

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

RHODE ISLAND

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE
OPEN RECORDS AND MEETINGS LAWS IN
RHODE ISLAND

Prepared by:
Joseph V. Cavanagh, Jr., Esq.
Karen A. Pelczarski, Esq.
Staci L. Sawyer, Esq.
Mary Cavanagh Dunn, Esq.
BLISH & CAVANAGH
Commerce Center
30 Exchange Terrace
Providence, Rhode Island 02903
(401) 831-8900



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Previously Titled
Tapping Officials' Secrets

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Lucy A. Dalglish, Executive Director

EDITORS

Gregg Leslie, Legal Defense Director
Mark Caramanica, Freedom of Information Director

ASSISTANT EDITORS

Christine Beckett, Jack Nelson Legal Fellow
Aaron Mackey
Emily Peterson

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

Prepared by:

Joseph V. Cavanagh, Jr., Esq.
 Karen A. Pelczarski, Esq.
 Staci L. Sawyer, Esq.
 Mary Cavanagh Dunn, Esq.
 BLISH & CAVANAGH
 Commerce Center
 30 Exchange Terrace
 Providence, Rhode Island 02903
 (401) 831-8900

FOREWORD

Open Records. Rhode Island enacted its open records statute, the Access to Public Records Act (“APRA”), R.I. Gen. Laws §§ 38-2-1 *et seq.*, in 1979, making it the forty-ninth state to pass such legislation. The APRA was substantially amended in 1991 and 1998.

Prior to the passage of the APRA, the common law gave a right of inspection of public records to only those persons who “ha[d] an interest therein which was such as would enable them to maintain or defend an action for which the document or record sought could furnish evidence or necessary information.” *Daluz v. Hawksley*, 116 R.I. 49, 351 A.2d 820 (1976).

The preamble of the APRA supplies a clear statement of its legislative intent. It reads:

The public’s right to access to public records and the individual’s right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy. R.I. Gen. Laws § 38-2-1 (1998).

In *Providence Journal Co. v. Sundlun*, 616 A.2d 1131 (R.I. 1992), the court held that the underlying policy of the Act favors the free flow and disclosure of information to the public. However, the legislature does not intend to empower the press and the public with carte blanche to demand all records held by public agencies.

Open Meetings. The Rhode Island Open Meetings Law (“OML”), R.I. Gen. Laws §§ 42-46-1 *et seq.*, was enacted in 1976. The public policy of the OML is set forth in its preamble. It provides:

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

Open Records**I. STATUTE -- BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

The APRA is unlimited as to who may request to inspect or copy public records. “Every person or entity” may make such request. R.I. Gen. Laws § 38-2-3(a) (1998).

2. Purpose of request.

There is no limitation on the purpose for which a request for records may be made. R.I. Gen. Laws § 38-2-3. A public record cannot be withheld based on the purpose for which the public records was sought. R.I. Gen. Laws § 38-2-3(h).

3. Use of records.

The use of public records is restricted. Information from public records may not be used “to obtain commercial advantage over the party furnishing that information to the public body”. R.I. Gen. Laws § 38-2-6. In addition to any civil liability, the APRA imposes maximum criminal sanctions of a \$500 fine and/or one year imprisonment for knowing and willful violation of this section. *Id.* Although this statute also expressly bars using information from public records “to solicit for commercial purposes”, that provision of the statute has been held to be unconstitutional and unenforceable. *See Rhode Island Ass’n. of Realtors, Inc. v. Whitehouse*, 199 F.3d 26 (D.R.I. 1999).

B. Whose records are and are not subject to the act?

The APRA is broad in application. Records of agencies or public bodies are subject to the APRA. An “agency” or “public body” shall mean any: “executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any [public authority], or any other public or private agency, person partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.” R.I. Gen. Laws § 38-2-2(1) (1999).

1. Executive branch.

Subject to the APRA, without limit as to function. Executive bodies, any office or authority thereof, and any person acting on behalf of any public agency are expressly included. R.I. Gen. Laws § 38-2-2(1) (1999)

a. Records of the executives themselves.

Presumably covered subject to the APRA.

b. Records of certain but not all functions.

Presumably covered subject to the APRA.

2. Legislative bodies.

Subject to the APRA. R.I. Gen. Laws § 38-2-2(1) (1999)

3. Courts.

“Judicial bodies are included . . . only in respect to their administrative function. R.I. Gen. Laws § 38-2-2(4)(i)(T) (1999).

4. Nongovernmental bodies.**a. Bodies receiving public funds or benefits.**

Not expressly included, but likely falls within the scope of the APRA as constituting a public or private agency, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency. R.I. Gen. Laws § 38-2-2(1) (1999).

b. Bodies whose members include governmental officials.

Not expressly included, but likely falls within the scope of the APRA as constituting a public or private agency, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency. R.I. Gen. Laws § 38-2-2(1) (1999).

5. Multi-state or regional bodies.

The APRA is limited to bodies “of the state, or any political subdivision thereof.” R.I. Gen. Laws § 38-2-2(1) (1999).

6. Advisory boards and commissions, quasi-governmental entities.

Included. R.I. Gen. Laws § 38-2-2(1) (1999); *see also* R.I. Gen. Laws § 42-35-1(b).

7. Others.

Expressly subject to the APRA are all regulatory and administrative bodies, and school, fire, and water districts. R.I. Gen. Laws § 38-2-2(1) (1999).

C. What records are and are not subject to the act?

1. What kind of records are covered?

The APRA broadly defines public records as those maintained by any public body, whether required by law or not, including all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or related to those they represent and correspondence of or to elected officials in their official capacities). R.I. Gen. Laws §§ 38-2-2(4) and 38-2-3(a) (1998).

2. What physical form of records are covered?

All material must be made available for inspection or copying regardless of form or characteristics. R.I. Gen. Laws § 38-2-3.

3. Are certain records available for inspection but not copying?

Presumably not.

D. Fee provisions or practices.

1. Levels or limitations on fees.

The APRA has specific fee provisions. R.I. Gen. Laws § 38-2-4(a) states that the “cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records.” The law also requires that public bodies provide an estimate on the search and retrieval costs of a request, and, if requested, an itemized breakdown of the costs of the search and retrieval. R.I. Gen. Laws. §§ 38-2-4(c) and (d). A court can later lower or waive the costs “if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” R.I. Gen. Laws. § 38-2-4(e).

2. Particular fee specifications or provisions.

a. Search.

A reasonable charge may be made for the search. However, hourly costs cannot exceed \$15.00 per hour, with no charge for first hour of search. R.I. Gen. Laws § 38-2-4(b).

b. Duplication.

Fifteen cents per page maximum for documents copyable on common business or legal size paper. R.I. Gen. Laws § 38-2-4(a).

c. Other.

A public body may not charge more than the reasonable actual cost for providing electronic records. R.I. Gen. Laws § 38-2-4(a).

The requester bears the cost of any necessary redactions as part of the search and retrieval costs, although a trial judge has discretion to waive those costs when the request is deemed to be in the public interest and likely to contribute to public understanding of government operations. *Direct Action for Rights & Equality v. Gannon*, 819 A.2d 651, 661-2 (R.I. 2003).

3. Provisions for fee waivers.

A court may reduce or waive the fees for costs charged for search or retrieval if the information requested is in the public interest because it is likely to contribute significantly to the public’s understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester. R.I. Gen. Laws § 38-2-4(e).

4. Requirements or prohibitions regarding advance payment.

No provision.

5. Have agencies imposed prohibitive fees to discourage requesters?

Not permitted.

E. Who enforces the act?

The Act is enforced by the Attorney General or by a private party through an action for injunctive or declaratory relief in the superior court of the county where the record is maintained. R.I. Gen. Laws § 38-2-8; *Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991)

1. Attorney General’s role.

A person who has been denied access to records has the option of filing a complaint with the Attorney General, who shall investigate the complaint. If the Attorney General then determines that the complaint is meritorious, he or she may instigate proceedings for injunctive or declaratory relief on behalf of the complainant in the appropriate superior court. R.I. Gen. Laws § 38-2-8(b). The Attorney General may also, of his or her own volition, initiate a complaint on behalf of the public interest. R.I. Gen. Laws § 38-2-8(d).

2. Availability of an ombudsman.

No specific provision. See, however, the role of Attorney General, discussed above, in R.I. Gen. Laws § 38-2-8.

3. Commission or agency enforcement.

No specific provision.

F. Are there sanctions for noncompliance?

If a request for access to records was initially denied and a court later determines that the request should have been granted, the court has the option of reducing or waiving the statutory fees for search and/or retrieval if it determines that the information requested is in the public interest and likely to contribute significantly to public understanding of the operations or activities of the government. R.I. Gen. Laws § 38-2-4(e). *See also Direct Action for Rights and Equality v. Gannon*, 819 A.2d 651 (R.I. 2003).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

The APRA lists 25 exemptions to public records. R.I. Gen. Laws § 38-2-2(4)(i)(A)-(Y).

a. General or specific?

Each exemption is specific.

b. Mandatory or discretionary?

The Rhode Island Supreme Court has held that the exemptions are discretionary. *Rhode Island Federation of Teachers, AFT, AFL-CIO v. Sundlun*, 595 A.2d 799 (R.I. 1991). The courts will not interpret the APRA in any way which will, in effect, amend or rewrite the statute. *Id.* at 802.

c. Patterned after federal Freedom of Information Act?

Many, but not all, of the exemptions are patterned after the federal Freedom of Information Act (“FOIA”).

2. Discussion of each exemption.

Exemption (A)(I): All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, and pupil records and all records relating to a client/attorney relationship and to a doctor/patient relationship and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personal files maintained to hire, evaluate, promote or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) (1999).

Exemption (A)(II): Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of said retirement systems after [June 17, 1991] shall be open for public inspection. “Pension records” as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 36, title 42 and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member’s designated beneficiary or beneficiaries. R.I. Gen. Laws § 38-2-2(4)(i)(A)(II).

In *Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982), the court noted that the records would not be held to fall within the exemption merely because they were stored in personnel files, regarded as personnel records by the police department, or arranged by the personnel bureau of the department.

In *Providence Journal Co. v. Kane*, 577 A.2d 661 (R.I. 1990), decided prior to the 1991 amendment to this section of the APRA, the Rhode Island Supreme Court held that all personnel records identifiable to an individual employee are exempt from disclosure. The Court refused to employ a balancing test in determining whether such records should be held to be confidential under the APRA.

In *Providence Journal Co. v. Sundlun*, 616 A.2d 1131 (R.I. 1992), the court held that records revealing the names and positions of state employees who were scheduled to be laid off, but were never actually laid off, were exempt from public disclosure. The court further held that Exemption (1) limits public access not only to personal information contained within an employee’s personnel file, but also to any records that identify a particular employee.

In addition, *Edward A. Sherman Publishing Co. v. Carpenter*, 659 A.2d 1117 (R.I. 1995), the court held that the name of a teacher who

receives notice of layoff is exempt from disclosure under the Act until the teacher’s employment is actually terminated.

Furthermore, the Rhode Island Attorney General determined that Exemption (1) does not permit a city to withhold information as to whether the city provided medical benefits to members of its boards or commissions, or information concerning the total cost of such benefits to city taxpayers. See Opinion of the Attorney General, April 14, 1989. Additionally, the Rhode Island Supreme Court recently held that all police civilian complaint reports are public documents under the APRA and must be disclosed upon request in redacted form whenever final action (a final determination made by the police chief) occurs. *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218, 224 (1998).

