COMPLIANCE WITH RHODE ISLAND'S OPEN MEETINGS ACT

A GUIDE FOR LOCAL OFFICIALS

COMPLIANCE WITH RHODE ISLAND'S OPEN MEETING ACT

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SECTION I:

INTRODUCTION

WHAT IS THE OPEN MEETINGS ACT?

A. STATEMENT OF LAW:

"EVERY MEETING OF ALL PUBLIC BODIES SHALL BE OPEN TO THE PUBLIC UNLESS CLOSED PURSUANT TO R.I.G.L.§42-46-4 THRU R.I.G.L.§42-46-5."

R.I.G.L.§42-46-5

B. BRIEF HISTORY AND BACKGROUND:

Designed to address the problem of misinformation and an at-a-distance style of democracy, the Rhode Island Open Meetings Act (OMA) was originally passed in 1976. In the years immediately following the Act's passage, enforcement of the law wavered between feeble at-best and non-existent. Throughout the 1980's and into the 1990's, it was not unusual for the attorney general in office at the time to receive complaints that meetings were being held in violation of the Open Meetings Act.

Fortunately, the legal and legislative backdrop of today is dramatically different from that of the past. With a renewed focus on the accountability of public officials, the statute has emerged as the primary tool of citizens and public advocacy groups seeking to exercise their rights to ensure that every meeting of a public body be open to the citizens of Rhode Island.

C. PURPOSE OF THE OPEN MEETINGS ACT AND LEGISLATIVE INTENT:

The Rhode Island Open Meetings Act (OMA) was designed with two purposes in mind. Foremost, the statute was devised to serve as an avenue through which the citizens of the State of Rhode Island could participate, observe, and monitor the inner-workings of government. Secondarily, the OMA was formulated as a means of furthering one of the major ideals of a democratic society: openness. In a statement reminiscent of the great enlightened thinkers of the past, the OMA sets forth:

> *"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."*

Thus, the very wording of the statute illustrates the General Assembly's primary goal in enacting a law such as this: to enhance the overall awareness of the citizenry. In other words, it was drafted with the "intent to make public business known to the public."

SECTION II:

WHY THE OPEN MEETINGS ACT IS IMPORTANT TO YOU IN YOUR ROLE AS A MUNICIPAL OFFICIAL

A. WHEN MEETING ACTIONS BECOME NULL AND VOID:

The Open Meetings Act is of critical importance to you, the municipal official. Why? *The answer is simple. When you stray from the letter of the law in this arena, the official actions and determinations that you participate in are in violation of the Act and may potentially become null and void.*

What does that mean? Well, it means that all of your hard work leading up to the last major meeting you held without proper notice - *was all for naught!* The three hour debate you engaged in during the meeting - *a total waste of time!* The meticulous minutes, which were taken as a record of your charitable and benevolent spirit - o*f no consequence whatsoever?* Do you want to ensure a controversial issue that has plagued you for months, which you thought was finally finished, finds its way back onto your calendar, opening up new ways for members of the press to reach you? - C*ommit an Open Meetings Act Violation!*

Under R.I. Gen. Laws § 42-46-8 (d), the court is given the power to "issue injunctive relief and declare null and void any actions of a public body found to be in violation of [Chapter 42]." This provision grants the court wide latitude to determine the proper remedy for an abuse of the Act. No matter how minor the infraction, so long as you have acted in contravention of the Act or its express purpose, you will find yourself in jeopardy of nullifying any actions or votes you may have participated in at the meeting. Furthermore, because the statute fails to provide a benchmark for determining which violations are egregious enough to warrant issuance of injunctions, any violation of the Act could be grounds for voidance.

Did you fail to post notice that a meeting may be held at least 48 hours before the date of the meeting? - *Possible injunction.* Did you forget to record the members of the public body as either present or absent in the meeting minutes? - *Possible injunction.* Did you neglect to file the notice electronically? - *Possible injunction*.

Want to ensure your meeting actions withstand judicial scrutiny? *Read on!*

B. A Heavy Burden: Public Bodies and Their Burden of Proof in Open Meetings Act Challenges

Understanding the Open Meetings Act is more vital to you as a municipal official than it is to the average citizen. You may wonder how this can possibly be. It is the citizen who must be apprised of his/her rights so that he/she knows when those rights have been violated and, in turn when it is appropriate to file a complaint with the attorney general or the court. If this is your line of reasoning, you are mistaken. Violations of the OMA have far more harrowing consequences for you, as a member of the public body than for the mere uninformed citizen. For you, the burden is quite heavy, literally. R.I. Gen. Laws § 42-46-14 provides that "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."

This means that the public body you serve on bears the burden of proving that the meeting was held in compliance with the statute, in the event of an Open Meetings Act challenge. The onus is on you to demonstrate, by whatever means available, conformity with the Act. The only way to guarantee consistency with the Act is to possess a basic understanding of its major provisions. Hence the next section is designed to provide a comprehensive analysis of both the key requirements of the OMA and the accompanying Secretary of State regulations.

