will follow.
VIOLATION FOUND.
*Issued April 14, 2014.*

**PR 14-08** **DiBenedetto v. Town of Foster**

On February 10, 2014, the Complainant requested the voice recording of a January 23, 2014 vicious dog hearing. Based upon the evidence presented, the Complainant received this voice recording on February 19, 2014. As such, the Town did not violate the APRA. See R.I. Gen. Laws § 38-2-3(e). The Town did not violate the APRA when it did not provide a "transcript" of the same vicious dog hearing because, there was no evidence that a transcript ever existed. Since a transcript did not exist, the APRA does not require "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[.]" R.I. Gen. Laws § 38-2-3(h).
*Issued April 10, 2014.*

**PR 14-09** **McQuade v. Rhode Island Department of Public Safety**

Mr. McQuade submitted an APRA request to the Rhode Island Department of Public Safety ("DPS") requesting documents, broken

down into nineteen (19) different categories, concerning the Rhode Island State Fusion Center and related programs and activities of the Rhode Island State Police and its partner agencies. DPS provided Complainant with some of the documents but denied others on the grounds that, either the documents did not exist and were exempt under R.I. Gen. Laws § 38-2-3(h) or, were exempt under R.I. Gen. Laws § 38-2-2(S) and section 892(e) of the Homeland Security Act. After reviewing the evidence presented, the Department found no violation.
*Issued April 11, 2014.*

**PR 14-10** **East Bay Newspapers v. Rhode Island Department of Public Safety**
The Department of Public Safety did not violate the APRA when it did not disclose law enforcement records that identified a particular person, did not lead to criminal charges and where no allegation had been made concerning the propriety of the DPS investigation. Such disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(4)(D)(c).
*Issued May 12, 2014.*

**PR 14-11** **Reilly v. Providence Economic Development Partnership**
The PEDP did not violate the APRA as there was no evidence that the PEDP physically maintained additional documents responsive to the Complainant's request. The PEDP's extension of time to contact its former legal counsel to determine whether any responsive records were maintained demonstrated "good cause." As such, there was no violation. See R.I. Gen. Laws § 38-2-3(e).
*Issued May 30, 2014.*

**PR 14-12** **Fitzgerald v. East Providence Police Department**
The East Providence Police Department violated the APRA when it refused to provide the Complainant with electronic access to the responsive documents. See R.I. Gen. Laws § 38-2-3(k). The Police Department violated the APRA when it improperly assessed a $5.00 charge for mailing when that amount did not represent "the actual cost of delivery, if any." R.I. Gen. Laws § 38-2-3(k). The Police Department did not violate the APRA as there was no evidence that the APRA policy prohibits the faxing or emailing of APRA responses. The Police Department's APRA procedures adequately designate the public records officer/unit and indicate how and where a citizen can make a public records request. We also concluded that since the Police Department does not have an independent website, the posting of this

procedure on the City's website/webpage, where the Police Department has a page, does not violate the APRA.
VIOLATION FOUND.
*Issued June 11, 2014.*

**PR 14-13** **Fitzgerald v. Warwick Police Department**
The Warwick Police Department violated the APRA when it improperly charged the Complainant for her APRA request. Additionally, the Police Department violated the APRA when it did not provide the Complainant with a detailed itemization of the costs involved, despite her request. The Police Department has ten (10) business days to respond to this Department's concern that the instant violation is "reckless" or willful and knowing. Thereafter, a supplemental finding will be issued.
VIOLATION FOUND.
*Issued June 12, 2014.*

**PR 14-14** **Go Local Prov. v. City of Providence**
The undisputed facts revealed that the Complainant made an APRA request to the City of Providence (the "City") on March 30, 2014 via email. It was further undisputed that the Complainant received no response until on or about May 22, 2014, after the Complainant called the City on May 20, 2014 to inquire as to the status of the APRA request. Thus, the City violated the APRA when it failed to respond within ten (10) business days to the March 30, 2014 APRA request. See R.I. Gen. Laws § 38-2-7.
VIOLATION FOUND.
*Issued June 25, 2014.*

