

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF ATTORNEY GENERAL**



**2012 ANNUAL REPORT
OPEN MEETINGS ACT
AND
ACCESS TO PUBLIC RECORDS ACT
ATTORNEY GENERAL PETER F. KILMARTIN**

OPEN MEETINGS ACT



ANNUAL REPORT 2012

**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. The Attorney General is pleased to submit the following information concerning the calendar year 2012.

STATISTICS

OPEN MEETINGS ACT COMPLAINTS RECEIVED:	36
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	41
VIOLATIONS FOUND:	18
WARNINGS ISSUED:	15
LITIGATION INITIATED:	3
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	5
ISSUED:	2

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 12-02	<u>Waltonen v. West Greenwich Town Council</u>
OM 12-03	<u>Knight v. Pawtucket School Committee</u>
OM 12-06	<u>Finlay v. Town of Cumberland</u>
OM 12-07	<u>Reilly v. Providence Economic Development Partnership, Inc.</u>
OM 12-08	<u>Beagan v. Albion Fire District</u>
OM 12-09	<u>DesMarais v. Manville Fire Department, Board of Wardens</u>
OM 12-10	<u>Auclair v. Manville Fire District</u>
OM 12-11	<u>Novak v. Western Coventry Fire District</u>
OM 12-13	<u>DesMarais v. Manville Fire District</u>
OM 12-22	<u>Novak v. Western Coventry Fire District</u>
OM 12-27	<u>Langseth v. Warwick City Council Airport Litigation Committee</u>
OM 12-28	<u>ACLU v. Woonsocket School Department</u>
OM12-33	<u>Taylor v. Providence Housing Authority Board of Commissioners</u>

OM12-38 Novak v. Western Coventry Fire District Standard Administrative Procedures Committee

OM12-39 Novak v. Western Coventry Fire District Board of Directors and Standard Administrative Procedures Committee

VIOLATIONS FOUND/LAWSUIT FILED

OM 12-24 DesMarais v. Manville Fire District

OM12-30 Satchell v. West Warwick Town Council and School Committee

OM12-32 Kerwin v. Rhode Island Student Loan Authority

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

OPEN MEETINGS ACT FINDINGS - 2012

- OM 12-01** **Cote v. Warwick City Council**
The City Council did not violate the OMA since it properly recorded in its minutes a vote by individual members as required by R.I. Gen. Laws § 42-46-7(a)(3).
Issued January 4, 2012.
- OM 12-02** **Waltonen v. West Greenwich Town Council**
The Town Council did not violate the OMA because there was no evidence of discussions or actions among a quorum of the Town Council. The Town Council also did not violate the OMA since there was no evidence that members of the Town Council discussed town business outside the purview of the public. The Town Council violated the OMA by not making a statement specifically indicating that an employee had been notified that his job performance would be discussed in executive session and that this statement was omitted from the minutes of the meeting. See R.I. Gen. Laws § 42-46-5(a)(1).
VIOLATION FOUND.
Issued January 6, 2012.
- OM 12-03** **Knigh t v. Pawtucket School Committee**
A public body must disclose all votes taken in executive session but a public body need not disclose a vote during the time period in which the disclosure of the vote would “jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” The School Committee, during its April 12, 2011 executive session, voted to extend a firm offer to the Pawtucket Teachers’ Alliance for a collective bargaining agreement. Once that offer was accepted and the School Committee voted on the final contract in public at its April 25, 2011 meeting, any strategy, negotiation or investigation discussed during executive session was no longer in jeopardy and the School Committee’s failure to report out the vote at the April 25, 2011 meeting was a violation of the OMA.
VIOLATION FOUND.
Issued January 9, 2012.
- OM 12-04** **Lambi v. Cumberland Hill Fire District**
The Cumberland Hill Fire District did not violate the OMA since there was no evidence that members of the Fire District met to

discuss an agenda item or any other public business outside the public purview.

January 25, 2012.

OM 12-05 Block v. Rhode Island Board of Elections

Complainant alleged that the Board of Elections violated the OMA during meetings in February 2010 and April 2010. Since the complaint was filed with this Department in November 2011, well after the expiration of the statute of limitations set forth in R.I. Gen. Laws § 42-46-8(b), this Department declined to review the complaint.

Issued February 13, 2012.

OM 12-06 Finlay v. Town of Cumberland

The Committee at issue was formed by the Mayor of the Town of Cumberland and its membership consists of the Mayor, members of two different Cumberland fire districts, members of the Town Council and members of the public to study the consolidation of fire services into a single provider. Although the Town submits the Committee's function is advisory, Solas v. Emergency Hiring Council, 774 A.2d 820, 825 (R.I. 2001) held that a public body that performs an advisory role falls within the OMA. The Committee's failure to comply with the requirements of the OMA was a violation.

VIOLATION FOUND.

Issued February 16, 2012.

OM 12-06B Finlay v. Town of Cumberland

The Town requested that this Department reconsider our prior finding in Finlay v. Town of Cumberland, OM 12-06. The Town's supplemental response did not change this Department's conclusion that the Committee at issue is a public body as that term is defined in the OMA. As such, its failure to comply with the OMA was a violation.

Issued April 23, 2012.

OM 12-07 Reilly v. Providence Economic Development Partnership, Inc.