SECTION III:

GUIDE TO OPEN MEETINGS ACT

AND ACCOMPANYING

SECRETARY OF STATE

RULES AND REGULATIONS

A. AN IN-DEPTH OVERVIEW OF THE PROVISIONS OF THE OPEN MEETINGS ACT

As municipal officials you wear many hats and shoulder many responsibilities, so you certainly don't want to spend countless hours adhering to the Act's requirements, only to find out later on that compliance was totally unnecessary at the time. How do you know when to conform your actions to meet the requirements of the OMA? The following two sections will answer both the questions of "who" must comply with the Act and "when" compliance is necessary.

1. WHO MUST COMPLY WITH THE ACT

The Open Meetings Act strictly governs "public bodies". Under subsection (c) of R.I. Gen. Laws § 42-46-2 a "public body" is defined as "any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or . . ." and includes any library that receives state aid. Political parties and organizations are specifically exempt from the definition, along with United States government entities. However the numerous administrative agencies covered by the Administrative Procedures Act do fall within the scope of the OMA, as do their "members elect".[1]

[1] Agencies that fall within the OMA's reach include but are NOT limited to the following: the Rhode Island industrial building authority, the Rhode Island recreational building authority, the Rhode Island port authority and economic development corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the Howard development corporation, the water resources board, the Rhode Island health and educational building corporation, the Rhode Island higher education assistance authority, the Rhode Island turnpike and bridge authority, the Blackstone Valley district commission, the Narragansett Bay water quality management district commission, their successors and assigns, and any body corporate and politic with the power to issue bonds and notes, which are direct, guaranteed, contingent, or moral obligations of the state, which is hereinafter created or established in this state.

The question of whether an agency constitutes a "public body" within the meaning of the statute has been resolved by both the decisions of the Rhode Island Supreme Court and Attorney General Advisory Opinions & Findings.

One advisory opinion and two Supreme Court decisions stand out as particularly relevant to city and town officials. Each illustrates that the determination of whether an agency constitutes a public body for OMA purposes does not rest on one single factor alone but rather the emphasis is on fact specificity. Further, it is important to note that subcommittees and advisory groups are considered public bodies for purposes of the Act.

At issue in Advisory Opinion No. 99-13 was the question of whether a three (3) member committee appointed by the Mayor of Warwick to advise him on the issue of hiring a new Police Chief, constituted a "public body" within the meaning of the statute. The Attorney General found that "the description and origin of the committee . . . [lead the] Department to believe that the committee [fell] within the definition of 'public body'." The hiring committee was thereafter forced to comply with the requisite statutory provisions.

Further clarity was lent to the phrase "public body" by Pine v. McGreavy, 687 A.2d 1244(R.I.1997), which answered the question of whether a financial town meeting or moderator fell within the statutory definition of "public body". The Court held that "a financial town meeting of electors qualified to vote on the imposition of a tax and expenditure of money does not fit with the definitional section [of R.I. Gen. Laws § 42-46-2]." Instead, the Court found that a financial town meeting "by its very nature, cannot be closed and cannot be other than highly public."

In coming to its conclusion, the Court reviewed the legislative intent behind the statute and determined that "the Act was designed to prevent public bodies of a different type from holding meetings in closed sessions." As a result, compliance with the OMA was determined unnecessary because the OMA was inapplicable.

By contrast, the court in Solas v. Emergency Hiring Council of State, 774 A.2d 820 (R.I. 2001) found that "the plain language of the statute provides, a

council's exercise of advisory power is enough to bring it under the Act's umbrella" and concluded that the Emergency Hiring Council was a public body subject to the requirements of the Act.

What does this body of case law mean to you, the municipal official? Well, first and foremost it indicates that the determination of whether an agency or body constitutes a "public body" within the meaning of the statute often times cannot be easily deduced. It also signifies that you should proceed with caution in this area. While it certainly is understandable that you would not want to give three (3) types of notice or extensive meeting minutes when you otherwise would not be required to do so, neither should you act without consulting the OMA. Our advice: look first to the statute itself, and if further clarification is needed consult with your legal counsel or city/town solicitor (who *may* seek the aid of the Attorney General's Office through solicitation of a written opinion).

2. WHEN MUST A PUBLIC BODY COMPLY WITH THE OPEN MEETINGS ACT?

A public body need only comply with the OMA if two threshold requirements are met. The first is the attainment of a quorum or more specifically, the presence of "a simple majority of the membership of a public body". *R.I. Gen. Laws § 42-46-2(d)* Second, a "meeting" must be convened within the meaning of the statute.

What happens of there is a quorum of members present but there is no meeting? Compliance with the Act is unnecessary. How about a meeting of less than a majority of the body's members? Here again, compliance with the OMA's notice and filing requirements is unnecessary. These basic tenets are discussed in greater detail in the following two sections.

a. STANDARD FOR DETERMINING WHEN A "QUORUM" EXISTS WITHIN THE MEANING OF THE ACT

The Rhode Island Supreme Court has articulated that in order for the OMA to apply, a "quorum" of a "public body" must first be present. Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294, 295 (R.I. 1999).While the presence or absence of a quorum may, at first glance, appear to be a very straightforward analysis, it can become somewhat complex at times.

For example, when two members of the Little Compton School Committee were out of town (leaving three members of the five member board available to meet) the question arose as to whether a quorum convened when only two of the remaining three members converged. The Department of Attorney General, in response to a complaint of an OMA violation, determined that "since the Committee [had] five members, three was a quorum for OMA purposes regardless of the membership present on any given night." (see Crowell v. Little Compton School Committee OM-04-24.)

