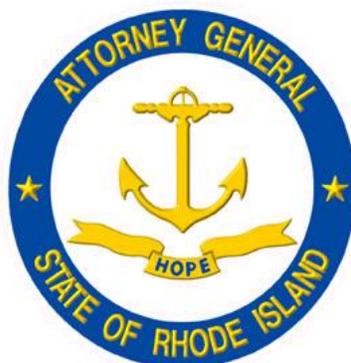




The Attorney General's
Guide to
Open Government In Rhode Island
6th Edition



Attorney General
Peter F. Kilmartin

INDEX
Section I
Open Meetings Act

Introduction	1
What is the Open Meetings Act?	3
When Does the Open Meetings Act Apply?	3
Notice Requirements	5
The Open Forum	8
When Can a Meeting be Closed?	8
Sample Notification Letter	9
How to Convene in Executive Session	12
Sealing Executive Session Minutes/Voting in Executive Session	13
Minutes	13
Remedies Available	14
Statute of Limitations	15
Where Can a Meeting be Held?	15
Maintaining Order	16
Tape Recording Meetings	16
Answering Your Questions	16

Section II
Access to Public Records Act

What is the Access to Public Records Act?	18
When Does the Access to Public Records Act Apply?	19
Determining Whether Records are Exempt from Public Disclosure	20
Settlement of Legal Claims	28

Procedures for Access to Public Records.....	28
Arrest Logs.....	30
Cost of Copying and/or Inspecting Public Records.....	30
Records Determined to be Exempt from Public Disclosure and Appeal Procedures	31
Remedies Available	32
Continuing Access	33
Compliance.....	33
Answering Your Questions	34
Sample Request Letter	34
Sample Denial Letter	35

INTRODUCTION

This manual represents the 6th edition of the Attorney General's Guide to Open Government in Rhode Island and is designed as a reference guide to the judicial decisions, statutes, and Attorney General findings/advisory opinions relating to the Open Meetings Act (OMA) and the Access to Public Records Act (APRA). This manual is intended to be used only as a reference guide and is not intended to be used as a substitute for the actual cases and/or statutes. Members of public bodies should consult the actual decisions and/or their legal counsel.

Through this manual, the Department of the Attorney General seeks to encourage open government by facilitating knowledgeable adherence to the OMA and the APRA. Additional information is available through the Attorney General's website at <http://www.riag.ri.gov>. Both this manual and the information on our website, will assist public bodies' efforts to comply with the mandates of the OMA and the APRA and to assure members of the public that government will be conducted in compliance with the law.

Peter F. Kilmartin
Attorney General

Section I

Open Meetings Act



WHAT IS THE OPEN MEETINGS ACT?

The Open Meetings Act (OMA) is a chapter of the Rhode Island General Laws designed to ensure that the peoples' business is conducted in an open manner so that the public may participate in their government and so that government will be accountable to the public. By conducting the public's business in an open forum, public bodies gather input from citizens concerned with the decisions being contemplated. By observing and participating in their government's decisions, citizens of this State gain increased accountability from their elected and appointed representatives.

Rhode Island's Open Meetings Act provides for this input and accountability by assuring that decisions affecting the public are made in public. The OMA does, however, recognize that a limited number of situations allow public bodies to meet in closed session to best serve the interests of the public. These limited exceptions to the OMA are specifically defined to protect the narrow interests served by the exceptions.

WHEN DOES THE OPEN MEETINGS ACT APPLY?

The Open Meetings Act (OMA) applies when a "**quorum**" of a "**public body**" convenes for a "**meeting**." Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). As with most statutes, each of these terms has a specific legal definition within the OMA.

The OMA defines a "**meeting**" 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." (Emphasis added). See Zarella v. East Greenwich Town Planning Committee, OM 03-02. A meeting expressly includes "workshops," "working sessions" and "work sessions." R.I. Gen. Laws § 42-46-2(a). Proceedings of the judicial branch of government, as well as proceedings in the probate or the municipal courts, are exempt from the OMA. R.I. Gen. Laws § 42-46-5(c). Some decisions defining "meetings" under the OMA's provisions are:

- A Town Council member's attendance at an informational session was not a "meeting" provided that the Town Council's members did not collectively discuss and/or take any action upon a matter over which it had supervision, control, jurisdiction, or advisory power. Neubert v. Governor's Office and Exeter Town Council, OM 98-09.
- Members of a public body who merely address questions to legal counsel (and who receive answers from legal counsel) will not convene a "meeting" provided that the members engage only in a colloquy with legal counsel and do not collectively discuss and/or act upon any matter over which it had supervision, control, jurisdiction, or advisory power. In re Ethics Commission, ADV OM 00-03.
- The convening of a subcommittee for a "site visit" was not a "meeting" provided that the subcommittee did not engage in a collective discussion and/or take other action. Richard v. Richmond Town Council, OM 99-05; Lamb v. Tiverton Budget Committee, OM 98-31.

- The convening of members to pay bills was a “meeting” since this action constituted a matter over which the public body had control, supervision, jurisdiction, or advisory power. Schmidt v. Ashaway Fire District, OM 97-08.
- The OMA applies to public bodies and to subcommittees that act in an advisory capacity. Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001).
- Town council members violated the OMA when they engaged in a series of one-on-one conversations concerning public business. Legal counsel declined to provide additional information to the Department of Attorney General concerning these conversations, and therefore, failed to satisfy its burden of proof. Allen v. Claims Committee of the Lincoln Town Council, et al., OM 00-22.
- A meeting may be convened, and a “rolling quorum” created, when members collectively discuss and/or take action via telephone or email. See Loparto v. Lincoln Town Council, OM 06-47; Mudge v. North Kingstown School Committee et al., OM 05-05; In re South Kingstown School Committee, ADV 04-01.
- A Fire District violated the OMA when it conducted a meeting through a series of telephone conversations among committee members. Pare v. Western Coventry Fire District, OM 01-06.
- A social event (breakfast gathering) at which no “meeting” is convened (no collective discussion and/or no action taken) will not implicate the OMA and need not be open to the public. In re Pawtucket City Council, ADV OM 05-01.

The OMA defines “**public body**” as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded a majority of its operational budget in the prior budget year with public funds.” Political parties, organizations or units thereof are not considered public bodies. R.I. Gen. Laws § 42-46-2(c).

- The following entities are considered public bodies: Rhode Island Industrial Building Authority, Rhode Island Recreational Building Authority, Rhode Island Port Authority and Economic Development Corporation, Rhode Island Industrial Facilities Corporation, Rhode Island Public Buildings Authority, Rhode Island Housing and Mortgage Finance Corporation, Rhode Island Solid Waste Management Corporation, Rhode Island Public Transit Authority, Rhode Island Student Loan Authority, Howard Development Corporation, Water Resources Board, Rhode Island Health and Educational Building Corporation, Rhode Island Higher Education Assistance Authority, Rhode Island Turnpike and Bridge Authority, Blackstone Valley District Commission, Narragansett Bay Water Quality Management District Commission, their successors and assigns, and any body corporate and politic with the power to issue bonds and notes, which are direct, guaranteed, contingent, or moral obligations of the state, which is hereinafter created or established in this state. R.I. Gen. Laws § 42-35-1(b).
- The Open Meetings Act applies only to state or municipal government. Entities of the United States government or multi-state organizations are not considered “public bodies.” Allen v. ASMFC Lobster Advisory Council and Department of Environmental Management, OM 98-05 (interstate compact composed of states bordering the Atlantic Ocean not a “public body”); Pierel v. Center for Substance Abuse Prevention/DHHS and Rhode Island Department of Health, OM 98-14 (Center for Substance Abuse Prevention

is a subdivision of the United States Health and Human Services Department and thus is not a “public body”).