## ACCESS TO PUBLIC RECORDS ACT
## ADVISORY OPINIONS – 2014

**ADV PR 14-01** **In re Barton Gilman, LLP**

Legal counsel for the Cumberland School Committee requested an APRA Advisory Opinion concerning the disclosure of certain documents that were referenced and/or "presented" during a pre-suspension hearing of a Cumberland School Department employee. Based upon the evidence presented, we were unable to definitively respond to the inquiry. We were presented no evidence concerning what specific documents were actually submitted, referenced, discussed, or quoted during the open session. Accordingly, we were unable to balance unknown privacy related facts with unknown public interest facts in order to determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et. seq." R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

*Issued March 28, 2014.*

**ADV PR 14-02** **In re Point Judith Venture Fund II, L.P.**

Because the City of Providence has concluded that the Limited Partnership agreement should be disclosed, at least in part, this Department opined that nothing within the Access to Public Records Act prohibits the City from disclosing the Limited Partnership agreement in accordance with its conclusion and/or discretion.

*Issued March 31, 2014.*

## 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 – 2014

**OM 14-01** **Mudge v. North Kingstown School Committee**

The North Kingstown School Committee did not violate the OMA because its August 13, 2013 executive session agenda adequately informed the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b).
*Issued January 15, 2014.*

**OM 14-02** **Daniels v. Warwick Long Term Facilities Planning Committee**

The Warwick Long Term Facilities Planning Committee did not violate the OMA when it held its November 15, 2013 meeting at a location that could not accommodate a large number of attendees. The OMA "does not require a public body to provide unlimited seating." See In re Town of West Warwick, ADV OM 99-02. Nor did we find any evidence that the Committee purposefully held the meeting at a location to minimize public attention and attendance.
*Issued January 16, 2014.*

**OM 14-03** **Vadenais v. North Smithfield Town Council**

The Town Council did not violate the OMA when it held a "site visit" to review a parcel of land. For purposes of the OMA, a "meeting" is defined as "the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(a). (Emphasis added). If members of a public body only view a site and do not collectively discuss their observations and findings, such action would not rise to the level of a "meeting" under the OMA. See Lamb v. Tiverton Budget Committee, OM 98-31.
*Issued January 23, 2014.*

**OM14-04** **Staven v. Portsmouth Town Council**

The Portsmouth Town Council violated the OMA when its October 15, 2013 meeting agenda did not adequately inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b).
VIOLATION FOUND.
*Issued February 6, 2014.*

**OM 14-05** **Santos v. Exeter Town Council**

The Exeter Town Council did not violate the OMA when a quorum of its members convened for an unnoticed meeting because the evidence established that the Exeter Democratic Town Committee, and not the Exeter Town Council, convened for a meeting. The OMA expressly

provides that "political part[ies,] organization[s], or [a] unit therefore," is not a "public body" within the OMA. See R.I. Gen. Laws § 42-46-2(3).
*Issued February 12, 2014.*

**OM 14-06** **Novak v. Western Coventry Fire District**
**PR 14-06** The Fire District violated the OMA when its 2013 annual notice did not include information required under R.I. Gen. Laws § 42-46-6(a). The Fire District did not violate the OMA when its agenda topics for the September 16 and 19, 2013 meetings adequately informed the public of the nature of the business to be discussed. The Fire District violated the OMA with respect to the September 19, 2013 agenda when it incorrectly listed the date the notice was posted as August 17, 2013, instead of September 17, 2013. The Fire District violated the APRA by failing to have a copy of its APRA procedures on its website. See R.I. Gen. Laws § 38-2-3(d).
VIOLATION FOUND.
*Issued February 13, 2014.*