Exemption (B): Trade secrets and commercial or financial information obtained from a person, firm or corporation, which is of a privileged or confidential nature. This Exemption is patterned after the federal FOIA but broader in scope, exempting information of a privileged or confidential nature. See 5 U.S.C. § 552(b)(4). R.I. Gen. Laws § 38-2-2(4)(i)(B) (1999).

In *Town of New Shoreham v. Rhode Island Public Utilities Commission*, 464 A.2d 730 (R.I. 1983), the Court interpreted this Exemption as affording no right to have made public income tax returns and financial statements which were produced but sealed pursuant to a protective order by the Public Utility Commission.

In *Providence Journal Co. v. Convention Center Authority*, 774 A.2d 40, 47 (R.I. 2001), the Court interpreted the “confidential nature” of this Exemption to include: Any financial or commercial information whose disclosure would be likely either (1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Providence Journal Co. v. Convention Center Authority*, 774 A.2d 40, 47 (R.I. 2001). In addition, the Court held that commercial or financial information provided on a voluntary basis is confidential for the purposes of exemption “if it is of a kind that would customarily not be released to the public by the person from whom it was obtained. *Id.*; see also *In re New England Gas Company*, 842 A.2d 545 (R.I. 2004); *Interstate Navigation Co. v. Division of Public Utilities*, (R.I. Super., Jan. 9, 2002), 2002 WL 169186.

In *Providence Journal Co. v. Convention Center Authority*, 774 A.2d 40, 48-49 (R.I. 2001) the Court held that the APRA does not mandate the publication of documents reflecting the negotiation process because that information was exempt from disclosure under APRA 38-2-2(4)(i)(B). If the final contracts contained confidential or privileged financial information that was segregable, that limited information is subject to redaction. *Id.* at 50.

Procedurally, the applicability of APRA to records held by a public body is not determined by a balancing test. *Providence Journal Co. v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001). The Supreme Court has held that to deploy a balancing test constitutes reversible error. *Id.* In *Robinson v. Malinoff*, 770 A.2d 873 (2001), the Court interpreted the APRA finding that the legislative intent is clear and is “to protect records concerning a particular individual, and in particular, when the disclosure would constitute an unwarranted invasion of that person’s privacy. *Id.* Although the purpose of the APRA is suggestive of a balancing approach, the Rhode Island Supreme Court has always strictly applied both the substantive and procedural section of the APRA. *Robinson*, 770 A.2d at 873; *Bernard v. Vose*, 730 A.2d 30 (R.I. 1999) (explaining records pertaining to the individual and contained in any files of a public body are not considered public because disclosure would constitute an unwarranted invasion of that personal privacy).

The Attorney General interpreted this exemption so as not to encompass a computer tape, which listed the names and codes of all persons filing financial statements with the Rhode Island Conflict of Interest Commission. The Attorney General reasoned that they had no reasonable expectation of privacy. See Opinion of the Attorney General, September 16, 1986.

Exemption (C): Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court. R.I. Gen. Laws § 38-2-2(4)(i)(C) (1999).

Exemption (D): All records maintained by law enforcement agencies for criminal law enforcement; and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency but only to the extent that the disclosure of such records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably constitute an unwarranted invasion of personal expected to privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, or the information furnished by such a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual; provided, however, records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public. R.I. Gen. Laws § 38-2-2(4)(i)(D) (1999).

Prior to the 1991 amendment of this section, the Attorney General determined that pre-arrest police reports containing basic information regarding suspects cannot be withheld under the exemptions to the Act unless they are of an investigatory nature. See Opinion of Attorney General, October 7, 1987. In 1995, the Attorney General interpreted the APRA to deny public access to motor vehicle accident police records when the accident is under investigation by the police department. See Opinion of the Attorney General, March 9, 1995. Additionally, the Rhode Island Supreme Court recently held that all police civilian complaint reports are public documents under the APRA and must be disclosed upon request in redacted form whenever final action (a final determination made by the police chief) occurs. *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218, 224 (1998).

Exemption (E): Any records which would not be available by law or rule of court to an opposing party in litigation. R.I. Gen. Laws § 38-2-2(4)(i)(E) (1999).

In *Hydron Labs, Inc. v. Department of the Attorney General*, 492 A.2d 135 (R.I. 1985), a corporation charged by the state with dumping noxious materials requested information concerning the waste-disposal site. The information was unavailable in an environmental action against the corporation under the qualified work product privilege of R.I. Rules of Civ. Proc. 34. The court held that the limitations placed on the scope of Rule 34 apply to discovery under the APRA, reasoning that the APRA was not designed to provide an alternative method of discovery for litigants.

Exemption (F): Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security. R.I. Gen. Laws § 38-2-2(4)(i)(F) (1999).

Exemption (G): Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor. R.I. Gen. Laws § 38-2-2(4)(i)(G) (1999).

Exemption (H): Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining. R.I. Gen. Laws § 38-2-2(4)(i)(H) (1999). A draft of a collective bargaining agreement is part of the negotiation process and does not become available for public inspection until it is ratified by both parties. See Opinion of the Attorney General, December 27, 1990.

Exemption (I): Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into. R.I. Gen. Laws § 38-2-2(4)(i)(I) (1999).

Exemption (J): Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42. (Chapter 46 of title 42 is the Rhode Island Open Meetings Law, discussed *infra*. R.I. Gen. Laws § 42-46-7 requires that minutes be available to the public except where disclosure “would be inconsistent” with provisions of the law permitting meetings to be closed.) R.I. Gen. Laws § 38-2-2(4)(i)(J) (1999).

The Attorney General has found minutes of an open zoning board meeting, whether approved or not, to be accessible. See Opinion of the Attorney General, February 19, 1987.

Exemption (K): Preliminary drafts, notes, impressions, memoranda, working papers and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public. R.I. Gen. Laws § 38-2-2(4)(i)(K) (1999).

This appears to be one of the most sweeping of the exemptions. Arguably inter-agency and intra-agency memoranda fall within the scope of exemption (K).

Exemption (L): Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or promotion or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination. R.I. Gen. Laws § 38-2-2(4)(i)(L) (1999).

Exemption (M): Correspondence of or to elected officials with or relating to those they represent, and correspondence of or to elected officials in their official capacities. R.I. Gen. Laws § 38-2-2(4)(i)(M) (1999).

Exemption (N): The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision. R.I. Gen. Laws § 38-2-2(4)(i)(N) (1999).

Exemption (O): All tax returns. R.I. Gen. Laws § 38-2-2(4)(i)(O) (1999).

Exemption (P): All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public. R.I. Gen. Laws § 38-2-2(4)(i)(P) (1999).

Exemption (Q): Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination. R.I. Gen. Laws § 38-2-2(4)(i)(Q) (1999).

Exemption (R): Requests for advisory opinions until such time as the public body issues its opinion. R.I. Gen. Laws § 38-2-2(4)(i)(R) (1999).

Exemption (S): Records, reports, opinions, information, and statements required to be kept confidential by federal or state law, rule of court, or by regulation. R.I. Gen. Laws § 38-2-2(4)(i)(S) (1999).

Note that exemption (S) does not include the federal FOIA’s qualification, that the statute protecting disclosure must either leave no discretion on the issue of withholding or establish criteria for withholding. See 5 U.S.C. § 552(b)(3).

Exemption (T): Judicial bodies are included in the definition of “public body” only in respect to their administrative function, pro-

vided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter. (Chapter 16, title 8, created the Commission On Judicial Tenure and Discipline, to investigate wrongdoing and unfitness of justices of various courts in Rhode Island). R.I. Gen. Laws § 38-2-2(4)(i)(T) (1999).

Exemption (U): Library records which, by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials. R.I. Gen. Laws § 38-2-2(4)(i)(U) (1999).

Exemption (V): Printouts from telecommunication (TELE-TEXT) devices for the deaf or hearing and speech impaired. R.I. Gen. Laws § 38-2-2(4)(i)(V) (1999).

Exemption (W): All records received by the Insurance Division of the Department of Business Regulation from other states, either directly or through the National Association of Insurance Commissioners, if such records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the Commissioner of Insurance from disclosing otherwise confidential information to the Insurance Department of this or any other state or country, at any time, so long as such agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state. R.I. Gen. Laws § 38-2-2(4)(i)(W) (1999).

Exemption (X): Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records. R.I. Gen. Laws § 38-2-2(4)(i)(X) (1999).

Exemption (Y): Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island general law section 9-1.1-6. R.I. Gen. Laws § 38-2-2(4)(i)(Y) (2007).

However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section. R.I. Gen. Laws § 38-2-2(4)(ii) (1999).

B. Other statutory exclusions.

For the standards a statute must meet to override the APRA, see R.I. Gen. Laws § 38-2-2(S) (1999).

1. **Health Records.** The Confidentiality of Health Care Information Act, R.I. Gen. Laws § 5-37.3-1 *et seq.*, enacted in 1978, generally bars providers of health care services from providing any information relating to a patient's medical history, diagnosis, condition, treatment, or evaluation to anyone other than the patient or an authorized representative without the written consent of the patient or an authorized representative. R.I. Gen. Laws § 5-37.3-4(a) (1999). A person violating this Act is subject to civil and criminal penalties, and may be fined up to \$5,000, imprisoned up to six months, or both. R.I. Gen. Laws § 5-37.3-4(a)(3).

2. **Mental Health.** R.I. Gen. Laws § 40.1-5-26 (1999) requires that mental health care records remain confidential and be disclosed only as required for court proceedings, by mental health law, or with written consent of the patient or his/her guardian.

3. **Registered Public Obligations.** R.I. Gen. Laws § 35-13-11(a) provides that records, with regard to the ownership of or security interests in registered public obligations, are not accessible.

4. **Welfare.** Records pertaining to the administration of public assistance are confidential pursuant to R.I. Gen. Laws § 40-6-12. Such records are subject to production through a subpoena duces tecum properly issued by a court, but only where either the purpose for which the subpoena is sought or the litigation involved is directly connected with the administration of public assistance. The addresses of welfare recipients are also releasable to the state's "warrant squad,"

so-called, if an outstanding arrest warrant or body attachment is issued. R.I. Gen. Laws § 40-6-12.1. Persons entitled to access to a list of individuals receiving public assistance shall not use such list for purposes other than administration, and shall not publish or use such list, except by express consent of the director of the Department of Human Services. R.I. Gen. Laws § 40-6-12. Violation of this section is a misdemeanor. *Id.*

5. **Alcoholism.** R.I. Gen. Laws § 23-1.10-13(a) (1995) provides that registration and other records of alcoholic treatment facilities are confidential and privileged. § 23-1.10-13(b) further provides that the director of the Department of Mental Health, Retardation and Hospitals may make information from patients' records available for research purposes, but that names or other identifying information may not be disclosed.

6. **Child Molestation.** Records concerning the identity of victims of child molestation and sexual assault are confidential pursuant to R.I. Gen. Laws § 11-37-8.5. Disclosure of identifying information may only be made by court order to the defendant charged with the assault and those directly involved with the preparation of the defense. R.I. Gen. Laws § 11-37-8.5(c).