The Providence Economic Development Partnership, Inc. ("PEDP") is the primary economic development policy making body of the City of Providence and its members are appointed by the Mayor of Providence. The PEDP's assets and liabilities are listed on the City of Providence's annual report. Based upon the evidence presented, the business of the PEDP is inextricably intertwined with that of the

City of Providence. As such, the PEDP is a subdivision of municipal government and its failure to post its agendas with the Secretary of State is a violation of the OMA.

VIOLATION FOUND.

Issued February 16, 2012.

OM 12-08 Beagan v. Albion Fire District

The Fire District violated the OMA by failing to articulate in its open call, in its open session minutes, and in its agenda, a statement specifying the nature of the business to be discussed in executive session. The Fire District also violated the OMA by failing to record in its open session minutes that the affected person received notice in accordance with R.I. Gen. Laws § 42-46-5(a)(1).

VIOLATION FOUND.

Issued February 16, 2012.

OM 12-09 DesMarais v. Manville Fire Department, Board of Wardens

The Board violated the OMA by posting its annual notice of its regularly scheduled meetings after its first regularly scheduled meeting was held. The Board violated the OMA when its May 11, 2011 meeting agenda failed to state the date, time and location of the meeting and the date the agenda was posted. The Board did not violate the OMA when it did not convene into executive session during some meetings despite executive sessions being listed on the agenda as there was no evidence to conclude the agendas were misleading. The Board did not violate the OMA when it failed to file and transmit its meeting minutes to the Secretary of State as there was no evidence the Board met the criteria of R.I. Gen. Laws § 42-46-7(d) & (e). The Board violated the OMA when it failed to indicate in its open session minutes of December 15, 2010 and January 19, 2011 that certain Board members were present or absent. The Board did not violate R.I. Gen. Laws § 42-46-7(a)(3) with a recorded vote of "all in favor" as that sufficiently informs the public of the "record by individual members of any vote taken" to indicate that all present members voted unanimously. The Board violated the OMA during its March 11, 2011 meeting when the Board failed to disclose an executive session vote upon returning to open session. The Board violated the APRA when it refused to provide documents requested via email as the Board's policy concerning email requests was unclear.

VIOLATION FOUND.

Issued March 1, 2012.

OM 12-10 **Auclair v. Manville Fire District**

The Manville Fire District violated the OMA when it failed to disclose a vote taken in executive session and when its agenda provided insufficient information to advise the public of the nature of the business to be discussed. Because the APRA request did not comply with the Fire District's written procedures, the Fire District did not violate the APRA when it did not timely comply with the request.

VIOLATION FOUND.

Issued March 1, 2012.

OM 12-11 **Novak v. Western Coventry Fire District**

The Fire District violated the OMA when it listed "anticipated litigation" on its July 7, 2011 executive session agenda, yet the lawsuit had already been filed. In accordance with our finding in Graziano v. R.I. Lottery Commission, OM 99-06, the case name should have been included on the agenda. The Fire District did not violate the OMA with respect to the August 24, 2011 and September 7, 2011 executive sessions as they were properly advertised. The Fire District violated the OMA with its September 7, 2011 executive session agenda because a number of topics in addition to the agenda items were discussed. This Department has held that when more than one matter is discussed under one or more of the topics found in R.I. Gen. Laws § 42-46-5, each matter must be noticed on the agenda. See Perry v. Coventry (Anthony) Fire District, OM 02-15. The Fire District did not violate the OMA when its agendas for the September 7, 2011, September 24, 2011, October 29, 2011, November 9, 2011, December 1, 2011 and December 10, 2011 meetings were listed on the Secretary of State's website as "Annual Meetings" as opposed to regular or special meetings because there was no evidence that the advertisement was designed to mislead the public or that the Complainant was aggrieved by this alleged error. Graziano v. R.I. State Lottery Commission, 810 A.2d 215 (R.I. 2002).

VIOLATION FOUND.

Issued March 6, 2012.

OM 12-12 **Costantino v. Smithfield School Committee**

Due to the statute of limitations, we declined to review whether the School Committee improperly convened into executive session on April 21, 2008 as the complaint was received by this Department on October 21, 2011. See R.I. Gen. Laws § 42-46-8(b). We concluded the School Committee did not violate the APRA when it refused to

provide sealed executive session meeting minutes of April 21, 2008 as properly sealed minutes are not public records. See R.I. Gen. Laws § 38-2-2(5)(i)(J).

Issued March 9, 2012.

OM 12-13 **DesMarais v. Manville Fire District**

The Manville Fire District violated the OMA when it held its November 9, 2011 open meeting at a place within the Manville fire station that was inaccessible to persons with disabilities. See R.I. Gen. Laws § 42-46-13(c). The Fire District shall have ten (10) business days to respond to this Department's inquiry concerning whether the violation found was willful and knowing in light of our finding in DesMarais v. Manville Fire District, OM 11-31.

VIOLATION FOUND.

Issued March 16, 2012.

OM 12-13B **DesMarais v. Manville Fire District**

This Department concluded the Manville Fire District violated the OMA in DesMarais v. Manville Fire District, OM 12-13, by holding its November 9, 2011 meeting at a location that was not accessible to persons with disabilities in violation of R.I. Gen. Laws § 42-46-13. While the evidence suggests that a willful or knowing violation may have occurred, a lawsuit has already been filed in Superior Court on Mr. DesMarais' behalf for the meeting at issue in this finding. As such, we decline to file a lawsuit with respect to this meeting.

