

# ***HIDDEN AGENDAS:***

Violations of the Open Meetings Act's Public Notice Requirement

A REPORT BY THE AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND

FEBRUARY 2016



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## ***INTRODUCTION AND EXECUTIVE SUMMARY***

An open and transparent government is one that welcomes an informed and engaged public. Active participation is difficult, if not impossible, however, when the public is given little notice or information about the meetings of public bodies to discuss the public's business.

The public's right to know in these situations has been enshrined into law through Rhode Island's Open Meetings Act (OMA). OMA, along with the Access to Public Records Act, is a key component to promoting transparency in state and local government. Unfortunately, OMA has not been subject to extensive legislative review and amendment in almost twenty years.

The OMA requires, among other things, state and local agencies to publicly post their agendas at least 48 hours in advance of the date of their meetings. As part of our continuing examination of open government issues, the ACLU of Rhode Island recently decided to take a closer look at agency compliance with that requirement, which mandates that posted agendas of public meetings include "a statement specifying the nature of the business to be discussed." R.I.G.L. §42-46-6(b). Our examination found that this important provision is too often honored in the breach.

A review of just one week of public meeting agendas disclosed numerous violations of this critical component of the law. Agendas were often vague, lacking critical information, and at times entirely unhelpful. We also discovered additional problems with the timing of agenda postings by public bodies. The net result of these practices is to make it much harder for members of the public to know exactly what public bodies plan to discuss at their meetings and, therefore, for the public to fully participate in the meetings or to contact members of the public body in advance to express views about items that may be discussed or voted upon.

Among our key findings:

- Despite two strong R.I. Supreme Court rulings and numerous opinions from the Office of Attorney General emphasizing the importance of specificity in preparing agendas, too many public bodies rely on vague listings that fail to provide sufficient or meaningful notice about the items of business to be discussed.
- Fire districts in particular demonstrate a haughty disregard for complying with this provision of OMA.
- The statute's 48-hour notice requirement is undermined by public bodies' use of weekends to comply with that timeframe.
- By posting agendas insufficiently in advance, public bodies prevent or discourage attendance from individuals who, because of hearing impairments or other disabilities, are in need of reasonable accommodations at public meetings.

As a result of our examination of these issues, we propose a number of recommendations for strengthening OMA. Among those recommendations are the following:

- The public should be given more than 48 hours notice about public meetings, and weekends and holidays should be excluded from the calculation.
- All public bodies should be required to audio-record their meetings and to post both those recordings and the minutes of their meetings online on the Secretary of State's website. These steps will serve as an important check on violations of the agenda notification requirement and will promote greater transparency.
- The inclusion of common open-ended agenda items such as "Old Business," "New Business," and "Reports" without further explication should be prohibited.

- Similar to the requirement in the Access to Public Records Act, every public body should be required to designate a person with responsibility for complying with the agenda notice provisions of OMA, and for certifying their knowledge of OMA's requirements.
- The penalties for violations of OMA should be strengthened to mirror those contained in the state's open records law.

## **AGENDA NOTICE REQUIREMENT**

*“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps, both. Knowledge will forever govern ignorance; And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”* – James Madison

That quote opened an important Rhode Island Supreme Court decision issued more than ten years ago in a case interpreting the state’s Open Meetings Act (OMA). The court decision, *Tanner v. Town of East Greenwich*, addressed one key aspect of OMA: the requirement that publicly-posted agendas of public meetings include “a statement specifying the nature of the business to be discussed.” The court unanimously concluded that an agenda item listed as “Interviews for Potential Board and Commission Appointments” violated OMA when the Town Council went on to vote to appoint various individuals to those boards and commissions.<sup>1</sup>

The OMA’s agenda notification requirement is one of the most important facets of the Act. After all, it is hardly helpful to require public bodies to provide advance notice of their meetings and to allow the public to attend if interested residents have to guess what the public body is actually going to discuss.

In recognition of this basic truth, the *Tanner* opinion emphasized that OMA “places an affirmative duty on the public body to provide adequate notice of meetings,” and the statute “should be broadly construed and interpreted in the light most favorable to public access.” More specifically, the Court stated that while the standard is “somewhat flexible,” agenda notices “reasonably must describe the purpose of the meeting or the action proposed to be taken.” Put another way, the question is “whether the notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted.”