7. **Criminal Convictions.** R.I. Gen. Laws § 12-19.1-2 (2000) and 12-19.1-3 require the court clerks to maintain and keep for public inspection a register of all criminal convictions in chronological order.

8. **Family Court.** R.I. Gen. Laws § 8-10-21 requires that records of the Family Court shall be public records, but for records of hearings in matters set forth in § 14-1-5, which includes proceedings concerning delinquent, wayward, dependent, neglected, and mentally defective or disordered children, adoption, paternity, and child marriages.

9. **Adoption.** R.I. Gen. Laws § 8-10-21 and 23-3-15 together prohibit the inspection of records of an adoption proceeding unless disclosure is granted by an order of the court. *In re Assalone*, 512 A.2d 1383, 1385 (R.I. 1986); *In re Christine*, 121 R.I. 203, 206, 397 A.2d 511, 512-13 (1979). An order granting disclosure may be issued only upon a showing of good cause. *Id.* at 207, 397 A.2d at 513. In *In re Christine*, a natural mother sought records of the adoptive parents. In *In re Assalone*, an adult adoptee sought records of her natural parents. In both cases, the Court denied access based on the failure to establish good cause. Moreover, the Court in *In re Assalone* noted in dicta that once compelling reasons are shown, those who may be vitally affected by disclosure must be given the opportunity to intervene through a representative to defend their interest. 512 A.2d at 1390.

10. **Judicial Misconduct.** Transcripts and determinations of the Commission on Judicial Tenure and Discipline are public documents, except where they relate to private reprimand involving a non-serious matter for which only a caution is given, in which case they are confidential. R.I. Gen. Laws § 8-16-5. Hearings before the Supreme Court which review the Commission's recommendations pursuant to § 8-16-6 shall be open to the public, and the court's decision shall be public and shall be published in the same manner as other decisions of the Supreme Court. R.I. Gen. Laws 8-16-6(c). Papers filed with and decisions of the Supreme Court on review of such reprimands are also confidential. R.I. Gen. Laws § 8-16-7.1. Evidence obtained by the Commission is confidential until it is introduced or becomes the subject of testimony at a public hearing. R.I. Gen. Laws § 8-16-13. Papers filed in judicial proceedings in aid of or ancillary to a non-public commission hearing are confidential. R.I. Gen. Laws § 8-16-13.1. The provisions in this chapter are expressly exempt from the operation of the APRA. R.I. Gen. Laws § 38-2-2(d)(20).

11. **Ethics Violations.** The content and substance of all proceedings before adjudicative panels of the Ethics Commission shall remain confidential until a final decision is rendered. The hearing before the commission shall be open to the public but the deliberations of the Commission are confidential and not open to the public. R.I. Gen. Laws § 36-14-13(a)(5),(a)(9) and (f).

12. *Elderly Persons.* Records pertaining to a person reported to be abused, neglected, exploited, abandoned or self-neglecting are confidential. R.I. Gen. Laws § 42-66-10. However, such records may be released in certain instances to assist in prosecutions or investigations, for the coordination of needed services, or for protection of elderly victims. *Id.*

13. *Pre-trial Services Program Records.* Information supplied by a defendant in a criminal case to a representative of the pre-trial services program during the defendant's initial interview or subsequent contacts is deemed confidential under R.I. Gen. Laws § 12-13-24(a) and shall not be subject to subpoena or to disclosure without the written consent of the defendant under most circumstances. *See* R.I. Gen. Laws §§ 2-13-24(a)(1)-(6) for a complete list of these exceptions.

14. *AIDS Test Results.* R.I. Gen. Laws § 23-6.3-7, 23-6.3-8 require health care providers, public health officials, and any other person who maintains records containing information on AIDS test results to maintain the confidentiality of such records.

15. *Nursing Home Patients.* Under R.I. Gen. Laws § 23-17.5-14, a nursing home patient's right to privacy and confidentiality extends to all records pertaining to that patient. Accordingly, release of any records is subject to the patient's approval in most instances.

16. *Abused and Neglected Children.* R.I. Gen. Laws § 40-11-13 mandates that all records concerning reports of child abuse and neglect shall be kept confidential. Any employee or agent of the Department of Human Services found violating this provision shall be deemed guilty of a misdemeanor, and shall be fined not more than two hundred (\$200.00) dollars or shall be imprisoned for not more than six (6) months or both. *See* R.I. Gen. Laws § 40-11-13(b).

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

None.

D. Are segregable portions of records containing exempt material available?

The APRA requires that reasonably segregable portions of public records after deletion of excluded information must be made available to the public, provided that disclosure of the segregable portion does not violate the intent of the exemptions. R.I. Gen. Laws § 38-2-2(4)(ii). Subject to judicial review, the highest authority of the public body is given authority to make such determination. R.I. Gen. Laws § 38-2-2(5).

E. Homeland Security Measures.

The APRA exempts from disclosure the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security. R.I. Gen. Laws § 38-2-2(4)(F).

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Presently the requester can choose a format for receiving records. Although electronic records are not specifically addressed in the Rhode Island's Open Record Law, "public record" is defined, in part, to be any material "regardless of physical form or characteristics." *See* R.I. Gen. Laws § 38-2-2(4)(i).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Any public body which maintains its records in a computer storage system shall provide a printout, or other reasonable format as requested, of any data properly identified. *See* R.I. Gen. Laws § 38-2-3(e).

C. Does the existence of information in electronic format affect its openness?

No, the APRA expressly provides that storing a record in a compute does not affect the public record status of information. R.I. Gen. Laws § 38-2-3(g).

D. How is e-mail treated?

The APRA treats electronic mail messages as a public record, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities. R.I. Gen. Laws § 38-2-2(4)(i).

1. Does e-mail constitute a record?

There is no statutory or case law addressing this issue.

2. Public matter on government e-mail or government hardware

There is no statutory or case law addressing this issue.

3. Private matter on government e-mail or government hardware

There is no statutory or case law addressing this issue.

4. Public matter on private e-mail

There is no statutory or case law addressing this issue.

5. Private matter on private e-mail

There is no statutory or case law addressing this issue.

E. How are text messages and instant messages treated?

There is no statutory or case law addressing this issue.

1. Do text messages and/or instant messages constitute a record?

There is no statutory or case law addressing this issue.

2. Public matter message on government hardware.

There is no statutory or case law addressing this issue.

3. Private matter message on government hardware.

There is no statutory or case law addressing this issue.

4. Public matter message on private hardware.

There is no statutory or case law addressing this issue.

5. Private matter message on private hardware.

There is no statutory or case law addressing this issue.

F. How are social media postings and messages treated?

There is no statutory or case law addressing this issue.

G. How are online discussion board posts treated?

There is no statutory or case law addressing this issue.

H. Computer software

There is no statutory or case law addressing this issue.

1. Is software public?

There is no statutory or case law addressing this issue.

2. Is software and/or file metadata public?

There is no statutory or case law addressing this issue.

I. How are fees for electronic records assessed?

The fee can be no greater than "the reasonable actual cost" of providing electronic records. R.I. Gen. Laws § 38-2-4(a).

J. Money-making schemes.

There is no statutory or case law addressing this issue.

1. Revenues.

There is no statutory or case law addressing this issue.

2. Geographic Information Systems.

There is no statutory or case law addressing this issue.

K. On-line dissemination.

There is no statutory or case law addressing this issue.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

No specific exemption; however, presumably closed because of R.I. Gen. Laws §§ 23-3-1 and 23-3-23, which, when read in conjunction provides that it shall be unlawful for any person to permit inspection of or disclose information in records concerning “death” and “data related thereto” unless authorized. R.I. Gen. Laws §§ 23-3-1 and 23-3-23.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

There is no statutory or case law addressing this issue.

1. Rules for active investigations.

There is no statutory or case law addressing this issue.

2. Rules for closed investigations.

There is no statutory or case law addressing this issue.

C. Bank records.

No specific exemption. Bank records which constitute financial information of a privileged or confidential nature fall within the scope of Exemption (A) of R.I. Gen. Laws § 38-2-2(4)(i)(A).

D. Budgets.

There is no statutory or case law addressing this issue.

E. Business records, financial data, trade secrets.

“Trade secrets and financial or commercial information obtained from a person, firm, or corporation, which is of a privileged or confidential nature” are exempt from disclosure. *See* R.I. Gen. Laws § 38-2-2(4)(i)(B).

Records reflecting financial settlements by public bodies of legal claims against a governmental body are expressly public. R.I. Gen. Laws § 38-2-14.

F. Contracts, proposals and bids.

No specific exemption. Partially within the scope of Exemption (N), which includes “real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned”. *See* R.I. Gen. Laws § 38-2-2(4)(i)(N). For documents of this type which are deemed public, the restriction in R.I. Gen. Laws § 38-2-6 would be applicable, in that the information therein cannot be used to obtain a commercial advantage over the party that furnished that information to the public body.

G. Collective bargaining records.

Excluded from disclosure. *See* R.I. Gen. Laws § 38-2-2(4)(i)(H), *supra*.

H. Coroners reports.

No specific exemption; however, presumably closed because of R.I. Gen. Laws §§ 23-3-1 and 23-3-23, which, when read in conjunction

provides that it shall be unlawful for any person to permit inspection of or disclose information in records concerning “death” and “data related thereto” unless authorized. R.I. Gen. Laws §§ 23-3-1 and 23-3-23.

I. Economic development records.

There is no statutory or case law addressing this issue.

J. Election records.

Presumably open; no specific exemption.

1. Voter registration records.

Voter registration records are public, but nothing contained in them shall indicate the particular place at which the voter was registered, nor shall there be any indication that the voter was registered at any other state, federal, or private agency. The state board of elections may maintain confidential records showing the actual place of registration of all voters. R.I. Gen. Laws § 17-9.1-6

2. Voting results.

There is no statutory or case law addressing this issue.

K. Gun permits.

In *Providence Journal Co. v. Pine*, 1998 WL 356904 (R.I. Super. 1998), the court decided that gun permit records are included under the APRA. Nevertheless, the Attorney General must redact all exempt portions from the gun permit records. It is entirely up to the Attorney General whether he chooses to manually redact material or whether he prefers to prepare a computer program in order to accomplish the same result; however the fact that the Attorney General may have to reprogram the computer will not serve as a bar to providing accessible gun permit records. *Id.* at *18.

L. Hospital reports.

Partially within the scope of Exemption (A), which includes records identifiable to a patient; including but not limited to medical treatment and records relating to a doctor-patient relationship. *See* R.I. Gen. Laws § 38-2-2(4)(i)(A). *See also* The Confidentiality of Health Care Information Act, R.I. Gen. Laws §§ 5-37.3-1 *et seq.*, enacted in 1978, which generally bars providers of health care services from providing any information relating to a patient’s medical history, diagnosis, condition, treatment, or evaluation to anyone other than the patient or an authorized representative without the written consent of the patient or an authorized representative. R.I. Gen. Laws § 5-37.3-4(a) (1999). A person violating this Act is subject to civil and criminal penalties, and may be fined up to \$5,000, imprisoned up to six months, or both. R.I. Gen. Laws § 5-37.3-4(a)(2)-(4).