Issued July 5, 2012.

OM 12-14 **Clapp v. Newport City Council**

The Newport City Council did not violate the OMA as the May 25, 2011 and the December 14, 2011 meeting agendas properly advised the nature of the business to be discussed.

Issued March 19, 2012.

OM 12-15 **Cook v. Tiverton Town Council**

The Tiverton Town Council did not violate the OMA when it discussed the way the Town Administrator handled media relations during an executive session when it was noticed as a discussion of the Town Administrator's job performance. Moreover, the evidence demonstrated that the Town Administrator unilaterally changed the manner in which media inquiries were

handled and did not do so at the express request of the Town Council.

Issued April 2, 2012.

OM 12-16 Montgomery v. New Shoreham Town Council

The Town Council did not violate the OMA since its agenda for its October 3, 2011 meeting adequately informed the public of the nature of the business to be discussed.

Issued April 4, 2012.

OM 12-17 Murphy v. North Smithfield Town Council

The Town Council did not violate the OMA since its December 5, 2011 executive session meeting agenda adequately informed the public of the nature of the business to be discussed in executive session.

Issued April 9, 2012.

OM 12-18 Murphy v. North Smithfield Town Council

The Town Council did not violate the OMA since its agenda for the December 19, 2011 executive session meeting adequately informed the public of the nature of the business to be discussed in executive session.

Issued April 9, 2012.

OM 12-19 Maloney v. North Kingstown Planning Commission

Complainant alleged that the North Kingstown Planning Commission violated the OMA during its May 17, 2011 meeting. Since the complaint was filed with this Department in January 2012, after the expiration of the statute of limitations set forth in R.I. Gen. Laws § 42-46-8(b), this Department declined to review the complaint.

Issued April 19, 2012.

OM 12-20 Albro v. West Greenwich Town Council

Complainant alleged that the Town Council violated the OMA when her employment status, which was not listed on the agenda, was mentioned during the meeting within the context of a properly noticed agenda item. This Department found that her job performance was mentioned only as a passing reference, not as part of a discussion, and therefore, the absence of public notice did not violate the OMA.

Issued April 25, 2012.

- OM 12-21** **Mooney v. New Shoreham Town Council**
The Town Council did not violate the OMA because its agenda for its October 3, 2011 meeting adequately informed the public of the nature of the business to be discussed. See also Montgomery v. New Shoreham Town Council, OM 12-16.
Issued May 7, 2012.
- OM 12-22** **Novak v. Western Coventry Fire District**
The Fire District did not violate the APRA as the evidence showed the Fire District responded to Complainant's July 25, 2011 APRA request by mail despite the fact that Complainant did not receive it. The Fire District violated the APRA by failing to respond to Complainant's September 9, 2011 and November 2, 2011 APRA requests in accordance with R.I. Gen. Laws § 38-2-7. The Fire District violated the OMA by failing to make available to the public a record of all votes taken for its August 24, 2011 meeting, listing how each member voted on each issue. R.I. Gen. Laws § 42-46-7(b).
VIOLATION FOUND.
Issued May 10, 2012.
- OM 12-23** **Murphy v. North Smithfield Town Council**
The Town Council did not violate the OMA since its agenda for the March 5, 2012 meeting adequately informed the public of the nature of the business to be discussed in executive session.
Issued June 8, 2012.
- OM 12-24** **DesMarais v. Manville Fire District**
The Manville Fire District violated the OMA when it held its December 14, 2011, January 11, 2012 and February 8, 2012 meetings at a location that was not accessible for persons with disabilities in violation of R.I. Gen. Laws § 42-46-13. Our prior findings make clear that the Fire District was well aware of its obligation to hold its meetings in a handicapped accessible location and yet it continues to disregard this requirement. As such, this Department will file a lawsuit against the Manville Fire District in Superior Court seeking injunctive and monetary relief.
VIOLATION FOUND.
LAWSUIT FILED.
Issued July 5, 2012.

- OM 12-25 **Moniz v. Tiverton Zoning Board of Review**
The Tiverton Zoning Board of Review did not violate the OMA when its agenda indicated that it would consider a variance request for a “garage,” rather than a variance request for a “barn.”
Issued July 5, 2012.
- OM 12-26 **Waltonen v. West Greenwich Town Council**
The West Greenwich Town Council (“Town Council”) did not violate the APRA when it provided a redacted copy of a letter requested through an APRA request as the redactions were limited to information regarding the identity of a juvenile and is not public because public disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(5)(i)(D)(c). See also Direct Action for Rights and Equality v. Gannon, 712 A.2d 218 (R.I. 1998) (balancing test). The Town Council did not violate the OMA because no evidence has been presented that a quorum of the Town Council met to discuss and/or act upon approving an invitation to bid for computer software outside of a publicly held meeting. R.I. Gen. Laws § 42-46-2(a).
Issued July 10, 2012.
- OM 12-27 **Langseth v. Warwick City Council Airport Litigation Committee**
The Warwick City Council Airport Litigation Committee violated the OMA in its failure to articulate an open call prior to convening into executive session. Because the open session minutes contained “a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed,” no further action was necessary.
VIOLATION FOUND.
Issued August 16, 2012.
- OM 12-28 **ACLU v. Woonsocket School Department**
The School Department violated the OMA when it failed to timely provide minutes pursuant to R.I. Gen. Laws § 42-46-7(b). This Department did not, however, find a willful or knowing violation.
VIOLATION FOUND.
Issued August 27, 2012.
- OM 12-29 **Kurland et al., v. Providence Community Action Program**
The Providence Community Action Program (“ProCAP”) is not a “public body” as defined by the OMA, and therefore, ProCAP did not violate the OMA when it excluded Complainants from its