Eight years later, the state Supreme Court reiterated its intent to interpret this provision in a meaningful way when it ruled as a violation of OMA a Newport zoning board agenda item that read in full: “Communications: Request for Extension from Turner Scott received 11/30/08 Re: Petition of Congregation Jeshuat Israel.” Although the zoning board argued that this was a topic that had been discussed at length at many previous meetings, the Court noted that the agenda was completely silent as to what specific property was at issue or what the “extension” referred to, and that placing the topic under “Communications” gave no hint that any action would be taken with respect to the agenda item.<sup>2</sup>

In response to these court rulings, the Office of the Attorney General (OAG) has issued a number of advisory opinions confirming the need for specificity in the posting of agenda items. For example, in one case, the OAG ruled that the Portsmouth Town Council violated OMA by listing “Prudence Island Ferry Update” as an agenda item, noting it lacked any identifying information concerning the specific nature of the business to be discussed. The fact that the issue of the Prudence Island Ferry had been the subject of discussion at many previous meetings was of no moment, the OAG noted.<sup>3</sup> And in *Block v. State Board of Elections*, the OAG held that the Board violated OMA by including the agenda item, “Discussion and possible vote in regards to election legislation in the R.I. General Assembly,” while failing to specify the particular pieces of election legislation the agenda was referring to.<sup>4</sup>

The OAG has similarly warned against the posting of catch-all agenda items like “Old Business” or “New Business” without any delineation of the business old or new that is to be discussed. In cases dating back almost twenty years, the OAG has found such broad agenda items to be insufficient.<sup>5</sup>

Appropriately, the OAG found this same reasoning applicable when the Providence Board of Park Commissioners issued an agenda with the heading “Superintendent’s Report.” While the “report” may have been “simply an opportunity to make the Commissioners aware of various developments in the Parks Department,” the

OAG found that “a member of the public would not be fairly informed of the nature of the business to be discussed” based only upon the agenda heading.<sup>6</sup>

In response to objections expressed by the public body in one case that agencies cannot predict in advance “each and every possible area of discussion or every possible action or vote,” the OAG noted that this “only bolsters the fact that the agenda item was not sufficient. If the [public body] could not predict what could have been discussed and/or voted upon during its meeting and therefore relied upon a generic topic heading, members of the public would have no way to know the nature of the business to be discussed and/or voted upon.”<sup>7</sup>

In one of its most recent decisions on the topic of agenda notices, the OAG found in October 2015 that the Woonsocket City Council violated OMA when it listed “Good and Welfare” as an agenda item. This was a regular agenda item where Council members were given the opportunity to, in the City’s words, “update the citizens as to events happening within the City, issues that they are working on, or to question the Mayor and/or City’s directors about department issues.” As with the open-ended agenda items noted above, the OAG similarly concluded that this one did not sufficiently apprise the public of the topics to be discussed.<sup>8</sup>

In light of the seemingly continual nature of the agenda violations as summarized above, the ACLU of Rhode Island decided to examine just how well the message given by the Supreme Court and the OAG through their OMA decisions had gotten through to public bodies. In order to do so, we chose to review the agendas posted on the Secretary of State’s website of every public body that met during the week of October 5-9, 2015, the week that the Woonsocket “Good and Welfare” opinion was issued.

On the one hand, we were pleased to see that, in accordance with OMA, many public bodies provided detailed information about their listed agenda items in their posted notices. Others clearly *attempted* to do so, although one could question if they provided the level of specificity that *Tanner* and other decisions have called for.

Many public bodies continued to list questionable items such as “old business” as a matter of course. Since municipal agencies have no obligation to post their meeting minutes online – a deficiency in the law that we believe should be corrected – there is no easy way to know for sure how many times agenda items like “old business” or “new business” were non-items for which there was no discussion. In some instances when the meeting minutes were available, business clearly was conducted. In others, minutes show that nothing was discussed as part of that agenda item. In those cases, the OAG would likely find “no harm, no foul.” But this does not strike us as the correct approach. It is our belief that members of the public should not have to guess what an item like that means. If there is in fact no old business to be discussed, the public body should either keep that item off the agenda or, if the public body wants to keep it on as part of a template, it should specify “None” next to the listing.

What was most troubling, and what forms the greatest focus of this report, were the large number of blatant violations of the agenda notice requirement that existed. We cite just a handful of them below:

- ***Bristol Housing Authority, October 8 meeting.***<sup>9</sup> The agenda listed the same item, “General Report – Executive Director,” three times. This “report” was listed under “old business,” “current business,” and “new business.” In none of the three instances, however, did the agenda give any indication whatsoever as to what those reports might cover.