- A conglomeration of individual staff members meeting on an ad hoc basis is not a “public body.” Weaver v. Department of Environmental Management, Freshwater Wetlands Division, OM 98-10.
- The moderator of a financial town meeting alone is not a “public body.” Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997).
- A caucus session to elect party leaders is not a “public body,” provided the caucus does not address city council business. McCaffrey v. Providence City Council, OM 97-18. See also In re Cranston Democratic City Committee, ADV OM 00-02.
- Members-elect of a public body are subject to the Open Meetings Act. Schanck v. Gloucester Town Council, OM 97-03.
- Where a public body appoints citizens to a committee, the citizens’ entity is considered a “public body.” Finnegan v. Scituate Town Council, OM 97-05.

The OMA defines “**quorum**” as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d). Findings have applied the OMA to scenarios that on their face do not appear to include a simple majority of the public body. For example:

- A public body may not utilize a series of communications to circumvent the requirements of the Open Meetings Act. D’Andrea v. Newport School Committee, OM 98-11.
- A quorum may convene upon back and forth contacts made by phone or email. See Loparto v. Lincoln Town Council, OM 06-47.

2005 Amendment: “Discussions of a public body via electronic communication, including telephonic communication and telephone conferencing shall be permitted only to schedule a meeting.” R.I. Gen. Laws § 42-46-5(b)(1) (active armed services exception).

2006 Amendment-Exception: A member of a public body who has a disability (defined in Chapter 87 of Title 42) may participate in a meeting via electronic or telephone communication when he or she:

- (a) cannot attend the meeting solely by reason of disability **and**
- (b) cannot otherwise participate without the use of electronic or telephone communication as a reasonable accommodation.

- Participation by a disabled member is subject to rules and regulations and waiver process established and determined by the governor’s commission on disabilities.
- Waiver decisions are matters of public record.

R.I. Gen. Laws § 42-46-5(b)(3), (4).

NOTICE REQUIREMENTS

Annual Notice: All public bodies must provide written notice of regularly scheduled meetings at the beginning of each calendar year. This notice shall include the dates, times, and locations of all meetings, and shall be provided to the public upon request. R.I. Gen. Laws § 42-46-6(a).

Supplemental Notice: In addition to annual notice, public bodies must post supplemental written notice to the public a minimum of forty-eight (48) hours before every scheduled meeting. R.I. Gen. Laws § 42-46-6(b). The public body must also maintain a copy of this supplemental notice for at least one year and the notice must contain:

- (a) the date the notice was posted,
 - (b) the date of the meeting,
 - (c) the time of the meeting,
 - (d) the location of the meeting, **and**
 - (e) a statement specifying the nature of the business to be discussed.
- The notice must contain a sufficient statement to apprise the public of the nature of the business to be discussed. Rainey v. Warren Town Council, OM 99-01.
 - A statement listing names of featured speakers is not sufficient notice to apprise the public of the nature of the business to be discussed. Jutras v. West Warwick School Committee's Special Education Parents Advisory Committee, OM 97-16.
 - Although a public body may not mislead the public, the Open Meetings Act does not require a public body to identify its intention to vote on a particular subject. Pulchalski v. Charlestown Town Council, OM 99-07.
A violation of the OMA was upheld in Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005), based on the totality of the circumstances, when notice for a town council meeting misled the public by advertising that only interviews would be conducted, however, votes were subsequently taken on the interviewed candidates at the meeting.

Posting of Notices: Annual and supplemental notices, at a minimum, must be posted:

- (a) 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, **and**
 - (b) in at least one other prominent location within the governmental unit, **and**
 - (c) filed electronically with the Secretary of State in accordance with procedures established by the Secretary of State.
- Posting of notice at the principal office of the public body was not sufficient since the notice was posted on an office door that was not accessible to the public. Banes v. West Warwick Sewer Commission, OM 98-26B.
 - Posting notice in a newspaper does not constitute “a prominent location within the governmental unit.” Hobson v. Coventry Charter Review Commission, OM 99-28.
 - If a public body postpones or continues a meeting, every effort must be made to reschedule the meeting so that notice may be posted at least forty-eight hours in advance. In the event of a pressing circumstance, such as inclement weather or insufficient capacity of the meeting hall, notice of these changes must be posted as soon as practicable. Littlefield v. New Shoreham Town Council, OM 99-39; Barber v. Burrillville Town Council, OM 05-02.

- Posting notice on Friday afternoon for a Monday morning meeting violated the OMA by failing to post supplemental notice for a minimum of forty-eight (48) hours. Graziano v. Lottery Commission, No. 96-4076 (R.I. Superior Court, 2001).
- Absent evidence of intending to mislead the public, the Town Council did not violate the OMA when newspaper advertisement contained erroneous information since the OMA does not require a Town Council to publish notice in a newspaper of general circulation. Pitochelli v. Johnston Town Council, OM 02-07.

Emergency Meeting: Upon a vote by a majority of the public body, an emergency meeting may be convened “to address an unexpected occurrence that requires immediate action to protect the public.” R.I. Gen. Laws § 42-46-6(c). In the event of an emergency meeting:

- a notice and an agenda must be posted as soon as practicable (including on the Secretary of State’s website);
 - a majority of the public body’s members must vote in open session “to address an unexpected occurrence that requires immediate action to protect the public;”
 - the public body must state in open session **and** must record in its open session minutes the reason the meeting is being convened with less than forty-eight (48) hours notice; **and**
 - the public body must discuss only the issue(s) that created the need for the emergency meeting.
- An emergency meeting was warranted where a committee learned one week prior to deadline that it must vote to approve the placement of local referenda on the November ballot. The committee violated the Open Meetings Act, however, by failing to post notice “as soon as practicable.” Toracinta v. Chariho School Committee, OM 96-31.
 - Emergency meeting to prohibit the appropriation of funding for hiring new firefighters was appropriate to avoid an impending financial crisis. The Town Council violated the Open Meetings Act by posting notice after the emergency meeting was convened. Macchioni v. Johnston Town Council, OM 99-31.
 - A council member’s telephone calls to other council members regarding possible locations for a new football stadium were not necessary to the “public welfare.” Nataly v. Exeter Town Council, OM 97-12.
 - An emergency meeting may be called when the public body must address a matter within forty-eight hours; otherwise, the matter may be timely advertised and is not considered emergent. Staven v. Portsmouth Town Council, OM 03-01; McGreavy v. Middletown School Committee, OM 02-23.

Amending the Agenda: By a majority vote, a public body, other than a school committee, may amend its agenda to add items. The additional items shall be for informational purposes only and may not be voted upon except when necessary to address an unexpected occurrence requiring immediate action or to refer the matter to an appropriate committee. R.I. Gen. Laws § 42-46-6(b).

2001 Amendment-Exception: A school committee may amend its agenda, provided the following requirements are satisfied:

- (a) the amended agenda is posted at least forty-eight (48) hours prior to the meeting:
 - (1) on the school district’s website **and**
 - (2) in the two (2) public locations required by the OMA (see R.I. Gen. Laws § 42-46-6(c));
- (b) the new agenda item(s) are unexpected **and** could not have been added in time for newspaper publication;
- (c) the school committee states for the record **and** records in its minutes:
 - (1) why the agenda item(s) could not have been added in time for newspaper publication, **and**
 - (2) why the agenda item(s) needed to be addressed at this meeting;
- (d) a formal process is available to provide timely notice of the revised agenda to any person upon request **and** the school district has taken reasonable steps to make the public aware of this process; **and**
- (e) the school district’s website **and** the two (2) posted notices required by the OMA advise that any agenda changes will be posted at least forty-eight (48) hours prior to the meeting.

THE OPEN FORUM: WHAT ABOUT “PUBLIC COMMENT”?

The Open Meetings Act recognizes an optional **Open Forum** portion of a meeting, which is defined as “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.” R.I. Gen. Laws § 42-46-2(f).