M. Personnel records.

Personnel records are generally excluded by Exemption (A), provided records are identifiable to an individual applicant for benefits, clients, patient, student, or employer. R.I. Gen. Laws § 38-2-2(4)(i)(A).. However, there is a list of specific personnel information that is required to be public under the APRA. *Id.* Moreover, pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. R.I. Gen. Laws § 38-2-2(4)(i)(A)(II).

1. Salary.

An employee’s gross salary is one of the specific items of personnel information that is public under R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

2. Disciplinary records.

Employee disciplinary records are non-public. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

3. Applications.

Records maintained in connection with hiring of employees are non-public. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

4. Personally identifying information.

R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) permits access to the following information that is identifiable to an individual employee: “the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and the date of termination”.

5. Expense reports.

There is no statutory or case law addressing this issue.

6. Other.

R.I. Gen. Laws § 38-2-2(4)(i)(A)(I) permits access to the following information that is identifiable to an individual employee: “the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and the date of termination”.

All pension records for current and retired members of public pension systems are public, with the exception of information regarding the medical condition of any person and the identification of the member’s designated beneficiary. R.I. Gen. Laws §38-2-2(4)(i)(A)(II).

N. Police records.

Records for criminal law enforcement are generally excluded from disclosure by Exemption (D) to the extent that disclosure could interfere with criminal investigation or enforcement proceedings, would deprive a person of a fair trial or impartial proceedings, could reasonably be expected to disclose a confidential source, would disclose investigation or prosecution techniques or procedures, or could endanger the life or safety of an individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charges or charges brought against any adult shall be public. R.I. Gen. Laws § 38-2-2(4)(i)(D).

1. Accident reports.

Police accident reports, including the standard accident report form, police department narrative reports, and witness statements, and are public records but portions may be withheld under Exemption (D). Opinion of Attorney General PR-04-05 (Mar. 19, 2004), 2004 WL 5328452. The accident reports that drivers are required to file with the R.I. Division of Motor Vehicles pursuant to R.I. Gen. Laws § 31-26-6 are confidential. R.I. Gen. Laws § 31-26-13.

2. Police blotter.

There is no statutory or case law addressing this issue.

3. 911 tapes.

Tapes containing records of 911 telephone calls are confidential and to be used only in handling emergency calls and for public safety purposes. They may not be released to anyone other than emergency and public safety personnel without written consent of the person whose voice is recorded or upon order of the court. R.I. Gen. Laws § 39-21.1-4(2). See also Opinion of Attorney General PR 04-05 (Mar. 19, 2004), 2004 WL 5328452.

4. Investigatory records.

Records for criminal law enforcement including “all records relating to the investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency” are generally excluded from disclosure by Exemption (D) to the extent that disclosure could interfere with criminal investigation or enforcement proceedings, would deprive a person of a fair trial or impartial proceedings, could reasonably be expected to disclose a confidential source, would disclose investigation or prosecution techniques or procedures, or could endanger the life or safety of an individual. R.I. Gen. Laws § 38-2-2(4)(i)(D).

Records for criminal law enforcement including “all records relating to the investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency” are generally excluded from disclosure by Exemption (D) to the extent that disclosure could interfere with criminal investigation or enforcement proceedings, would deprive a person of a fair trial or impartial proceedings, could reasonably be expected to disclose a confidential source, would disclose investigation or prosecution techniques or procedures, or could endanger the life or safety of an individual. R.I. Gen. Laws § 38-2-2(4)(i)(D).

a. Rules for active investigations.

Presumably be non-public under Exemption (D).

b. Rules for closed investigations.

If a complaint is investigated and the police decide not to charge the subject, those records are not subject to disclosure because it is presumed that their disclosure would constitute an unwarranted invasion of privacy pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(D)(c). See Op. Atty Gen. ADV PR 03-02 (Sept. 23, 2003) 2003 WL 24172742.

5. Arrest records.

5. Arrest records.

Records or reports reflecting the initial arrest of an adult and the charges or charges brought against any adult shall be public. R.I. Gen. Laws § 38-2-2(4)(i)(D).

7. Victims.

There is no statutory or case law addressing this issue.

8. Confessions.

There is no statutory or case law addressing this issue.

9. Confidential informants.

Law enforcement agency investigative records which could reasonably be expected to disclose the identity of a confidential source are exempt from disclosure. R.I. Gen. Laws § 38-2-2(4)(i)(D)(d).

10. Police techniques.

Law enforcement agency investigative records which would disclose techniques and procedures for law enforcement investigations or prosecutions are not public. R.I. Gen. Laws § 38-2-2(4)(i)(D)(e).

11. Mug shots.

There is no statutory or case law addressing this issue.

12. Sex offender records.

There is no statutory or case law addressing this issue.

13. Emergency medical services records.

There is no statutory or case law addressing this issue. In practice, these records are treated like medical records in that the requester needs a medical authorization form to obtain them.

O. Prison, parole and probation reports.

There is no statutory or case law addressing this issue.

P. Public utility records.

There is no statutory or case law addressing this issue.

Q. Real estate appraisals, negotiations.

1. Appraisals.

There is no statutory or case law addressing this issue.

2. Negotiations.

There is no statutory or case law addressing this issue.

3. Transactions.

There is no statutory or case law addressing this issue.

4. Deeds, liens, foreclosures, title history.

There is no statutory or case law addressing this issue.

5. Zoning records.

There is no statutory or case law addressing this issue.

R. School and university records.

1. Athletic records.

There is no statutory or case law specifically addressing athletic records but pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), any record identifiable to an individual student is not a public record.

2. Trustee records.

There is no statutory or case law addressing this issue.

3. Student records.

Any record identifiable to an individual student, and specifically including medical or psychological facts and student performance records, is not a public record. R.I. Gen. Laws § 38-2-2(4)(i)(A)(I).

4. Other.

None.

S. Vital statistics.

Generally closed except in the situations described in R.I. Gen. Laws § 23-3-23.

1. Birth certificates.

Access to birth records less than 100 years old is generally limited to the person whose birth was recorded, his or her parents (if the person is a minor), his or her issue, attorneys at law, title examiners, and members of legally incorporated genealogical societies. Birth certificates may only be issued to the person whose birth was recorded, his or her parents (if the person is a minor), and his or her issue. R.I. Gen. Laws § 3-3-23(d).

2. Marriage & divorce.

Generally closed. Issuance of marriage and divorce certificates is subject to the rules and regulations established by the state Director of Health pursuant to R.I. Gen. Laws § 23-3-3.

3. Death certificates.

Generally closed. Issuance of death certificates is subject to the rules and regulations established by the state Director of Health pursuant to R.I. Gen. Laws § 23-3-3.

4. Infectious disease and health epidemics.

There is no statutory or case law addressing this issue.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

The APRA has no general provisions governing the process for making a request. Each public body must establish its own access procedures. R.I. Gen. Laws § 38-2-3(c). However, a public body may not require written requests for public information available pursuant to R.I. Gen. Laws § 42-35-2 or for other documents prepared for or readily available to the public. *See* R.I. Gen. Laws § 38-2-3(c).

1. Who receives a request?

The custodian of records for the public body. R.I. Gen. Laws § 38-2-3(d).

2. Does the law cover oral requests?

While the statute does not specifically address oral requests, each public body shall establish procedures regarding access to public records. R.I. Gen. Laws § 38-2-3(c). A public body can establish a procedure that does not permit oral requests, by requiring that all requests be in writing or that all requests be in writing and using a specific

request form. If a public body has not established any procedures pursuant to R.I. Gen. Laws § 38-2-3(c), it must accept oral requests and treat them the same as written requests. *See* Opinion of the Attorney General PR 09-29 (Nov. 19, 2009), 2009 WL 6329137. However, no public body can require written requests for public information available pursuant to R.I. Gen. Laws § 42-35-2 or for other documents prepared for or readily available to the public. R.I. Gen. Laws § 38-2-3(c).

a. Arrangements to inspect & copy.

No difference between oral and written requests.

b. If an oral request is denied:

No difference between oral and written requests.

(1). How does the requester memorialize the refusal?

Presumably, there is no difference between oral and written requests. Denial of access must be in writing within 10 days of the request, and give specific reasons for the denial and the procedures to appeal the denial. The public body waives any reason for denial not set forth in this written response. R.I. Gen. Laws § 38-2-7.

(2). Do subsequent steps need to be in writing?

Presumably, there is no difference between oral and written requests.

3. Contents of a written request.

a. Description of the records.

No specific requirements.

b. Need to address fee issues.

While the statute allows for fees, there is no requirement that the request address the fee issue. In addition, a public body shall provide an estimate of the costs of a request for documents prior to providing copies. R.I. Gen. Laws § 38-2-4(c).

c. Plea for quick response.

No provision.

d. Can the request be for future records?

No specific provision.

e. Other.

When a public body establishes a procedure for APRA requests under R.I. Gen. Laws § 38-2-3(c), it can require that requests be made in writing and also that such written requests must be made on a specific request form. The procedures also can exclude requests via electronic mail. If a public body's procedures are silent as to accepting e-mail requests, then it must accept requests via e-mail and treat them the same as other requests. *See* Opinion of the Attorney General PR 09-29 (Nov. 19, 2009), 2009 WL 6329137.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

Records must be made available for inspection and copying "at such reasonable time as may be determined by the custodian thereof." R.I. Gen. Laws § 38-2-3(a). The custodian is required to tell the requester if the records are in active use or in storage, and to make an appointment for the requester "to examine such records as expeditiously as may be made available." R.I. Gen. Laws § 38-2-3(d).

However, any denial of the right to inspect or copy records must be made by the public body in writing, giving the specific reasons for the denial within ten (10) business days of the request and indicating the

procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body. R.I. Gen. Laws § 38-2-7(a).

Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days. R.I. Gen. Laws § 38-2-7(b).

2. Informal telephone inquiry as to status.

No specific provision.

3. Is delay recognized as a denial for appeal purposes?

Under the APRA, an agency must deny a request for records in writing, giving the specific reasons for its denial and indicating the procedures for appealing the denial, within ten business days of the request. Failure to so respond is deemed a denial. The limit may be extended to thirty business days for good cause. R.I. Gen. Laws § 38-2-7.

C. Administrative appeal.

1. Time limit.

The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition. R.I. Gen. Laws § 38-2-8.

2. To whom is an appeal directed?

Administrative appeals are exclusively with the chief administrative officer of the agency. R.I. Gen. Laws § 38-2-8(a). Upon denial, a formal complaint may be filed with the Attorney General. R.I. Gen. Laws § 38-2-8(b). The APRA specifies that appeals are by “any person denied the right to inspect a record.” R.I. Gen. Laws § 38-2-8.

The Rhode Island Supreme Court has determined that a requestor “may” direct an appeal to the chief administrator officer of the agency but is not required to do so. The Legislature, in R.I. Gen. Laws § 38-2-8, created an alternative to an administrative appeal, in that a person denied the right to inspect records has the option of retaining private counsel and instituting proceedings for injunctive or declaratory relief in the superior court. *Downey v. Carcieri*, 996 A.2d 1144 (R.I. 2010).

a. Individual agencies.

Administrative appeals are exclusively with the chief administrative officer of the agency. R.I. Gen. Laws § 38-2-8(a).

b. A state commission or ombudsman.