- ***Burrillville Planning Board, October 5 meeting.***<sup>10</sup> The agenda included the item “Planning Board Discussion” under the category of “Other Business.” No explanation of the topic or topics for discussion was included. Minutes of that meeting show, however, that it included the raising of questions “regarding the proposed new power plant,” one of the most newsworthy and controversial issues in the town.<sup>11</sup>

• **Hopkinton Town Council, October 5 meeting.**<sup>12</sup> The agenda called for an executive session to discuss “existing litigation,” but failed to specify what existing litigation it was referring to.

• **Northern Rhode Island Conservation District, October 7 meeting.**<sup>13</sup> This agenda showed a creative way of being unhelpful – indeed, incomprehensible – to most members of the public. Its agenda (below) consisted of an alphabet soup of items. “Old Business” included the topic “SRWEP.” Under the agenda item “Reports,” the matters to be discussed included, among other inadequate acronyms meaningful only to the initiated, “SCC,” “NRCS,” “RC & D,” and “RIFCO.”

Wednesday October 7, 2015  
7 pm  
AGENDA

I. Minutes

II. Treasurer’s Reports  
A. Itemized financials for each grant

III. Old Business  
A. Snake Den Farm  
B. SRWEP  
C. Scituate 319 Project Update  
D. Moswansicut Project Update  
E. Annual Dinner- November 14th  
F. New Grant updates

IV. Reports  
V. A. Chair  
B. SCC  
C. NRCS  
D. RC & D  
E. RIFCO  
F. RIACD  
G. Envirothon

*A Northern Rhode Island Conservation District’s agenda offers only alphabet soup to describe what would be discussed at an upcoming public meeting.*

• **Lincoln Conservation Commission, October 7 meeting.**<sup>14</sup> This agenda is replete with non-explanatory agenda items like “Old Business,” “New Business,”

Wetland Applications,” and “Commission Projects.” On this last agenda item, the minutes disclose that the Commission discussed a number of specific projects that were not specified on the agenda.<sup>15</sup>

• **Narragansett Housing Authority, October 6 meeting.**<sup>16</sup> The agenda (below, left) consisted entirely of seven words: “1. Roll Call; 2. Minutes; 3. Bills and Correspondence; 4. Business.” While “roll call” and “minutes” may be self-explanatory, “business” most certainly is not.

<p>October 2, 2015</p> <p style="text-align: center;">NOTICE</p> <p>The regular session of the Narragansett Housing Authority's monthly meeting will be held on Tuesday, October 6, 2015 at 6:00 P.M. at 25 Fifth Avenue, Narragansett, Rhode Island.</p> <p>1. Roll Call</p> <p>2. Minutes</p> <p>3. Bills &amp; Correspondence</p> <p>4. Business</p> <p>Michael C. McLoughlin Executive Director</p>	<p>Vote on Public Hearing from September 28, 2015 and Public Hearing on Housing Board of Review.</p>
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*Left: A Narragansett Housing Authority agenda consists of just seven words.  
Right: A Pawtucket Board of Appeals agenda does not even include the meeting's location.*

• **Pawtucket Board of Appeals, October 5 meeting.**<sup>17</sup> The entire agenda (above, right) reads as follows: “Vote on Public Hearing from September 28, 2015 and Public Hearing on Housing Board of Review.” It does not even include a reference to the place or time for the meeting.

- ***Pawtuxet River Authority, October 5 meeting.***<sup>18</sup> The posting simply consists of an announcement that the meeting will be taking place. The entire “agenda” reads as follows: “Monthly meeting of the Pawtuxet River Authority and Watershed Council for October, at 6:00 pm.” It does not even specify the location or date for the meeting.

- ***Smithfield Housing Authority, October 7 meeting.***<sup>19</sup> Under new business, the agenda lists the item “Travel” without any explanation.

- ***Tiverton Zoning Board of Review, October 7 meeting.***<sup>20</sup> The agenda includes an item labeled “Discussions/Information on pending legal issues,” with no explanation as to what those pending issues were.

The list could go on, but these examples demonstrate a significant and serious problem that needs to be addressed.