December 14, 2011 meeting. The factors considered, *inter alia*, were ProCAP was established and formed as a non-profit corporation and not through any governmental action, the membership and composition of ProCAP is governed by federal law and the employees of ProCAP are not government employees.

Issued September 7, 2012.

OM12-30 **Satchell v. West Warwick Town Council and School Committee**

The West Warwick Town Council and School Committee violated the OMA when it convened a so-called emergency meeting on June 4, 2012. We concluded that no "immediate action" was needed to address an "unexpected occurrence" to "protect the public." R.I. Gen. Laws § 42-46-6(c). There was also no evidence presented that either entity affirmatively voted to convene an emergency meeting, stated and recorded in the open session minutes why the matter had to be addressed in less than forty-eight (48) hours, or posted notice as soon as practicable, all in violation of R.I. Gen. Laws § 42-46-6(c). The Town Council and the School Committee were allowed ten (10) business days to respond to this Department's inquiry concerning whether the violations found were willful or knowing. A supplemental finding to follow.

VIOLATION FOUND.

Issued September 17, 2012.

OM12-30B **Satchell v. West Warwick Town Council and School Committee**

For the reasons discussed in Satchell v. West Warwick Town Council and School Committee, OM 12-30, released September 17, 2012, this Department concluded that the West Warwick Town Council ("Town Council") and the West Warwick School Committee ("School Committee") violated the OMA when it held an emergency meeting in executive session on June 4, 2012 at 2:00 PM in violation of R.I. Gen. Laws § 42-46-6(c). This Department allowed the Town Council and School Committee ten (10) business days to respond on the issue of whether the violation was willful and knowing pursuant to R.I. Gen. Laws § 42-46-8(d). Based upon the evidence presented, the School Committee's attendance at the June 4, 2012 meeting was not a willful or knowing violation of the OMA. There has, however, been no evidence put forth that supports the Town Council's conclusion that the meeting rose to the level of an emergency nor that the seven (7) minutes notice was "as soon as practicable." R.I. Gen. Laws § 42-46-6(c). The Town Council's alternative argument that the June 4, 2012 meeting was a regular meeting and not an emergency meeting, falls far short of

the forty-eight (48) hours notice required by the OMA. The Town Council, by its own admission, realized the meeting had not been properly posted, yet nonetheless convened the meeting. We conclude the Town Council willfully or knowingly violated the OMA. Accordingly, this Department will file a lawsuit against the Town Council seeking civil fines.

LAWSUIT FILED.

Issued November 30, 2012.

OM12-31 Knight v. Pawtucket School Committee

The School Committee did not violate the OMA as it properly disclosed in the open session minutes the individual votes taken in its March 13, 2012 executive session. See R.I. Gen. Laws § 42-46-4(b). The School Committee did not violate the OMA as the agendas for its March 13, 2012 executive session meeting and the March 20, 2012 special meeting sufficiently informed the public of the nature of the business to be discussed.

Issued September 25, 2012.

OM12-32 Kerwin v. Rhode Island Student Loan Authority

The Student Loan Authority (“Authority”) violated the OMA when it posted notice on the Secretary of State’s website on June 25, 2012 for a meeting convened on June 26, 2012 in violation of R.I. Gen. Laws § 42-46-6(b). This Department is seeking additional information from the Student Loan Authority to determine if the violation is willful or knowing, which would subject the Authority to civil fines.

VIOLATION FOUND.

Issued October 2, 2012.

OM12-32B Kerwin v. Rhode Island Student Loan Authority

This finding supplements Kerwin v. Rhode Island Student Loan Authority, OM 12-32. This Department finds that the Rhode Island Student Loan Authority (“Authority”) willfully or knowingly violated the Open Meetings Act when the Authority chose to hold a meeting on June 26, 2012 after posting public notice of the meeting on the Secretary of State’s website less than forty-eight (48) hours before the meeting, in violation of Rhode Island General Laws § 42-46-6(b).

LAWSUIT FILED.

Issued December 13, 2012.