Likewise, the Department of Attorney General in ADV 99-05 determined that while the OMA did not apply when less than a majority of the North Kingstown Town Council were present, the public body was still subject to R.I. Gen. Laws § 42-46-5(b) which recites that, "no meeting of members of a public body . . . shall be used to circumvent the spirit or requirements of this chapter."

Finally, it is important to note that a quorum can convene through email or a series of one-on-one phone conversations. It is therefore imperative that you pay particularly close attention to the number of intended email recipients, for example, when sending emails to members of the public body.

(*see R.I. Gen. Laws § 44-46-5(d) for additional restrictions concerning email*)

b. STANDARD FOR DETERMINING WHEN AN ASSEMBLY BECOMES A "MEETING" WITHIN THE MEANING OF THE ACT

Equally as important to the assessment of whether compliance with the OMA is necessary is a determination of whether a meeting has assembled. A "meeting" is defined under the statute 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." The "so-called workshop, working, or work sessions" are also classified as "meetings" under the statute. Here again, the Attorney General's Advisory Opinions, Attorney General's Findings, and judicial decisions help to make the term's meaning even more precise.

The narrow issue of when a "meeting" is convened for purposes of the Open Meetings Act was recently addressed by In Re Pawtucket City Council ADV OM 05-01. The specific concern was whether an informal gathering of City Council members for breakfast meetings implicated the OMA. The Department of Attorney General concluded that "if a majority of the members of the Council discuss or act upon any matter over which the Council has 'supervision, control, jurisdiction, or advisory power,' the Council would need to adhere to the requirements of the Act."

A similar issue was raised by Advisory Opinion 99-01. The Department of Attorney General concluded that "the mere attendance of members of the Town Council and School Committee at [a] 'social, non-business' 'reception' does not by itself constitute a violation of the Open Meetings Act." The opinion further established that "the members of these public bodies may not discuss or act upon any matter over which the public bodies have jurisdiction, supervision, control, or advisory power at this 'social, non-business' 'reception' or, for that matter, outside of a properly noticed meeting." Thus, the Attorney General's findings substantiate the notion that while members of a public body can gather together for social occasions any discussion related to matters over which the board presides is strictly prohibited, unless OMA meeting requirements are met.

The question of when an assemblage constitutes a meeting for OMA purposes was raised in a slightly different context by AG Advisory Opinion 99-02. The issue there was whether meetings between two (2) members of the town council (in a town governed by the town council) and union representatives constituted a meeting of a "public body" as defined by the OMA. The Department of Attorney General concluded that these meetings did *not* fall within the reach of the Open Meetings Act because the requirements of R.I. Gen. Laws § 42-46-2(a) and (d) had not been met. In other words, there wasn't a meeting or a quorum, therefore there wasn't a violation.

Finally, the earlier mentioned Fischer case is equally as telling on this subject. The Rhode Island Supreme Court held that the Open Meetings Act did not apply to a solicitor's informal meeting with zoning board members, since a public body did not convene and there was no quorum present. The Court concluded "there was never any convening of a meeting of a public body as envisioned by the Act." In essence, the question that must be asked, to determine if a meeting has convened for purposes of the Act, is "has a collective discussion or action been taken by members of a public body?"

It is clear from both the advisory opinions, and decisions rendered by the judiciary, that the question of whether an assemblage constitutes a meeting will be answered in the affirmative only if there is both a "convening", as intended by the legislature, and a quorum. The absence of either condition is enough to bring an assembly outside the reach of the OMA.

C. PERMISSIBLE CLOSED MEETINGS

To municipal officials, the Open Meetings Act may seem overbroad in its application of meetings required to be open, however the statute does permit certain closed meetings or so-called "executive sessions". (see R.I. Gen. Laws § 42-46-5). The following chart delineates the ten (10) purposes, identified in the statute, for which a meeting may be closed.

- any discussion of a person's **job performance, character or mental health;**
- sessions and work sessions that pertain to **collective bargaining** or **litigation;**
- **investigative proceedings** regarding allegations of civil or criminal misconduct;
- discussions concerning:
  a. **acquisition or lease of real property** for public purposes;
  b. **disposition of publicly held property** wherein advanced information would be detrimental to the public interest;
  c. **a prospective business or industry** locating in the state of Rhode Island where an open meeting would have a detrimental effect on the interest of the public;
- a matter related to the **investment of public funds** where premature disclosure would adversely affect the public interest;
- any executive session of a local school committee exclusively for the purposes of:
  a. conducting **student disciplinary hearings**, or
  b. reviewing **other matters which relate to the privacy of students and their records;**
- any hearings or discussion of a **grievance** filed pursuant to a collective bargaining agreement;
- any discussions of the **personal finances** of a **prospective donor to a library**.

It is important to note the ten purposes listed above are the *only* grounds to convene in executive session. Closed meetings of the past have met with many challenges and much suspicion and the statute itself sets forth a very specific manner in which to call a closed meeting.

Accordingly, before a public body can hold a meeting closed to the public, there must be an affirmative vote of the majority of its members to convene in a closed session, by open call. Minutes recorded for this meeting must reflect: (1) the vote of each member on the question of holding a closed meeting; (2) the reason for holding a closed meeting under R.I. Gen. Laws § 42-46-5(a)(1)-(9); and (3) a statement specifying the nature of the business to be discussed in executive session. In effect, both a statutory citation and a statement must be provided for every matter that is discussed in executive session. Additionally, the only matters that may be discussed in executive session are limited to those set forth in open call and recorded in the open session minutes.

