State Of Rhode Island And Providence Plantations

Department Of Attorney General

2017 Annual Report

Open Meetings Act And Access To Public Records Act

Attorney General Peter F. Kilmartin

Open Meetings Act

Annual report 2017

**ATTORNEY GENERAL'S ANNUAL REPORT
OF COMPLAINTS RECEIVED PURSUANT TO
RHODE ISLAND GENERAL LAWS SECTION 42-46-1 ET. SEQ.,
THE OPEN MEETINGS ACT**

Rhode Island General Laws Section 42-46-11 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Open Meetings Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. On occasion, the Attorney General will issue one finding or advisory opinion in response to multiple similar complaints or requests for advisory opinions, resulting in a greater discrepancy between complaints received and findings/advisory opinions issued. The Attorney General is pleased to submit the following information concerning the calendar year 2017.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	71
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	35
VIOLATIONS FOUND:	11
WARNINGS ISSUED:	11
LITIGATION INITIATED:	0
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	8
ISSUED	3

VIOLATIONS FOUND/WARNINGS ISSUED

The Attorney General issued warnings in the following cases as a result of having found that they violated the Open Meetings Act:

OM 17-01 Novak v. Coventry Charter Review Commission
OM 17-02 Novak v. Western Coventry Fire District
OM 17-03 Miller, et al. v. Chariho School Committee
OM 17-06 Appolonia v. West Warwick Board of Canvassers
OM 17-08 Esposito, et al. v. Scituate School Committee and Superintendent Search Subcommittee
OM 17-09 Pierson v. Coventry Board of Canvassers and Registration
OM 17-11 Dion v. Central Coventry Fire District
OM 17-14 Avanzato v. North Kingstown Town Council
OM 17-30 Apperson v. South Kingstown School Committee

OM 17-33 Dionne v. Woonsocket City Council
OM 17-35 Clifford, et al. v. North Smithfield Town Council

VIOLATIONS FOUND/LAWSUIT FILED

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Summaries of all findings/written advisory opinions issued are attached hereto.

OPEN MEETINGS ACT FINDINGS – 2017

OM 17-01 **Novak v. Coventry Charter Review Commission**

The OMA requires that the "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." See R.I. Gen. Laws § 42-46-7(b)(1). The Coventry Charter Review Committee violated the OMA when the October 27, 2015 meeting minutes were not made available to the Complainant when he visited the Coventry Town Hall on January 8, 2016. We concluded that the Complainant did not demonstrate that he was aggrieved as a result of his allegation concerning improper notice for the January 7, 2016 meeting as the evidence revealed he attended the meeting at issue. See R.I. Gen. Laws § 42-46-8(a).
VIOLATION FOUND.
Issued February 21, 2017.

OM 17-02 **Novak v. Western Coventry Fire District**

The Fire District violated the OMA when it untimely filed a number of its unofficial and official and/or approved minutes on the Secretary of State's website for a number of its Board of Directors and Standard Administrative Procedures meetings. See R.I. Gen. Laws § 42-46-7(b)(2) and (d). While its failure to do so violated the OMA, we did not find a willful or knowing violation, considering the totality of the circumstances. One of the considerations was that, unlike other public bodies who may extend the time to file their unofficial minutes, a fire district may not extend the timeframe for filing its unofficial minutes. See R.I. Gen. Laws § 42-46-7(b)(2).
VIOLATION FOUND.
Issued February 21, 2017.

OM 17-03 **Miller, et al. v. Chariho School Committee**

Nine complainants filed a thirty-seven page complaint alleging numerous OMA violations committed by the School District. After reviewing all the evidence submitted, the sole violation we found was that the School District took a vote in executive session to amend the executive session minutes of a prior meeting and the vote recorded in the executive session minutes (on the motion to amend) was different than the vote recorded in the open session minutes. If possible, the School District was advised to amend its minutes to reconcile this discrepancy.
VIOLATION FOUND.
Issued March 2, 2017.

OM 17-04 **Bruckner v. Lincoln School Committee**

The Complainant alleged that the School Committee violated the OMA by improperly sharing her correspondence during executive session. The Complainant was unable to attend the meeting in question for unrelated reasons. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002) (Noting that the burden of demonstrating such a grievance is upon the party who seeks to establish standing to object). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant did not demonstrate that she was "in some way disadvantaged or aggrieved" by the executive session discussion, and, as such, had no standing to object. Accordingly, we found no violation.
Issued March 14, 2017.

OM 17-05 **Stranahan v. West Warwick Board of Canvassers**

The Complainant alleged that the BOC violated the OMA when it failed to notice a second BOC meeting on July 20, 2016 and when it posted an insufficient agenda item for the BOC's meeting on August 9, 2016. The Complainant attended both meetings in question. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant did not demonstrate that he was "in some way disadvantaged or aggrieved" by the alleged violations. Indeed, this Department's review of the audio recording of the August 9, 2016 meeting indicated nothing that could be fairly construed to show that the Complainant was unprepared for or unable to respond to the agenda items discussed. As such, the Complainant had no standing to object. Accordingly, we found no violation.
Issued April 3, 2017.

OM 17-06 **Appolonia v. West Warwick Board of Canvassers**

The Complainant alleged that the BOC violated the OMA when it discussed and voted on a matter that was not listed on the meeting's agenda. Specifically, we examined whether the BOC's denial of a

motion for issuance of a subpoena was adequately noticed by the meeting's agenda item "STRANAHAN VS. PADULA HEARING-STATUS." Based on the Rhode Island Supreme Court's decisions in Tanner v. Town of East Greenwich, 880 A.2d 784 (R.I. 2005), Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013), and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education et al., 151 A.3d 301 (R.I. 2016), we found that the agenda item here did not sufficiently specify the nature of the business to be discussed and therefore violated the OMA. We further noted that the BOC's quasi-judicial status did not exempt it from the OMA's requirements and that the BOC's request for flexibility in conducting meetings is already provided for by the OMA. VIOLATION FOUND.
Issued April 3, 2017.

OM 17-07 **Keegan v. Burrillville Town Council/ Silva v. Burrillville Town Council**
The Town Council did not violate the OMA as there was no evidence that a quorum of its members discussed outside the public purview (on June 7, 2016) the disclosure of a press release and/or a Resolution. Rather, the undisputed evidence revealed that the Town Clerk/Town Manager authorized the release of the press release. There was also no evidence that the Town Council discussed the Resolution prior to its June 8, 2016 meeting outside the public purview in violation of the OMA, and in fact, the evidence revealed that this matter was noticed on a prior Town Council agenda. Lastly, the Town Council provided adequate and sufficient public notice for its June 8, 2016 agenda.
Issued April 3, 2017.

OM 17-08 **Esposito, et al. v. Scituate School Committee and Superintendent Search Subcommittee**
Complainants alleged numerous OMA violations. With respect to the sufficiency of an agenda item for the School Committee's meeting, Complainants attended the meeting in question and had the opportunity to voice their concerns on this issue and, accordingly, we found that Complainants were not aggrieved and thus had no standing to object to the agenda. See R.I. Gen. Laws § 42-46-8(a). With respect to the allegations regarding failure to post written notice and meeting minutes for the Search Subcommittee's meeting, we examined whether the Search Subcommittee was a "public body" under the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and

Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the Search Subcommittee's scope of delegated authority. The evidence demonstrated, inter alia, that the Search Subcommittee screened all the applicants for the superintendent position, interviewed candidates, and eliminated from consideration various applicants, ultimately advancing only one candidate to the School Committee. Accordingly, the Search Subcommittee took action, an exercise of authority which is markedly distinguishable from the "informal, strictly advisory" role the entity had taken in Pontarelli, 151 A.3d at 308. As such, we found that the Search Subcommittee is a "public body" subject to the OMA's requirements and, consequently, we found that the Search Subcommittee violated the OMA when it failed to post written notice and meeting minutes for its meeting. See R.I. Gen. Laws §§ 42-46-6(b), 42-46-7(a). However, we found injunctive relief inappropriate and did not find any evidence of a willful and knowing violation.
VIOLATION FOUND.
Issued April 11, 2017.

OM 17-09 **Pierson v. Coventry Board of Canvassers and Registration**
Complainant alleged that the BOC violated the OMA when it failed to timely post its agenda for its September 15, 2016 meeting. While the Complainant attended the meeting, the evidence indicated that the late notice left the Complainant little time to arrange his schedule and that he missed a good portion of the meeting's substance. Accordingly, we found that the Complainant was aggrieved. See R.I. Gen. Laws § 42-46-8(a). Turning to the merits, we found that the drawing of names to determine the ballot order was an "action" over which the BOC has "supervision, control, jurisdiction, or advisory power[,]" and accordingly that a BOC "meeting" was convened on September 15, 2016. See R.I. Gen. Laws § 42-46-2(1). Although we found that the BOC violated the OMA, we noted that the BOC's attempts to rectify its violation by giving notice in writing to each of the candidates who might have been affected by the meeting, including the Complainant, militated against a finding that the BOC willfully or knowing violated the OMA.
VIOLATION FOUND.
Issued April 14, 2017.