**OM 14-07** **Guarino, et al. v. Rhode Island Atomic Energy Commission**
The Complainants alleged the Rhode Island Atomic Energy Commission ("RIAEC") violated the OMA on numerous occasions. After review of all allegations, this Department found the RIAEC violated the OMA when it: 1) held its December 10, 2012 meeting on less than 48 hours notice and discussed a topic that was not appropriate for executive session; 2) discussed a topic not proper for executive session on January 2, 2013 and failed to disclose in open session (and record in the open session minutes) the votes taken by each individual member in executive session; 3) failed to hold interviews in open session; 4) engaged in a collective discussion via an email chain beginning December 19, 2012 and ending on December 21, 2012; and 5) failed to post notice of its search committee meeting prior to conducting the March 1, 2013 meeting.
VIOLATION FOUND.
*Issued February 17, 2014.*

**OM 14-08** **Hathaway v. Rhode Island Atomic Energy Commission-**
This Department found the RIAEC violated the OMA when it failed to properly conduct and record an open call for the following meetings: September 7, 2012; December 10, 2012; and January 2, 2013.
VIOLATION FOUND.
*Issued February 17, 2014.*

**OM 14-09** **Gorman v. Central Coventry Fire District, Board of Directors**
**Fay v. Central Coventry Fire District, Board of Directors**

Since both complaints were submitted against the Central Coventry Fire District Board of Directors ("Board"), ("CCFD"), or ("Fire District"), and since both complaints contained similar allegations, this Department addressed both complaints in a single finding. Our investigation began by addressing the Board's argument that they are not a public entity, therefore, not subject to the OMA. Since the Board provided no factual or legal support for this argument, and since this argument conflicted with Emergency Hiring Counsel v. Solas, 774 A.2d 820 (R.I. 2001), this Department rejected the Board's argument that it is not a "public body." Next, this Department addressed Mr. Gorman's eight (8) allegations and Mr. Fay's nine (9) allegations and found that the CCFD violated the OMA: 1) when it failed to timely post meeting minutes on the Secretary of State's website, 2) when the Board failed to state in open session the reason for holding a closed session meeting by citing to the subdivision of R.I. Gen. Laws § 42-46-5(a), and 3) when the Board discussed matters, in closed session, that did not fall within R.I. Gen. Laws § 42-46-5(a)(2). In addition to the violations listed above, this Department identified certain matters as possible willful or knowing violations and directed the Board to provide a substantive response addressing, in a non-conclusionary manner, the willful or knowing concerns expressed in light of the willful or knowing standard identified by the Supreme Court and this Department. A supplemental finding will follow.
*Issued June 27, 2014.*

**OM 14-10** **Budziak v. Coventry Fire District**

The Coventry Fire District ("Fire District") did not violate the OMA when it refused to allow Complainant to attend an executive session meeting on January 30, 2014. Based upon the evidence presented, the portion of the meeting when the Fire District convened into a larger training room with the union members was part of the executive session and the Fire District's request that the Complainant wait in an adjoining room did not violate the OMA.
*Issued March 25, 2014.*

**OM 14-11** **Rider v. Foster Town Council**

The Complainant alleged that the Foster Town Council ("Town Council") violated the OMA when the agenda item for the November 21, 2013 meeting did not specify the nature of the business to be discussed. Since the Complainant attended the November 21, 2013 meeting and did not demonstrate that she was aggrieved, this

Department concluded that she did not have standing to raise the allegation. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002).
*Issued April 4, 2014.*

**OM 14-12** **Vitkevich v. Portsmouth Town Council**
The Portsmouth Town Council violated the OMA when the agenda for its October 29, 2013 meeting failed to inform the public of the nature of the business to be discussed. See R.I. Gen. Laws § 42-46-6(b). The agenda item in question stated "Request Additional Funding for the Mothballing of the Elmhurst Chapel." Despite the "mothballing" agenda, the Town Council voted in favor of developing a phasing plan and cost options for the demolition of the Chapel.
VIOLATION FOUND.
*Issued April 11, 2014.*