One further requirement set forth in the statute is the disclosure of all votes taken in closed sessions once the session is reopened unless "its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to discussions conducted under R.I. Gen. Laws § 42-46-5(a)." A public body *may* seal the closed session *meeting minutes*, upon a public vote by a majority of the members. R.I. Gen. Laws § 42-46-7(c)

While a closed meeting is an important tool in the administrative process, its availability must not be compromised by abuse. It is prudent therefore that you, as municipal officials, appreciate and respect the function this mechanism serves and follow the rules outlined above.

QUICK CHECKLIST OF THE MAJOR REQUIREMENTS OF THE OPEN MEETINGS ACT

"ALL PUBLIC BODIES MUST . . ."

☐ 1. Give annual and supplemental notice of regularly scheduled meetings. The supplemental notice must be posted:

- ☐ a. 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
- ☐ b. in at least one other prominent place within the governmental unit, and
- ☐ c. also must be posted electronically within forty-eight (48) hours of the date the scheduled meeting is to occur.

☐ 2. Keep minutes of all meetings.

☐ 3. Record (in minutes) all votes taken at all meetings, listing how each member voted on each issue and make this record available to the public within two (2) weeks of the date of the vote.

☐ 4. Ensure that all open meetings of said public bodies are accessible to persons with disabilities.

☐ 5. Allow the public to tape record open meetings, subject to reasonable restrictions.

"ALL PUBLIC BODIES (1) WITHIN THE EXECUTIVE BRANCH, (2) ALL STATE PUBLIC AND QUASI-PUBLIC BOARDS, (3) ALL AGENCIES AND CORPORATIONS MUST ALSO. . ."

☐ 1. keep official minutes of all meetings of the public body; and

☐ 2. file a copy of all open meeting minutes with the Secretary of State within thirty-five (35) days of the meeting.

(*Unless the public body is solely advisory in nature.*)

B. AN IN-DEPTH OVERVIEW OF SPECIFIC REQUIREMENTS OF THE OPEN MEETINGS ACT

1. NOTICE REQUIREMENTS:

So you have determined that you are a public body and you desire to hold a "meeting" within the meaning of the statute. What do you do now? In short, you must post notice. But how do you know when and where to furnish this notice? The following section outlines the specific manner in which notice must be given.

a. ANNUAL NOTICE REQUIREMENTS:

The notice requirements of the OMA are spelled out in R.I. Gen. Laws § 42-46-6(a) and specify that written notice of all regularly scheduled meetings must be provided at the beginning of each calendar year. Such notice is to include the following: (1) all dates; (2) all times; and (3) locations of all meetings. The Act further mandates the public body post the notice *either* at its principal office *or* if no principal office exists, at the building where the meeting is to be held, *but* in any event, notice must be posted in at least one other prominent location within the government unit.

b. SUPPLEMENTAL NOTICE REQUIREMENTS :

In addition to the requisite annual notice, supplemental notice must be posted a minimum of forty-eight (48) hours before every scheduled meeting. Even if a good faith effort has been made to comply with the 48 hour advance notice requirement, a public body may still be found in violation of the Act, as was the case in Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002). Based on the specific facts and circumstances, the Court held that notice posted on a Friday afternoon for a Monday meeting was insufficient to meet the OMA requirements.

Specifically, the notice must include: (1) the date the notice was posted; (2) the date of the meeting; (3) the time of the meeting; (4) the location of the

meeting; and (4) a statement specifying the nature of the business to be discussed. The public body must keep a copy of the supplemental notice for at least one year and post the supplemental notice in the same two locations as the annual notice if total compliance with the statute is to be achieved.

While the notice requirement does not compel a public body to identify its intention to vote on a particular subject (Pulchaski v. Charlestown Town Council, OM 99-07), it does require more than a mere listing of the names of featured speakers. Jutras v. West Warwick School Committee Special Education Advisory Committee, OM 97-16. In sum, the notice must set forth, "a sufficient statement to apprise the public of the nature of the business to be discussed." Rainey v. Warren Town Council, OM 99-01. The key here is to sufficiently apprise the public while not being misleading.

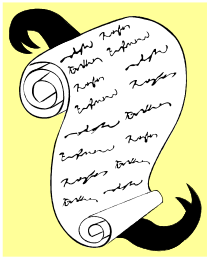
c. ELECTRONIC NOTICE REQUIREMENTS :

Lastly, under the 2003 amendments to the Open Meetings Act, every annual notice and every supplemental notice must be filed electronically, with the Secretary of State's Office. *(The electronic filing process is discussed in Section 3 "Electronic Filing Requirements".*

2. MINUTES REQUIREMENTS:

a. CONTENT OF MINUTES

The statute requires public bodies to keep written minutes of all meetings. The details of this requirement are spelled out explicitly in R.I. Gen. Laws § 42-46-7, the terms of which state that the minutes must contain:



1. the date, time, and place of the meeting;
2. the members of the public body recorded as either present or absent;
3. record by individual members of any vote taken; and
4. any other information relevant to the public body's business that any member of the public requests be included or reflected in minutes.

b. TIME PERIOD FOR RELEASE OF MINUTES

A record of every vote taken at a meeting, listing how each member voted on each issue is considered a public record and as such must be available to the public at the public body's office *within two (2) weeks* of the date of the vote. The official and unofficial minutes are also classified as public records under the statute with the exception of properly sealed meeting minutes. The unofficial minutes must be available within thirty-five (35) days of the meeting or by the next regularly scheduled meeting, whichever is earlier. There is an exception to this latter requirement, which allows for non-disclosure in two instances.