## ***FIRE DISTRICTS***

Those who follow these issues closely know there is a special circle in open government hell reserved just for fire districts. Three years ago, when our office reviewed Office of Attorney General opinions addressing violations of both the Open Meetings Act and the Access to Public Records Act by public bodies over a twelve-year period, fire districts had a less than enviable place in those reviews. Based on our count, the OAG had found public bodies in violation of the Open Meetings Act approximately 112 times during that time period, but 16 of them – over 14% – involved fire districts. Similarly, in looking at open records complaints, the OAG found violations in 164 complaints, and 20 of those – approximately 12% – were against fire districts.<sup>21</sup>

It should thus come as no surprise that a disproportionate percentage of the open government lawsuits filed by the OAG are against fire districts. Indeed, their reputation is such that the General Assembly passed special legislation a few years ago to require “all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards” to post on the Secretary of State website unofficial copies of their minutes within 21 days of a meeting. R.I.G.L. §42-46-7(b)(2). No other public body is subject to this specific requirement, and OMA requires no other municipal agency to file their minutes with the Secretary of State at all. Unfortunately, a look at the meeting agendas for the week of October 5, 2015 only confirmed the insouciance with which fire districts approach their obligations under OMA. To cite just a few examples:

- ***Hope Valley/Wyoming Fire District, October 8 meeting.***<sup>22</sup> Item 16 on the agenda was: “Executive Session under RI General Laws 42-46-5(a)(1-10).” This statutory reference refers to *every possible ground* contained in OMA for going into closed session (including such matters as “discussion of the personal finances of a prospective donor to a library”). In other words, the agenda authorized the Fire District to meet in private for any reason it wanted to. As it turns out, the minutes disclose that

no executive session was ultimately held, but the uselessness of an agenda notice like this is obvious.<sup>23</sup>

• **Hopkins Hill Fire District Executive Board, October 5 meeting.**<sup>24</sup> In addition to having an improperly terse agenda (with listings such as “Fire Chief’s Report,” “Street Lighting/Hydrant Report,” and “Old Business”), the agenda (below, left) had two other items of note. One was for an “Executive Session (if needed).” There was no explication of what the executive session would discuss and, in fact, the minutes disclose that an executive session was held, but with no explanation of its topic disclosed. Even more boldly, the agenda included an item listed as “New Business: None.” A review of the minutes (below, right) from the meeting, however, shows that, contrary to the blatantly misleading posting, a good deal of new business was conducted. A number of votes were taken, including one authorizing the expenditure of up to \$25,000 for a new generator.<sup>25</sup>

<p>Hopkins Hill Fire District Executive Board Meeting Monday, October 5, 2015 7:00 p.m. Hopkins Hill Fire Station</p> <p><b>Agenda</b> Call to Order Executive Session(if needed) Reconvene Meeting Minutes of Previous Meeting (approval) Treasurer's Report Tax Collector's Report Street Lighting/Hydrant Report Fire Chief's Report Old Business New Business: None Good of District Adjournment</p> <p>Carol Dion Clerk</p>	<p>KEN BURDICK MADE A MOTION TO ACCEPT, SECOND BY DENISE DEGRAIDE. DAN DANIS-YES, CAROL DION-YES, DENISE BROWN-YES, CARRIE MOORE-YES. APPROVED AND COPIES PLACED ON FILE.</p> <p>OLD BUSINESS: NONE</p> <p>NEW BUSINESS:</p> <ol style="list-style-type: none"> <li>1. KEN BURDICK MADE A MOTION TO AUTHORIZE CHIEF FRANK BROWN TO SELL UTILITY #2 VAN FOR WHAT HE DEEMS APPROPRIATE. (\$6400-\$6500). SECOND BY CARRIE MOORE. DENISE DEGRAIDE-YES, DENISE BROWN-YES, CAROL DION-YES, DAN DANIS-YES. APPROVED</li> <li>2. DENISE DEGRAIDE MADE A MOTION FOR CHIEF FRANK BROWN TO BE AUTHORIZED TO SPEND UP TO \$25,000.00 FOR A NEW GENERATOR, AND TO USE MONEY WHERE HE DEEMS APPROPRIATE. SECOND BY KEN BURDICK. CAROL DION-YES, DAN DANIS-YES, DENISE BROWN-YES, CARRIE MOORE-YES. APPROVED.</li> </ol> <p>GOOD OF SOCIETY: OPEN HOUSE, CHOWDER AND CLAMCAKES AND BAZAAR ON OCTOBER 18<sup>TH</sup>. 10-3</p> <p>ADJOURNMENT AT 7:42 P.M.</p> <p>RESPECTFULLY SUBMITTED, <i>Carol Dion, Clerk</i> CAROL DION CLERK</p>
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*The agenda for a Hopkins Hill Fire District Executive Board meeting (left) claims no new business will be discussed at the meeting. A page of the meeting's minutes (right) shows a number votes were taken during the "New Business" period of the meeting.*