OM 17-10 **Nye v. State of Rhode Island**
The Complainant alleged that various meetings were not posted on the Secretary of State's website, but the Complainant readily acknowledged he had no intention of attending all meetings except for a May 3, 2016 meeting. With respect to the May 3, 2016 meeting, the

Complainant read a newspaper article on either the day of the meeting or the day before the meeting indicating that a meeting would be held. For these reasons, we determined that the Complainant was not aggrieved and therefore found no violation. See Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002).
Issued April 14, 2017.

OM 17-11 **Dion v. Central Coventry Fire District**
The Central Coventry Fire District ("Fire District") violated the OMA when it untimely filed three (3) of its meetings minutes on the Secretary of State's website. See R.I. Gen. Laws § 42-46-7(b)(2). With respect to the Complainant's allegation that the minutes for two (2) of its meetings did not reflect the votes of the members of the Fire District, we found no violation. Our review of the evidence presented revealed no meetings were held on those two (2) dates.
VIOLATION FOUND.
Issued April 25, 2017.

OM 17-12 **Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing**
The Complainant alleged that the RICDHH violated the OMA when it failed to timely post meeting minutes on the Secretary of State's website for nine meetings. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, the Complainant provided no indication that he was aggrieved during the time period when the meeting minutes should have been posted but were not. As such, the Complainant had no standing to object. Accordingly, we found no violation.
Issued April 27, 2017.

OM 17-13 **Farley v. Newport Housing Authority and Newport Development Corporation**
The Complainant alleged the Newport Housing Authority and the Newport Development Corporation ("Authority and Corporation") violated the OMA when it did not post notice for its July 14, 2016 meeting. We found no violation since the Complainant did not provide any evidence that a meeting in fact occurred on that date nor did the Complainant provide any evidence to contradict the Authority and Corporation's assertion that a meeting was not held in July. With

respect to the Complainant's allegation that the June 9, 2016 meeting minutes were not posted on the Secretary of State's website, we concluded no violation. The Complainant alleged that the Authority and Corporation, as a quasi-public municipal entity, fell within the purview of R.I. Gen. Laws § 42-46-7(d). Rhode Island General Laws § 42-46-7(d) states, in pertinent part, "[a]ll public bodies with the executive branch of the state government and all state public and quasi-public boards, agencies and corporations * * * shall file a copy of the minutes of all open meetings with the secretary of state for inspection * * * within thirty-five (35) days of the meeting . . .". (Emphases added). As we have noted on previous occasions, this particular provision does not apply to municipal entities. To conclude that municipal entities do not fall within the purview of R.I. Gen. Laws § 42-46-7(d), but that municipal quasi-public entities do fall within that purview would lead to an illogical result and contradict the plain language of the OMA. See Macomber v. Warren Town Council, OM 13-21.
Issued April 28, 2017.

OM 17-14 **Avanzato v. North Kingstown Town Council**
The Town Council Town Manager Search Citizen Panel violated the OMA during its January 20, 2016 meeting when the discussions were not appropriate for executive session. Our review found no discussion concerning the job performance, character, or physical/mental health of any applicants. See R.I. Gen. Laws § 42-46-5(a)(1); Medeiros v. Tiverton Town Council, OM 00-14 (the Town Council violated the OMA by discussing the formation of potential interview questions in executive session since these discussions fall outside R.I. Gen. Laws § 42-46-5(a)(1)); Moon v. East Greenwich Fire District, OM 96-23 (closed session to open job applications was improper). Because we concluded that the executive session discussion was not appropriate for executive session we required the release the January 20, 2016 executive session meeting minutes. No action was taken during this meeting, and accordingly, further injunctive relief was inappropriate.
VIOLATION FOUND.
Issued May 12, 2017.

OM 17-15 **DesMarais v. Manville Fire District**
There was no evidence that the Complainant sought access to minutes that allegedly were not available or not posted in accordance with R.I. Gen. Laws 42-46-7(b)(2) and (d), and based upon this evidence, this

Department determined the Complainant was not aggrieved. We found no violation.
Issued May 12, 2017.

OM 17-16 **Sparks v. Town of Foster**

The Town of Foster ("Town") did not violate the OMA because, based upon the evidence presented, there was no evidence that a quorum of the Town Council members met outside the purview of a properly noticed meeting and discussed matters over which the Town Council had supervision, control, jurisdiction or advisory power. The Complainant did not provide any evidence to contradict the Town Council members' assertions in their affidavits that no such discussions occurred. The Complainant further alleged the Town's Zoning Board violated the OMA during a meeting when it received a letter requesting that an agenda item be continued. The Complainant did not respond or provide any evidence to counter the Town's argument that he was not aggrieved by this alleged violation since he attended the meeting in question. As such, we found that the Complainant lacked standing to bring this claim. Even if we concluded that the Complainant had standing to bring this claim, we have previously noted that a continuance for a meeting is not governed by the OMA. See Pezzi v. Warwick Zoning Board, OM 06-05.
Issued June 16, 2017.

OM 17-17 **Ramos v. Bristol Town Council**

Because the Town Council re-adopted the resolution that it had passed on April 5, 2017, injunctive relief was not an appropriate remedy. Moreover, our review found no evidence of a willful or knowing violation, and indeed, the Complainant did not allege a willful or knowing violation. For these reasons, the complaint was moot.
Issued June 19, 2017.

OM 17-18 **Plunkett v. Westerly School Committee**

The Complainant alleged the Westerly School Committee ("School Committee") violated the OMA when the Chairman of the School Committee read a statement during the public comment section of one of its meeting, yet there was no item on the agenda indicating the statement would be read. Consistent with R.I. Gen. Laws § 42-46-8(a) and the standard established in Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), we concluded that the Complainant did not demonstrate that he was in some way disadvantaged or aggrieved by the School Committee's allegedly

deficient notice. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice. This failure to sufficiently articulate how the alleged deficient posting disadvantaged him individually was fatal to his claim. The Complainant was not aggrieved and therefore had no standing to bring this allegation.
Issued June 21, 2017.

OM 17-19 **Brunetti, et al. v. Town of Johnston**
Complainants alleged numerous OMA violations relating to a January 10, 2017 Town Council meeting. With respect to the alleged defect in the notice for the meeting, we found that several Complainants attended the meeting in question and that no Complainant sufficiently articulated how he or she was aggrieved by the alleged defect. Accordingly, we found that Complainants were not aggrieved. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). With respect to the allegations regarding insufficient venue, we noted that the OMA "does not require a public body to provide unlimited seating." See In re Town of West Warwick, ADV OM 99-02; see also Daniels v. Warwick Long Term Facilities Planning Committee, OM 14-02. The evidence demonstrated that the venue had a capacity of eighty-seven. Additionally, the affidavits submitted by the Town revealed no evidence of preferential treatment with respect to seating, no evidence that the Town knew the attendance would exceed the meeting space until about an hour before the meeting was scheduled to begin, and no evidence that moving the meeting to a larger space was feasible or possible. We simply found nothing in the OMA that required the Town to move its January 10, 2017 meeting beyond its scheduled location under these circumstances. With respect to the allegations that the Mayor conducted a "rolling quorum" with members of the Town Council, we similarly found no violation. Based on the undisputed facts, we found no evidence that the Mayor served as a conduit that connected the three separate communications with Town Council members and therefore found no evidence of any collective discussion that would constitute a "meeting" under the OMA. See Guarino, OM 14-07.
Issued June 30, 2017.

OM 17-20 **Bleczinski v. Warwick School Committee**
The Complainant alleged that the School Committee violated the OMA when it deliberated with its attorney outside of open session. We previously addressed a nearly identical question in In re: Rhode Island

Ethics Commission, ADV OM 00-03. There, we found that public body "members who merely address questions to legal counsel (and receive answers from legal counsel) will not constitute a 'meeting' for purposes of the OMA." Id. Here, consistent with our previous finding, counsel for the School Committee met with the School Committee and answered questions. Based on the uncontroverted evidence, we found no indication that a collective discussion took place and thus found that no "meeting" occurred pursuant to R.I. Gen. Laws § 42-46-2(1). Accordingly, we found no violation.
Issued June 30, 2017.

OM 17-21 **Valley Breeze v. North Smithfield Town Council**
The North Smithfield Town Council did not violate the OMA when it convened into executive session for litigation purposes pursuant to R.I. Gen. Laws 42-46-5(a)(2). A review of the executive session minutes determined that the subject-matter was appropriate for executive session. Also, the Town Council did not violate the OMA when it did not disclose the executive session vote since such disclosure would have jeopardized any strategy, negotiation, or investigation undertaken. See R.I. Gen. Laws 42-46-4(b).
Issued July 5, 2017.

OM 17-22 **Novak v. Western Coventry Fire District**
The Complainant alleged the Fire District untimely filed some of its official and unofficial minutes on the Secretary of State's website. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, this Department found that the Complainant was not an "aggrieved" party and therefore had no standing to bring his complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20; Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12. As such, we found no OMA violation. Since the Complainant was in possession of the requested documents, we need only examine whether the alleged failure to provide such documents represented a willful and knowing, or reckless violation. We responded in the negative.
Issued July 12, 2017.