- Any or all of the members of a public body (school committees included) may respond to comments initiated by a member of the public during the open forum portion of a meeting even if the matter was not previously posted on the agenda, for informational purposes only. R.I. Gen. Laws § 42-46-6(d).
- **School Committees-Exception:** A school committee may add items to the agenda, for informational purposes only, when a member of the public submits a written request during the public comment/open forum session of the meeting. R.I. Gen. Laws § 42-46-6(b).

WHEN CAN A MEETING BE CLOSED?

The Open Meetings Act mandates that “[e]very meeting of all public bodies shall be open to the public,” unless closed pursuant to one of the following exceptions:

1. Discussions relating to the job performance, character, or physical or mental health of a person(s), provided that:

- (a) the affected person(s) receive advanced written notice advising that they may require the meeting to be held in open session,
- (b) the public body states in its open call that the affected person(s) have been notified, **and**
- (c) the public body records in its open session minutes that the affected person(s) have been notified;

SAMPLE NOTIFICATION LETTER

Dear **(affected person)**:

Pursuant to R.I. Gen. Laws § 42-46-5(a)(1), Rhode Island's Open Meetings Act, this letter advises you that **(name of public body)** intends to discuss your job performance, character, or physical or mental health in executive session on **(date and time of meeting)** at **(location of meeting)**. At your option, the Open Meetings Act requires that **(name of public body)** convene this meeting in open session. Accordingly, if you do not wish the discussion related to you to occur in executive session, and if you instead wish this discussion to take place in open session, kindly contact **(contact person, telephone number, address)** as soon as possible.

Sincerely,
Name

- Only discussions of an individual's job performance, character or physical or mental health is permitted in closed session. Voting must be done in open session. Graziano v. R.I. Lottery Commission, OM 99-06.
- Annual audit properly discussed in executive session to the extent that the results were used to evaluate an employee's job performance. Lapointe v. Coventry School Committee, OM 98-16.
- Job interview may be held in closed session where the interview involves a discussion of the job performance, character, or health of a candidate. Finnegan v. Scituate Town Council, OM 97-05. However, convening in closed session merely to open job applications, without discussing a candidate's job performance, violated the Open Meetings Act. Moon v. East Greenwich Fire District, OM 96-23.
- There is no requirement that the public body disclose the identity of the affected person(s). Graziano v. R.I. Lottery Commission, OM 99-06.
- Executive session to discuss a pay raise and certain benefits was appropriate since the discussion involved a review of the employee's job performance. Charlestown Democratic Town Committee v. Charlestown Town Council, OM 95-26.
- An executive session to discuss the overall performance of a Regional School District's administration is not permissible. Hayes v. Bristol/Warren Regional Joint Finance Committee, OM 95-32.
- An executive session may be appropriate whenever the discussion relates to job performance, character, or physical or mental health of a person(s), not only when these are in doubt. In re Woonsocket School Committee, ADV OM 04-06.

- The decision to include or to exclude a person from an executive session lies with the public body. However, a public body may not selectively permit some members of the public to attend an executive session while excluding others. In re Pawtucket Fire Department, ADV OM 01-02.
 - Discussing job performance in executive session after the affected person(s) requested that such discussion be held in open session violated the Open Meetings Act. Fortin et al. v. Warren Fire Department Board of Engineers, OM 99-08. However, such affected person(s) have no right to request that the discussion be held in closed session. Jutras v. West Warwick School Committee, OM 96-14.
 - Pursuant to R.I. Gen. Laws § 42-46-5(a)(1) an affected person(s) may elect to have the discussion take place in open session with little or no notice. In re Town of New Shoreham, ADV OM 99-14.
 - Even though one candidate requested that his evaluation take place in open session, an executive session discussion was proper since the discussion concerned all candidates and since the discussion could not be segregated. In re Warwick Police Department, ADV OM 99-13.
 - A complainant did not have legal standing to file an Open Meetings Act complaint claiming that an affected person(s) did not receive advanced written notice advising that an executive session may be held in open session since the complainant was not an affected/aggrieved person. Okwara v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 00-07.
2. Sessions or work sessions pertaining to collective bargaining or litigation;
- Closed session is appropriate to discuss not only pending litigation, but reasonably anticipated litigation where substantive discussions of strategy are necessary. Greig v. Jamestown Town Council, OM 97-06; see also Pallasch v. Town of Tiverton, OM 04-23.
 - A matter may properly be discussed in executive session even though certain aspects may have been disclosed previously by the media. Pitochelli v. Johnston Town Council, OM 95-30A.
 - In order to convene into executive session pursuant to the “collective bargaining” exception, the executive session discussion must concern a recognized/organized union for the employees. Walsh v. Charlestown Town Council, OM 00-03.
 - An entity need not be certified as a bargaining representative in order for an executive session to convene for collective bargaining purposes. The collective bargaining exception requires that the session involve a representative for a group of employees rather than individual(s) representing their own interest(s). In re Portsmouth School Committee, ADV OM 04-05.
3. Discussions regarding security, including, but not limited to, the deployment of security personnel or devices;
- The Town Council properly convened into executive session to discuss its concerns for the safety and the security of its students in light of recent school violence. Berube v. Coventry Town Council, OM 99-22.

4. Investigative proceedings regarding allegations of civil or criminal misconduct;
5. Discussions or considerations related to the acquisition or lease of real property for public purposes, or the disposition of publicly held property where advanced public information would be detrimental to the public interest;
 - A public body may convene into executive session to discuss or to consider the acquisition or lease of real property for public purposes even if advanced public information would not be detrimental to the public interest. In re Rhode Island Council on the Arts, ADV OM 00-04.
 - Executive session to compare the cost of renovating a school to the cost of constructing a new school was improper since “disposition” concerns transferring or giving up property. Newport Daily News v. Middletown Town Council, OM 99-26.
6. Discussions relating to a prospective business or industry locating within Rhode Island where advanced public information would be detrimental to the public interest;
7. Matters relating to the investment of public funds where the premature disclosure would be detrimental to the public interest;
8. School committee executive sessions held to conduct student disciplinary hearings **or** held to review other matters relating to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality, provided that:
 - (a) the affected student(s) receive advanced written notice advising that they may require the discussion to be held in open session,
 - (b) the school committee states in its open call that the affected student(s) have been notified, **and**
 - (c) the school committee records in its open session minutes that the affected student(s) have been notified; **and**
 - This exemption provides no authority for an “affected student” to have the “student disciplinary hearing” in executive session, as opposed to the “discussion.” Providence Journal v. East Greenwich School Committee, OM 01-03.
9. Any hearing on, or discussions of a grievance filed pursuant to a collective bargaining agreement.
 - A public body may convene into executive session to conduct hearings on, or discussions of, a grievance, provided that the grievance is filed pursuant to a collective bargaining agreement. In re South Kingstown School Committee, ADV OM 00-06.
10. Discussions of the personal finances of a prospective donor to a library.

The Open Meetings Act does not prohibit interested parties from attending closed sessions as long as the public bodies’ actions do not amount to permitting or excluding members of the

public in a way that would circumvent the spirit or requirements of the Act. Perry v. Coventry Fire District, OM 04-06.

HOW TO CONVENE IN EXECUTIVE SESSION

Any portion of a meeting that a public body intends to convene in closed/executive session pursuant to R.I. Gen. Laws § 42-46-5(a)(1)-(10) must begin with an “open call,” defined as “a public announcement by the chairperson of the committee that the meeting is going to be held in executive session.” R.I. Gen. Laws § 42-46-2(b). The “open call” must be made in open session.