The first is where revelation of the meeting minutes contents would be inconsistent with R.I. Gen. Laws § 42-46-4 and § 42-46-5. The second instance permits the public body to extend the time period for filing of the minutes and publicly state the reason, upon a majority vote.

The graphic below outlines the statutory requirements for the filing and release of a public body's minutes.

Meeting Minutes
Must be filed at the Office of the Public Body.
Within 35 days or by the next regularly scheduled meeting, whichever is earlier.
Exception: (1) Where revelation of the meeting minutes would be inconsistent with § 42-46-4 and § 42-46-5; (2) Where the public body extends the time period for filing of the minutes and publicly states the reason.

c. CLOSED MEETING MINUTES:

Under the statute, the minutes of a closed session must be made available at the next regularly scheduled meeting with one exception. If the majority votes to keep the minutes closed pursuant to R.I. Gen. Laws §§ 42-46-4 and 42-46-5, the meeting minutes may be properly sealed, (assuming the closed session adhered to the requirements of the OMA.).

3. ELECTRONIC FILING REQUIREMENTS:

For years the Secretary of State had struggled with the overly burdensome effects of a paper filing system. The way the records were stored and retrieved at the secretary of state's office created "the possibility of errors" according to a 2002 Brown University study. These record-access problems were the impetus behind the amendment that took effect in July 2004, requiring meeting notices (and minutes for executive branch bodies) to be filed electronically with the Secretary of State. To streamline the process the Secretary of State formulated its own rules for electronic filing, set forth in Rule #6 of the Secretary of State Regulations.

There are four key steps to the electronic filing procedure, as outlined by Rule #6:

Step 1: The first component relates to the agency termed the "overseeing body" under the statute. This agency is responsible for identifying who will be the "filing coordinator" (for that overseeing body). The designation of the official filing coordinator must be submitted *in writing* on the *"Open Government Filing Coordinator Designation Form"* (see p.39), which is available online at www.state.ri.us. The Filing Coordinator Designation Form must be sent to the Secretary of State's Office by July 1 of every year and within thirty (30) days of the creation of an Overseeing Body. This designation is only complete upon confirmation of a valid email address by the Secretary of State.

Step 2: After submission of the designation form but before any filings can be performed, the filing coordinator must set up a web account with the Secretary of State. Upon receipt of the designation form, a username and password is issued to the Filing Coordinator, along with a list of instructions detailing the account setup process.

Step 3: In the third step of this process the filing coordinator identifies all filers for all public bodes, which fall under the overseeing body and ensures that this information is accurate and up to date. Through submittal of a list of all

public bodies within the corresponding overseeing body, the filing coordinator carries out his/her remaining functions as required by Rule 6. This list must contain the following:

 public body name

 public contact name

 email address of the public contact, if applicable

 phone number of public contact

 mailing address of public body

 web address of public body, if applicable, and

 the authority under which the public body was created

In the event there is a change in the filer, the filing coordinator must update the filer information.

Step 4: The final component of the filing process is the actual submission of the filings by the designated filers. According to Rule 10 all designated filers must have access to email and each designated filer must have the ability to submit notices and minutes in the specified filing format through the Secretary of State Open Meetings Website.

In order to submit meeting notices or meeting minutes to the Secretary of State electronically, the filer must fill out all electronic fields as provided in the Secretary of State Open Meetings Website. Successful submission of a meeting notice or meeting minutes is marked by receipt of an electronic confirmation message from the Secretary of State indicating the filing was successfully transmitted through the Secretary of State Open Meetings Website.

In the event that the filer fails to receive the above-referenced confirmation message, the filer must contact the Secretary of State and verify that the filing was in fact received.

4. ACCESSIBILITY REQUIREMENTS:

To maximize the accessibility of public body meetings, the statute requires the public bodies to permit tape recording of the meetings subject to certain "reasonable restrictions". Measures designed to preserve the orderly conduct of a meeting and to safeguard public facilities against damage caused by the use of certain recording equipment are both examples of the type of restrictions the court has found reasonable in the past.

The statute also requires all meetings to be held in facilities accessible by persons with disabilities. In O'Keefe v. Narragansett Town Council, OM 98-01 a town council was held to have violated the OMA by holding meetings in a building that was not accessible to individuals in wheelchairs, due to a broken wheelchair lift.

Access concerns are not limited solely to disabled persons however. In Re Town of West Warwick ADV OM 99-03 advises public bodies that a town council may not impede the access of non-residents by allowing its own town residents to have preferential seating.

Consequently, it is essential that the public bodies, on which you serve, remain vigilant in their effort to keep meetings open to *all* members of the public.

5. OTHER REQUIREMENTS OF THE ACT:

In a disclaimer designed to prevent future impediments to the desired goal of openness, the Act specifically provides that it does "not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised." Essentially, this safeguard is designed to facilitate an open atmosphere, where public business can take place undisturbed.