OM 17-23 **Poulin v. City of Central Falls**

The Complainant alleged the City of Central Falls ("City") violated the OMA when the notice for its May 15, 2017 meeting was not posted within a minimum of forty-eight (48) hours in advance of the meeting. The Complainant also alleged the City voted on the acceptance of all Budget Ordinances for fiscal year 2018, yet the agenda item was not sufficient. The Complainant attended the May 15, 2017 meeting. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a); Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Since the Complainant attended the meeting, she was not aggrieved by the alleged defect in the notice and as such, we found no violation.

Issued August 2, 2017.

OM 17-24 **Grieb v. Aquidneck Island Planning Commission**

This Department received a request for an advisory opinion by the AIPC and two APRA and OMA complaints filed against the AIPC all of which raised the same threshold questions: whether the AIPC was a "public body" under the OMA or the APRA. With respect to the OMA analysis, based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the AIPC's scope of authority, legal status, and independence from governmental entities. The evidence demonstrated that the AIPC is a duly incorporated nonprofit organization that selects its own leadership, establishes its own programs and priorities without consultation, amendment, or review by any municipality, and does not perform delegated public business. Accordingly, we found that the AIPC is not a "public body" under the OMA. See R.I. Gen. Laws § 42-46-2(3). We next considered whether the AIPC is a "public body" under the APRA. Based on Reilly & Olneyville Neighborhood Association v. Providence Department of Planning and Development and/or Providence Redevelopment Agency, PR 09-07B and In re: Newport Public Library, ADV PR 14-04, we looked to whether the AIPC acted "on behalf of and/or in place of any public agency" such that it had entered into an agency-type relationship with a governmental entity. R.I. Gen. Laws § 38-2-2(1). The evidence indicated that the AIPC is a separate and independent entity without an established agency relationship with any governmental entity, having sole and exclusive control over its budget and finances. As

such, we found that AIPC is not a "public body" under the APRA. Therefore, we found no violations.
Issued August 15, 2017.

OM 17-25 **Ahlquist v. Energy Facilities Siting Board**
The Complainant alleged that the EFSB violated the OMA when it denied him entry to a pre-hearing conference. The uncontroverted evidence demonstrated that the pre-hearing conference was only attended by three private attorneys and an attorney for the PUC. Because none of the EFSB members was present for this conference, a "quorum" of the EFSB did not convene and, as such, the OMA is not implicated. See R.I. Gen. Laws § 42-46-2(4). Accordingly, we found no violation.
Issued August 18, 2017.

OM 17-26 **Bassett v. North Smithfield Municipal Building Review Task Force**
Complainant alleged that the NSMBRTF failed to post agendas for two meetings. Because Complainant provided no indication that the failure to post agendas specifically prevented him from attending the meetings, and, instead, suggested that he would not have been able to attend the meetings regardless, we found that Complainant had not met his burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). As such, we found that Complainant was not an "aggrieved" party and therefore had no standing to allege the OMA violation contained in his complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20. Therefore, we found no violation.
Issued August 24, 2017.

OM 17-27 **de Vries v. Scituate Planning Commission**
Complainant alleged that the Commission violated the OMA during its March 21, 2017 meeting when it discussed a topic not included on the agenda. Based on the corroborated affidavit and meeting minutes, we found that the Commission Chairman passed out copies of a letter concerning an item not included on the meeting agenda. However, similar to the circumstances in Waltonen v. West Greenwich Town Council, OM 12-02, no collective discussion or further action took place. Because a quorum of the Commission did not collectively discuss or take action with respect to the letter, we found no violation. We also noted that Complainant's rebuttal arguments were either not properly raised in his Complaint or did not implicate the OMA.
Issued August 25, 2017.

OM 17-28 **<u>Riker v. Northern Rhode Island Collaborative</u>**

The Rhode Island Northern Collaborative is not a "public body" within the "executive branch of state government [or] all state public and quasi-public boards, agencies and corporations, [or] those public bodies set forth in subdivision (b)(2)." R.I. Gen. Laws 42-46-7(d). Accordingly, the failure to post approved and/or official minutes on the Secretary of State's website did not violate R.I. Gen. Laws 42-46-7(d).

Issued September 5, 2017.

OM 17-29 **<u>Desrosiers v. East Providence Board of Assessment</u>**

The Complainant alleged the East Providence Board of Assessment Review's agenda for its December 6, 2016 meeting did not indicate the date, time, and location of the meeting nor was it specific enough to inform the public of the nature of the business to be discussed. In response to this Department's inquiry, the Complainant indicated that he did not attend this meeting because he "didn't understand what was going to be discussed at the meeting." We concluded that the Complainant was not aggrieved with respect to his allegation that the agenda did not include the date, time and location of the meeting and therefore lacked standing to bring that aspect of the complaint. <u>See Graziano v. Rhode Island State Lottery Commission</u>, 810 A.2d 215 (R.I. 2002). With respect to his allegation that the agenda was not specific enough, we found no violation.

Issued September 5, 2017.

OM 17-30 **<u>Apperson v. South Kingstown School Committee</u>**

The South Kingstown School Committee violated the OMA when the members engaged in a "rolling" or "walking" quorum, which occurs when a majority of the members of a public body attain a quorum through a series of one-on-one conversations or interactions. These discussions concerned not only whether a particular member was "willing-to-serve," but also who would be the new Chairperson and Vice-Chairperson of the School Committee. While these discussions occurred over a period of time and through a series of less-than-quorum meetings, in substance and result, they differed very little from the violation we found in <u>The Valley Breeze v. Cumberland Fire District</u>, OM 15-04 ("all members further attest that, albeit briefly, the topic of chairman and vice-chairman was also discussed").

VIOLATION FOUND.

Issued September 13, 2017.

OM 17-31 **Valley Breeze v. Pawtucket City Council Finance Committee**

Complainant alleged that the Committee improperly convened into executive session and failed to post notice for a City Council meeting. We found, consistent with our numerous prior findings, that the Committee's executive session interviews were permissible under R.I. Gen. Laws § 42-46-5(a)(1). With respect to the notice allegation, because Complainant provided no indication that the failure to post notice specifically prevented him from attending the meeting, and, instead, stated that he would not have been able to attend the meeting regardless, we found that Complainant had not met his burden under the Graziano standard. See R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). As such, we found that Complainant was not an "aggrieved" party and therefore had no standing to allege the OMA violation contained in his complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20. Therefore, we found no violation.
Issued October 18, 2017.

OM 17-32 **Flaherty v. North Smithfield Municipal Building Review Task Force**

Complainant alleged that the MBRTF violated the OMA after its July 19, 2017 meeting when it discussed MBRTF business in the parking lot. Although we were presented with conflicting narratives of what transpired in the parking lot on July 19, 2017, we found credible the five-time corroborated account of MBRTF members. Because the evidence failed to establish that a quorum of MBRTF members ever collectively discussed any matter within their supervision, jurisdiction, control, or advisory power, we found no violation.
Issued October 25, 2017.

OM 17-33 **Dionne v. Woonsocket City Council**

The Woonsocket City Council ("City Council") violated the OMA when it amended its agenda at one of its meetings to add an additional item, yet not only discussed this item, but also voted on this additional item. See R.I. Gen. Laws § 42-46-6(b). This Department found no evidence of a willful and knowing violation. We directed the City Council to reconsider and re-vote on the agenda item at a properly posted future meeting.
VIOLATION FOUND.
Issued November 22, 2017.

OM 17-34 **Jones v. Kingston Hill Academy**

The Complainant alleged that the KHA violated the OMA during its April 3, 2017 meeting when it improperly convened into executive

session to discuss the proposed sale of property. Specifically, the Complainant alleged that the KHA property was not "publicly held" pursuant to R.I. Gen. Laws § 42-46-5(a)(5). We found that as a public charter school, the KHA was clearly a public school under state law. See R.I. Gen. Laws § 16-77-2.1 Accordingly, property owned by the KHA is "publicly held." We therefore found no violation.
Issued November 27, 2017.

OM 17-35 **Clifford, et al. v. North Smithfield Town Council**
Complainant alleged that an agenda item on the Town Council's July 17, 2017 meeting failed to sufficiently specify "the nature of the business to be discussed." R.I. Gen. Laws § 42-46-6(b). Consistent with Rhode Island Supreme Court precedent, we found that the agenda items "Adoption of 2017/2018 Budget" and "Method of Tax Collection," provided no indication that an amendment of the budget would be discussed, much less that a $100,000 contingency fund would be considered and voted on. Therefore, the Town Council violated the OMA. We instructed that the Town Council should reconsider and re-vote on the matter discussed at its July 17, 2017 meeting at a properly posted future meeting. See Tanner v. Town of East Greenwich, 880 A.2d 784, 802 (R.I. 2005) ("By scheduling, re-noticing, and re-voting on the challenged appointment, the town council, albeit belatedly, was acting in conformity with both the letter and spirit of the avowed purpose of the OMA – to ensure that 'public business be performed in an open and public manner.'").
VIOLATION FOUND.
Issued December 14, 2017.