In order to convene an executive session, a public body must:

- (a) during the open call, vote by a majority of the members to convene in executive session;
 - (b) record in the open session minutes the vote of each member on the question of holding a meeting closed to the public;
 - (c) 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 the executive session has been convened;
 - (d) state in the open call **and** record in the open session minutes a statement specifying the nature of the business to be discussed;
 - (e) limit the executive session to those matters set forth in the open call and recorded in the open session minutes; **and**
 - (f) not discuss any other matter in the executive session, even if these discussions would have been appropriate for an executive session.
- A vote to convene in executive session, as well as a citation to the appropriate exception and a statement specifying the nature of the business to be discussed, must be made in open session. Balzar v. Jamestown School Committee’s Administrative Search Committee, OM 97-01.
 - Merely citing the statutory citation for a closed session meeting is not sufficient to apprise the public of the nature of business to be discussed. If the matter to be discussed in executive session is one of public record, such as a pending court case or the negotiation of a well-publicized contract, the public body should identify and/or cite the case. Simply referring to “litigation” or “personnel” in this instance is not sufficient. If, however, the matter to be discussed has yet to be made public, the public body may limit its open call and open session minutes to the nature of the matter to be discussed, such as “litigation” or “personnel.” A statement and a statutory citation must be provided for each matter to be discussed. Graziano v. R.I. Lottery Commission, OM 99-06.

For example, in open session, a member of a public body may articulate the following open call:

I move, pursuant to R.I. Gen. Laws § 42-46-5(a)(1), that this public body convene in executive session to discuss the job performance of an employee. This individual has

been notified in writing that this public body intends to convene in executive session in order to discuss his/her job performance and he/she has declined to have this discussion take place in open session. I also move, pursuant to R.I. Gen. Laws § 42-46-5(a)(5), that this public body convene in executive session to discuss acquiring Greenacre for the purpose of building softball fields.

SEALING EXECUTIVE SESSION MINUTES/VOTING IN EXECUTIVE SESSION

Following the executive session, upon a public vote by the majority of the members, a public body may seal the closed session minutes. (The Open Meetings Act is silent on the unsealing of minutes.) The minutes must record how each individual member voted on the issue of sealing the minutes and must be made available at the office of the public body within two (2) weeks of the vote. R.I. Gen. Laws § 42-46-7(c).

If a vote is cast during the executive session itself, the vote must be disclosed as soon as the open session is reconvened. R.I. Gen. Laws § 42-46-4. Also, within two (2) weeks of any vote (in open or closed session), the public body must make available at its office a record listing how each individual member voted on a particular issue. R.I. Gen. Laws § 42-46-7(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.

- A vote taken in executive session must be repeated as soon as the meeting is reconvened in open session, subject to the above exception. Within two weeks of a vote, a record listing how each member voted must be made available at the office of the public body, again subject to the above exception. Dexter v. North Kingstown School Committee, OM 98-17.
- A School Committee violated the Open Meetings Act by failing to disclose an executive session vote upon reconvening in open session even though no members of the public were present when the School Committee reconvened into open session. Hirst v. Chariho School Committee, OM 99-19.
- Recording that “motion carried” does not reflect how each individual member of the public body voted. Pitochelli v. Johnston City Council, OM 98-06.
- Voting by secret ballot in open session is inconsistent with the Open Meetings Act. In re Health Council Services, ADV OM 99-12.

MINUTES

All public bodies are required to maintain written minutes for all open and closed meetings. R.I. Gen. Laws § 42-46-7(a). These minutes must include:

- (a) the date, time, and place of the meeting;
- (b) the members of the public body recorded as either present or absent;

- (c) a record by individual member of any vote taken; **and**
 - (d) any other information relevant to the business of the public body that a member of the public body requests to be included.
- Minutes must be maintained for all open and closed session meetings, even if a public body convenes into executive session without substantively discussing any matter in open session. Open session minutes must be maintained, at a minimum, to record the open call. Shuttert v. Coventry Town Council, OM 99-17.

Public bodies must make available at their principal office the unofficial minutes of a meeting:

- (a) within thirty-five (35) days of the meeting, **or**
- (b) at the next regularly scheduled meeting, whichever is earlier. R.I. Gen. Laws § 42-46-7(b).

Two Exceptions:

- (1) Where a closed session meeting has been properly convened **and** a majority of the members vote to seal the minutes, **or**
 - (2) 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).
- A public body is not required to approve its minutes publicly. The failure to approve minutes only affects the running of the statute of limitations in which to bring a complaint under the OMA. Graziano v. R.I. Lottery Commission, OM 99-06.
 - OMA violated when policy required Town Councilman to ask Mayor for a copy of the Zoning Board minutes. Minutes must be made 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. Pitochelli v. Town of Johnston, OM 02-11.

All public bodies within the executive branch of government and all state public and quasi-public boards, agencies and corporations must keep official/approved minutes of all open meetings and must file a copy of all open meeting minutes with the Secretary of State within thirty-five (35) days of the meeting. This requirement does not apply to public bodies whose responsibilities are advisory in nature. R.I. Gen. Laws § 42-46-7(d).

Public bodies already required to file minutes with the Secretary of State pursuant to R.I. Gen. Laws § 42-46-7(d) must file these minutes electronically. See R.I. Gen. Laws § 42-46-7(e).

REMEDIES AVAILABLE

Any citizen or entity of this State who is aggrieved by a violation of the Open Meetings Act may file a complaint with the Attorney General. Nothing in the Open Meetings Act precludes a person from filing an individual action in the Superior Court. R.I. Gen. Laws § 42-46-8. In a

lawsuit, the public body has the burden of proving that the disputed meeting was properly conducted. R.I. Gen. Laws § 42-46-14.

If the Superior Court finds that a public body has violated the Open Meetings Act, 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;
- may issue injunctive relief and declare null and void any actions of a public body found to be in violation of the Open Meetings Act; **and**
- may impose a civil fine not exceeding \$5,000 against the public body or any of its members for a willful or knowing violation.

A town council's efforts to take remedial action after conducting a meeting with a misleading notice, by promptly re-noticing and conducting the meeting, were considered when the award of attorney's fees against the town were reduced significantly. Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005).

STATUTE OF LIMITATIONS

The Attorney General may file a complaint against a public body or its members for a violation of the OMA up to one hundred eighty (180) days from the date that the public body approved the minutes at which the alleged violation occurred, **or** in the event of an unannounced or improperly closed meeting, the Attorney General may file a complaint up to one hundred eighty (180) days from the time the public body revealed the alleged violation, whichever is greater. R.I. Gen. Laws § 42-46-8(b). If the Attorney General declines to file a complaint in the Superior Court, the individual complainant may file suit 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 is later. R.I. Gen. Laws § 42-46-8(c).

WHERE CAN A MEETING BE HELD?

All open meetings must be held in locations accessible to persons with disabilities. R.I. Gen. Laws § 42-46-13.

- A Town Council violated the Open Meetings Act by holding meetings in a building that was not accessible to individuals in wheelchairs due to a broken wheelchair lift. O'Keefe v. Narragansett Town Council, OM 98-01.
- Town Council that rescheduled a meeting to an auditorium in order to accommodate an expected seven hundred members of the public will not violate the Open Meetings Act in the event that attendance exceeds legal capacity and members of the public are prevented from entering the auditorium. The Town Council may not, however, provide preferential

seating to West Warwick residents while allowing non-residents seating on a first-come first-serve basis. In re Town of West Warwick, ADV OM 99-03.

MAINTAINING ORDER

The public's right to attend the open meetings of a public body is not a license to disrupt those meetings. The Open Meetings Act specifically provides, "[t]his 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." R.I. Gen. Laws § 42-46-5(d).

- Town Council did not violate the Open Meetings Act by removing an individual who disrupted a meeting. Major v. Johnston Town Council, OM 00-05.

TAPE RECORDING MEETINGS

Subject to certain "reasonable restrictions" a public body must allow the public to tape record its open meetings. These "reasonable restrictions" include those designed to preserve orderly conduct of a meeting, to safeguard public facilities against damage caused by the use of certain recording equipment or to require fair payment for the cost of electricity. Belcher v. Mansi, 569 F.Supp. 379 (D.R.I. 1983); Pagliarini v. Kent County Water Authority, OM 06-24.