- OM12-33** **Taylor v. Providence Housing Authority Board of Commissioners**
Although the Board properly amended its agenda during its June 28, 2012 meeting to add an additional agenda item, it violated the OMA when it did not simply discuss the item but voted on the additional agenda item. R.I. Gen. Laws § 42-46-6(b). The Board's actions of suspending agenda items and taking an agenda item out of order was not a violation of the OMA.
VIOLATION FOUND.
Issued October 5, 2012.
- OM12-34** **Tomlins v. City of Cranston**
The City of Cranston did not violate the OMA as there was no evidence presented that a "public body" held a "meeting" as those terms are defined by the OMA.
Issued October 24, 2012.
- OM12-35** **Mudge v. North Kingstown School Committee**
The Complainant, a member of the School Committee, filed a complaint alleging numerous violations. This Department concluded that, *inter alia*, there was insufficient evidence to determine that the School Committee failed to articulate an open call, there was no evidence that a quorum of the School Committee discussed public business outside the public purview, and that no executive session vote was taken, and accordingly, the School Committee did not violate the OMA when it did not disclose a vote that was not taken. This Department has no jurisdiction to review alleged violations of the School Committee's rules, policies, or practices, or alleged violations of Roberts Rules of Order.
Issued October 24, 2012.
- OM12-36** **Boss v. Woonsocket Sick Leave Pool Board of Governors**
Based upon the facts presented, this Department determined that the Woonsocket Sick Leave Pool Board of Governors is not a public body and therefore not subject to the Open Meetings Act.
Issued November 14, 2012.
- OM12-37** **Laccinole v. Town of Narragansett**
Complaint raised numerous allegations including that members of the Town Council met outside the public purview to discuss terminating the Town Manager and/or the appointment of an interim Town Manager. Based upon the evidence presented, which included affidavits and submitted documentary evidence, we found no evidence to support this allegation. The Town Council

also did not violate the OMA when it posted its May 31, 2012 meeting on notice one minute short of forty-eight (48) hours from the scheduled start of the meeting since the evidence demonstrated that the meeting was actually convened more than forty-eight (48) hours from the actual start of the meeting. There was also no evidence that the Town Council discussed non-agenda topics during a September 27, 2011 executive session.
Issued November 15, 2012.

OM12-38 **Novak v. Western Coventry Fire District Standard Administrative Procedures Committee**

The Western Coventry Fire District Standard Administrative Procedures Committee (SAP Committee) violated the OMA when the agenda for its August 9, 2012 meeting posted on August 5, 2012 incorrectly listed the date of the meeting as being July 11, 2012. The SAP Committee violated the OMA when it failed to indicate the date the notice was posted.
VIOLATION FOUND.
Issued November 29, 2012.

OM12-39 **Novak v. Western Coventry Fire District Board of Directors and Standard Administrative Procedures Committee**

The Western Coventry Fire District Board of Directors (“BOD”) did not violate the OMA when it included the incorrect day of the week for its March 20, 2012 meeting on its agenda since the agenda and the Secretary of State’s webpage indicated the correct date. The Western Coventry Fire District Standard Administrative Procedures Committee (SAP Committee) did not violate the OMA when it included the incorrect day of the week for its June 13, 2012 meeting on its agenda since the agenda and the Secretary of State’s webpage indicated the correct date. The BOD and the SAP Committee did violate the OMA by failing to indicate the date the notices were posted.
VIOLATION FOUND.
Issued November 29, 2012.

OM 12-40 **Brien v. Woonsocket City Council**

The City Council properly held an executive session pursuant to Rhode Island General Laws § 42-46-5(a)(2).
Issued November 30, 2012.

OM 12-41 **Collette v. Charlestown Revision Advisory Committee**

The OMA does not require a town committee to post minutes on its town website, and thus the Advisory Committee did not violate the OMA.

Issued December 14, 2012.

OPEN MEETINGS ACT
ADVISORY OPINIONS - 2012

ADV OM 12-01 **In Re Pojac Point Fire District**

The Fire District's Annual Meeting is not subject to the Open Meetings Act because a meeting of Qualified Electors, who have control over all issues raised, discussed, and voted upon at the meeting, "cannot be other than highly public." See Pine v. McGreavy, 687 A.2d 1244, 1245 (R.I. 1997).

Issued June 14, 2012.

ADV OM 12-02 **In Re Westerly School Committee**

The OMA does not apply when less than a quorum of School Committee members discusses School Committee business outside of a School Committee meeting. The OMA may be implicated, however, if members of the School Committee engage in electronic communication to discuss School Committee business outside of a School Committee meeting. Whether such a discussion violates the OMA becomes a fact-specific inquiry that can only be determined after a factual record has been developed.

Issued October 18, 2012.

ACCESS TO PUBLIC RECORDS ACT



ANNUAL REPORT 2012

**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. The Attorney General is pleased to submit the following information concerning the calendar year 2012.

STATISTICS

ACCESS TO PUBLIC RECORDS ACT COMPLAINTS RECEIVED:	42
FINDINGS ISSUED BY THE ATTORNEY GENERAL:	34
VIOLATIONS FOUND:	19
WARNINGS ISSUED:	19
LITIGATION INITIATED:	0
WRITTEN ADVISORY OPINIONS:	
REQUESTS RECEIVED:	3
ISSUED:	2

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 12-02	<u>Quirk v. Town of North Providence</u>
PR 12-05	<u>DesMarais v. Manville Fire Department, Board of Wardens</u>
PR 12-09	<u>McBurney v. City of Pawtucket</u>
PR 12-11	<u>Murphy v. Town of North Smithfield</u>
PR 12-12	<u>Gagnon v. East Providence School Committee</u>
PR 12-13	<u>Campbell v. Town of Tiverton</u>
PR 12-14	<u>Novak v. Western Coventry Fire District</u>
PR 12-15	<u>AVCORR v. Central Falls Detention Facility Center</u>
PR 12-16	<u>Conservation Law Foundation v. DOA</u>
PR 12-17	<u>WPRI v. Woonsocket Police Department</u>
PR 12-18	<u>Costa v. Town of Scituate</u>
PR 12-20	<u>Smith v. Warwick Public Schools</u>
PR 12-22	<u>Finnegan v. Scituate Police Pension Board</u>