OPEN MEETINGS ACT ADVISORY OPINIONS – 2017

ADV OM 17-01 **In Re: Office of the Child Advocate Death Review Panel**
The Rhode Island Child Advocate sought an OMA advisory opinion concerning whether the Death Review Panel ("DRP") is a "public body" subject to the OMA. Based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the DRP's scope of authority, frequency of meetings, and composition of membership. The evidence demonstrated, inter alia, that the DRP consists of a varying set of members who

convene only when a fatality or near fatality of a child occurs and that the membership of the DRP is not defined and work voluntarily. Additionally, the DRP does not implement policy or legislative changes but instead makes recommendations to support prospective changes. These recommendations are published in a report that is made public by statute within thirty days of its completion. As such, based on the specific evidence presented, we found that the DRP was "an informal, strictly advisory committee." Pontarelli, 151 A.3d at 308. Therefore, we opined that the DRP is not a "public body" under the OMA.
Issued February 28, 2017.

ADV OM 17-02 **In Re: Aquidneck Island Planning Commission**

This Department received a request for an advisory opinion by the AIPC and two APRA and OMA complaints filed against the AIPC all of which raised the same threshold questions: whether the AIPC was a "public body" under the OMA or the APRA. With respect to the OMA analysis, based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the AIPC's scope of authority, legal status, and independence from governmental entities. The evidence demonstrated that the AIPC is a duly incorporated nonprofit organization that selects its own leadership, establishes its own programs and priorities without consultation, amendment, or review by any municipality, and does not perform delegated public business. Accordingly, we found that the AIPC is not a "public body" under the OMA. See R.I. Gen. Laws § 42-46-2(3). We next considered whether the AIPC is a "public body" under the APRA. Based on Reilly & Olneyville Neighborhood Association v. Providence Department of Planning and Development and/or Providence Redevelopment Agency, PR 09-07B and In re: Newport Public Library, ADV PR 14-04, we looked to whether the AIPC acted "on behalf of and/or in place of any public agency" such that it had entered into an agency-type relationship with a governmental entity. R.I. Gen. Laws § 38-2-2(1). The evidence indicated that the AIPC is a separate and independent entity without an established agency relationship with any governmental entity, having sole and exclusive control over its budget and finances. As such, we found that AIPC is not a "public body" under the APRA. Therefore, we found no violations.

Issued August 15, 2017.

ADV OM 17-03 **<u>In Re: Amendments to R.I. Gen. Laws § 42-46-7(d)</u>**

Legal counsel for the Town of Burrillville and the Rhode Island Fire Safety Code Board of Appeal & Review sought an OMA advisory opinion concerning the interpretation of the recently amended R.I. Gen. Laws § 42-46-7(d). The amendment provides that "[a]ll public bodies 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[.]" R.I. Gen. Laws § 42-46-7(d). While we sympathized with the precarious position that this amended language places public bodies that meet less than every thirty-five days, we stated that we do not have the authority to unilaterally amend or interpret away clear legislative language. Instead, the resulting problem is a political one, not a legal one, and a remedial solution must come from the General Assembly. *Issued December 7, 2017.*

Access To Public Records Act

Annual Report 2017

ATTORNEY GENERAL'S ANNUAL REPORT OF COMPLAINTS RECEIVED PURSUANT TO RHODE ISLAND GENERAL LAWS SECTION 38-2-1 ET. SEQ., THE ACCESS TO PUBLIC RECORDS ACT

Rhode Island General Laws Section 38-2-15 requires that the Attorney General submit to the Legislature an annual report summarizing the complaints received pursuant to the Access to Public Records Act, including the number of complaints found to be meritorious and the action taken by the Attorney General in response to each complaint. On occasion, the Attorney General will issue one finding or advisory opinion in response to multiple similar complaints or requests for advisory opinions, resulting in a greater discrepancy between complaints received and findings/advisory opinions issued. The Attorney General is pleased to submit the following information concerning the calendar year 2017.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	51
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	57
VIOLATIONS FOUND:	17
WARNINGS ISSUED:	16
LITIGATION INITIATED:	1
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	0
ISSUED:	0
APRA REQUESTS TO THE ATTORNEY GENERAL:	85

VIOLATIONS FOUND/WARNINGS ISSUED

Warnings were issued in the following cases as a result of having found that they violated the Access to Public Records Act:

PR 17-04 Clark v. Glocester Police Department
PR 17-06 Piskunov v. Town of Burrillville
PR 17-09 Thomson v. Town of Johnston
PR 17-11 Moses Afonso Ryan, Ltd. v. City of East Providence
PR 17-12 Pierson v. Coventry Board of Canvassers
PR 17-13 Piskunov v. Town of Glocester

PR 17-14	Hicks v. Rhode Island Commission on the Deaf and Hard of Hearing
PR 17-15	Oliver v. Rhode Island Commission on the Deaf and Hard of Hearing
PR 17-25	Greenbaum v. City of Providence
PR 17-30	TJ v. City of Providence
PR 17-34	Novak v. Western Coventry Fire District
PR 17-42	Vitkevich v. Rhode Island Department of Transportation
PR 17-47	Gannon v. City of Pawtucket
PR 17-51	Harris v. City of Providence
PR 17-55	Hartley v. Coventry Fire District
PR 17-57	Gill v. Tiverton Town Council

VIOLATIONS FOUND/LAWSUIT FILED

PR17-44	Mudge v. Town of North Kingstown

* * *

Summaries of all findings/written advisory opinions issued are attached hereto.

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2016

PR 17-01 **Ryan v. Oakland Mapleville Fire District**

Complainants alleged that the OMFD violated the APRA when it failed to adequately respond to three multi-part APRA requests. The evidence indicated that a number of the APRA requests were not proper requests for documents cognizable under the APRA, but instead interrogatories for which responsive documents had already been provided. See Block v. Block Island Volunteer Fire Department, PR 15-45. The evidence also revealed that for each remaining APRA request the OMFD reasonably and adequately searched for responsive documents and either produced numerous responsive documents or credibly stated, after a reasonable search, that they did not have or maintain responsive documents. See R.I. Gen. Laws §§ 38-2-3(a), (h). We found no evidence that the OMFD improperly withheld any responsive documents. Accordingly, we found no violations.

Issued January 13, 2017.

PR 17-02 **Grasso v. Town of Charlestown**

The Complainant alleged that the Town violated the APRA when it failed to fully respond to his APRA request by disclosing a document containing pagination irregularities that suggested pages were missing. We found no evidence that would lead us to conclude that additional portions of the requested document existed. We emphasized that the Town produced the document in exact manner and format in which it was maintained. Accordingly, we found no violation.

Issued February 07, 2017.

PR 17-03 **Harris v. City of Providence**

The Complainant alleged the City violated the APRA when it produced some documents in response to her APRA request, yet provided additional documents in response to a request filed by another individual that the Complainant claimed was responsive to her APRA request. The Complainant's APRA request sought: "[a]ll logs maintained by the Providence Police Department of all calls received * * *" Upon review of the other individual's request, his request specifically sought "all incident reports and/or calls for service for the entity known as * * *" Having compared the two requests, we found that they were not similar and sought different documents. There was no violation of the APRA.

Issued February 6, 2017.

PR 17-04 **<u>Clark v. Glocester Police Department</u>**

Complainant alleged that the GPD violated the APRA with respect to two separate APRA requests when: (1) it twice failed to specify the reasons for the denial; (2) it twice failed to indicate in writing that no reasonably segregable portion was releasable; (3) it once failed to indicate the procedures for appealing the denial; and (4) it twice withheld documents based on the purpose for which the records were sought. The evidence revealed that both APRA responses cited a specific APRA exemption and thus we concluded that the GPD did specify the reasons for the denial. However, we also found that the GPD twice failed to indicate in writing that no reasonably segregable portion of the requested document was releasable and additionally once failed to indicate the procedures for appealing the denial. We found no evidence that the documents were withheld based on the purpose for which they were sought.
VIOLATION FOUND.
Issued February 24, 2017.

PR 17-05 **<u>Piskunov v. Town of Narragansett</u>**

The Complainant alleged that the Town violated the APRA when it withheld the requested last ten internal affairs reports completed by the Town Police Department. Consistent with <u>Direct Action for Rights and Equality v. Gannon (DARE)</u>, 713 A.2d 218 (R.I. 1998), citizen-initiated complaints were more likely to further the public interest than other kinds of internal affairs reports. Here, the evidence indicated that of the last ten internal affairs reports completed, only three were citizen-initiated complaints and two of those complaints were either withdrawn or not pursued by the complainant. The evidence also revealed that the Complainant failed to articulate any public interest. Accordingly, based upon the undisputed evidence presented, we failed to find any evidence that the balancing scale tipped in favor of public disclosure and, as a result, found no violation.
Issued February 22, 2017.

PR 17-06 **<u>Piskunov v. Town of Burrillville</u>**

The Complainant alleged that the Town violated the APRA when it withheld requested documents and when it failed to indicate the procedures for appealing the denial. The evidence revealed that the Town released the requested documents during the pendency of this matter. We found no evidence of a willful and knowing, or reckless,

violation, however, we concluded that the Town violated the APRA by failing to indicate the procedures for appealing the denial.
VIOLATION FOUND.
Issued February 22, 2017.