**OM 14-13** **Riley v. I-195 Redevelopment District Commission**
**Scotti v. I-195 Redevelopment District Commission**
The I-195 Redevelopment District Commission did not violate the OMA by convening into executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(5) for "Discussion/Vote to Select Firm to Provide Real Estate Brokerage and Advisory Services to the District." Although we determine this case to present "a close call," based upon the facts presented in this case, we conclude that the selection of a real estate brokerage firm falls within the purview for "[a]ny discussions or considerations related to the * * * disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public." R.I. Gen. Laws § 42-46-5(a)(5).
*Issued April 14, 2014.*

**OM 14-14** **Sheldon v. Warwick Minimum Housing Review Board**
The Warwick Minimum Housing Review Board violated the OMA when they did not allow the Complainant to videotape the January 6, 2014 meeting. In this Department's finding of Pagliarini v. Kent County Water Authority, OM 06-24, we recognized that the United States District Court for the District of Rhode Island held that "a determination that the [OMA] requires [a public body] to allow members of the press and public to tape record its meetings follows inexorably from the policy set forth [in the OMA,]" and that this practice may also extend to videotaping. See Belcher v. Mansi, 569 F.Supp. 379, 382-83 (D.R.I. 1983).
VIOLATION FOUND.
*Issued April 30, 2014.*

**OM 14-15** **Pagliarini v. Tiverton Tax Assessment Board of Review**

The Tiverton Tax Assessment Board of Review ("Board") did not violate the OMA prior to the start of its January 13, 2014 meeting as there was no evidence that a quorum of the Board collectively discussed public business outside the purview of the public.
*Issued April 30, 2014.*

**OM 14-16** **Boss v. Woonsocket School Committee**

The Woonsocket School Committee did not violate the OMA because it created and maintained minutes for its November 13, 2013 executive session consistent with the requirements set forth in R.I. Gen. Laws § 42-46-7(a).
*Issued May 12, 2014.*

**OM 14-17** **Zhang v. East Greenwich School Committee**

The School Committee did not violate the OMA when it refused to allow the Complainant to attend an executive session. The option to extend an invitation to an individual to attend an executive session is held by the public body, and not the individual seeking to attend the executive session. See Vargas v. Providence School Board, OM 94-26. The School Committee did not violate the APRA when it refused to provide the Complainant with a copy of the November 5, 2013 executive session meeting minutes as properly sealed executive session minutes are not public. See R.I. Gen. Laws § 38-2-2(4)(J).
*Issued May 6, 2014.*

**OM14-18** **Pierson v. Coventry School Committee**

The Coventry School Committee violated the OMA when it failed to timely provide minutes and a record of all votes taken pursuant to R.I. Gen. Laws § 42-46-7(b). This Department found injunctive relief to be inappropriate since, based on the evidence presented, the untimely availability of the minutes was the result of a family illness and, the Complainant was provided with the minutes of all the meetings requested.
VIOLATION FOUND.
*Issued May 7, 2014.*

**OM 14-19** **Boss v. City of Woonsocket's School Board Review Committee**

Based on the evidence presented, and using the analysis established in Solas v. Emergency Hiring Council, 774 A.2d 820, 825 (R.I. 2001) as a guide, this Department rejected the argument that the Woonsocket School Board Review Committee was not a public body because it was formed by the Mayor-elect, consisted of campaign staff, and emanated

from the campaign. Instead, this Department found that the Committee was a "department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government" as defined by Rhode Island General Laws § 42-46-2(3). See also Schanck v. Glocester Town Council, OM 97-03.
VIOLATION FOUND.
*Issued May 12, 2014.*

**OM 14-20** **Curt-Hoard v. Woonsocket School Board**
The Complainant alleged that the Woonsocket School Board ("School Board") violated the OMA when the agendas for the School Board's January 15, 2014 and February 12, 2014 meetings failed to specify the nature of the business to be discussed. Since the Complainant did not demonstrate that she was aggrieved by the allegation, and in fact attended the meetings in question, this Department concluded that she did not have standing to raise the issue. See R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d. 215 (R.I. 2002).
*Issued May 29, 2014.*