ANSWERING YOUR QUESTIONS

Citations in this manual are to judicial decisions available in law libraries and to Attorney General findings/advisory opinions available at the Department of the Attorney General, 150 South Main Street, and at the State Law Library, 250 Benefit Street, Providence, Rhode Island. Attorney General decisions are also available through the Attorney General's website at <http://www.riag.ri.gov>.

Members of public bodies should direct questions about the Open Meetings Act to their legal counsel. Legal counsel to municipal bodies are encouraged to consult with their city or town solicitor. The Department of the Attorney General will only consider requests for advisory opinions concerning proposed action subject to the Open Meetings Act from counsel to a public body or a city or town solicitor. Legal counsel are requested to allow as much time as possible to permit an answer. The Department of the Attorney General is bound only by formal written opinions and is expressly not bound by informal opinions provided over the telephone.

Section II

Access To Public Records Act



WHAT IS THE ACCESS TO PUBLIC RECORDS ACT?

The Access to Public Records Act (APRA) is a chapter of the Rhode Island General Laws designed to provide access to public documents so that the public may participate in their government and so that government will be accountable to the people. By providing access to public records, public bodies receive input from citizens concerning the decisions being contemplated. By observing and participating in their government's decisions, citizens of this State gain increased accountability from their elected and appointed representatives.

Rhode Island's Access to Public Records Act provides for this input and accountability by assuring that public records are available to the public. The Access to Public Records Act does, however, recognize that certain types of records are not available for public inspection. The exceptions to the Access to Public Records Act are specifically defined to protect the narrow interests served by the exceptions.

WHEN DOES THE ACCESS TO PUBLIC RECORDS ACT APPLY?

The Access to Public Records Act (APRA) ensures the public's right to access "**public records**" maintained by "**public bodies.**" As with most statutes, these terms have a specific legal definition within the APRA.

The APRA defines a "**public body**" as "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 § 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." R.I. Gen. Laws § 38-2-2(1).

- The following entities are considered public bodies: Rhode Island Industrial Building Authority, Rhode Island Recreational Building Authority, Rhode Island Port Authority and Economic Development Corporation, Rhode Island Industrial Facilities Corporation, Rhode Island Public Buildings Authority, Rhode Island Housing and Mortgage Finance Corporation, Rhode Island Solid Waste Management Corporation, Rhode Island Public Transit Authority, Rhode Island Student Loan Authority, Howard Development Corporation, Water Resources Board, Rhode Island Health and Educational Building Corporation, Rhode Island Higher Education Assistance Authority, Rhode Island Turnpike and Bridge Authority, Blackstone Valley District Commission, Narragansett Bay Water Quality Management District Commission, their successors and assigns, and any body corporate and politic with the power to issue bonds and notes, which are direct, guaranteed, contingent, or moral obligations of the state, which is hereinafter created or established in this state. R.I. Gen. Laws § 42-35-1(b).
- Judicial bodies are included in the APRA, but only in their administrative function. Since court records relating to eviction proceedings do not relate to a court's administrative function, these records are exempt from public disclosure. R.I. Gen. Laws § 38-2-2(4)(T); Info. Center, Inc. v. Spina, PR 97-10.
- An alumni organization of a public school is a public body for purposes of the APRA if the organization is acting on behalf of a public agency. In re University of Rhode Island, ADV PR 00-05.
- The Volunteer Fire Association is not a public body for purposes of the Open Meetings Act, but the Volunteer Fire Association is a public body for purposes of the APRA. Schmidt v. Ashaway Fire District et al., PR 97-09.
- The APRA only creates a cause of action for an individual or entity denied access to records maintained by a public body against the public body that is the custodian of the records. Robinson v. Malinoff, 770 A.2d 873 (R.I. 2001).
- Councilperson filing an APRA complaint in his/her individual capacity was not the proper party to file a complaint when the entire Town Council, in its official capacity, was denied access. Canavan v. City of Central Fall, PR 00-18.

The APRA defines a "**public record**" as "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.” R.I. Gen. Laws § 38-2-2(4). Records maintained pursuant to the Access to Public Records Act shall not be replaced or supplemented with the product of a “real translation reporter.” R.I. Gen. Laws § 38-2-3.1.

DETERMINING WHETHER RECORDS ARE EXEMPT FROM PUBLIC DISCLOSURE

The APRA requires a two-step inquiry to determine whether a requested record is a public record or whether the requested record is exempt from public disclosure. First, a public body must determine whether a requested record falls within one of the twenty-five (25) categories that are exempt from public disclosure. R.I. Gen. Laws § 38-2-2(4)(A)-(Y). Second, if the requested record does not fall within one of the twenty-five (25) categories, a public body must conduct a balancing test weighing the privacy interest of the affected individual against the public interest in disclosure. Direct Action for Rights and Equality v. Gannon (DARE I), 713 A.2d 218 (R.I. 1998); see also DARE (II), 819 A.2d 651 (R.I. 2003).

1. **The Twenty-Five Exceptions:** If the requested record falls within one of the twenty-five (25) enumerated exceptions, the requested record is exempt from public disclosure and no further inquiry is required. A balancing test is not performed. The twenty-five (25) enumerated exceptions are listed below:

(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, 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 the 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.

- Because of the newly adopted changes to R.I. Gen. Laws § 38-2-2(4)(A)(I), there has not been an opportunity to interpret this statute in its most current form. The United States

Supreme Court, however, has interpreted the Freedom of Information Act (“FOIA”), on which the amended APRA is modeled.

- In United States Department of Justice, et al. v. Reporters Committee for Freedom of the Press, et al., the United States Supreme Court examined the “public interest” in disclosure, and expressed that “the FOIA’s central purpose is to ensure that the *Government’s* activities be opened to the sharp eye of public scrutiny, not that information about *private citizens* that happens to be in the warehouse of the Government be so disclosed.” See 489 U.S. 749, 774 (1989).
- In National Archives and Records Administration v. Favish, 124 S.Ct. 1570, the United States Supreme Court held that a decedent’s family’s privacy interest outweighed the public interest in disclosure of death-scene photographs. The Court set forth factors when privacy concerns are present. The requester must show the following:
 - That the public interest sought to be advanced is significant;
 - That the interest in obtaining the information is more specific than having the information for its own sake; and
 - That the information is likely to advance that interest.

Disclosure of the names and addresses of retired and disabled federal employees would lead to a clearly unwarranted invasion of personal privacy. National Association of Retired Federal Employees v. Horner, 879 F.2d 873 (D.C.C. 2011). The Court determined that the disclosure would compromise a significant, rather than *de minimis*, privacy interest. See *id.* at 874; see also Fuka v. DEM (2007 WL 1234484)(R.I. Super.).

- A record identifying the number of teachers granted provisional certificates does not specifically identify an employee, and therefore, constitutes a public record. Offer v. Rhode Island Department of Education, PR 99-04. The home addresses of all certified public school teachers is not a public record since disclosure would constitute an unwarranted invasion of personal privacy. Burns v. Department of Education Coventry School District, PR 98-11.
- Parole Board records are exempt from public disclosure since these records contain personal or medical information relating to an individual. Bernard v. Vose, 730 A.2d 30 (R.I. 1999).
- The APRA does not require the public disclosure of an employee’s starting gross salary and starting job description, but instead requires the disclosure of an employee’s current gross salary and current job description. Graziano v. Department of Administration, PR 00-01.
- Town expenses related to a Police Chief obtaining a law degree represents “other remuneration” and therefore is a public record. Mague v. Town of Charlestown, PR 96-12.
- Correspondences exchanged between the Auditor General and a law firm were exempt from public disclosure because these documents related to the attorney/client relationship. Graziano v. Rhode Island Auditor General, PR 98-01.
- Documents reflecting the total number of hours billed by a law firm and documents reflecting the total amount of legal fees paid to a law firm were public documents. The narratives describing the type of legal work performed relates to the attorney/client relationship and is therefore exempt from public disclosure. Graziano v. Rhode Island Lottery Commission, PR 98-19.