• **Misquamicut Fire Department, October 6 meeting.**<sup>26</sup> The posted “agenda” (below, left) simply announced that there would be a “regular monthly meeting,” and specified the time and location. There was no agenda at all, even though enough public business occurred at the meeting to fill three pages of minutes. In fact, under “new business” in the minutes (below, right), at least three votes for the expenditure of funds were taken and approved.<sup>27</sup>

<p>The regular monthly meeting of the Misquamicut Fire Department will be held on Tuesday October 6th, 2015 @ 7pm. It will be held at 65 Crandall Ave, Westerly RI 02891.</p>	<p><u>Banquet Committee</u>- Banquet is all set for Friday 10/16/15.</p> <p><u>Nominating Committee</u>- 2015-2016 slate of officers nominated</p> <ul style="list-style-type: none"> <li>• Captain Jon Turnberg</li> <li>• 1<sup>st</sup> lieutenant- Lino Petini</li> <li>• 2<sup>nd</sup> Lieutenant- Ray Elterich</li> <li>• Secretary- Jon Turnberg</li> <li>• Treasurer- Doug Turnberg</li> <li>• Steward- Jeff Muir</li> <li>• Members at large- Michael Sullivan &amp; Jack Lutzel</li> <li>• Fire police will consist of Captain Gil Scott and Lieutenants Neil Collins &amp; Dennis Sharkey.</li> </ul> <p>With no positions being challenged the secretary cast one ballot for each nominee. Motion was seconded and passed. (FF Jeff Avanzino advised the membership that he would assist FF Muir with the steward position.)</p> <p><u>Communications:</u> Boston Celtics discounted tickets are available to firefighters. See posting for details</p> <p><u>Unfinished Business:</u> Nothing said</p> <p><u>New Business:</u> A motion was made, seconded and passed to allocate the treasurer \$150.00 to purchase software for the annual audit. Chief Findeisen announced that the four people the executive board had recommended to the district for Tier one incentive award, were rejected.</p> <p>A motion was made and seconded to allocate \$500.00 for each of these individuals as a thanks for their service. After some discussion the motion was passed. Awarding the following individuals \$500.00</p> <ul style="list-style-type: none"> <li>• FF Brian Holdridge</li> <li>• FF Jack Lutzel</li> <li>• FP Neil Collins</li> <li>• FF Michael Sullivan</li> </ul>
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*An “agenda” for a Misquamicut Fire Department meeting (left) provides no information about the planned discussion. Its minutes (right) show at least three votes for the expenditure of funds were taken and approved.*

• **Saylesville Fire District, October 8 meeting.**<sup>28</sup> Like notices of a number of other public bodies, the agenda for this meeting included the impeccably open-ended agenda item of “Other.” According to the minutes, that agenda item was used to discuss and take a vote on a motion to “open a new Health Care Account.”<sup>29</sup>

### ***TIMING OF NOTICES***

The Open Meetings Act requires public bodies to give “written public notice of any meeting within a minimum of forty-eight (48) hours before the date.” R.I.G.L. §42-46-6(b). Even though the language references the “date” of the meeting, it appears that it has been interpreted for some time to mean the actual starting *time* of the meeting. This is actually a significant difference. Under the latter, and apparently widely-accepted, interpretation, if a public body is meeting at 7 PM on a Thursday, the public notice would need to be posted by 7 PM on Tuesday. Read literally, however, one could argue the notice would need to be filed by 12:01 AM on Tuesday, since that would be a minimum of 48 hours before the meeting *date* of Thursday. Even with the more lenient interpretation, however, we were surprised to see how stingy many public bodies were with providing advance notice.

We recognize that some public bodies might want to wait as long as possible to post an agenda to ensure the placement of last-minute items. But OMA contains provisions allowing for the addition of emergency items at a meeting, and the less time that notice is provided, the less opportunity members of the public have to make plans to attend or to contact their representatives about items appearing on the agenda. It’s worth remembering that there was a time when some public bodies were required to post their agenda in newspapers. Because of the advance time needed to submit the agendas for publication, the agenda generally had to be finalized at least a few days ahead of the 48 hours. With newspaper notice no longer required under OMA for any public bodies, it is not unreasonable to expect a little more advance notice than the 48 hour minimum.