6. SPECIAL RULES FOR SCHOOL COMMITTEES AND EMERGENCY MEETINGS:

In the context of school committees and emergency meetings, the rules are somewhat different. The chart below outlines the notification requirements for both categories.

Public Body	Type of Notice Required
School Committee	1. Notice must be posted at the principal office of the public body holding the meeting, and 2. in at least one other prominent place within the governmental unit. 3. Electronic notice must be posted with the Secretary of State's Office. 4. Notice must be published in a newspaper of general circulation in the school district under the committee's jurisdiction.
Ad Hoc Committees; Sub Committees; and Advisory Committees of School Committees	1. Notice must be posted at the principal office of the public body holding the meeting, and 2. in at least one other prominent place within the governmental unit. 3. Electronic notice must be posted with the Secretary of State's Office 4. Do Not have to publish notice in a newspaper.
Emergency Meeting of Any Public Body	1. Notice and meeting agenda must be posted as soon as practicable.

Unlike with other public bodies, school committees are only allowed to add agenda items not appearing in the published notice if five specific requirements are met. (See R.I. Gen. Laws § 42-46-6(d).) Among the articulated conditions is the proviso that the school committee electronically file the revised agenda with the secretary of state and post it on the school district's website and in the two public locations required by R.I. Gen. Laws § 42-46-6 at least forty-eight hours in advance of the meeting.

Just as school committee meetings operate under a distinct set of rules, so too do emergency meetings. An emergency meeting may only be convened: (1) to address an unexpected occurrence; (2) that requires immediate action; and (3) that is necessary to protect the public. The Department of Attorney General

(through advisory opinions) has determined that an emergency meeting is proper where a committee learns that it must immediately vote to approve the placement of local referenda on the November ballot. By contrast, discussions concerning locations for a new football stadium were determined not necessary to the public welfare.

As a result, an emergency meeting was considered improper in this context.

C. BREAKING THE RULES: VIOLATIONS OF THE OPEN MEETINGS ACT

Now that you have read through all of the major requirements of the Act some of you may be left with the question "could the process really be that simple"? But apparently following the rules set forth by the OMA is really not that simple at all. A Brown University study released in 2003 found that although it is one of the simplest requirements of the OMA, most agencies that were required to file meeting minutes, failed to submit their minutes to the Secretary of State. In fact, six organizations did not have any meeting minutes on file with the secretary of state for 2002 and five of those agencies "never" submitted minutes. The abusive practices didn't end there however. "While most [agencies] were good about citing the statute that allows closed meetings under certain circumstances, they did a poor job of specifying the nature of the business to be discussed."

Alas, there is a mechanism for reporting violations such as those mentioned above. It is encapsulated in R.I. Gen. Laws § 42-46-8, which provides that "[a]any citizen or entity of the state who is aggrieved as a result of violations of . . . this chapter may file a complaint with the attorney general."

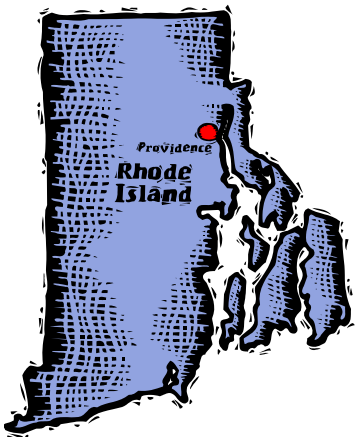
Subsections (a) through (c) of the statute outline the procedure the attorney general must follow once a private individual's complaint is received by the Attorney General's office. Central to this process is an investigation into the merits of the citizen's complaint. Depending upon the outcome of the investigation, the attorney general may decide to file suit on the citizen's behalf subject to certain time restrictions outlined in the chart on the following page.

Complainant	**Type of Meeting:**	**Time Limitation for Filing Complaint in Superior Court**
(A.) Private Individual	Properly Called Meeting Unannounced Meeting Closed Meeting	**If the individual has first filed a complaint with the Attorney General,** the individual's suit must be filed within 90 days of the Attorney General closing the individual's complaint or within 180 days of the alleged violation, whichever is later. **OR** **If the individual did NOT file a complaint with the attorney general,** the individual's suit should be filed within 180 days from the date of public approval of the minutes, OR in the case of an unannounced or improperly closed meeting, within 180 days of public approval or after 180 days from the public action of a public body revealing the alleged violation, whichever is greater.
(B.) Attorney General (On behalf of Private Individual or Entity)	Properly Called Meeting	The Attorney General's Complaint must be filed with the Court before 180 days from the date of public approval of the minutes have expired.
(C.) Attorney General (On behalf of Private Individual or Entity)	Unannounced Meeting	The Attorney General's Complaint must be filed with the Court before 180 days from public action of a public body revealing the violation have expired or before 180 days from the date of public approval of the minutes have expired, whichever is greater.
(D.) Attorney General (On behalf of Private Individual or Entity)	Closed Meeting	The Attorney General's Complaint must be filed with the Court before 180 days from public action of a public body revealing the violation has expired or before 180 days from the date of public approval of the minutes have expired, whichever is greater.

While the Attorney General may file a complaint under the OMA, any private individual or entity may also file a complaint in the Superior Court (as outlined by Section (A) of the above chart) and may do so without first filing a complaint with the Attorney General.