PR 12-26 Collette v. Department of Children, Youth and Families
PR 12-27 Block v. Bristol/Warren Regional Public School District & Johnston
Public Schools
PR 12-28 Marcello v. Scituate Police Pension Board
PR 12-29 Finnegan v. Scituate Police Pension Board
PR 12-30 Diomanes v. City of Newport
PR 12-34 Manfredi v. Providence Housing Authority

VIOLATIONS FOUND/LAWSUIT FILED

None

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

ACCESS TO PUBLIC RECORDS ACT FINDINGS - 2012

- PR 12-01** **Livingston v. Rhode Island Family Court**
The Rhode Island Family Court did not violate the APRA when it denied the Complainant's request for personal access to the Court's computer system to review requested electronic files because the APRA does not require that a requestor be provided actual computer access. See R.I. Gen. Laws § 38-2-3(e). This Department also determined that the Rhode Island Family Court did not violate the APRA when it denied the Complainant's request to search, carte blanche, its hardcopy and electronic records, especially because those records were unredacted and potentially contained information exempt from public disclosure under the APRA.
Issued January 5, 2012.
- PR 12-02** **Quirk v. Town of North Providence**
The Town of North Providence violated the APRA by failing to respond to an APRA request within ten (10) business days. The Town was advised to respond to this Department's inquiry concerning whether the failure to timely respond constituted a willful or knowing violation in light of this and prior violations of the APRA.
VIOLATION FOUND.
Issued January 26, 2012.
- PR12-02B** **Quirk v. Town of North Providence**
In Quirk v. Town of North Providence, PR 12-02, released January 26, 2012, this Department concluded the Town violated the APRA by failing to respond to Complainant's APRA request dated November 8, 2011. This supplemental finding concludes the Town's actions did not amount to a willful or knowing violation because, based upon the evidence presented, the Town's violation was the result of a clerical error and because the Town has since complied with the November 8, 2011 APRA request.
Issued July 11, 2012.
- PR 12-03** **Eikeland v. Newport Police Department**
The Police Department did not violate the APRA as there was no evidence presented that the Police Department withheld or refused to produce responsive records.
Issued January 30, 2012.

- PR12-04** **Common Cause v. RI Board of Elections**
The Board of Elections did not violate the APRA by failing to provide access to ballots from the November 2010 election because R.I. Gen. Laws § 17-19-39.1 prohibits such access absent a vote by the Board of Elections or a court order. Accordingly, the requested documents were not public records.
Issued February 29, 2012.
- PR 12-05** **DesMarais v. Manville Fire Department, Board of Wardens**
The Board violated the APRA when it refused to provide documents requested via email since the Board's policy concerning email requests was unclear.
VIOLATION FOUND.
Issued March 1, 2012.
- PR 12-06** **Auclair v. Manville Fire District**
Since the APRA request did not comply with the Fire District's written procedures, the Fire District did not violate the APRA when it did not timely comply with the request.
Issued March 1, 2012.
- PR 12-07** **McBurney v. Lime Rock Fire District**
Consistent with prior findings, the Department of Attorney General declined to review this complaint (all prior parts had been withdrawn) because it raised issues identical to issues pending in Superior Court. Specifically, although the remaining issue was not pending in Superior Court, the Superior Court lawsuit did raise other issues relating to the same APRA request and sought the same relief, *i.e.*, access to the requested documents. Because both the pending complaint and the Superior Court lawsuit sought access to the requested documents, this Department yielded to the Superior Court's jurisdiction.
Issued March 6, 2012.
- PR 12-08** **Costantino v. Smithfield School Committee**
The School Committee did not violate the APRA when it refused to provide sealed executive session meeting minutes of April 21, 2008 as properly sealed minutes are not public records. See R.I. Gen. Laws § 38-2-2(5)(i)(J).
Issued March 9, 2012.

- PR 12-09** **McBurney v. City of Pawtucket**
The City violated the APRA when it failed to disclose or exempt an October 2010 memorandum. Based upon the evidence presented, the Department was unable to determine when or how the October 2010 memorandum was disclosed to a third party, and therefore, could not determine whether the attorney work product privilege was waived. Since the Complainant already had a copy of the October 2010 memorandum, the waiver issue was moot.
VIOLATION FOUND.
Issued April 2, 2012.
- PR 12-10** **Rodriguez v. East Providence Police Department**
The East Providence Police Department did not violate the APRA when it was unable to locate a requested document. The evidence demonstrated that the Police Department's search, although unsuccessful, was reasonably calculated to discover the requested document.
Issued April 4, 2012.
- PR 12-11** **Murphy v. Town of North Smithfield**
The Town violated the APRA when it refused to provide access to certain documents but provided no explanation why those documents were exempt from disclosure. The Town also violated the APRA when it refused to provide access to certain documents, claiming attorney/client privilege, yet the evidence revealed those documents were disclosed to third parties.
VIOLATION FOUND.
Issued April 9, 2012.
- PR 12-12** **Gagnon v. East Providence School Committee**
The School Committee violated the APRA when it only partially responded to Complainant's APRA request. The School Committee did not violate the APRA when it failed to respond to Complainant's questions because a public body's APRA obligation does not extend to answering questions.
VIOLATION FOUND.
Issued May 7, 2012.
- PR 12-13** **Campbell v. Town of Tiverton**
The Town violated the APRA by providing a written representation instead of providing Complainant with the right to inspect and/or copy the requested billing statements for legal fees

(subject to the exemption found in R.I. Gen. Laws § 38-2-2(5)(i)(A)(I)).