- (A)(II) **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” include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of the system, 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.**
- A document relating to a town employee’s disability pension was not a public record since this document contained medical information relating to the employee. Mague v. Charlestown Town Council, PR 98-27.
- (B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.
- A document submitted as a result of a request for proposals that reveals the final bid, as well as the methodology and the costs to arrive at the final bid, was not a public record. Cahill v. Housing Authority of the City of Pawtucket, PR 00-09.
 - If a request is made for financial or commercial information that a person is obliged to provide to the government, it is exempt from disclosure if the disclosure is likely either: (1) to impair the government’s ability to obtain information in the future, **or** (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. If a request is made for financial or commercial information that is provided to the government on a voluntary basis, it is exempt from disclosure if the information “is a kind that would customarily not be released to the public by the person from whom it was obtained.” The Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I. 2001).
- (C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the Family Court.
- (D) Records maintained by law enforcement agencies for criminal law enforcement and all other 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 are not public records, but only to the extent that disclosure could:
- (a) reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings;

- (b) deprive a person of a right to a fair trial or an impartial adjudication;
 - (c) reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - (d) reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis, or the information furnished by a confidential source;
 - (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions; or
 - (f) reasonably be expected to endanger the life or physical safety of any individual.
- A “mug shot” is not a public record since disclosure could reasonably be expected to interfere with enforcement proceedings. Setera v. City of Providence, PR 95-29.
 - If allowing a criminal defendant access to certain documents will circumvent the reciprocal discovery process, and therefore reasonably be expected to interfere with enforcement proceedings, these documents would not constitute public records. Documents relating to the initial arrest report and the narrative of an adult are public records. In re Newport Police Department, ADV PR 99-03.
 - Investigation reports concerning the suicide of an identifiable individual were not public records since disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy” to the decedent’s family. Casey v. Johnston Police Department, PR 02-02.

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.

- Redacted reports concerning disciplinary actions taken as a result of recommendations made by the Hearing Officers’ Division is a public record since these records relate to the management and the direction of a law enforcement agency. Direct Action for Rights and Equality v. Gannon (DARE I), 713 A.2d 218 (R.I. 1998); see also DARE (II), 819 A.2d 651 (R.I. 2003).
 - Records concerning whether a police chief imposed or modified the recommendation of the Internal Affairs Officer relates to the management and the direction of a law enforcement agency and is therefore a public record. In re Johnston Police Department, ADV PR 00-01.
 - The initial arrest reports of an adult, and the arrest narratives, are public records, although certain information may be redacted upon an appropriate balancing test. In re Narragansett Police Department, ADV PR 99-02.
- (E) Any records that would not be available by law or rule of court to an opposing party in litigation.

- If a court in which litigation is ongoing has made a determination based upon the laws or rules of court that a document will not be required to be disclosed, then that ruling precludes production of those same documents under the APRA. Hydron Laboratories, Inc. v. Department of the Attorney General, 492 A.2d 135 (R.I. 1985).
- (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 that would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested.
- (H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- Transcripts to an ongoing arbitration hearing are exempt from public disclosure since these transcripts contain “reports and statements of strategy or negotiation including labor negotiations or collective bargaining.” Cranston United Taxpayers v. City of Cranston, PR 99-19.
- (I) Reports and statement 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 not required to be disclosed pursuant to chapter 46 of title 42, the Open Meetings Act.
- Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure. Morra v. East Providence Tax Assessors, PR 99-06; Gorman v. Tiogue Fire District, PR 97-04.
 - Executive session minutes that were not sealed pursuant to the Open Meetings Act were public records. A public body could still redact portions of the executive session minutes that were otherwise exempt from public disclosure pursuant to the APRA. Graziano v. Rhode Island Board of Nurse Registration and Nursing Education, PR 98-16.
- (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.**
- A preliminary lease agreement was a public record since the lease agreement was submitted and discussed at an open meeting of the Town Council. Shuttert v. Coventry Town Council, PR 99-07.
 - Documents outlining the town clerk’s duties versus the administrative assistant’s duties were public records because the requested documents were submitted at an open meeting of the Town Council. Marcello v. Town of Scituate, PR 99-08.

- Not all exempted documents submitted at a public meeting are necessarily public, however, documents that might otherwise be exempt from disclosure pursuant to 38-2-2(4)(i)(K) are public if submitted at a public meeting. Chrabaszcz v. Johnston School Department, PR 04-15.
- (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.
- A copy of an estate tax return was exempt from public disclosure. Howard v. Rhode Island Estate Tax Division, PR 98-14.
- (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.
- A document compiled in the course of a Department of Environmental Management Division of Compliance and Inspection investigation is exempt from public disclosure since this record does not represent final action. Bowden v. Rhode Island Department of Environmental Management, PR 98-26.
 - A public body's response to an APRA complaint is exempt from public disclosure since the requested record represents an investigatory record and does not constitute final action. Gormally v. MHRH, PR 95-02.
 - Notice of a probable violation does not constitute final action and is therefore exempt from public disclosure. Moran v. Public Utility Commission, PR 99-01.
 - Document forwarded from the Economic Development Corporation to the Governor's Budget Office was not a preliminary memorandum or working paper and must be disclosed. Sheehan v. Economic Development Corporation, PR 01-03.
- (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.
- 911 Emergency telephone call tapes are not public records. In re Emergency 911 Uniform Telephone System, ADV PR 02-01.
 - All police records relating to the arrest, detention, apprehension, and disposition of any juvenile are not public records. R.I. Gen. Laws § 14-1-64; In re Newport Police Department, ADV PR 99-03.
 - A police department that deleted information from an arrest booking report concerning the arrest of a juvenile suspect did not violate the APRA. Woonsocket Call v. Smithfield Police Department, PR 95-07.
 - Records of convictions or probations that have been expunged are not public records. R.I. Gen. Laws § 12-1.3-4(c); In re Newport Police Department, ADV PR 99-03.
 - An individual's Bureau of Criminal Investigation records are exempt from public disclosure. In re Narragansett Police Department, ADV PR 00-02.
 - The Division of Motor Vehicles did not violate the APRA by failing to disclose a driver's social security number since disclosure would constitute an unwarranted invasion of personal privacy and is exempt from disclosure by the Driver's Privacy Protection Act. Marrier v. Division of Motor Vehicles, PR 95-09.
 - A driver's automobile accident report is exempt from public disclosure. R.I. Gen. Laws § 31-26-13. A police officer's automobile accident report may be a public record subject to otherwise applicable exceptions. Information constituting an unwarranted invasion of personal privacy, such as an individual's address, social security number, and injuries incurred, may be redacted. Anderson v. Providence Police Department, PR 98-05.
 - The Confidentiality of Health Care Communications and Information Act prohibits a third party, such as the Division of Motor Vehicles, from disclosing information relating to a person's health care history, diagnosis, condition, treatment, or evaluation. R.I. Gen. Laws § 5-37.3-3. Therefore, healthcare information on an individual's application for a handicap parking permit is exempt from public disclosure. In re Division of Motor Vehicles, ADV PR 99-01.
 - The Driver's Privacy Protection Act prohibits the Division of Motor Vehicles from disclosing any personal information, such as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5 digit zip code), telephone number, and medical or disability information." R.I. Gen. Laws § 27-49-3.1(c)(1); In re Division of Motor Vehicles, ADV PR 99-01.
 - Records relating to an investigation conducted by the Ethics Commission are exempt from public disclosure. R.I. Gen. Laws § 36-14-12(c)(6); Cianci v. Rhode Island Ethics Commission, PR 99-03.
- (T) Judicial bodies are included in the APRA, but only in respect to their administrative function, provided that records kept pursuant to chapter 16 of title 8, the Commission on Judicial Tenure and Discipline, are exempt from disclosure.