**OM 14-21** **Common Cause v. I-195 Redevelopment District Commission**
The Frameworks Subcommittee did not violate the OMA when it met for a presentation because there was no evidence that any collective discussions of the members of the Frameworks Subcommittee occurred. Rather, it appears a presentation was made, and members of the Frameworks Subcommittee asked questions during the presentation. While in the proper circumstances these questions and answers could implicate the OMA, in light of the affidavits submitted by the three (3) Frameworks Subcommittee members, the evidence falls short of any collective discussions or action amongst them. The Frameworks Subcommittee members' collective presence, as well as the asking and answering of questions, is insufficient to trigger the OMA.
*Issue May 30, 2014.*

**OM 14-22** **Bourbonniere v. Newport City Council**
The narrow issue presented to this Department can be defined as whether the City's video conferencing accommodation complies with R.I. Gen. Laws § 42-46-13. Rhode Island General Laws § 42-46-13(c) recognizes that the OMA "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 [the OMA] are held in accessible facilities." (Emphasis

added). The OMA also provides guidance on how a public body can comply with the accessibility requirement. See R.I. Gen. Laws § 42-46-13(d). While R.I. Gen. Laws § 42-46-13(d) does not appear to be an exhaustive list of alternative accommodations, it is notable that video or tele-conferencing are not included, and that all alternatives listed within R.I. Gen. Laws § 42-46-13(d) would permit a person with a disability to physically attend a public meeting. Moreover, the State Building Code standards referenced within R.I. Gen. Laws § 42-46-13(b) further support our conclusion that the video conferencing alternative fails to comply with the OMA.
VIOLATION FOUND.
*Issued June 4, 2014.*

**OM 14-23** **Sinapi v. University of Rhode Island Student Senate**
The University of Rhode Island Student Senate did not violate the OMA as this Department concluded that the Student Senate is not a "department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government." See R.I. Gen. Laws § 42-46-2(c). We are aware of no authority, and none has been presented, to support the proposition that the voluntary adoption of the OMA by a non-public body subjects that entity to the OMA and this Department's jurisdiction.
*Issued June 5, 2014.*

**OM 14-24** **Novak v. Western Coventry Fire District**
The Fire District violated the OMA by failing to timely post its minutes on the secretary of state's website for seven (7) meetings. Rhode Island General Laws § 42-46-7(b)(2) states that "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." R.I. Gen. Laws § 42-46-7(b)(2).
VIOLATION FOUND.
*June 11, 2014.*

**OM 14-25** **Kelly v. Woonsocket Budget Commission**
The Complainant alleged that members of the Woonsocket Budget Commission ("WBC") violated the OMA when the members voted to terminate the services of the Finance Director through email

communications, and when the Commission failed to post proper notice on the Secretary of State's website. Rhode Island General Laws § 45-9-6(a) clearly defines the five (5) instances under which the Commission must comply with the OMA. The termination of an employee does not fall into any of those five (5) situations. Thus, the WBC did not violate the OMA.
*Issued June 12, 2014.*

**OM 14-26** **Block v. RI State Properties Committee**
The Rhode Island State Properties Committee ("Committee") violated the OMA when it failed to file its minutes for the August 13, 2013, September 26, 2013, October 8, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State's website in a timely manner. The Committee shall have ten (10) business days to respond to this Department's concern that the instant violation is "willful or knowing." A supplemental finding will be issued.
VIOLATION FOUND.
*Issued June 13, 2014.*

## OPEN MEETINGS ACT
## ADVISORY OPINIONS – 2014

*None*

## 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.

DEPARTMENT OF ATTORNEY GENERAL
*PETER F. KILMARTIN, ATTORNEY GENERAL*
150 South Main Street - Providence RI 02903
(401) 274-4400 – TDD (401) 453-0410

# 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.

_____ _____

_____ _____