VIOLATION FOUND.

Issued May 7, 2012.

PR 12-14 **Novak v. Western Coventry Fire District**

The Fire District did not violate the APRA since the evidence showed the Fire District responded to Complainant's July 25, 2011 APRA request by mail despite the fact that Complainant did not receive it. The Fire District violated the APRA by failing to respond to Complainant's September 9, 2011 and November 2, 2011 APRA requests in accordance with R.I. Gen. Laws § 38-2-7.

VIOLATION FOUND.

Issued May 10, 2012.

PR 12-15 **AVCORR v. Central Falls Detention Facility Center**

The Central Falls Detention Facility Center ("CFDFC") violated the APRA when it failed to respond in some capacity within ten (10) business days to AVCORR Management, LLC's ("AVCORR") APRA request. See R.I. Gen. Laws § 38-2-7. The CFDFC did not violate the APRA when it failed to produce the requested document because the evidence revealed the document was the subject of discovery in pending litigation and that AVCORR was in possession of the document through this discovery. As such, this Department was not the appropriate forum to determine whether the document was a public record. See Horton v. Portsmouth Police Department, PR 06-27; Zendran v. Providence Police Department, PR 06-30.

VIOLATION FOUND.

Issued May 23, 2012.

PR 12-16 **Conservation Law Foundation v. DOA**

The Department of Administration ("DOA") violated the APRA when it did not timely respond to Complainant's APRA request under R.I. Gen. Laws § 38-2-7. No evidence was presented to show that the request did not comply with the DOA's policies and procedures for submitting public records requests. The violation, however, was not knowing and willful.

VIOLATION FOUND.

Issued June 8, 2012.

- PR 12-17** **WPRI v. Woonsocket Police Department**
The Police Department violated the APRA when it: 1) initially denied WPRI's request for an initial arrest report, and 2) failed to provide the Complainant with the initial narrative report. The Police Department did not violate the APRA when it identified reasons for denying the initial narrative report sufficient to comply with R.I. Gen. Laws § 38-2-7(a).
VIOLATION FOUND.
Issued June 14, 2012.
- PR 12-18** **Costa v. Town of Scituate**
The Town violated the APRA by failing to respond in a timely manner.
VIOLATION FOUND.
Issued July 5, 2012.
- PR 12-19** **Waltonen v. West Greenwich Town Council**
The West Greenwich Town Council ("Town Council") did not violate the APRA when it provided a redacted copy of a letter requested through an APRA request as the redactions were limited to information regarding the identity of a juvenile and is not public because public disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." R.I. Gen. Laws § 38-2-2(5)(i)(D)(c). See also Direct Action for Rights and Equality v. Gannon, 712 A.2d 218 (R.I. 1998) (balancing test); R.I. Gen. Laws § 38-2-2(5)(i)(A)(I). The Town Council did not violate the OMA because no evidence has been presented that a quorum of the Town Council met to discuss and/or act upon approving an invitation to bid for computer software outside of a publicly held meeting. R.I. Gen. Laws § 42-46-2(a).
Issued July 10, 2012.
- PR 12-20** **Smith v. Warwick Public Schools**
The WPS violated the APRA by failing to respond to the request in a timely manner and by providing a compilation of information, rather than providing the actual source documents responsive to the request. The WPS was instructed to provide the Complainant with the actual responsive source documents.
VIOLATION FOUND.
Issued July 24, 2012.

- PR 12-21** **DaPonte v. City of Pawtucket**
The City of Pawtucket ("City") did not violate the APRA because the evidence revealed that the City provided a response within ten (10) business days from receipt of the request.
Issued August 23, 2012.
- PR 12-22** **Finnegan v. Scituate Police Pension Board**
The Board violated the APRA when it: 1) failed to keep minutes on file for five (5) of the Board's meetings over the course of 1998 and 1999 and 2) withheld requested records of pension payments concerning two public employees. See R.I. Gen. Laws §§ 38-2-3(b) and 38-2-2(5)(i)(A)(I). The Board did, however, timely respond to the APRA request. See R.I. Gen. Laws § 38-2-7. The Board also properly charged a search and retrieval fee pursuant to R.I. Gen. Laws § 38-2-4(b).
VIOLATION FOUND.
Issued August 24, 2012.
- PR 12-23** **Gagnon v. City of East Providence**
The City of East Providence did not violate the APRA in its responses. The APRA requires that public bodies provide responsive documents, and not answers to questions. Taken as a whole, the Complainant sought answers to questions and not documents.
Issued September 4, 2012.
- PR 12-24** **Boston Herald v. Economic Development Corporation**
The Economic Development Corporation ("EDC") did not violate the APRA because no evidence had been presented that the EDC has more documents responsive to the APRA request than it has already produced. Moreover, the EDC's need for the additional twenty (20) business days to comply with the APRA request due to the extensiveness of its files and the other APRA requests filed near the time of Complainant's APRA request constituted good cause. See R.I. Gen. Laws § 38-2-7(b).
Issued September 7, 2012.
- PR 12-25** **Newport Daily News v. Department of Public Safety**
The Department of Public Safety ("DPS") did not violate the Access to Public Records Act ("APRA") when it withheld the names of three police officers on scene and the 911 recording. Further, the