Administrative appeals are exclusively with the chief administrative officer of the agency. R.I. Gen. Laws § 38-2-8(a).

c. State attorney general.

Upon denial from a public body of a request, an individual or entity may file a formal complaint with the Attorney General. R.I. Gen. Laws § 38-2-8(b). However, nothing prevents the individual or entity denied the request from filing an action in Superior Court in the county in which the records are maintained. R.I. Gen. Laws § 38-2-8(b).

3. Fee issues.

Presumably the same applies.

4. Contents of appeal letter.

The APRA does not impose specific requirements for the contents of appeal letters, but it is good practice to include a description of the records sought, a request that the agency consider the letter a petition for review to the chief administrative officer pursuant to R.I. Gen.

Laws § 38-2-8(a), the reasons given for denial, and a statement refuting those reasons.

a. Description of records or portions of records denied.

No specific requirement, but it is good practice to include a description of the records or portions of records to which access was denied in the appeal letter.

b. Refuting the reasons for denial.

No specific requirement, but it is good practice to include the reasons given for denial and a statement refuting those reasons.

5. Waiting for a response.

A final determination by the chief administrative officer must be made within ten business days after submission of a review petition. R.I. Gen. Laws § 38-2-8(a).

6. Subsequent remedies.

Unavailable. Appeals, as stated above, are directly to the Attorney General. Alternatively, the initial denial by the agency is deemed an exhaustion of administrative remedies, and the person seeking access may directly file a civil action for injunctive or declaratory relief in the Superior Court in the county where the record is maintained. R.I. Gen. Laws § 38-2-8(b).

D. Court action.

1. Who may sue?

Any person or entity seeking access, or the Attorney General.

2. Priority.

Actions brought in the Superior Court under the APRA may be advanced on the trial calendar upon motion made in accordance with the rules of civil procedure. R.I. Gen. Laws § 38-2-9(c).

3. Pro se.

As a general rule, acting *pro se* is not advisable because of the risks of failure to follow procedural rules or to discover applicable statutory and case law.

4. Issues the court will address:

a. Denial.

May be addressed. However, except for good cause shown, any reason not specifically set forth in the initial denial letter shall be deemed waived by the public body. R.I. Gen. Laws § 38-2-7(a).

b. Fees for records.

Unclear whether may be addressed.

c. Delays.

Delay beyond ten business days constitutes denial. R.I. Gen. Laws § 38-2-7.

d. Patterns for future access (declaratory judgment).

Declaratory judgments may be sought. R.I. Gen. Laws § 38-2-8(b).

5. Pleading format.

The pleading is in the form of a civil complaint against the agency alleging that the agency denied access, the records sought are public records, and plaintiff followed all proper procedures in making the request, with a prayer for injunctive or declaratory relief. *See* R.I. Gen. Laws § 38-2-8(b).

6. Time limit for filing suit.

No time limitation is set forth by the APRA or appeal. There is a three year statute of limitation for suits against the state. R.I. Gen. Laws § 9-1-25.

7. What court.

Suit must be filed in the Superior Court in the county where the records are maintained. R.I. Gen. Laws § 38-2-8(b).

8. Judicial remedies available.

Suit may be filed for injunctive or declaratory relief. R.I. Gen. Laws § 38-2-8(b). In *Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991), the Court held that this section does not provide a remedy to compel nondisclosure when a public body or official is about to disclose material that might be entitled to an exemption under this Act.

9. Litigation expenses.

The court shall award reasonable attorney fees and costs to the prevailing plaintiff. R.I. Gen. Laws § 38-2-9. If the defendant prevails, the court has discretion to award attorneys fees and costs to the defendant in certain circumstances. R.I. Gen. Laws § 38-2-9.

a. Attorney fees.

The court shall award reasonable attorneys' fees to the prevailing plaintiff. R.I. Gen. Laws § 38-2-9. If the court finds in favor of the defendant and also further finds that that the plaintiff's case was not grounded in fact, existing law, or in good faith argument for the extension, modification, or reversal of existing law, the court has the discretion to award attorneys' fees to the prevailing defendant. R.I. Gen. Laws § 38-2-9.

b. Court and litigation costs.

The court shall award reasonable costs to the prevailing plaintiff. R.I. Gen. Laws § 38-2-9. If the court finds in favor of the defendant and also further finds that that the plaintiff's case was not grounded in fact, existing law, or in good faith argument for the extension, modification, or reversal of existing law, the court has the discretion to award reasonable costs to the prevailing defendant. R.I. Gen. Laws § 38-2-9.

10. Fines.

The court shall impose a civil fine not exceeding one thousand dollars (\$1,000) against a public body or official found to have committed a knowing and willful violation of APRA. R.I. Gen. Laws § 38-2-9.

In *Direct Action for Rights and Equality v. Gannon*, 819 A.2d 651 (R.I. 2003), the Court held that statutory amendments allowing trial court to waive costs of retrieval and to award reasonable attorneys' fees in an APRA violation applies only to the imposition of a fine.

11. Other penalties.

If it finds that a public body wrongfully denied access to public records, the court shall order the public body to provide the requested records at no cost to the prevailing party. R.I. Gen. Laws § 38-2-9.

12. Settlement, pros and cons.

Often in practice when a person seeking disclosure informs the Attorney General of the withholding, the Attorney General, if appropriate, will issue an informal opinion advising the agency to make the records public. The practice of the Attorney General has been to refrain from filing a complaint where the particular agency has not been involved in prior violations and/or where the agency has demonstrated a good faith intention to comply with the APRA.

E. Appealing initial court decisions.

1. Appeal routes.

Appeal of a Superior Court decision is made directly to the Rhode Island Supreme Court.

2. Time limits for filing appeals.

Appeal must be filed within twenty days of final judgment. R.I. Supreme Court Rule of Appellate Procedure 4.

3. Contact of interested amici.

Briefs of *amicus curiae* may be filed with written consent of all parties, or upon leave of the Supreme Court on motion which identifies the interest of the applicant and the reasons why brief is desirable. R.I. Supreme Court Rule of Appellate Procedure 16(f).

The Reporters Committee for Freedom of the Press and the Rhode Island Affiliate of the American Civil Liberties Union may file *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

This issue has not been addressed by the courts.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

Any member of the public may attend an open meeting. R.I. Gen. Laws § 42-46-3. However, the OML expressly allows the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised. R.I. Gen. Laws § 42-46-5(d).

The Attorney General has determined that if a meeting place is unexpectedly filled to capacity and it is not possible to accommodate registered voters and the general public in one room, officials may segregate non-voters from all others and request that non-voters assemble in a convenient place, in close proximity to the meeting, as long as they are provided with some type of communication device which allows the proceedings to be heard. *See* Opinion of the Attorney General, July 3, 1991. However, in a 1999 opinion to the Town of West Warwick, the Attorney General stated that even if an event is filled to capacity due to a large amount of non-West Warwick residents, the Town could not first offer access to West Warwick residents and then offer seating to non-West Warwick residents on a first-come, first-serve basis as the Act does not restrict attendance at meetings of public bodies to residents of a particular city or town. *See* Opinion of the Attorney General, March 11, 1999.

B. What governments are subject to the law?

The OML applies to meetings of state and municipal government.

1. State.

The OML applies to meetings of all public bodies, which are defined as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, and shall include all authorities defined in R.I. Gen. Laws § 42-35-1(b). R.I. Gen. Laws § 42-46-2(c). However, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body. *Id.*”

2. County.

The OML applies to meetings of all public bodies, which are defined as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, and shall include all authorities defined in R.I. Gen. Laws § 42-35-1(b). R.I. Gen. Laws § 42-46-2(c). However, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body. *Id.*”

3. Local or municipal.

The OML applies to meetings of all public bodies, which are defined as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, and shall include all authorities defined in R.I. Gen. Laws § 42-35-1(b). R.I. Gen. Laws § 42-46-2(c). However, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body. *Id.*”

C. What bodies are covered by the law?

The OML applies to meetings of all public bodies, which are defined as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, and shall include all authorities defined in R.I. Gen. Laws § 42-35-1(b). R.I. Gen. Laws § 42-46-2(c). However, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body. *Id.*”

1. Executive branch agencies.

These are presumably covered. *See* definition of “public body” in R.I. Gen. Laws § 42-35-1(b).

a. What officials are covered?

All public bodies which “convene” to discuss or act upon a matter over which the public body has “supervision, control, jurisdiction, or advisory power”. R.I. Gen. Laws § 42-46-2(a).

b. Are certain executive functions covered?

There is no limitation as to executive functions involved. The OML covers all public bodies which “convene” to discuss or act upon any matter over which the public body has “supervision, control, jurisdiction, or advisory power”. R.I. Gen. Laws § 42-46-2(a).

c. Are only certain agencies subject to the act?

No. The OML covers all public bodies which are departments or agencies of state or municipal government and which “convene” to discuss or act upon a matter over which the public body has “supervision, control, jurisdiction, or advisory power”. R.I. Gen. Laws § 42-46-2(a).

2. Legislative bodies.

Covered. However, excluded from coverage is any political party, organization or unit thereof. R.I. Gen. Laws § 42-46-2 (c).

3. Courts.

The OML expressly does not apply to proceedings of the judicial branch of state government, and probate and municipal court proceedings in any city or town. R.I. Gen. Laws § 42-46-5(c).

4. Nongovernmental bodies receiving public funds or benefits.

Not covered unless a library that received 25% of its operational budget in the prior budget year from public funds or is an “authority” as defined in R.I. Gen. Laws § 42-35-1(b). R.I. Gen. Laws § 42-46-2(c). R.I. Gen. Laws § 42-35-1(b) identifies authorities as including certain named authorities, corporations and boards as well as any future “body corporate and politic with the power to issue bonds and notes, which are direct, guaranteed, contingent, or moral obligations of the state”.

Except with respect to libraries, the definition of “public body” is not tied to receipt of public funds. *See* Opinion of the Attorney General No. ADV OM 99-10 (July 2, 1999), 1999 WL 34814173.

5. Nongovernmental groups whose members include governmental officials.

Probably not covered unless a library or authority as defined in R.I. Gen. Laws § 42-35-1(b), as these groups may fall outside of the definition of “public body” under R.I. Gen. Laws § 42-46-2(c). Any political party, organization, or unit thereof meeting or convening for any purpose is expressly not covered by the OML. *Id.*

6. Multi-state or regional bodies.

The OML limits coverage to public bodies “of state or municipal government.” R.I. Gen. Laws § 42-46-2(c).

7. Advisory boards and commissions, quasi-governmental entities.

R.I. Gen. Laws § 42-46-2(c) includes public bodies which are supervisory or advisory in nature and not just public bodies that meet to render decisions. *See Solas v. Emergency Hiring Counsel of State*, 774 A.2d 820, 825 (R.I. 2001). As discussed above, quasi-governmental agencies which meet the definition of “authority” in R.I. Gen. Laws § 42-35-1 are covered.

8. Other bodies to which governmental or public functions are delegated.

May be covered as an “authority” of state or municipal government. R.I. Gen. Laws § 42-46-2(c).

9. Appointed as well as elected bodies.

Substantially covered.