PR 17-07 **Harris v. City of Providence**

Complainant alleged that the City violated the APRA when it: (1) redacted handwritten notes on released documents; (2) failed to produce a City's employee's calendar; (3) failed to produce certain payroll documents for a particular City employee; and (4) charged an allegedly excessive fee for search, review, and redaction of the produced documents based on the short elapsed time between pre-payment and production. Based on our in camera review, we found that the redacted handwritten notes were not responsive to the Complainant's APRA request and thus the redaction did not violate the APRA. Additionally, based on the City's uncontroverted affidavits, we found no evidence that the calendar document existed. With respect to the requested payroll documents, we found that the City's search was reasonably calculated to discover all responsive documents. Finally, we found that undisputed evidence demonstrated that the City's charge for search, review, and redaction corresponded to work done before the estimate was sent to the Complainant. Accordingly, we found no violation.
Issued February 24, 2017.

PR 17-08 **J. Brian Day v. City of Pawtucket**

The Pawtucket Police Department did not violate the APRA when it denied a request for the residential address of a person involved in a motor-vehicle accident. The information requested was available through non-APRA avenues, and if a public record under the APRA in this circumstance, the residential address must be a public record under the APRA in all circumstances. No recognized public interest was asserted for disclosure.
Issued February 27, 2017.

PR 17-09 **Thomson v. Town of Johnston**

Complainant alleged that the Town violated the APRA when it produced only the face sheet and not the narratives of the requested internal affairs reports. Based on our prior finding in WPRI v. Woonsocket Police Department, PR 12-17, we found that the request for "the last 10 Internal Affairs reports" should be interpreted to include both the face sheet and their accompanying narratives. Accordingly, we found that the Town violated the APRA when it did

not consider the narratives to be responsive to the APRA request. However, because it was unclear if the Complainant still sought the internal affairs reports, and because the content of the internal affairs reports was not the subject of our review, we left the subsequent determination of whether and in what manner the responsive narrative reports must be disclosed to be made by the Town consistent with the APRA and our finding in Piskunov v. Town of Narragansett, PR 17-05.
VIOLATION FOUND.
Issued March 09, 2017.

PR 17-10 **Farinelli v. City of Pawtucket**
The Complainant alleged that the City violated the APRA when it failed to produce certain documents responsive to her request. Specifically, the APRA request sought the last twelve internal affairs reports and, although the City provided twelve internal affairs reports, the Complainant alleged that other, more recent, internal affairs reports should have been included. The evidence revealed that the Complainant was already in possession of the sought documents and, in some instances, that the sought documents were not responsive to her APRA request. We found no evidence of a willful and knowing, or reckless, violation.
Issued March 09, 2017.

PR 17-11 **Moses Afonso Ryan, Ltd. v. City of East Providence**
The City of East Providence denied the Complainant's APRA request basing its denial on its conclusion that "the documents you requested were from a meeting of individuals which does not constitute an agency or public body as defined by R.I.G.L. §38-2-2." This denial has absolutely no basis in law and other than the conclusory sentence, the City makes no effort in its denial or in its response to this Department to explain the legal basis for this denial. As such, this Department directed that the City respond to the APRA request in a manner consistent with the APRA and this finding, and that the City provide a supplemental response to this Department addressing why the violation that we have found should not be considered a "knowing and willful" or "reckless" violation, subjecting the City to monetary penalties.
VIOLATION FOUND.
Issued April 12, 2017.

PR 17-11B **Moses Afonso Ryan, Ltd. v. City of East Providence**

In Moses Afonso Ryan, Ltd v. City of East Providence, we reviewed the Complainant's Access to Public Records Act ("APRA") complaint against the City of East Providence ("City") and concluded that the City violated the APRA when it improperly denied the Complainant's APRA request. See R.I. Gen. Laws § 38-2-7. The City was allowed to provide an explanation as to why the violation should not be considered knowing and willful, or reckless. See R.I. Gen. Laws § 38-2-9(d). After reviewing the City's supplemental response and the evidence presented, it appeared that the City's decision to deny access was the result of comingling the APRA and the Open Meetings Act, which led to the City's conclusion that the APRA request was not made to a public body. While we rejected this reasoning, we are satisfied that the violation was not willful and knowing, or reckless.
Issued June 22, 2017.

PR 17-12 **Pierson v. Coventry Board of Canvassers**

The Board of Canvassers violated the APRA when it failed to respond to an APRA request within ten (10) business days. This Department rejected the Board of Canvassers' chief argument that the APRA request sought answers to questions or interrogatories, and therefore, fell outside the APRA. The Board of Canvassers was directed to respond to the APRA request.
VIOLATION FOUND.
Issued April 14, 2017.

PR 17-13 **Piskunov v. Town of Glocester**

The Complainant alleged that the Town violated the APRA when it withheld requested documents. During the pendency of this matter, the Town offered to produce the requested documents but conditioned access upon pre-payment. Rhode Island General Laws § 38-2-7(b) provides, in relevant part, that "[a]ll copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner." Since the Town no longer challenges the denial, and because the Town did not produce the requested records in a timely manner, we found that the Town violated R.I. Gen. Laws § 38-2-7(b). Consistent with this finding and with the APRA, this Department directed the Town to produce the requested documents within ten (10) business days of this finding.
VIOLATION FOUND.
Issued April13, 2017.

PR 17-14 **Hicks v. Rhode Island Commission on the Deaf and Hard of Hearing**

Complainant alleged that the RICDHH violated the APRA when it failed to respond to two oral and one written request for documents. Complainant also alleged that the RICDHH failed to maintain written APRA procedures. The undisputed evidence indicated that although the two oral requests were arguably not proper requests pursuant to the APRA, the RICDHH did not have any formal APRA procedures and we therefore treated the oral requests as APRA requests. We also found that the written request was clearly an APRA request as it was labeled as such. The RICDHH's failure to respond to any of these requests violated the APRA. We also found that the RICDHH's failure to maintain written APRA procedures violated the APRA. As such, this Department directed the RICDHH to provide a supplemental response addressing why the violations we found should not be considered "knowing and willful" or "reckless" violations. VIOLATION FOUND.

Issued April 17, 2017.

PR 17-15 **Oliver v. Rhode Island Commission on the Deaf and Hard of Hearing**

The Complainant alleged that the RICDHH violated the APRA when it failed to respond to her email asking for documents. Although we expressed doubts that the email was a cognizable request for documents pursuant to the APRA, the evidence indicated that the RICDHH did not have an APRA policy and, accordingly, we treated Complainant's email as an APRA request. Because the RICDHH did not respond in any capacity to this email we found that the RICDHH violated the APRA, but did not find a willful and knowing, or reckless, violation.

VIOLATION FOUND.

Issued April 17, 2017.

PR 17-16 **Harris v. City of Providence**

The City did not violate the APRA when it exempted from public disclosure a videotape played at a public meeting depicting an assault on a private individual. The Complainant presented no evidence or argument that the public interest would be advanced through disclosure and R.I. Gen. Laws 38-2-2(4)(K)'s mandate that documents submitted at a public meeting are public records and must be disclosed applies only to the categories of documents set forth in R.I. Gen. Laws 38-2-2(4)(K).

Issued April 18, 2017.

PR 17-17 **Harris v. City of Providence**

The Complainant alleged the City violated the APRA when it withheld unfiled deposition transcripts. The City claimed it purchased the transcripts from a third party court reporter and, as such, considered them to be 'trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.' See R.I. Gen. Laws § 38-2-2(4)(B)." We concluded that unfiled deposition transcripts in a civil case are not public records under the APRA based on Federal Rules of Civil Procedure 30(f)(3), (4) and R.I. Superior Court Rule of Civil Procedure 30(f)(2), which govern depositions in civil cases, and on the ruling in Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992), which was approved in The Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I. 2011).

Issued April 18, 2017.

PR 17-18 **Karlsson v. Rhode Island Department of Education**

The Rhode Island Department of Education ("RIDE") did not violate the APRA since the evidence established that RIDE did not receive the Complainant's APRA request. While it was unclear why RIDE did not receive the Complainant's APRA request, the Complainant did not provide any rebuttal to contradict RIDE's assertion. Moreover, RIDE's response once becoming aware of the APRA request – to respond within one day – supported RIDE's position that it was unaware of the Complainant's APRA request prior to this Department's inquiry. Based upon the evidence presented, we could not conclude RIDE violated the APRA.

Issued April 26, 2017.

PR 17-19 **Farinelli v. City of Pawtucket**

The City of Pawtucket did not violate the APRA when it sought (and received) clarification concerning one of four categories in an APRA request. Moreover, a City employee's response to a follow-up inquiry did not constitute a denial on behalf of the City where the City employee did not have "the authority to grant or deny persons or entities access to records." R.I. Gen. Laws § 38-2-3.2.

Issued April 28, 2017.

PR 17-20 **Farinelli v. City of Pawtucket**

The City of Pawtucket did not violate the APRA when it withheld the audio recordings of two telephone calls placed to the Police Department by the complainant wherein the complainant accused a

specific and identifiable person of committing a crime. Applying the balancing test, the identifiable individual maintained significant privacy interests and no cognizable public interest was identified that would be advanced through disclosure.
Issued April 28, 2017.