DPS timely responded to the APRA request pursuant to R.I. Gen. Laws § 38-2-7 and thus did not violate the APRA.
September 13, 2012.

PR12-26 **Collette v. Department of Children, Youth and Families**
The Department of Children, Youth and Families (“DCYF”) violated the APRA when it failed to respond to Complainant’s May 25, 2012 APRA request within ten (10) business days.
VIOLATION FOUND.
September 17, 2012.

PR12-27 **Block v. Bristol/Warren Regional Public School District & Johnston Public Schools**
The Bristol/Warren Regional Public School District and the Johnston Public Schools violated the APRA when they failed to respond to Complainant’s April 12, 2012 APRA request within ten (10) business days. See R.I. Gen. Laws § 38-2-7.
VIOLATION FOUND.
September 17, 2012.

PR12-28 **Marcello v. Scituate Police Pension Board**
The Scituate Police Pension Board (“Board”) violated the APRA when it failed to respond to complainant’s July 13, 2012 APRA request within ten (10) business days. See R.I. Gen. Laws § 38-2-7. This Department issued our finding in Costa v. Town of Scituate, PR 12-18, on July 5, 2012, eight (8) day prior to the instant APRA request, wherein we concluded the Town of Scituate violated the APRA when it failed to timely respond to an APRA request to the Board. In the instant case, the Board was allowed ten (10) business days to respond to this Department’s inquiry concerning whether the violation found was willful and knowing. A supplemental finding will follow.
VIOLATION FOUND.
September 17, 2012.

PR 12-29 **Finnegan v. Scituate Police Pension Board**
The Board violated the APRA when it failed to timely respond to Complainant’s APRA request in violation of R.I. Gen. Laws § 38-2-7.
VIOLATION FOUND.
Issued September 26, 2012.

- PR 12-30** **Diomanes v. City of Newport**
The City was obligated to respond to the Complainant's records request within ten (10) business days, either by producing responsive documents; denying the request, in writing, citing the applicable exemption and the appeals process; or by extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. The City violated the APRA when it failed to respond to Complainant's August 3, 2012 request within ten (10) business days.
VIOLATION FOUND.
Issued September 27, 2012.
- PR 12-31** **Pitochelli v. Town of Johnston**
The Town did not violate the APRA because the evidence presented revealed that the Town timely responded to the Complainant's APRA request.
Issued November 5, 2012.
- PR 12-32** **Laccinole v. Town of Narragansett**
Complaint raised numerous allegations including that members of the Town Council met outside the public purview to discuss terminating the Town Manager and/or the appointment of an interim Town Manager. Based upon the evidence presented, which included affidavits and submitted documentary evidence, we found no evidence to support this allegation. The Town Council also did not violate the OMA when it posted its May 31, 2012 meeting on notice one minute short of forty-eight (48) hours from the scheduled start of the meeting since the evidence demonstrated that the meeting was actually convened more than forty-eight (48) hours from the actual start of the meeting. There was also no evidence that the Town Council discussed non-agenda topics during a September 27, 2011 executive session.
Issued November 15, 2012.
- PR 12-33** **Clifford v. North Smithfield School Department**
This Department determined that the School Department's response to the Complainant's APRA request was proper under the APRA and therefore the School Department did not violate the APRA.
Issued December 4, 2012.
- PR 12-34** **Manfredi v. Providence Housing Authority**
The Providence Housing Authority violated the APRA when it failed to respond to the Complainant's APRA request in a manner

consistent with the APRA. The Housing Authority's response failed to state the "specific reasons for the denial" and failed to identify exempt documents. R.I. Gen. Laws § 38-2-7(a). The Providence Housing Authority also failed to provide some responsive documents.

VIOLATION FOUND.

Issued December 18, 2012.

ACCESS TO PUBLIC RECORDS ACT
ADVISORY OPINIONS - 2012

ADV PR 12-01

In re: Woonsocket Teacher Guild, AFT, AFLCIO, Local 951

This Department opines that the Woonsocket Sick Leave Pool Board of Governors is not an "agency" or "public body" as defined under the Access to Public Records Act and thus not subject to the Act's provisions.

Issued November 14, 2012.

ADV PR 12-02

In Re: Rhode Island Airport Corporation

The disclosure of names and resumes of identifiable unsuccessful applicants for the position at issue are not public records because the disclosure would constitute a "clearly unwarranted invasion of personal privacy." This Department does not reach the issue of whether the resumes of unsuccessful applicants could be redacted to protect an individual's privacy interest.

Issued November 30, 2012.