The importance of providing adequate advance notice to the public about a meeting, and the topics that will be covered, is too obvious to need to explain. In many instances, however, public bodies did what they could to minimize the impact of advance notice. This is most apparent in examining the posting practices of public bodies that met on a Monday – in the case of our examination, on October 5th. Out of

74 notices for meetings for that date posted on the Secretary of State's website, twenty-five – more than *one of third of them* – were not posted until the Friday before the meeting – on October 2nd. In other words, the public bodies needed to count the weekend in order to meet their obligations of advance notice. While this complies with the literal meaning of the law, it does so to the detriment of an informed public, as constituents would likely need to check over the weekend to see what was on the agenda.

Office of the Secretary of State: Nellie M. Gorbea: Open Meetings [http://sos.ri.gov/openmeetings/index.php?batchTemp=true&limit\\_s...](http://sos.ri.gov/openmeetings/index.php?batchTemp=true&limit_s...)

- Cranston Public Works Committee - October 05, 2015 at 06:30 PM  
Council Chambers, 869 Park Ave., Cranston, RI 02910  
Filed on: October 01, 2015 at 03:34 PM
- X • North Kingstown Town Council - October 05, 2015 at 06:30 PM  
44 Beach Street, Beechwood Senior Center, North Kingstown, RI 02852  
Filed on: October 02, 2015 at 02:17 PM
- X • Tiverton Recreation Commission - October 05, 2015 at 06:30 PM  
34 Roosevelt Drive, , Tiverton, RI 02878  
Filed on: October 02, 2015 at 01:12 PM
- North Smithfield Historic District Commission - October 05, 2015 at 06:30 PM  
Heritage Hall, 101 Greene Street, Slatersville, RI 02876  
Filed on: October 01, 2015 at 09:59 AM
- Lime Rock Fire District - October 05, 2015 at 06:30 PM  
100 Old River Road, , Lincoln, RI 02865  
Filed on: October 01, 2015 at 08:38 AM
- Cranston Public Works Committee - October 05, 2015 at 06:30 PM  
Council Chambers, 869 Park Ave., Cranston, RI 02910  
Filed on: September 30, 2015 at 02:43 PM
- X • Hopkinton, Town of - October 05, 2015 at 06:45 PM  
1 Town House Road, , Hopkinton, RI 02833  
Filed on: October 02, 2015 at 04:11 PM
- X • Narragansett Town Council - October 05, 2015 at 07:00 PM  
25 Fifth Avenue, , Narragansett, RI 02882  
Filed on: October 02, 2015 at 11:58 AM
- X • Bristol Harbor Commission - October 05, 2015 at 07:00 PM  
240 High St Old State House Bldg On Town Common Rear Entrance South Side of, , Bristol, RI 02809  
Filed on: October 02, 2015 at 12:15 PM
- Exeter Town Council - October 05, 2015 at 07:00 PM  
Council Chambers, Exeter Clerk's Office, 675 Ten Rod Road, Exeter, RI 02822  
Filed on: September 30, 2015 at 12:55 PM
- Bristol Fire Department - October 05, 2015 at 07:00 PM  
Bristol Fire Department Headquarters, 4 Annawamscutt Dr., Bristol, RI 02809  
Filed on: October 01, 2015 at 10:51 AM
- CAST - Citizens and Students Together - October 05, 2015 at 07:00 PM  
137 Anan Wade Road, , North Scituate, RI 0257  
Filed on: September 16, 2015 at 12:10 AM
- X • Westerly Town Council - October 05, 2015 at 07:00 PM  
45 Broad Street, Council Chambers - 2nd Floor, Westerly, RI 02891  
Filed on: October 02, 2015 at 01:27 PM
- X • Tiverton Harbor Commission - October 05, 2015 at 07:00 PM  
Brookdale Sakonnet Bay Senior Living--Game Room, 1215 Main Rd, Tiverton, RI 02878  
Filed on: October 02, 2015 at 02:45 PM
- Lime Rock Fire District - October 05, 2015 at 07:00 PM  
100 Old River Road, , Lincoln, RI 02865  
Filed on: October 01, 2015 at 08:35 AM
- X • Jamestown Town Council - October 05, 2015 at 07:00 PM  
Jamestown Town Hall, 93 Narragansett Avenue, Jamestown, RI 02835  
Filed on: October 02, 2015 at 04:54 PM
- Bristol Zoning Board of Review - October 05, 2015 at 07:00 PM  
10 COURT STREET, , BRISTOL, RI 02809  
Filed on: September 18, 2015 at 04:50 PM

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Cancel

if 2 1/19/16, 3:25 PM

*A list of meetings posted on the R.I. Secretary of State's website shows a number of agencies (8 of 17 listed on this page) posted their agendas for Monday public meetings on the Friday before.*

It is worth noting that these Friday postings were not for meetings of minor public bodies, either. Nine town councils and two school committees that met on Monday, October 5th did not post their agendas until Friday, October 2nd. They included Town

Council meetings for Barrington, Hopkinton, Jamestown, Middletown, Narragansett, New Shoreham, North Kingstown, North Smithfield, and Westerly, and school committee meetings for Providence and Smithfield.