Subsection (d) of R.I. Gen. Laws § 42-46-8 details both the equitable and legal remedies available to the judge. Among them are the issuance of an injunction and a declaratory judgment that the actions are null and void. In addition, where a violation is found to have been committed *willfully* or *knowingly* the statute permits the court to "impose a civil fine not exceeding five thousand dollars ($5,000)". This fine may be assessed against the public body, itself, or against any individual member of the public body.

Finally, this subsection also requires the court to award reasonable attorney fees to a prevailing plaintiff (other than the attorney general), except where special circumstances would render such an award unjust.



SECTION IV:

RECENT DEVELOPMENTS IN THE

RHODE ISLAND

OPEN MEETINGS ACT

Just when you thought you knew all there is to know about open meetings law, the legislature enacted two pieces of legislation in 2005, which expanded the requirements of the Open Meetings Act.

On June 29, 2005 Senate bill S-274, which prohibits the use of telephone conferencing for meetings of a public body, became law. The measure allows an exemption for active military personnel, permitting them to use e-mail or telephone conferencing to take part in a meeting. Otherwise, the bill only allows telephone conferencing for the scheduling of meetings. In a statement made after the Senate passed the bill, Representative Peter Kilmartin said, "Holding meetings by telephone runs contrary to the very notion of democracy. The public should get every possible chance to take part in and scrutinize the decision-making process, something that would be very hard to accomplish if groups suddenly began meeting by telephone."

House bill H-5170 was also passed by the 2005 General Assembly and subjects all libraries that receive state aid to the Open Meetings Act. Under the statute "any library that funded a majority of its operational budget in the prior budget year with public funds" is considered a "public body" subject to the same rules and requirements of the various other public bodies. Broadening the statute's application to include publicly funded libraries has expanded the list of permissible reasons to close a meeting as provided by R.I. Gen. Laws § 42-46-5. The statute as amended now includes "any discussion of the personal finances of a prospective donor to a library" among the allowable purposes for which a meeting may be closed.

Thus it is apparent that even with the many changes to the OMA throughout the years, the open meetings law remains subject to even further changes, as the General Assembly may warrant. The statute as it exists now is broad in its application yet it is specific enough in its coverage to forewarn municipal officials, like you, of the many dangers that come with non-compliance of the Act.

SECTION V:

ADDITIONAL RESOURCES

AND FORMS

ADDITIONAL RESOURCES

1. FOR ADDITIONAL INFORMATION, TO VIEW RECENTLY FILED MEETING MINUTES (OF THE EXECUTIVE BRANCH) AND NOTICES OF MEETINGS, OR TO SIMPLY ACCESS THE FORMS REFERENCED ABOVE:

   * PLEASE VISIT THE SECRETARY OF STATE'S WEBSITE: HTTP://SOS.RI.GOV/
   * CLICK ON "PUBLIC INFO"
   * CLICK ON THE "OPEN MEETINGS" TAB LOCATED IN THE LEFT COLUMN

   YOU SHOULD NOW BE ABLE TO CHOOSE FROM AMONG THE FOLLOWING MENU:

   Open Meetings FAQ's

   Open Meetings Law

   Open Meetings Rules and Regulations

   Open Meetings Enforcement

   Public Body Information Form

   Filing Coordinator Form

2. TO REQUEST A WRITTEN ADVISORY OPINION* OR TO FILE A COMPLAINT PLEASE CONTACT:

   Special Assistant Attorney General

   Phone: (401) 274-4400

   Address: 150 South Main Street

   Providence, RI 02903

   OR TO LEARN MORE ABOUT OPEN GOVERNMENT AND ACCESS TO PUBLIC RECORDS, OR TO VIEW OPEN MEETINGS AND PUBLIC RECORDS FINDINGS PLEASE VISIT:

   WWW.RIAG.RI.GOV

3. FOR ADDITIONAL ARTICLES RELATED TO OPEN MEETINGS ACT AS WELL AS ACCESS TO PUBLIC RECORDS PLEASE VISIT:

   WWW.ACCESSRI.ORG

**Requests for advisory opinions must be made by legal counsel for the public body.*

Sample Notification Letter

Dear (affected person):

Pursuant to R.I. Gen. Laws § 42-46-5(a) (1), Rhode Island's Open Meetings Act, this letter advises you that (name of public body) intends to discuss your job performance, character, or physical or mental health in executive session on (date and time of meeting) at (location of meeting). At your option, the Open Meetings Act requires that (name of public body) convene this meeting in open session, and if you instead wish this discussion to take place in open session, kindly contact (contact person, telephone number, address) as soon as possible.

Sincerely,
Name

(Taken from the Attorney General's ***Guide to Open Government****)*

Sample Open Call

I move, pursuant to R.I. Gen. Laws § 42-46-5(a) (1), that this public body convene in executive session to discuss the job performance of an employee. This individual has been notified in writing that this public body intends to convene in executive session in order to discuss his/her job performance and he/she has declined to have this discussion take place in open session. I also move, pursuant to R.I. Gen. Laws § 42-46-5(a) (5), that this public body convene in executive session to discuss acquiring Greenacres for the purpose of building softball fields.