PR 17-21 **Farinelli v. City of Pawtucket**
The City did not violate the APRA when it withheld disclosure of the "original" police narratives pertaining to a specific and identifiable death determined to be a suicide. While the City had disclosed the modified or updated narrative approximately two years ago, "the fact that 'an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information.'" United States Department of Justice v. Reporters Committee, 489 U.S. 749, 770 (1989). Even assuming that the disclosure would advance some "public interest," the complaint and rebuttal were replete with evidence that disclosure would invade significant privacy interest. Moreover, because the document concerned a specific and identifiable person/incident, it was not susceptible to redaction. Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 559 (R.I. 1989).
Issued April 28, 2017.

PR 17-22 **Farinelli v. City of Pawtucket**
The Complainant challenged the City response that responsive e-mails were "overly redacted" and/or not provided. Of the 68 e-mails that were provided in a redacted manner, 63 of these e-mails were in the Complainant's possession prior to making the instant APRA request. Accordingly, it was unnecessary for us to determine whether the City violate the APRA when it provided redacted e-mails. See Farinelli v. City of Pawtucket, PR 16-27. Having reviewed the remaining e-mails in camera, we determined that these e-mails were exempt under the APRA and/or otherwise within the Complainant's possession prior to making the instant APRA request.
Issued April 28, 2017.

PR 17-23 **Sharp v. Department of Corrections**
The Complainant alleged that the DOC violated the APRA when it did not provide him access to documents responsive to his request for records on the escape of John Gary Robichaud from the ACI. This escape occurred in the early 1970s. Based on our review of the produced documents and the evidence presented, we failed to find any evidence that would lead us to conclude that additional portions of the

requested documents exist within the DOC that are being withheld, or that the DOC search was in anyway inadequate. The Complainant did not present, nor did we find, any evidence to establish that the DOC had additional documents that were responsive to the APRA request that it refused to provide. It was significant that the documents sought were from the early 1970s. Accordingly, based upon our review of the record, we found no violation.
Issued May 10, 2017.

PR 17-24 **Greenbaum v. Providence Police Department**
The denial of internal affairs reports relating to a particular incident did not violate the APRA. The Complainant provided no public interest and the privacy interests of the affected individuals outweighed this non-asserted interest.
Issued May 10, 2017.

PR 17-25 **Greenbaum v. City of Providence**
The City of Providence violated the APRA when its extension provided nearly verbatim the language set forth in R.I. Gen. Laws 38-2-3(e) and was not "particularized to the specific request made." The Complainant took no issue with the fact that the City had "good cause" to assert an extension. Because injunctive relief was inappropriate and because there was no evidence of a willful and knowing, or reckless, violation, this Department took no further action.
VIOLATION FOUND.
Issued May 10, 2017.

PR 17-26 **Nye v. State of Rhode Island**
The Complainant alleged a violation based on the failure to timely respond within ten (10) business days, however, after review, this allegation was determined to be unfounded and a timely response was provided. Moreover, the Complainant alleged that other aspects of the public body's response violated the APRA. We determined that the estimated search and retrieval cost was reasonable and accurately communicated, and that the Complainant's remaining allegations did not violate the APRA.
Issued May 11, 2017.

PR 17-27 **Koutsogiane v. Cumberland Fire District**
The Complainant made an APRA request seeking copies of expenses/costs for medical and dental insurance for all personnel for the months of June, July, and August 2016. Based upon the evidence presented, the Fire District responded with records, but for the months

of May, June, and July, instead of June, July, and August. The Fire District provided the Complainant with copies of the August records after he filed a complaint with this Department. This Department has previously determined it is unnecessary for us to consider whether a public body violated the APRA – and therefore seek injunctive relief – where a complainant receives the subject documents after filing an APRA complaint. See Farinelli v. City of Pawtucket, PR 16-27. Rather, we limit our inquiry to whether the public body willfully and knowing, or recklessly, violated the APRA. We found no such evidence in the instant case.
Issued May 11, 2017.

PR 17-28 **Harris v. City of Providence**
The Complainant alleged the City violated the APRA when it improperly withheld records responsive to her APRA request. The Complainant's APRA request sought administrative and court pleadings and all settlement agreements from January 1, 2010 in which a particular person was the attorney of record. The City timely responded and produced a number of documents. In support of the APRA complaint that the City did not produce all responsive documents, the Complainant submitted copies of documents from three (3) cases where the City was a named defendant. Our review of the docket sheets in those three (3) cases, however, revealed that the particular person at the subject of the APRA request was not listed as the attorney of record in any those cases. This Department has previously held that the failure of a public body to produce records that do not exist or that are not responsive to an APRA request does not violate the APRA. See e.g., Harris v. City of Providence, PR 16-37; see also R.I. Gen. Laws §§ 38-2-3(a), (h). Accordingly, we found no violation.
Issued May 11, 2017.

PR 17-29 **DeWolf v. Town of Coventry**
The Town of Coventry did not violate the APRA when the evidence revealed that although the Complainant did not comply with the Town's APRA procedures, the Town responded in a timely manner. The Complainant's rebuttal did not challenge that her APRA request was not made consistent with the Town's promulgated APRA procedure, and she admitted that she "did not notice [the Town's public records request form] when [she] wrote [her] request." Accordingly, since the APRA request was not made in a manner consistent with the applicable APRA procedures, we find that the Town did not violate the APRA. See Rosenfield v. North Kingstown

School Department, PR 14-02 ("This Department has previously determined that an APRA request must first comport with a public body's APRA policy before we can decide whether a violation has occurred, and we see no reason to depart from the plain language of the APRA and our findings.").
Issued May 12, 2017.

PR 17-30 **TJ v. City of Providence**

The Complainant filed two (2) APRA requests with the City on the same date. With respect to the City's response to one of the APRA requests, the evidence revealed that the City timely responded indicating that it did not maintain the document responsive to that request. We failed to find any evidence that would lead us to conclude that the requested document was maintained by the City, or that the City's search was in anyway inadequate. We found no violation with respect to that allegation. With respect to the other APRA request, we found that the City violated the APRA when its extension provided nearly verbatim the language set forth in R.I. Gen. Laws § 38-2-3(e) and was not "particularized to the specific request made." Because injunctive relief was inappropriate and because there was no evidence of a willful and knowing, or reckless, violation, this Department took no further action.
VIOLATION FOUND.
Issued May 17, 2017.

PR 17-31 **Levitt v. Department of Corrections**

There was no evidence that the DOC unreasonably conducted its search and retrieval, which consisted of two hours, the first hour being free. Because the Complainant did not tender pre-payment, as a matter of law, the DOC could not have denied access. R.I. Gen. Laws § 38-2-7(b). The DOC did deny the Complainant access to what it interpreted as a request for identifiable attendance records, but such records are exempt from disclosure under the APRA. 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 June 14, 2017.

PR 17-32 **Crenshaw v. Community College of Rhode Island**

Complainant alleged that the CCRI violated the APRA when it failed to produce documents responsive to his request. We have previously stated that the APRA governs the public's right to access public documents, but does not mandate or require that public bodies answer

questions. See Gagnon v. City of East Providence, PR 12-23; see also Setera v. City of Providence, PR 95-20. The instant request asked an interrogatory that sought to elicit a narrative answer. Also, the request was not made pursuant to the CCRI's APRA policy and procedures. For these reasons, we found that the request was not a cognizable request under the APRA and, accordingly, found no violation.
Issued June 16, 2017.

PR 17-33 **Greenbaum v. City of Providence**
It was undisputed that we had previously investigated, addressed, and resolved Complainant's prior allegations regarding his January 15, 2016 APRA request in Greenbaum v. Providence Police Department, PR 17-24. Complainant now sought to raise a new allegation of violation regarding the same APRA request, which he failed to previously raise. We noted that the piecemeal filing of separate complaints relating to the same APRA request is discouraged. See Clark v. West Glocester Fire District, PR 14-29, n.1; see also Clark West Glocester Fire District, OM 16-14, PR 16-51. While we did note the possibility that, in some limited situations where a complainant has articulated a sufficient reason for doing so, a complainant may file multiple complaints regarding the same APRA request, we found that here the Complainant failed to articulate any reason for splitting his claim. Accordingly, we declined to further review the matter.
Issued June 19, 2017.

PR 17-34 **Novak v. Western Coventry Fire District**
The Complainant alleged the Fire District untimely filed some of its official and unofficial minutes on the Secretary of State's website. The OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a); see also Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, this Department found that the Complainant was not an "aggrieved" party and therefore had no standing to bring his complaint. See Curt-Hoard v. Woonsocket School Board, OM 14-20; Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12. As such, we found no OMA violation. Since the Complainant was in possession of the requested documents, we need only examine whether the alleged failure to provide such documents represented a willful and knowing, or reckless violation. We responded in the negative.
VIOLATION FOUND.

Issued July 12, 2017.

PR 17-35 **Paiva v. Town of Cumberland**

The Complainant alleged the Town of Cumberland ("Town") violated the APRA when it improperly redacted and denied his APRA request seeking records concerning the death of a third party. In In re: Cumberland Police Department, ADV PR 03-02, this Department concluded that "when a law enforcement agency investigates a complaint and determines that an arrest is not warranted, there exists a strong presumption that records arising out of that investigation fail to meet the threshold requirement established by R.I. Gen. Laws § 38-2-2(4)(i)(D)(c)." Whatever public interest exists in disclosure – and based on these facts and our review of the documents we doubt it is much – the privacy interest outweighs the public interest. We found no violation.

Issued June 23, 2017.