The Attorney General has interpreted the OML to apply to members-elect of a city-council. *See* Opinion of the Attorney General No. 95-12, (December 19, 1995), 1995 WL 783630. Members-elect become subject to the OML as soon as the election results are not, even if the elections results have not yet been certified. *See* Opinion of the Attorney General No. OM 07-03 (Mar. 8, 2007), 2007 WL 1696978.

D. What constitutes a meeting subject to the law.

The OML defines “meeting” as “the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” Expressly included as public meetings are “so-called ‘workshop,’ ‘working,’ or ‘work’ sessions.” R.I. Gen. Laws § 42-46-2.

The Attorney General has interpreted the OML to apply to any “gripe session” at which members of the public express concerns and criticisms to a public body and no votes are taken. *See* Opinion of the Attorney General No. 90-12-41 (December 4, 1990), 1990 WL 487204. A meeting at which the electorate of a town may vote, such as a Financial Town Meeting, is subject to the OML and members of the general public may *not* be excluded. *See* Opinion of the Attorney General No. 91-06-12 (July 3, 1991), 1991 WL 498710.

The Attorney General has interpreted the OML to apply whenever any gathering, whether formal or casual, of two or more members of the same public body to discuss any matter in which action will be taken by the public body. *See*, Opinion of the Attorney General No. 92-06-09 (June 5, 1992), 1992 WL 478161.

1. Number that must be present.

The Rhode Island Supreme Court has interpreted the OML to require that a quorum must be present to constitute a meeting for purposes of the OML. *See, e.g., Fischer v. Zoning Bd. of Town of Charlestown*, 723 A.2d 294 (R.I. 1999). A quorum is a simple majority unless otherwise defined by law. R.I. Gen. Laws § 42-46-2 (d). However, a public body cannot circumvent the requirements of the OML by discussing a matter that is before it in a series of one-on-one conversations. Opinion of the Attorney General No. ADV OM 04-04 (Apr. 16, 2004), 2004 WL 3557538.

a. Must a minimum number be present to constitute a “meeting”?

The Rhode Island Supreme Court has interpreted the OML to require that a quorum must be present to constitute a meeting for purposes of the OML. *See, e.g., Fischer v. Zoning Bd. of Town of Charlestown*, 723 A.2d 294 (R.I. 1999). A quorum is a simple majority unless otherwise defined by law. R.I. Gen. Laws § 42-46-2 (d).

b. What effect does absence of a quorum have?

Although the OML does not specifically address this issue, the Rhode Island Supreme Court ruled that the OML did not apply to town solicitor’s informal meeting with two zoning board members, since this was not the convening of a meeting of a public body as envisioned by the OML, no quorum was present, and no public business was transacted. *Fischer v. Zoning Bd. of Town of Charlestown*, 723 A.2d 294 (R.I. 1999).

2. Nature of business subject to the law.

The public body must be convening to “discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. R.I. Gen. Laws § 42-46-2(a). Moreover, the Rhode Island Supreme Court has held that the provisions of the OML do not apply when no public business was transacted at the gathering. *See, e.g., Fischer v. Zoning Bd. of Town of Charlestown*, 723 A.2d 294 (R.I. 1999).

a. “Information gathering” and “fact-finding” sessions.

Not specified.

b. Deliberations toward decisions.

Not specified.

3. Electronic meetings.

While no provision of the OML attempts to regulate electronic meetings (i.e., conference calls, e-mail), the OML does expressly prohibit the use of electronic communication to circumvent the spirit or requirements of the OML. R.I. Gen. Laws § 42-46-5(b). Discussions of a public body *visa* electronic communication shall be permitted only to schedule meetings. R.I. Gen. Laws § 42-46-2(b).

a. Conference calls and video/Internet conferencing.

While no provision of the OML attempts to regulate electronic meetings (i.e., conference calls, e-mail), the OML does expressly prohibit the use of electronic communication to circumvent the spirit or requirements of the OML. R.I. Gen. Laws § 42-46-5(b). Discussions of a public body *visa* electronic communication shall be permitted only to schedule meetings. R.I. Gen. Laws § 42-46-2 (b).

b. E-mail.

While no provision of the OML attempts to regulate electronic meetings (i.e., conference calls, e-mail), the OML does expressly prohibit the use of electronic communication to circumvent the spirit or requirements of the OML. R.I. Gen. Laws § 42-46-5(b). Discussions of a public body *visa* electronic communication shall be permitted only to schedule meetings. R.I. Gen. Laws § 42-46-2 (b).

c. Text messages.

There is no statutory or case law addressing this issue.

d. Instant messaging.

There is no statutory or case law addressing this issue.

e. Social media and online discussion boards.

There is no statutory or case law addressing this issue.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

The OML makes reference to “regularly scheduled meetings” without further definition.

b. Notice.

(1). Time limit for giving notice.

Written notice of the dates, times and places of regularly scheduled meetings must be given at the beginning of the calendar year. R.I. Gen. Laws § 42-46-6(a). Supplemental written public notice of the date, time, place, and a statement specifying the nature of the business to be discussed is required within a minimum of 48 hours before the date of the meeting, and copies of the notice must be maintained for at least one year. R.I. Gen. Laws § 42-46-6(b). If an emergency meeting is called, a meeting notice and agenda must be posted “as soon as practicable”. R.I. Gen. Laws § 42-46-6(c). When a meeting which was properly noticed and posted under the OML is continued to another date, without formal adjournment, the public body cannot rely on the original notice given. Any continuation meeting must be re-noticed and re-posted in accordance with the provisions of the OML. *See* Opinion of the Attorney General No. 91-08-14 (August 14, 1991), 1991 WL 498708.

(2). To whom notice is given.

The OML does not specifically address to whom notice must be given and only addresses the posting of notices.

(3). Where posted.

Written public notice shall include, but need not be limited to, a posted notice at the principal office of the public body holding the meeting. If no principal office exists, the notice must be posted at the building in which the meeting is to be held, and in at least one other prominent area within the governmental unit. R.I. Gen. Laws § 42-46-6(c). Notice must also be filed electronically with the secretary of state pursuant to the rules and regulations are promulgated by the secretary of state. R.I. Gen. Laws § 42-46-6(c). Notice of a school committee meeting also must be published in a newspaper of general circulation in the school district under the committee's jurisdiction. R.I. Gen. Laws § 42-46-6(c). The Attorney General has specifically found that the OML requires all public bodies holding meetings to comply fully with the Act's provisions including those public bodies in "work sessions." See Opinion of the Attorney General, February 13, 1991.

(4). Public agenda items required.

A statement specifying the nature of the business to be discussed must be included in the written notice posted within a minimum of 48 hours before the date of the meeting. R.I. Gen. Laws § 42-46-6 (b). The agenda must list individual items to be discussed, and the Attorney General has determined that it is grossly inadequate to simply list broad agenda items such as "Old Business" and "New Business." Opinion of the Attorney General, OM 09-20/PR 09-36 (Dec. 17, 2009), 2009 WL 6329143.

In *Tanner v. Town Council of East Greenwich*, 880 A.2d 784, 797-8 (R.I. 2005), the Rhode Island Supreme Court attempted to give guidance as to what would constitute a statement specifying the nature of the business to be discussed. It found that the Legislature intended to establish a flexible standard that would provide fair notice to the public as to the nature of the business to be discussed or acted upon and the OML does not require an agenda to specifically state that the public body intends to vote on a particular issues. But in this particular instance the agenda listed "Interviews for Potential Board and Commission Appointments", along with the name and interview time for each candidate, which the court found was misleading and failed to not reasonably inform the public that the town council would be voting on the candidates. Procedurally, the Tanner court held that the action was not rendered moot when the Town gave proper notice at a second meeting. See also *Solas v. Emergency Hiring Council of State*, 774 A.2d 820 (R.I. 2001) and Opinion of the Attorney General, OM 09-20/PR 09-36 (Dec. 17, 2009), 2009 WL 6329143.

Listing "2005-6 School Budget" on the agenda, when the school committee anticipated that there would be a vote on the issue of whether to close Wickford Elementary School, was misleading and failed to fairly notify the public that the issues of school closure and consolidation would be discussed. *Obs v. North Kingstown School Committee*, C.A. No. WC 05-441, 2005 WL 2033074/2005 R.I. Super. LEXIS 132 (R.I. Super. Aug. 10, 2005).

(5). Other information required in notice.

All public bodies are required under the OML to ensure that all open meetings are held in places accessible to handicapped persons. R.I. Gen. Laws § 42-46-13.

(6). Penalties and remedies for failure to give adequate notice.

The OML provides for a maximum civil fine of \$5,000.00 per meeting for willful violation of any other provision in the OML. In addition, the court may issue injunctive relief and declare null and void any actions of a public body found in violation of the OML. R.I. Gen. Laws § 42-46-8.

In the matter of *Obs v. North Kingstown School Committee*, No. WC 05-441, 2007 WL 2360082 (R.I. Super. July 26, 2007), the Washington County Superior Court imposed the maximum fine of \$5,000 against the school committee, based upon an intentionally misleading agenda item in this particular case and the secrecy with which the school committee had shrouded its past deliberations and decisions. But, in order not to unduly penalize town taxpayers, the Court said it would vacate the fine if the School Committee adopted a policy that would ensure strict compliance with the OML in the future.

c. Minutes.**(1). Information required.**

All public bodies must keep written minutes of their meetings which, at a minimum, must include the date, time and place, all present and absent members, a record by individual members of any vote taken, and other information relevant to the business of the public body that any member requests to be included or reflected in the minutes. R.I. Gen. Laws § 42-46-7 (a).

(2). Are minutes public record?

All public bodies within the executive branch of state government and all state public and quasi-public boards, agencies and corporations must keep official and/or approved minutes of all meetings and must file copies of all minutes of meetings with the Secretary of State for inspection by the public within thirty-five (35) days of the meeting. Rhode Island Gen. Laws § 42-46-7(d). This requirement does not apply to public bodies that are solely advisory in nature.

According to the Attorney General, minutes of public meetings should be filed in a place which allows for convenient public access. The most appropriate location for minutes of a Town Council committee is the Town Clerk's Office. See Opinion of the Attorney General No. 91-08-14 (August 14, 1991), 1991 WL 498708.

2. Special or emergency meetings.**a. Definition.**

An emergency meeting may be held upon majority vote of the members of a public body when deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. R.I. Gen. Laws § 42-46-6(c).

b. Notice requirements.**(1). Time limit for giving notice.**

If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and filed electronically with the secretary of state. Upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. Moreover, the OML provides that emergency meetings shall not circumvent "the spirit and requirements of this Chapter." R.I. Gen. Laws § 42-46-6(c).

(2). To whom notice is given.

The OML does not specifically address to whom notice must be given and only addresses the posting of notices.

(3). Where posted.

There are no special requirements regarding emergency meetings. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and filed electronically with the secretary of state pursuant to the rules and regulations which shall be promulgated by the secretary of state. R.I. Gen. Laws § 42-46-6(c).

(4). Public agenda items required.

Not specifically addressed. However, if an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state. R.I. Gen. Laws § 42-46-6 (c).

(5). Other information required in notice.

If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and, upon meeting, the public body shall state for the record why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. R.I. Gen. Laws § 42-46-6(c).

(6). Penalties and remedies for failure to give adequate notice.

The same penalties and remedies apply as for regular meetings.