- Since court records relating to eviction proceedings do not relate to a court's administrative function, these records are exempt from public disclosure. Info. Center, Inc. v. Spina, PR 97-10.
- (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.
- A library membership list is a public record since the list does not identify a person who requests, checks out, or uses any library materials. In re Greenville Public Library, ADV PR 00-02.
- (V) Printouts from TELE – TEXT devices used by persons 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.
- (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 R.I. Gen. Laws § 9.1.1-6.
2. **The Balancing Test:** If a requested record does not fall within one of the twenty-five (25) exemptions, the requested document should be presumptively considered a public record. Nevertheless, even if the requested document does not fall within one of the twenty-five (25) enumerated exceptions, the requested document may be subject to redaction upon an appropriate balancing test weighing the public interests in disclosure against the privacy interests of the affected individual. Direct Action for Rights and Equality v. Gannon (DARE I), 713 A.2d 218 (R.I. 1998) (see also DARE (II), 819 A.2d 651 (R.I. 2003)); Providence Journal Company v. Kane, 577 A.2d 661 (R.I. 1990).
- A witness'/victim's name may not be automatically redacted from a police report. Instead, a witness'/victim's name may be redacted only if the individual's privacy interest outweighs the public interest in disclosure. This balancing test must be performed on a case-by-case basis and must take into consideration the specific facts of each situation. If a witness/victim requests anonymity, this request should be one factor in favor of redaction. In re Newport Police Department, ADV PR 99-03; In re Narragansett Police Department, ADV PR 99-02.
 - The State Police properly withheld the home address of the Superintendent of the State Police and an Inspector. In this particular case, the privacy interest in the individual law enforcement officer's home address outweighed the public interest. Chappell v. Rhode Island State Police, PR 04-18.

Any reasonably segregable portion of a public record excluded by the APRA 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.* R.I. Gen. Laws § 38-2-3(b).

SETTLEMENT OF LEGAL CLAIMS

Settlement agreements of any legal claims against a governmental entity shall be deemed public records. R.I. Gen. Laws § 38-2-14.

PROCEDURES FOR ACCESS TO PUBLIC RECORDS

The APRA requires a public body to establish *written* procedures regarding access to public records, except that a written request for public records is not required where the documents sought are:

- (a) available pursuant to R.I. Gen. Laws § 42-35-2, the Administrative Procedures Act, **or**
- (b) prepared for or readily available to the public. R.I. Gen. Laws § 38-2-3(d).

These procedures must include, but are not limited to:

- *Identification of a designated public records officer or unit;*
- *How to make a public records request; and*
- *Where a public records request should be made.*

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.

Unless exempt from public disclosure, all records maintained or kept on file by any public body shall be public records and every person or entity shall have the right to inspect and/or to copy those records at such reasonable times as may be determined by the public body. No person shall be denied public records based upon 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.* R.I. Gen. Laws § 38-2-3(a) & (j).

- A public body must allow a person or an entity either to inspect and/or to photocopy public records. A procedure that requires a person or an entity to pay the cost of photocopying documents, and does not permit a person or an entity the opportunity to inspect documents, violates the APRA. Schmidt v. Ashaway Fire District, PR 98-24.
- A city can establish procedures limiting the maximum number of files that an individual can inspect at one time, however, the city may not establish procedures that limit the

public's right to inspect a maximum number of documents in any given day or hour. Burns v. City of Providence Assessor's Office, PR 98-06 (policy limiting access to a maximum of five files per day improper); Coulter v. Town of Cumberland, PR 95-24A (policy limiting access to four files at any one time proper, provided access could be gained to unlimited number of files per day).

- The failure of a town to establish procedures to enable/ensure access to public records was a violation of the Access to Public Records Act. Black v. Barrington Board of Tax Assessment Review et al., PR 05-05.

If a requested public record is not available at the time a request is made (because the record is either in active use or in storage), the custodian of the record must inform the requesting individual of this fact and schedule an appointment for the citizen to examine the document(s) as expeditiously as possible. R.I. Gen. Laws § 38-2-3(f).

- The Budget Committee did not violate the APRA by maintaining copies of its minutes in a locked filing cabinet within Town Hall, provided the minutes were made available to the requesting individual within ten (10) business days. Carroll v. Tiverton Budget Committee, PR 99-11.

The APRA does not require a public body to reorganize, consolidate, or compile data that is not maintained in the form requested at the time the request was made, **except where the records are in an electronic format and the public body would not be unduly burdened in providing such data.** R.I. Gen. Laws § 38-2-3(h).

- The APRA does not require a public body to respond to inquiries with questions or to provide oral/verbal information. Instead, the APRA requires that a public body respond to inquiries for public documents. Graziano v. Office of the Auditor General, PR 98-22; Scotti v. Town of Johnston, PR 06-32.
- The Town did not violate the APRA by failing to permit access to a list of candidates for the position of Police Chief since no list existed. Finnegan v. Town of Scituate, PR 97-02.
- The Police Department did not violate the APRA by failing to compile or to create documents that did not exist. Carrellas v. Portsmouth Police Department, PR 99-12.
- Since information maintained within a computer could be retrieved using only a few keystrokes, a public body would not be unduly burdened in compiling data. DeCristofano v. Town of North Smithfield, PR 00-10.
- Town not required to provide records in a particular computer text format when doing so would unduly burden the public body. Conley v. Town of West Greenwich, PR 00-21.

Any person or entity requesting copies of public records may obtain the copies in any and all media that the public body is capable of providing. Any public body that maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, if requested. Nothing in the APRA is intended to affect the public record status of information merely because it is stored in a computer. R.I. Gen. Laws § 38-2-3(g) and (i).

At the election of the person or entity requesting public records, the public body shall provide copies of the public record electronically, by fax, 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. R.I. Gen. Laws § 38-2-3(k).

ARREST LOGS

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, or within seventy-two (72) hours if the request is made on a weekend or holiday, to the extent such information is known to the public body. This applies only to arrests made within five (5) days prior to the request:

- 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;*
- 9) *Name of the arresting officer unless doing so would identify an undercover officer. R.I. Gen. Laws § 38-2-3.2.*

COST OF COPYING AND/OR INSPECTING PUBLIC RECORDS

The APRA permits a public body to assess charges for inspecting and/or copying public records. A public body may charge:

- (a) a maximum of fifteen cents (\$.15) per page for a document copyable on common business or legal size paper,
- (b) a maximum of fifteen dollars (\$15.00) per hour for search and retrieval, with the first hour free, **and**
- (c) no more than the reasonable actual cost for providing electronic records *or retrieving records from storage where the public body is assessed a retrieval fee.* R.I. Gen. Laws § 38-2-4(a) and (b).

Multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request for purposes of calculating search and retrieval time. R.I. Gen. Laws § 38-2-4(b).

Also, a public body must:

- (a) *upon request*, provide an estimate of the charges assessed,
 - (b) upon request, provide a detailed itemization of the costs for search and retrieval,
 - (c) perform the search and retrieval of public documents within a reasonable amount of time, **and**
 - (d) provide a reduction or waiver of the cost for search and retrieval of public records upon a court order. R.I. Gen. Laws § 38-2-4(c), (d) and (e).
- A public body violated the APRA by charging \$.25 per page for photocopies. Pursuant to the APRA, a public body may not charge more than \$.15 per page, unless otherwise provided for in the Rhode Island General Laws. Diaz v. Tiverton Town Clerk, PR 98-21. See R.I. Gen. Laws § 34-13-9 (copies of recording instruments may be assessed a higher charge).
 - A public body may not charge more than the reasonable actual cost for providing electronic records, such as audiotapes or videotapes. In re Newport Police Department, ADV PR 99-03; Black v. Barrington Board of Tax Assessment Review et al., PR 05-05 (OM 05-04).
 - A public body may not charge more than the reasonable actual cost for providing remote (online) electronic access to land evidence records. In re City of Pawtucket, ADV PR 00-06.
 - A public body may discard public records that are requested, but not retrieved. However, a person or an entity may once again request the same public records and a public body may assess charges only for “documents provided to the public.” A public body may require a person or an entity to prepay for the cost of public records. In re Town of Scituate, ADV PR 99-04.
 - Fire District violated the APRA when it charged \$125/hour for the cost of search and retrieval conducted by its attorney. Gorman v. Coventry Fire District, PR 00-23.
 - A public body may request pre-payment of fees. Schwarz v. Public Utilities Commission, PR 04-11.
 - A public body may charge for the time required to redact/delete information because it is part of the process of retrieving and producing the requested documents. Direct Action for Rights and Equality v. Gannon (II), 819 A.2d 651, 661 (R.I. 2003).