PR 17-36 **DiGregorio v. Town of North Kingstown**

Complainant alleged that the Town violated the APRA when it failed to produce certain documents responsive to his request and failed to explain the denial. This Department has held on numerous occasions that the failure of a public body to produce records that do not exist does not violate the APRA. See Murphy v. City of Providence, PR 15-07. Since no evidence existed that additional documents responsive to Complainant's request other than the document already provided existed at the time of the request, we found no violation. We also found that by indicating that the only document responsive to Complainant's request was the provided document, the Town complied with the APRA. See R.I. Gen. Laws § 38-2-7; see also Smith v. Warwick Public School Department, PR 15-13. For these reasons, we found no violation.

Issued July 10, 2017.

PR 17-37 **Providence Journal v. Department of Administration and Office of Health and Human Services**

Complainant alleged that the DOA and the OHHS violated the APRA when they failed to timely respond to or specifically deny her requests/correspondences. After reviewing the voluminous evidence in this matter, we found that the allegations concerned three interrelated but legally distinct correspondences. Because we found that none of these correspondences were addressed to the DOA, we found no violation with respect to DOA. With respect to the OHHS, we found that the first correspondence was treated as an APRA

request and was tolled by a request for prepayment pursuant to R.I. Gen. Laws § 38-2-7(b). It was undisputed that the Complainant did not tender the prepayment. With respect to the Complainant's second correspondence, we found that the nature of the request - made during roughly ninety seconds of a free-flowing hour-long conversation - was not susceptible to determination by this Department. Since we could not discern the nature of the second request, we could not find that OHHS's response violated the APRA. With respect to the Complainant's third correspondence, assuming that it was an APRA request, we noted that the Complainant filed her Complaint prior to the expiration of the OHHS' time to respond. We accordingly found that Complainant's allegations of violation were not ripe. Therefore, we found no violations. We were also advised - and the Complainant did not contest this representation - that subsequent to the filing of this complaint, the OHHS has provided all requested responsive documents.
Issued July 12, 2017.

PR 17-38 **Sullivan v. City of Newport**

In connection with responding to the instant complaint, the City discovered the requested documents and provided such to the Complainant. Since the requested documents were provided, injunctive or declaratory relief was not appropriate. Moreover, there was no evidence that the City's initial search was inadequate or that the failure to provide the requested documents represented a willful and knowing, or reckless violation. Notably, the City provided access to other requested documents.
Issued August 2, 2017.

PR 17-38B **Sullivan v. City of Newport**

This supplemental finding addressed whether Complainant's rebuttal altered our finding in Sullivan v. City of Newport, PR 17-38. We found that the Complainant's suggestion that the City should have responded in a narrative manner was not governed by the APRA and that the City's failure to do so did not violate the APRA. See Chase v. Department of Corrections, PR 11-36. Additionally, based on the evidence presented, we failed to find any evidence that would lead us to conclude that other responsive documents existed that were being improperly withheld by the City. Instead, we found that the City's search was reasonably calculated to discover all responsive documents. See Nye v. Rhode Island Department of Public Safety, PR 16-46. Accordingly, we found no violation.
Issued November 27, 2017.

PR 17-39 **Conley v. City of East Providence**

The Complainant alleged that the City violated the APRA when it withheld requested police incident reports regarding a specific juvenile individual. We have consistently held that where an arrest has not taken place, there is a presumption that incident reports are exempt from public disclosure, particularly where juveniles are identified. See R.I. Gen. Laws § 38-2-2(4)(D); see also Lassiter v. Pawtucket Police Department, PR 14-18. After weighing the non-asserted public interest in disclosure against any privacy interests, we found that there were significant privacy interests relating to juveniles in the incident reports. Based on our in camera review, we found that these privacy interests could not be adequately protected through redaction. See Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 559 (R.I. 1989) ("Even if all references to proper names were deleted, the principal's identity would still be abundantly clear from the entire context of the report."). Accordingly, we found no violation.
Issued August 15, 2017.

PR 17-40 **Grieb v. Aquidneck Island Planning Commission**

This Department received a request for an advisory opinion by the AIPC and two APRA and OMA complaints filed against the AIPC all of which raised the same threshold questions: whether the AIPC was a "public body" under the OMA or the APRA. With respect to the OMA analysis, based on Solas v. Emergency Hiring Council, 774 A.2d 820 (R.I. 2001) and Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education, 151 A.3d 301 (R.I. 2016), we looked to the AIPC's scope of authority, legal status, and independence from governmental entities. The evidence demonstrated that the AIPC is a duly incorporated nonprofit organization that selects its own leadership, establishes its own programs and priorities without consultation, amendment, or review by any municipality, and does not perform delegated public business. Accordingly, we found that the AIPC is not a "public body" under the OMA. See R.I. Gen. Laws § 42-46-2(3). We next considered whether the AIPC is a "public body" under the APRA. Based on Reilly & Olneyville Neighborhood Association v. Providence Department of Planning and Development and/or Providence Redevelopment Agency, PR 09-07B and In re: Newport Public Library, ADV PR 14-04, we looked to whether the AIPC acted "on behalf of and/or in place of any public agency" such that it had entered into an agency-type relationship with a governmental entity. R.I. Gen. Laws § 38-2-2(1). The evidence

indicated that the AIPC is a separate and independent entity without an established agency relationship with any governmental entity, having sole and exclusive control over its budget and finances. As such, we found that AIPC is not a "public body" under the APRA. Therefore, we found no violations.
Issued August 15, 2017.

PR 17-41 **Ritchotte v. Town of Coventry**

Complainant alleged that the Town violated the APRA when it denied his request for transcripts and/or a recording of a hearing that occurred at the Town Municipal Court. We found that no transcripts existed at the time of the Complainant's request and, accordingly, that the failure of the Town to produce documents that do not exist does not violate the APRA. See R.I. Gen. Laws § 38-2-3(h). We also found that the transcripts and recordings were exempt under R.I. Gen. Laws § 38-2-2(4)(T), which exempts non-administrative judicial records. Because it was undisputed that the Town Municipal Court is a judicial body and that both transcripts and recordings of an official court proceeding are non-administrative records, we found that the Town did not violate the APRA by denying access to the requested records. As such, we found no violations.
Issued August 18, 2017.

PR 17-42 **Vitkevich v. Rhode Island Department of Transportation**

The Complainant alleged that the DOT violated the APRA when it claimed it did not maintain certain records responsive to two requested categories and when it withheld a requested document responsive to a third requested category pursuant to R.I. Gen. Laws § 38-2-2(4)(K) as a "draft." With respect to the first category of requested documents, we found that DOT properly stated that it did not maintain any responsive records. With respect to the second category, we found that the DOT made only conclusory statements that documents did not exist. With respect to the third category, we found that the withheld document did not constitute a "draft" based on DOT's representations and our in camera review of the document. Accordingly, the DOT violated the APRA when it failed to release the requested document. Although we found no willful and knowing, or reckless violation, we directed the DOT to provide the withheld document and to more clearly support its conclusory assertion that documents responsive to the second category did not exist.
VIOLATION FOUND.
Issued September 5, 2017.

PR 17-43 **Riggs v. Coastal Resources Management Council**

The Complainant alleged that the CRMC violated the APRA when it failed to adequately respond to his requests for documents. We found that the Complainant's email to the CRMC's Executive Director was not a valid APRA request because it failed to comply with the CRMC's APRA procedures, contained a mixture of questions and requests incongruous with a valid APRA request, and was insufficiently independent from a prior APRA request made by a third party. We also found that the Complainant's phone call and email with outside legal counsel to the CRMC failed to constitute cognizable APRA requests. We noted that Complainant did not intend these communications to be APRA requests and that the outside legal counsel had no authority "to grant or deny persons or entities access to records." R.I. Gen. Laws § 38-2-3.16; see also Farinelli v. City of Pawtucket, PR 17-19. Accordingly, we found no violation.
Issued September 5, 2017.

PR 17-44 **Mudge v. Town of North Kingstown**

The Town of North Kingstown violated the APRA when it failed to timely respond to the Complainant's APRA request. See R.I. Gen. Laws § 38-2-7. The Town provided no argument or evidence that the Complainant's APRA request did not comply with its APRA procedures. Rather, the Town placed blame on the impending retirement of the Finance Director. Similar was our finding in Chappell v. Town of North Kingstown, PR 11-31, where we previously confronted this issue. Therefore, based on the uncontested evidence, we found that the Town violated the APRA when it failed to respond to the APRA request in a timely manner. We directed the Town to provide a supplemental explanation as to why its failure to respond should not be considered knowing and willful, or reckless.
VIOLATION FOUND.
Issued September 5, 2017.