Worse, some of the agendas were not posted until Friday afternoon, and sometimes late in the afternoon. For example, the Barrington Town Council agenda for its Monday meeting was posted at 3:03 PM on Friday,<sup>30</sup> the Hopkinton Town Council agenda was posted at 4:11 PM,<sup>31</sup> and the Jamestown Town Council agenda was posted at 4:54 PM.<sup>32</sup>

HOME / OPEN GOVERNMENT / TRANSPARENCY / PUBLIC MEETINGS

## Jamestown Town Council

- [Info About This Entity](#)
- [All Meetings](#)

**Contact Information**  
 Contact Person: Cheryl Fernstrom  
 Phone: 401-423-9800  
 Email: [cfernstrom at jamestownri.net](mailto:cfernstrom@jamestownri.net)

**Meeting Information**  
 Date: October 05, 2015  
 Time: 07:00 PM  
 Location: Jamestown Town Hall, 93 Narragansett Avenue, Jamestown, RI 02835  
 Filed on: October 02, 2015 at 04:54 PM

**Agenda**

- [Agenda filed on October 02, 2015 at 04:54 PM](#)

*The Secretary of State’s website shows that the agenda for the Monday, October 5, Jamestown Town Council meeting was not posted until 4:54 PM on Friday, October 2.*

### **ADVANCE NOTICE AND REASONABLE ACCOMMODATIONS**

Use of the minimum time period for posting agenda notices is problematic for another reason. Federal and state anti-discrimination laws provide for the right of people who may be deaf or hard of hearing to have an interpreter at meetings, but some public bodies do not seem to take that seriously. Many agenda notices helpfully contained an announcement that people needing communications assistance or other accommodations for the meeting could contact a designated person at the public body in advance for assistance. Often, that announcement was accompanied by a requirement that the contact be made within a certain specified time. Unfortunately, in at least a dozen instances, by the time the public body posted the agenda for the meeting, the timeframe for requesting accommodations had already passed!

To give just two examples: the Jamestown Town Council agenda for a Monday, October 5th meeting advised any members of the public needing “accommodations to ensure equal participation” to contact the Town Clerk “not less than three (3) business days prior to the meeting.”<sup>33</sup> The North Kingstown Town Council agenda for a meeting that same day similarly announced that the Town would “provide interpreters for the deaf and hard of hearing ..., provided a request is received three (3) days prior to said meeting.”<sup>34</sup> The only problem is that both of these agendas were not posted until the afternoon of Friday, October 2nd, making it impossible for anybody seeking accommodations to request them in time.

## **RECOMMENDATIONS AND CONCLUSION**

It has been almost twenty years since extensive amendments were made to OMA. The time has clearly arrived for a fresh look at the statute in all its respects, in order to consider how the public's right to know and participate in the operation of state and municipal agencies can be strengthened.

Even the relatively narrow review of this report – focused on agenda item specificity and the timing of agenda postings – provides an opportunity for considering some of those possible changes. The ACLU of Rhode Island recommends:

- The timeframe for posting of agendas should be extended to 72 hours instead of 48, or at least clarified to mean 48 hours from the date, not the time, of the meeting.
- The timeframe for posting of agendas should explicitly exclude weekends and holidays.<sup>35</sup>
- The timeframe for posting of agendas must provide sufficient time for members of the public needing interpreters or other accommodations to request them.
- The inclusion of common open-ended agenda items such as “Old Business,” “New Business,” and “Reports” without further explication should be prohibited.
- Presently, only state agencies and quasi-public corporations are required to post meetings of their minutes online on the Secretary of State's website. This requirement should be extended to all public bodies in order to make it easier to learn the business actually conducted at meetings and to ensure the discussions match the posted agendas.
- In a similar vein, public bodies should be required to audio-record all meetings,

and post those recordings, in order to further promote transparency and help avoid violations of the agenda notification requirement.