RECORDS DETERMINED TO BE EXEMPT FROM PUBLIC DISCLOSURE AND APPEAL PROCEDURES

The APRA requires that any denial of the right to inspect and/or copy records, *in whole or in part*:

- (a) be made in writing,
- (b) be made within ten (10) business days, except for “good cause” this time period may be extended for an additional twenty (20) business days (extension must be made in writing within the original ten (10) business days),
- (c) state the specific reasons for the denial, **and**
- (d) indicate that an appeal may be sought to the chief administrative officer of the public body, the Department of the Attorney General, or the Superior Court for

the county in which the records are maintained. R.I. Gen. Laws §§38-2-7(a) and 38-2-3(e).

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. R.I. Gen. Laws § 38-2-3(e).

The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request. R.I. Gen. Laws § 38-2-3(d).

- The Board violated the APRA by failing to provide access to the requested documents within ten (10) business days, or otherwise failing to extend for “good cause” the time period to respond for an additional twenty (20) business days. Raymond v. Glendale Board of Fire Wardens, PR 99-09.
- The Town violated the APRA by failing to cite the specific reasons for denying access to the requested records. A statement that the requested document is not a public record, without more, does not comply with the APRA. Nye v. Town of Westerly, PR 95-21.
- The Town violated the APRA by failing to indicate in its letter of denial the procedure for appealing the denial. Young v. Town of Hopkinton, PR 05-10.

Failure to respond to a request to inspect and/or to copy public records within ten (10) business days (or within a total of thirty (30) business days under § 38-2-3(e) if extended for “good cause”) shall be deemed a denial. Any reason not specifically set forth in the denial shall be deemed waived by the public body, except for “good cause” shown. R.I. Gen. Laws § 38-2-7(b).

If a public body receives a request for records that do not exist or that are not within its custody or control, the public body must state in its response that it does not have or maintain the requested records. R.I. Gen. Laws § 38-2-7(c).

REMEDIES AVAILABLE

Any person or entity denied the right to inspect a record of a public body may file a review petition with the chief administrative officer of the public body, who must make a final determination within ten (10) business days of the review petition’s submission. If the chief administrative officer determines that the record is not subject to public disclosure, the person or entity seeking disclosure may file a complaint with the Department of the Attorney General or with the Rhode Island Superior Court of the county where the record is maintained. R.I. Gen. Laws § 38-2-8.

- In order for the Department of the Attorney General to have jurisdiction over an APRA complaint, a person or an entity must: (1) request a specific record from a public body and (2) be denied access to the requested record. The Department of the Attorney General does not respond to requests from citizens for advisory opinions, nor does the

Department of the Attorney General respond to hypothetical inquiries. Schmidt v. Ashaway Fire Association et al., PR 99-21.

- Since an APRA complaint filed with the Department of the Attorney General is the identical issue before the Rhode Island Superior Court, the Department of the Attorney General will not interfere with the judicial process and the public body's responsibilities are subject to the Superior Court's order. Dietz v. Board of Registration for Professional Land Surveyors, PR 99-17.
- The APRA is directed solely toward requiring disclosure by public agencies and does not provide a remedy to person(s) seeking to prevent public disclosure. Rhode Island Federation of Teachers, AFT, AFL-CIO v. Sundlun, 595 A.2d 799 (R.I. 1991).

Nothing within the APRA shall prohibit any individual or entity from retaining legal counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the Superior Court of the county where the record is maintained. R.I. Gen. Laws § 38-2-8(b). The public body has the burden to demonstrate that the record in dispute is not a public record. R.I. Gen. Laws § 38-2-10. If the Superior Court finds that a public body has violated the APRA, the Court:

- *shall order the public body to provide the record(s) at no cost to the prevailing party, and*
- *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 a willful violation, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly committed a violation* R.I. Gen. Laws §§ 38-2-7(b), 38-2-9(d).

CONTINUING ACCESS

All records initially deemed to be public records shall continue to be deemed public records whether or not subsequent court action or investigations are held pertaining to the matters contained in these records. R.I. Gen. Laws § 38-2-13.

- Records that are the subject of an ongoing investigation into possible violations of statute, rule, or regulation where final action has yet to be taken are not exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(P), provided that the requested records would have been deemed public records prior to the commencement of the investigation. In re University of Rhode Island, ADV PR 00-05.

COMPLIANCE

Beginning January 1, 2013, 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 the APRA. R.I. Gen. Laws § 38-2-3.16.

ANSWERING YOUR QUESTIONS

Citations in this manual are to judicial decisions available in law libraries and to Attorney General findings/advisory opinions available at the Department of the Attorney General, 150 South Main Street, and at the State Law Library, 250 Benefit Street, Providence, Rhode Island. Attorney General decisions are also available through the Rhode Island Attorney General's website at <http://www.riag.ri.gov>.

Members of public bodies should direct questions about the Access to Public Records Act to their legal counsel for the public body. Legal counsel to municipal bodies are encouraged to consult with their city or town solicitor. The Department of the Attorney General will only consider requests for advisory opinions concerning proposed action subject to the Access to Public Records Act from counsel to a public body or a city or town solicitor. Legal counsel is requested to allow as much time as possible to permit an answer. The Department of the Attorney General is bound only by formal written opinions and is expressly not bound by informal opinions provided over the telephone.

SAMPLE REQUEST LETTER

Dear (**Records Custodian**):

Pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq., I am requesting access to records, which I believe are public documents. Specifically, I am requesting records relating to (**be as specific as possible about your request**).

In accordance with R.I. Gen. Laws § 38-2-7, (**name of public body**) has ten (10) business days to provide the requested documents or to notify me in writing the specific reasons for denying me access to the requested records. If the exemption you are claiming applies only to a portion of the records that I seek, please delete that portion and provide photocopies of the remainder of the records. See R.I. Gen. Laws § 38-2-3(b). I understand that for "good cause" the ten (10) business day time period may be extended for an additional twenty (20) business days, provided that I am notified of the "good cause" in writing within the original ten (10) business days of my request.

I also agree to pay a maximum of \$.15 per page for the cost of photocopying and a maximum of \$15.00 per hour for search and retrieval, with the first hour being free. Please notify me at the following phone number or address when the requested records are available for pickup.

Thank you for your assistance in this matter.

Sincerely,

Name, address, and telephone number (**optional**)

SAMPLE DENIAL LETTER

Dear **(name of requestor)**:

Thank you for your letter requesting access to **(specify documents requested)**.

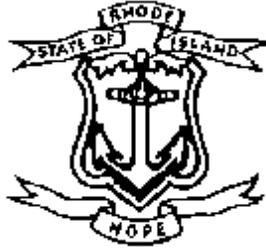
Pursuant to the Access to Public Records Act, the records you have requested (or a portion of the records you have requested) do not constitute public records. Specifically, **(specify documents requested)** are exempt from public disclosure pursuant to **(cite appropriate section of R.I. Gen. Laws § 38-2-2(4)(A)-(Y))**.

In accordance with R.I. Gen. Laws § 38-2-8, you may wish to appeal this decision to **(name and address of the chief administrative officer of the public body)**. You may also wish to file a complaint with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. It is also my understanding that additional information concerning the Access to Public Records Act may be available through the Attorney General's website at www.riag.ri.gov.

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

Sincerely,

Name



PETER F. KILMARTIN
Attorney General
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400

Revised July 2012