The OML provides for a maximum civil fine of \$5,000.00 per meeting for willful violation of any provision in the OML. In addition, the court may issue injunctive relief and declare null and void any actions of a public body found in violation of the OML. R.I. Gen. Laws § 42-46-8.

c. Minutes.**(1). Information required.**

If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight hours. R.I. Gen. Laws § 42-46-6(c). Moreover, the law provides that emergency meetings shall not circumvent the “spirit and requirements of this Chapter.” R.I. Gen. Laws § 42-46-6(c).

(2). Are minutes a public record?

Minutes of emergency meetings are not distinguished from minutes of regularly scheduled meetings. See discussion above for regularly scheduled meetings.

3. Closed meetings or executive sessions.**a. Definition.**

Closed meetings must be limited to matters allowed to be exempted from discussion by the nine exemptions listed in the OML, which include: any discussion of job performance, character, or physical or mental health of a person; discussions related to collective bargaining or litigation; discussion related to security issues; discussions related to investigative proceedings regarding allegations of misconduct, either civil or criminal; discussions related to acquisition or lease of real property; discussions of prospective business or industry entity; discussion of a matter related to the investment of public funds where the premature disclosure would adversely affect the public interest; certain matters related to school committees; and matters relating to grievances filed pursuant to collective bargaining agreement. R.I. Gen. Laws §§ 42-46-4 and 42-46-5.

b. Notice requirements.

The only special notice requirements provided in the OML are applicable only to closed meetings in which the job performance, character, or physical or mental health of a person or persons is going to be discussed or an executive session of a local school committee exclusively for the purposes (a) of conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy of students and their records. R.I. Gen. Laws §§ 42-46-5(a)(1) and (8). With respect to each such meeting, advance written notice must be provided to the affected person(s) or student(s) and he or she must be advised that he or she may require that the discussion be held at an open meeting. *Id.* Failure to provide such notification shall render any action taken against the affected person(s) or student(s) null and void. *Id.* Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any person(s) or student(s) to be discussed have been so notified and this statement shall be noted in the minutes of the meeting. *Id.*

Otherwise, there is no special notice requirements for closed meetings.

(1). Time limit for giving notice.

Same time limit for notice as for regular meetings.

(2). To whom notice is given.

The OML does not specifically address to whom notice must be given and only addresses the posting of notices.

(3). Where posted.

Same posting requirements as for regular meetings.

(4). Public agenda items required.

The meeting agenda must give fair notice of what will be discussed in any closed session. Although reasonable minds can differ as to what will constitute fair notice in any given situation, the notice should give some specific indication of the nature of the business to be discussed in closed session, i.e., “a personnel matter”, and not simply reference that there will be a closed session. Opinion of the Attorney General, OM 09-20/PR 09-36 (Dec. 17, 2009), 2009 WL 6329143. If more than one matter of a specific type will be discussed at the closed session, the agenda must indicate the number of matters to be discussed. Opinion of the Attorney General, OM 07-05 (Apr. 11, 2007), 2007 WL 1696981. With respect to litigation matters and personnel matters, if the matter is not yet public the public body may simply list “litigation matter” or “personnel matter” in its agenda. But if the matter is already one of public record, such as a pending court case, the public body should state the name of the case. *Id.* If the closed meeting relates to threatened litigation on a subject where the public is already aware of the existing discord, it is not sufficient for a school committee to list an agenda item as simply “litigation”, there must be more specific notice of the subject, such as “Litigation—Threatened Litigation as to Breathalyzer Policy” or “Litigation – Breathalyzer Policy” on the public agenda, to more fairly inform the public. *Phoenix-Times Publishing Co. v. Barrington School Committee*, No. PC-2009-4665, 2010 R.I. Super. LEXIS 170 (R.I. Super. Nov. 15, 2010).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

The same penalties and remedies apply as for regular meetings.

The OML provides for a maximum civil fine of \$5,000.00 per meeting for willful violation of any provision in the OML. In addition, the court may issue injunctive relief and declare null and void any actions of a public body found in violation of the OML. R.I. Gen. Laws § 42-46-8.

c. Minutes.

Minutes of a closed meeting must be made available at the next regularly scheduled meeting, unless there is a majority vote in accordance with the OML to keep the minutes closed. R.I. Gen. Laws § 42-46-7(c). Into the minutes must be recorded and entered the vote, the reasons for holding a closed meeting, by a citation to the applicable exemption, and a statement specifying the nature of the business to be discussed. R.I. Gen. Laws § 42-46-4.

The Attorney General has noted that the requirement is only to include a statement of “nature of the business”, and there is no requirement to include a detailed statement of the actual discussions during the closed meeting. Opinion of the Attorney General No. 92-01-01 (January 3, 1992), 1992 WL 478153. The OML’s provision requiring a majority vote to keep minutes of a closed meeting exempt from disclosure was also interpreted to apply only to meetings closed pursuant to R.I. Gen. Laws § 42-65-5(a)(1)-(4). If a meeting is closed pursuant to R.I. Gen. Laws § 42-64-5(a)(5)-(7) to discuss a matter such as purchase of property or investment of public funds, minutes of that meeting must be released once the purpose for holding the closed meeting

has abated (i.e., the property has been purchased or the investment has been made). Opinion of the Attorney General, *Id.*

Minutes of a closed session may be approved in an open session if no discussion is necessary before approval. If a public body wants to discuss minutes of a meeting that will be kept closed or if a vote on closure will be taken, the public body may go into closed session to avoid an inappropriate disclosure of the nature of the discussion at the original closed meeting. *See* Opinion of the Attorney General No. 90-05-18 (June 18, 1990), 1990 WL 357448.

(1). Information required.

No distinction.

(2). Are minutes a public record?

The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body both votes to extend the time period and publically state the reason for extending the time period. R.I. Gen. Laws § 42-46-7(c).

d. Requirement to meet in public before closing meeting.

A meeting may be closed upon majority vote of the members by open call. R.I. Gen. Laws § 42-46-4. An open call is a public announcement by the chairperson that the meeting is to be closed, indicating the statutory authority involved. R.I. Gen. Laws § 42-46-2 (b).

e. Requirement to state statutory authority for closing meetings before closure.

The chairperson is required to publicly state that the meeting will be a closed meeting and indicate the specific statutory authority for closing the meeting. R.I. Gen. Laws § 42-46-2(b).

f. Tape recording requirements.

No provisions.

F. Recording/broadcast of meetings.

The OML does not prohibit sound and photographic recordings. However, use of electronic communication shall not be used to circumvent the spirit or requirements of the OML. R.I. Gen. Laws § 42-46-5(b).

1. Sound recordings allowed.

No specific provision in statute, but allowed by case law. The U.S. District Court for the District of Rhode Island found a prohibition against taping meetings without the express knowledge and consent of a school committee to be unconstitutional. The court found that the OML required the school committee to allow members of the press and the public to tape record its meetings, subject to reasonable restrictions. *Belcher v. Mansi*, 569 F.Supp. 379 (D. R.I. 1983).

2. Photographic recordings allowed.

No specific provision in statute, but the Attorney General has given the opinion that videotaping open portions of a meeting is allowed, by extension of the reasoning relating to sound recordings in *Belcher v. Mansi*, 569 F.Supp. 379 (D. R.I. 1983), subject to reasonable restrictions set forth by the public body. Opinion of the Attorney General, OM 06-58 (Sept. 8, 2006), 2006 WL 4573885.

G. Are there sanctions for noncompliance?

The sanctions include reasonable attorney's fees and costs to a prevailing plaintiff, a declaration that the actions of the public body violative of the statute are null and void, and a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have willfully and knowingly violated the law. R.I. Gen. Laws § 42-46-8.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

OML lists ten specific purposes for which a meeting may be closed to the public. R.I. Gen. Laws § 42-46-5(a)(l)-(10). The language of the OML, that a public body "may" close a meeting, indicates that the exemptions are discretionary. *See* R.I. Gen. Laws § 42-46-5(a).

a. General or specific.

The exemptions are specific.

b. Mandatory or discretionary closure.

The language of the OML, that a public body "may" close a meeting, indicates that the exemptions are discretionary. *See* R.I. Gen. Laws § 42-46-5(a).

2. Description of each exemption.

Exemption (1): Any discussions of the job performance, character, physical or mental health of a person or persons provided that such person or persons affected may require that such discussion be held at an open meeting. According to the Attorney General, Exemption (1) does not authorize completely secret interviews of candidates for public positions. Exemption (1) covers only those portions of the interview dealing with an applicant's job performance, health, or character, which may be conducted in a closed session if the person affected does not object to the session being closed. *See* Opinion of the Attorney General No. 89-04-24 (April 10, 1989), 1989 WL 421847.

Exemption (2): Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to the same. The Rhode Island Superior Court, concurring with prior Attorney General Opinions, has interpreted exemption (2) to include not only instances in which a lawsuit has already been filed but also matters concerning "threatened litigation or imminent litigation that is reasonably anticipated by the public body." *Phoenix-Times Publishing Co. v. Barrington School Committee*, No. PC-2009-4665, 2010 R.I. Super. LEXIS 170 (R.I. Super. Nov. 15, 2010).

The exemption only applies if the public interest will be affected by full disclosure of procedures and defenses in an adversarial situation, and the determining factor is whether advance public information would be detrimental to the public's interest. *See* Opinion of the Attorney General No. 90-05-17 (June 18, 1990), 1990 WL 357449.

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

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

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

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

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

Exemption (8): Any executive session of a local school committee exclusively for the purposes (a) of conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy

of students and their records, provided, however, that any affected student may require that the discussion be held in an open meeting.

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

B. Any other statutory requirements for closed or open meetings.

All public bodies are required to insure that all open meetings are accessible to handicapped persons. Access compliance was fulfilled by December 20, 1991. R.I. Gen. Laws § 42-46-13.

C. Court mandated opening, closing.

None.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

No specific exemption. May be covered by exemption (4), which includes investigative proceedings regarding allegations of civil or criminal misconduct.

B. Budget sessions.

No specific exemption. The Attorney General has determined that meetings of a public committee concerning budget are not exempt. *See* Opinion of the Attorney General, February 13, 1986.

C. Business and industry relations.

No specific exemption. May be covered by exemptions (6) and (7) on prospective business location and investing funds.

D. Federal programs.

No specific exemption. May be covered by exemptions (6) and (7) on prospective business location and investing funds.

E. Financial data of public bodies.

No specific exemption except for exemption (7) on investing funds.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

No specific exemption.

G. Gifts, trusts and honorary degrees.

No specific exemption.

H. Grand jury testimony by public employees.

Closed pursuant to exemption (4), which includes all investigative proceedings regarding allegations of criminal misconduct.

I. Licensing examinations.

No specific exemption.

J. Litigation; pending litigation or other attorney-client privileges.

Exemption (2) excludes all sessions and work sessions pertaining to litigation. Exemption (4) excludes investigative proceedings regarding allegations of both criminal and civil misconduct.

K. Negotiations and collective bargaining of public employees.

All sessions and work sessions pertaining to collective bargaining are generally excluded by exemption (2).

1. Any sessions regarding collective bargaining.

Work sessions of a public body to prepare for upcoming collective bargaining negotiations are appropriately closed under exemption 2.