PR 17-44B **Mudge v. Town of North Kingstown**

After viewing all the evidence presented, this Department determined that there was sufficient evidence to conclude that the Town of North Kingstown recklessly and/or willfully and knowingly violated the APRA when it failed to timely respond to Complainant's APRA request. Accordingly, this Department filed a lawsuit against the Town seeking civil fines. See R.I. Gen. Laws § 38-2-9.
VIOLATION FOUND.
Issued November 21, 2017

PR 17-45 **Cote v. City of Warwick**

The Complainant alleged that the City violated the APRA when its response to his request for "total sick days" used by City fire fighters failed to include information relating to injured on duty time. We noted that "it is the requester's responsibility to frame requests with sufficient particularity to . . . enable the searching agency to determine precisely what records are being requested." Assassination Archives and Research v. Central Intelligence Agency, 720 F. Supp. 217, 219 (D.D.C. 1989) (citations omitted); see also Palazzo v. Rhode Island Senate, PR 11-21. We found that it did not violate the APRA for the City to interpret the request for the "number of total sick days" to mean "sick time" used by City fire fighters and exclude "injured on duty time," particularly where it was undisputed that the City tabulates "sick time" and "injured on duty time" separately.
Issued September 7, 2017.

PR 17-46 **APRA Watch v. City of Providence**

The Complainant alleged that the City violated the APRA when it responded to his APRA request with a six hour "estimate of the amount of time it will take to provide an estimate for the final search, retrieval, review and redaction[.]" We found that this response complied with R.I. Gen. Laws § 38-2-4(b) because it conveyed that it would take an estimated six hours for actual search and retrieval of all responsive documents and that future redaction costs - reasonably anticipated given the nature of requested documents - were not included in the estimate and could be determined only after obtaining the requested documents. We also found that the estimate of six hours did not violate the APRA given the scope of the request. Further, we found that the Complainant's request for a "summary of how the amount was determined" was not akin to a request for a detailed itemization pursuant to R.I. Gen. Laws § 38-2-4(d). Accordingly, we found no violation.
Issued September 8, 2017.

PR 17-47 **Gannon v. City of Pawtucket**

The Complainant alleged that the City violated the APRA when, pursuant to the balancing test, it redacted individuals' names on invoices of temporary contracted workers. We found a public interest through the Complainant's personal knowledge and objective facts indicating that disclosure of the individuals' names was necessary to reveal and shed light on government operations. Under the specific facts of this case, we found only limited privacy interests implicated. Accordingly, the public interest in disclosure outweighed the privacy

interest and, as such, the City violated the APRA when it failed to release the individuals' names on the requested documents. The City was directed to do so.
VIOLATION FOUND.
Issued October 6, 2017.

PR17-48 **Nye v. City of Warwick**
Complainant alleged that the City violated the APRA when it charged prepayment for documents responsive to his APRA request. We found that the City properly charged for matters fairly within the ambit of search and retrieval, as permitted by R.I. Gen. Laws § 38-2-4(b). We also noted that the City permissibly allocated one half-hour of search and retrieval time to a prior APRA request, which was made within the same thirty-day period as the instant APRA request. See R.I. Gen. Laws § 38-2-4(b). Because it was undisputed that the Complainant never paid the requested prepayment, and because we found that the prepayment was for "costs properly charged[,]" the City did not violate the APRA when it withheld documents while it was awaiting receipt of prepayment. See R.I. Gen. Laws § 38-2-7(b). Accordingly, we found no violation.
Issued October 11, 2017.

PR 17-49 **Marrapese v. City of Cranston**
The Complainant alleged the Cranston Police Department violated the APRA when it improperly denied his request for a specific incident report that did not culminate in an arrest. The APRA request implicated R.I. Gen. Laws § 38-2-2(4)(D)(c), which exempts from public disclosure records maintained by law enforcement agencies for criminal law enforcement purposes where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." There was some privacy interest concerning the individuals named in this incident report. We determined that the privacy interest outweighs the public interest in disclosure. See Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998). The Complainant cited no "public interest" in disclosure and even a minimal privacy interest outweighs a non-existent "public interest." Additionally, since the report related to a specific and identifiable incident, it was not susceptible to redaction. See Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 559 (R.I. 1989)
Issued October 12, 2017.

PR 17-50 **Starnino v. Narragansett Police Department**

The Complainant alleged the Narragansett Police Department violated the APRA when it improperly denied his request for a specific incident report that did not culminate in an arrest. The APRA request implicated R.I. Gen. Laws § 38-2-2(4)(D)(c), which exempts from public disclosure records maintained by law enforcement agencies for criminal law enforcement purposes where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." There was some privacy interest concerning the individuals named in this incident report. We determined that the privacy interest outweighs the public interest in disclosure. See Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998). The Complainant cited no "public interest" in disclosure and even a minimal privacy interest outweighs a non-existent "public interest." Additionally, since the report related to a specific and identifiable incident, it was not susceptible to redaction. See Pawtucket Teachers Alliance v. Brady, 556 A.2d 556, 559 (R.I. 1989)

Issued October 12, 2017.

PR 17-51 **Harris v. City of Providence**

The City violated the APRA when it provided an estimate for search and retrieval that this Department determined was not reasonably calculated and violated the APRA. The City was directed to perform the search and retrieval and provide the responsive (but redacted where appropriate) documents without charge. See R.I. Gen. Laws 38-§ 2-7(b).

VIOLATION FOUND

Issued October 18, 2017.

PR 17-52 **Valley Breeze v. City of Woonsocket**

Complainant alleged that the City violated the APRA when it failed to respond to his APRA request. The uncontroverted evidence indicated that the City had timely requested an extension. Similar to Koutsogiane v. Cumberland Fire District, PR 16-40, while the Complainant had received the City's extension prior to filing the instant complaint - and thus could have raised the sufficiency of the extension in his complaint - the complaint took no issue with the City's exercise of an extension. As such, we found that the City did not violate the APRA because it did timely respond to the Complainant's APRA request, namely by asserting an extension.

Issued October 18, 2017.

PR 17-53 **Harris v. City of Providence**

The Complainant alleged the City violated the APRA when it improperly denied her APRA request wherein she sought fourteen (14) calendar dates, all of which were prospective in nature, of one particular City Solicitor. We concluded these calendar entries would show precisely where and when this Solicitor could be located, potentially placing him in a vulnerable position. Additionally, the prospective calendars are also exempt pursuant to R.I. Gen. Laws § 38-2-2(4)(K), which exempts in relevant part, "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products." The requested prospective calendars were subject to change due to cancellations, additions, and other changes. We concluded that the calendars related to future dates were exempt pursuant to Exemption (K).

Issued October 19, 2017.

PR 17-54 **Cote v. City of Warwick**

The Complainant alleged that the City of Warwick violated the APRA when, after he paid the fee associated with his APRA request, the City informed him it would take an additional five (5) to seven (7) days to produce the copies. The Complainant alleged that period of time was unreasonable. The Deputy City Clerk indicated in her affidavit that her duties extended beyond processing and tracking public records requests made to the City, and this particular request required her to contact the Fire Department to obtain the requested information. We find nothing to support the Complainant's averment that the five to seven business estimate – which in actuality the City responded to on the third business day – violated the APRA.

Issued October 19, 2017.

PR 17-55 **Hartley v. Coventry Fire District**

The Complainant alleged that the Fire District violated the APRA when it withheld a tape recording of a public meeting pursuant to R.I. Gen. Laws § 38-2-2(4)(K) as a "draft[.]" Because the tape recording contained no mental impressions and did not otherwise fall within Exemption (K), we found that the recording did not constitute a "draft[.]" We also did not find the Fire District's policy arguments persuasive. Accordingly, we found that the Fire District violated the APRA when it failed to release the tape recording. However, we did not find a willful and knowing, or reckless violation. The Fire District was directed to disclose the tape recording.

VIOLATION FOUND.

Issued October 19, 2017.

PR 17-56 **Lavallee v. Rhode Island Commerce Corporation**

The Complainant alleged the Rhode Island Commerce Corporation ("Corporation") violated the APRA when its pre-payment estimate was unreasonable. This Department concluded that the Corporation's response to the APRA request, as well as the affidavit submitted by the Corporation, conclusively established that the pre-payment fee charged by the Corporation complied with R.I. Gen. Laws § 38-2-4(b). The Corporation's response conveyed that it would take an estimated sixteen (16) hours to search and retrieve all responsive documents and an estimated four (4) hours to review and redact responsive documents. The APRA expressly permits the Corporation to charge for pre-payment for time spent searching, retrieving and redacting responsive documents. See R.I. Gen. Laws § 38-2-4(b). See APRA Watch v. City of Providence, PR 17-46; Nye v. City of Warwick, PR 17-48.

Issued, December 14, 2017.

PR 17-57 **Gill v. Tiverton Town Council**

The Complainant alleged that the Tiverton Town Council violated the APRA when it claimed it did not maintain or possess the document she requested, namely a statement that Councilman Lebeau referred to at the July 10, 2017 Town Council meeting. The narrow issue presented for our consideration is whether a document maintained by a single member of the Town Council - which has not been shared with the Town Council - falls within the ambit of the APRA. While we acknowledged that Mr. Lebeau may have been in actual possession of the requested document and not the Town Council, we have not been directed to any authority (or representation) by the Town Council that Mr. Lebeau, by himself, is subject to the APRA and we have no reason to believe the General Assembly intended to allow documents to fall into a legal abyss in situations similar to this one. Accordingly, we found the Town Council violated the APRA and we directed Mr. Lebeau and/or the Town Council to provide the Complainant with a copy of the document within ten (10) business days of this finding. See also Anderson v. Little Compton School Department and School Committee, PR 15-56.

VIOLATION FOUND

Issued December 21, 2017.