(Taken from the Attorney General's
Guide to Open Government)

Sample Meeting Minutes

XYZ SCHOOL BOARD
100 Westchester Street
Ocean, Rhode Island 02999

Special Meeting
#607
May 16, 2005

Mr. Smith called the meeting to order at 6:00 pm

BOARD MEMBERS PRESENT: Chairperson Smith, Ms. Jones, Ms. Robinson, Mr. Brown, Mr. Pitt

BOARD MEMBERS ABSENT: Mr. Wong

ALSO PRESENT: Mrs. Black, Mr. Carlton, other staff members and the public whose names are listed on the sign-in sheet.

Agenda Item 1: Executive Session R.I. Gen. Laws § 42-46-5(a) (2)

Chairperson Smith moved that the XYZ School Board convene an executive session, as noted in the agenda, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) for purposes of discussing Labor and Personnel matters related to the Superintendent's job performance. A roll call vote was taken and by unanimous vote, the executive session commenced.

Upon returning to public session Chairperson Smith moved to seal the minutes of the executive session, pursuant to R.I. Gen. Laws § 42-46-4, which Ms. Jones seconded. The motion passed unanimously (5-0).

Mr. Smith-yes/Ms. Jones-yes/Ms. Robinson-yes/Mr. Brown-yes/Mr. Pitt-yes

Agenda Item 2: Record of Previous Meetings

Ms. Jones moved to approve the minute of the May 5, 2005 meeting, which was seconded by Mr. Brown. The motion passed unanimously (5-0).

Mr. Smith-yes/Ms. Jones-yes/Ms. Robinson-yes/Mr. Brown-yes/Mr. Pitt-yes

Agenda Item 3: Bid Award- Athletic Uniforms

Mr. Pitt moved to approve recommendation of administration to award to Blue Sporting Goods for a total of $15,500, which was seconded by Chairperson Smith. The motion passed (4-1).

Mr. Smith-no/Ms. Jones-yes/Ms. Robinson-yes/Mr. Brown-yes/Mr. Pitt-yes

Motion to Adjourn 9:00 p.m. unanimously approved.

Mr. Smith-yes/Ms. Jones-yes/Ms. Robinson-yes/Mr. Brown-yes/Mr. Pitt-yes

Secretary of State Filing Form

Secretary of State Open Meetings Website

PUBLIC BODY INFORMATION FORM

DATE SUBMITTED: _____
OVERSEEING BODY NAME: _____

PUBLIC BODY

NAME: _____

AUTHORIZING STATUTE: _____

MAILING ADDRESS: _____

WEB ADDRESS: _____

PUBLIC CONTACT *This information will be posted on the Secretary of State Open Meetings Website.*

NAME: _____

EMAIL ADDRESS: _____

PHONE NUMBER: _____

FILER

FIRST NAME: _____

LAST NAME: _____

EMAIL ADDRESS: _____

All filers must have a valid email address.

PLEASE RETURN THIS FORM TO YOUR FILING COORDINATOR:

_____

_____

_____

PLEASE DETACH AND KEEP FOR FUTURE REFERENCE

TO UPDATE FILER INFORMATION SUBMITTED TO THE SECRETARY OF STATE OPEN MEETINGS WEBSITE, PLEASE SEND AMENDED FORM TO YOUR FILING COORDINATOR.

YOUR FILING COORDINATOR'S NAME IS: _____

EMAIL/PHONE: _____

THE *PUBLIC BODY INFORMATION FORM* IS AVAILABLE AT WWW.STATE.RI.US/CPI

OPEN GOVERNMENT
FILING COORDINATOR DESIGNATION FORM

PLEASE PRINT THIS FORM ON OFFICIAL LETTERHEAD AND SEND TO:

CIVICS AND PUBLIC INFORMATION
OFFICE OF THE SECRETARY OF STATE
82 SMITH STREET
STATE HOUSE, ROOM 38
PROVIDENCE, RI 02903

PLEASE PROVIDE THE FOLLOWING INFORMATION TO DESIGNATE A FILING COORDINATOR FOR YOUR OVERSEEING BODY.

FIRST NAME: _____

LAST NAME: _____

MAILING ADDRESS: _____

CITY: _____

STATE: _____ ZIP: _____

PHONE NUMBER: _____

EMAIL: _____

NAME OF HEAD OF OVERSEEING BODY:

_____

SIGNATURE OF HEAD OF OVERSEEING BODY:

_____ DATE: _____

NOTES

NOTES

Rhode Island League of Cities and Towns

The Rhode Island League of Cities and Towns is a private, nonpartisan, nonprofit association of cities and towns formed in 1968 to advocate the interests of cities and towns before the state legislature, federal and state agencies, and to improve the effectiveness of local government in the state of Rhode Island.

Public Policy Advocacy

Lobbying for public policies that
benefit and strengthen local government

Membership Programs

Exploration and implementation of services
and programs to benefit cities and towns

Intergovernmental Relations

Promoting stable and productive
intergovernmental relationships

Public Awareness

Promotion of increased understanding and support
for the benefits and value of strong local government
with the media, the general public, and other institutions

Membership Education

Publications, information, training and
networking opportunities for key
elected and appointed local officials

Unity

Fostering a strong sense of unity between all
cities and towns resulting in a common agenda
to advance local government interests

Federal Representation

Advocacy of local government interests before the
United States Congress and federal agencies
is provided through affiliation with the
National League of Cities in Washington, D.C.