- Similar to the requirement in the Access to Public Records Act, every public body should be required to designate a person with responsibility for complying with the agenda notice provisions of OMA, and for certifying their knowledge of OMA's requirements.
- In line with the Access to Public Records Act, the remedies for violations of OMA should be strengthened to establish penalties for "reckless" violations of the law, not just "knowing and willful" ones.
- The OAG should send an advisory to all public bodies providing guidance on their obligations under OMA, particularly in terms of the need for greater specificity in agenda notices.

It is difficult to improve upon the concise public policy statement that serves as the preamble to OMA: "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.G.L. §42-46-6(b). As this report documents, vague and ill-timed agenda notices of public bodies undermine OMA's "essential" goals. We are hopeful that this analysis will spur improvements to OMA and better promote the public's right to know just as OMA intends.<sup>36</sup>

## ENDNOTES

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<sup>1</sup> *Tanner v. Town of East Greenwich*, 880 A.2d 784 (R.I. 2005).

<sup>2</sup> *Anolik v. Zoning Board of Review of the City of Newport*, 64 A.3d 1171 (R.I. 2013).

<sup>3</sup> *Staven v. Portsmouth Town Council*, OM 14-04.

<sup>4</sup> *Block v. State Board of Elections*, OM 13-14.

<sup>5</sup> Among the advisory opinions cited by the OAG for this proposition are *Okwara v. Rhode Island Commission on the Deaf and Hard of Hearing*, OM 00-07, and *Blanchard v. Glendale Board of Fire Wardens*, OM 97-13. Those opinions, and all other advisory opinions more than a few years old, no longer appear on the Attorney General's website and thus are not readily accessible to the public.

<sup>6</sup> *Pinning / Reilly v. Providence Board of Park Commissioners*, OM 07-08.

<sup>7</sup> *Staven*, supra.

<sup>8</sup> *Fagnant v. Woonsocket City Council*, OM 15-17.

<sup>9</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4503/2015/186108.pdf>

<sup>10</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4136/2015/185656.pdf>

<sup>11</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/4136/2015/43825.pdf>

<sup>12</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/3771/2015/186049.pdf>

<sup>13</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4519/2015/185929.pdf>

<sup>14</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/5040/2015/184510.pdf>

<sup>15</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/5040/2015/43539.pdf>

<sup>16</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4256/2015/185990.pdf>

<sup>17</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4009/2015/185121.pdf>

<sup>18</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4380/2015/186055.pdf>

<sup>19</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4978/2015/185726.pdf>

<sup>20</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4675/2015/186024.pdf>

<sup>21</sup> "Knowing and Willful": *The Need for Stronger Enforcement of Rhode Island's Public Records Law.*  
[http://riaclu.org/images/uploads/Knowing\\_and\\_Willful\\_Report.pdf](http://riaclu.org/images/uploads/Knowing_and_Willful_Report.pdf)

<sup>22</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4851/2015/185975.pdf>

<sup>23</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/4851/2015/43999.pdf>

<sup>24</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/5000/2015/185782.pdf>

<sup>25</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/5000/2015/43680.pdf>

<sup>26</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4642/2015/185456.pdf>

<sup>27</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/4642/2015/43827.pdf>

<sup>28</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4350/2015/186133.pdf>

<sup>29</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/minutes/4642/2015/43827.pdf>

<sup>30</sup> <http://sos.ri.gov/openmeetings/?page=meeting&id=186029>

<sup>31</sup> <http://sos.ri.gov/openmeetings/?page=meeting&id=186049>

<sup>32</sup> <http://sos.ri.gov/openmeetings/?page=meeting&id=186053>

<sup>33</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4169/2015/186053.pdf>

<sup>34</sup> <http://sos.ri.gov/documents/publicinfo/omdocs/notices/4122/2015/186023.pdf>

<sup>35</sup> Last year, the Senate passed a bill, 15-S 719, sponsored by Sen. Michael McCaffrey, that would have addressed this issue. Unfortunately, the bill died in the House. As originally introduced, the bill also contained an audio recording requirement, but that provision was stripped from the legislation on the Senate floor.

<sup>36</sup> This report was prepared with the significant assistance of Megan Khatchadourian, ACLU of RI Assistant to the Director. Supplemental assistance was provided by volunteer Debbie Flitman.





This report was prepared by the American Civil Liberties Union of Rhode Island. The ACLU of Rhode Island is a private, non-profit organization dedicated to preserving and protecting the civil liberties guarantees found in the Bill of Rights.

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