See Opinion of the Attorney General, OM 07-02 (Feb. 28, 2007), 2007 WL 1696977. Where the agenda for a closed work session of a school committee listed "Teacher Contract Negotiations Work Session", it was not a violation of the OML for the school committee to discuss the financial implications of various provisions that might be included in a new teachers' union contract. Although the agenda didn't specify that financial implications of various contract provisions might be discussed, because it would be nearly impossible to negotiate a collective bargaining agreement with another party without first determining the financial parameters within which any discussion could take place. *Id.*

The Attorney General has determined that meetings of a school committee's budget committee do not fall under the collective bargaining exemption because the budget committee has no role in, nor is a party to, later negotiations. *See* Opinion of the Attorney General No. 95-07 (May 30, 1995), 1995 WL 370309.

2. Only those between the public employees and the public body.

The exemption is not limited to sessions involving the public body and the public employees but also extends to sessions which only involve the public body.

L. Parole board meetings, or meetings involving parole board decisions.

No specific exemption. May be covered by exemption (4), which includes all investigative proceedings regarding allegations of civil or criminal misconduct, although parole board hearings are not normally "investigative."

M. Patients; discussions on individual patients.

Excluded by exemption (1), which includes "Any discussions of the . . . physical or mental health of a person." Persons affected, i.e. patients, may require the meeting to be open.

N. Personnel matters.

Interviews, disciplinary matters and discussions on dismissing employees are excluded by exemption (1), which includes, "Any discussions of the job performance [or] character of a person." Persons affected may require the meeting to be open. Note that most job interviews would be neither discussions of "job performance" nor of "character" and therefore arguably would be open.

The Attorney General found that discussions relating to the need for a particular position does not relate to the performance or character of an individual and therefore not an appropriate topic for executive session. *See* Opinion of the Attorney General No. 93-05-10 (May 13, 1993), 1993 WL 208956.

1. Interviews for public employment.

Presumably not covered because a quorum is likely not present. Otherwise closed pursuant to R.I. Gen. Laws § 42-46-5(a)(1).

2. Disciplinary matters, performance or ethics of public employees.

Presumably closed pursuant to R.I. Gen. Laws § 42-46-5(a)(1). However, employees may require the meeting to be public. *Id.*

3. Dismissal; considering dismissal of public employees.

Presumably closed pursuant to R.I. Gen. Laws § 42-46-5(a)(1).

O. Real estate negotiations.

Exemption (5) excludes discussions or considerations related to the acquisition, lease or disposition of a public property, but only where advanced public information would be detrimental to the public. R.I. Gen. Laws § 42-46-5(a)(5).

P. Security, national and/or state, of buildings, personnel or other.

Exemption (3) generally excludes all discussion regarding the matter of security. R.I. Gen. Laws § 42-46-5(a)(3).

Q. Students; discussions on individual students.

Exemption (8) excludes executive sessions of school committees conducting disciplinary hearings or reviewing other matters relating to the privacy of students and their records. However, students may require the meeting to be public. R.I. Gen. Laws § 42-46-5(a)(8).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

No provision.

2. When barred from attending.

No distinction.

3. To set aside decision.

No distinction.

4. For ruling on future meetings.

No distinction.

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

There is no agency for handling open meetings appeals in Rhode Island. However, any citizen or entity of the state who is aggrieved as a result of violations of the OML may file a complaint with the attorney general. R.I. Gen. Laws § 42-46-5(a).

b. State attorney general.

The Attorney General is required to prepare and post in a prominent location in each city and town hall, a notice providing concise information explaining the requirements of the OML and advising citizens of their rights to file complaints for violations of the OML. R.I. Gen. Laws § 42-46-12.

R.I. Gen. Laws § 42-46-8 prescribes the procedures for persons aggrieved as a result of violations of the OML. A citizen of Rhode Island may file a complaint with the Attorney General. As a practical matter, this may be done simply by letter. The Attorney General must investigate, and may, upon determination that the allegations are meritorious, file a complaint in the Superior Court against the public body.

It is the official policy of the Attorney General not to issue advisory opinions on the OML. The Attorney General is authorized to render formal opinions to state departments, boards, commissions and general officers only. As a practical matter, the Attorney General will render informal and unofficial opinions to individuals upon request.

In practice, the Attorney General has consistently simply requested agency violators to comply with the OML and has refrained from filing complaints, upon noting that the agency was acting in good faith and was not a repeat offender. *See, e.g.,* Opinion of the Attorney General, February 25, 1986.

The Attorney General is required by law to file and submit to the legislature a report each year summarizing the complaints received pursuant to the OML and including information as to how many complaints were found to be meritorious and the action taken in response to those complaints. R.I. Gen. Laws § 42-46-11.

c. Court.

Persons aggrieved as a result of violations of the OML may file a complaint in the Superior Court. R.I. Gen. Laws § 42-46-8(c).

2. Applicable time limits.

No complaint by the Attorney General may be filed after 180 days from the date of public approval of the minutes of the meeting at which the alleged violation occurred or, in the case of an unannounced or improperly closed meeting, after 180 days from the public action of a public body revealing the alleged violation, whichever is greater. R.I. Gen. Laws § 42-46-8(b).

3. Contents of request for ruling.

There are no applicable requirements concerning the contents of any request for a ruling.

4. How long should you wait for a response?

The OML does not provide for any specified response time. However, keep in mind that a complaint in the Superior Court must be filed within certain time limitations — usually within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8(c).

5. Are subsequent or concurrent measures (formal or informal) available?

Aggrieved persons may concurrently or subsequently file a complaint in the Superior Court.

C. Court review of administrative decision.

1. Who may sue?

“Any individual” may file a complaint in the Superior Court on his/her own behalf. R.I. Gen. Laws § 42-46-8(c).

2. Will the court give priority to the pleading?

Actions brought under the OML may be advanced on the calendar upon motion of the petitioner. R.I. Gen. Laws § 42-46-8(g).

3. Pro se possibility, advisability.

Bringing an action *pro se* is possible but not advisable for procedural reasons.

4. What issues will the court address?

The OML does not limit the issues that may be addressed.

a. Open the meeting.

The court may issue injunctive relief. R.I. Gen. Laws § 42-46-8(d).

b. Invalidate the decision.

The court may declare null and void any actions of a public body found to be in violation of this chapter. R.I. Gen. Laws § 42-46-8(d).

c. Order future meetings open.

The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. R.I. Gen. Laws § 42-46-8(d).

5. Pleading format.

The pleading is in the form of a complaint, alleging the violation and including a prayer for relief.

6. Time limit for filing suit.

The complaint must be filed within the time limits applicable to the Attorney General. R.I. Gen. Laws § 42-46-11. If the individual

has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8(c)

7. What court.

Suit must be brought in the Superior Court. R.I. Gen. Laws § 42-46-8(c).

8. Judicial remedies available.

The OML provides that the court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of the chapter. R.I. Gen. Laws § 42-46-8(d).

9. Availability of court costs and attorneys' fees.

The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust. R.I. Gen. Laws § 42-46-8(d).

10. Fines.

The court may impose a civil fine not exceeding \$5,000 against a public body or any of its members who have been found to have committed a willful violation of the OML, not to exceed \$1,000 total fine for any meeting. R.I. Gen. Laws § 42-46-8(d).

11. Other penalties.

None provided.

D. Appealing initial court decisions.

1. Appeal routes.

Appeals from the Superior Court ruling must be made to the Rhode Island Supreme Court.

2. Time limits for filing appeals.

Appeals must be filed within twenty (20) days of final judgment. R.I. Sup. Ct. App. p. 4.

3. Contact of interested amici.

Briefs of *amicus curiae* may be filed with the written consent of all parties, or upon leave of the Supreme Court on motion which identified the interest of the applicant and the reasons for brief. Rhode Island Supreme Court Rule of Appellate Procedure 16(f).

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

No specific provision.

A. Is there a right to participate in public meetings?

No specific provision.

B. Must a commenter give notice of intentions to comment?

No specific provision.

C. Can a public body limit comment?

Presumably not. However, the OML allows the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised. R.I. Gen. Laws § 42-46-5(d).

D. How can a participant assert rights to comment?

No provisions.

E. Are there sanctions for unapproved comment?

No provisions.

Statute

Open Records

38-2-1. Purpose.

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

38-2-2. Definitions.

As used in this chapter:

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

(2) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

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

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

(A)

(I) All records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 36, title 42, and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries.

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

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

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

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

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

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

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

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

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

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

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

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

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

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

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

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

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

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

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

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

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

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

(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

(5) “Supervisor of the regulatory body” means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

(6) “Prevailing plaintiff” means and shall include those persons and entities deemed prevailing parties pursuant to 42 U.S.C. § 1988.

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

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

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

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

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

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

(f) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

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

(h) No public records shall be withheld based on the purpose for which the records are sought.

38-2-3.1. Records required.

All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a “real-time translation reporter”.

38-2-4. Cost.

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

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.

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

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

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

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings.

Nothing in this chapter shall be:

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

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

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

38-2-6. Commercial use of public records.

No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one year.

38-2-7. Denial of access.

(a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person or entity requesting the right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

38-2-8. Administrative appeals.

(a) Any person or entity denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination

whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

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

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

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

38-2-9. Jurisdiction of superior court.

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

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

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

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

38-2-10. Burden of proof.

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

38-2-11. Right supplemental.

The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

38-2-12. Severability.

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

38-2-13. Records access continuing.

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

38-2-14. Information relating to settlement of legal claims.

Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

38-2-15. Reported violations.

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

Open Meetings

42-46-1. Public policy.

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

42-46-2. Definitions.

As used in this chapter:

(1) "Meeting" means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term "meeting" expressly includes, without limiting the generality of the foregoing, so-called "workshop," "working," or "work" sessions.

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

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

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

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

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

42-46-3. Open meetings.

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

42-46-4. Closed meetings.

(a) By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by § 42-46-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting. No public body shall discuss in closed session any public matter which does not fall within the citations to § 42-46-5(a) referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.

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

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

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

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

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

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

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

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

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

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

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

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

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

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

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

(b) No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

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

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

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

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

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

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

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

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

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

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

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

42-46-6. Notice.

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

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

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

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

an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

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

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

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

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

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

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

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

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

42-46-7. Minutes.

(a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:

(1) The date, time, and place of the meeting;

(2) The members of the public body recorded as either present or absent;

(3) A record by individual members of any vote taken; and

(4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.

(b) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

(c) The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5.

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

(e) All minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of minutes with the secretary of state shall take effect one year after this subsection takes effect. If a public body fails to transmit minutes in accordance with this subsection,

then any aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

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

(a) Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.

(b) No complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred, or, in the case of an unannounced or improperly closed meeting, after one hundred eighty (180) days from the public action of a public body revealing the alleged violation, whichever is greater.

(c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.

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

The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter.

(e) [Deleted by P.L. 1988, ch. 659, § 1.]

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

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

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

42-46-9. Other applicable law.

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

42-46-10. Severability.

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

42-46-11. Reported violations.

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

42-46-12. Notice of citizen's rights under this chapter.

The attorney general shall prepare a notice providing concise information explaining the requirements of this chapter and advising citizens of their right

to file complaints for violations of this chapter. The notice shall be posted in a prominent location in each city and town hall in the state.

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

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

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

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

(d) The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is

not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

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

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

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

42-46-14. Burden of proof.

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

