

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

BOARD OF DIRECTORS ORIENTATION

MINUTES OF Wednesday, October 28, 2015 ORIENTATION

Board Members Present: Mayor Scott Avedisian, Chairperson; Director Peter Alviti, Stephanie Ogidan Preston, Princess Sirleaf Bomba, Margaret Holland McDuff and Mark Susa

Also Present: Raymond Studley, CEO; Christian Capizzo, Outside Counsel; Benjamin Salzillo, In-House Legal; Victoria Catalano, Paralegal and Marie DiToro, Recording Secretary.

Open Meetings Act & Access to Public Records Act Lisa Pinsonneault

Public Records Act

Ms. Pinsonneault states that the Department of Attorney General has jurisdiction on both the Open Meetings Act and Public Records Act such that if a citizen believes one of these has been violated they may file a complaint with the Attorney General's office and they will investigate it. If they determine the facts are warranted they can file a civil lawsuit.

In 2013 there was a significant amendment to the Access to Publics Records Act (APRA) that requires every employee that has authority to grant or deny access to records must be trained annually. Training can occur either through live training or video training that they have on their website.

When a public request comes in the first thing someone should ask is does the record fall in one of the 27 exemptions. There are 27 exemptions found in the act. If it falls within one of the 27, it is exempt and it does not need to be released.

If the document doesn't fall in one of the 27 exemptions then a balancing act is performed, does the individual's right to privacy outweigh the public's interest in disclosure of this document.

Is it a public body, the definition is rather broad. They still see public bodies deny request for records because they did not create the record and that is simply not a prerequisite. If the agency has or maintains a document a citizen has the right to request it from the agency.

There is no duty to answer questions under APRA, however if there is a source document that is responsive to that inquiry then that needs to be provided.

Exemptions: Ms. Pinsonneault goes through a few exemptions.

- Individually identifiable records are exempt but only if the disclosure is clearly an unwarranted invasion of personal privacy under the Freedom of Information Act
- Preliminary drafts, notes, impressions, memorandum working papers and work product
 - If any of these documents are presented at a public meeting they do become public
- Investigatory records of public bodies pertaining to possible violations of statute rule or regulation, other than records of final action taken
- Minutes of the meeting that are not required to be disclosed are properly sealed executive session minutes
- Correspondence of and to elected officials with or related to those they represent in correspondence of and to elected officials in their official capacity
- Reports or opinions and statements that are required to be kept confidential by federal law regulations, state law or rule of court

Procedures:

- Every public body must have written procedures regarding their access to public records
 - Cannot require written request if it is available under APRA or prepared for or readily available for the public
- Must include designated public records officer or unit
- How citizen can make a request
- Where the citizen can make a request
 - Can have a form, but cannot require them to put it on specific form
- Must be on website or otherwise readily available
- When a request comes in, one of three things must occur within ten business days
 - Provide the records within 10 days
 - Extend the time for good cause for an additional 20 business days
 - Or deny access to records
 - Must provide in writing the specific reason for the denial
 - Must indicate the procedure the citizen has to appeal the denial
- Prior to providing records upon request if citizen asks can provide cost estimate of search and retrieval and copies-must reduce or waive cost upon court order
- Cannot ask the person to identify themselves or provide a reason for the request
- Public Body can charge for cost
 - \$0.15 per copy on common or legal size paper
 - \$15.00 per hour for search and retrieval, first hour free of charge
 - No more than the actual reasonable cost for electronic files
- Electronic, Fax or by mail requests are acceptable
- No requirements to reorganize, compile or consolidate data that is not maintained
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Complaints:

- If AG's determine there was a reckless, willful or knowing violation they will file a civil lawsuit

Questions:

Are the presentations to the Board at the meetings public documents and Ms. Pinsonneault responds yes, unless it is in Executive Session.

If the Board members receive a request from the public are they mandated to respond and Ms. Pinsonneault responds no because of the procedure RIPTA has in place and posted on the website.

Board Members can forward the request to Mr. Salzillo to respond.

If the media asks questions at a press conference and the staff do not have an answer at that time, does the clock start at that time under Public Records Act or must they submit request in writing.

Ms. Pinsonneault responds that the staff should clarify at that time if it is a press inquiry or an APRA request. The clock starts at the time the application is submitted due to the fact RIPTA has a procedure in place.

Open Meetings Act:

Ms. Pinsonneault states that the Open Meetings Act does not apply to all situations. It is triggered if three elements are met.

- A quorum of a public body must have a meeting.

Ms. Pinsonneault explains the definition of public body, quorum and meeting under the open meetings act.

- Must be careful with a rolling or walking quorum
- Can only email members of public bodies to schedule a meeting
- There is no teleconferencing allowed in the State of Rhode Island
 - Only if on active duty or a disability that cannot otherwise participate and is subject to the Governor's commission on disability
- Mr. Studley likes to keep the Board informed between meetings-he sends an email with a disclaimer that states- **do not respond-this is only an update**

Executive Session:

- 10 reasons that allow executive session
- Go into executive session with a roll call
- Shall be limited to matters allowed
- Vote of each member in closed meeting must be recorded in the minutes
- No other topic is allowed
- Appropriate reasons:
 - Job performance, character physical or mental health of persons, does not only mean employees-consultant-hiring a new position-potential candidate-must provide advance notice to him/her and give them the option to require it happens in open session or remain in executive session

- Collective bargaining or litigation
- Investigative proceedings regarding allegation of civil or criminal misconduct
- Grievances
- Votes in Executive Session
 - Must be disclosed upon reconvening in open session unless it jeopardizes strategy, negotiation or investigation
 - Once that jeopardy does dissipate then there is an affirmative obligation to disclose out the vote
- Annual Notice filed at the beginning of each year and the supplemental notice 48 hours prior to each meeting
- Agenda
 - Must be posted at principal office of public body
 - Posted at one other prominent place within the governmental unit (Police Dept, library, etc.)
 - Must be filed electronically with Secretary of State
 - Annual notice must include dates/times and places of regularly scheduled meetings and available to the public upon request
 - Supplemental Notice must include
 - Date
 - Time
 - Location
 - Date agenda was posted
 - Nature of business to be discussed
 - Can amend agenda-for informational purposes only, except if it is an emergency
- Minutes
 - All public bodies must keep written minutes
 - Only 4 things must be included
 - Date/time /place
 - Members present/absent
 - Record of votes
 - Relevant information that the member of the public body requests
 - Unofficial minutes must be available within 35 days or at the next regularly scheduled meeting, whichever is earlier
 - Sealed Executive session minutes are an exception to this
 - Motion to extend time to file minutes can occur if necessary
 - Must file all minutes on the SOS website within 35 days of the meeting
- Nothing requires a public body from having public comment
 - Suggests limiting peoples' time to speak
- Convene upon majority vote to handle unexpected occurrences that need immediate attention to protect the public-but if it can wait 48 hours then it is not an emergency
- Complaints can be filed if someone feels there has been a violation through the AG's office or through the courts

Questions:

Pension Board-This is a lot of personal information-does this have to be public?

- Benefits are public records
- There can be some items that could be confidential and the Board would then convene into Executive Session

Complaints that happen a lot

- Lack of specificity on agenda's is the biggest one

Code of Ethics

Jason Grammit

Mr. Grammit states he is from the RI Ethics Commission. There is a small staff. Twelve people work there with a board of nine people. A big part of what he does is the education. As too much time goes by, a reminder of conflict of interest procedures is important.

The goal is not to go over every code of ethics, however to talk about conflict of interest generally and speak about a few specifics, like how to recuse properly and gifts with the upcoming season. Please ask questions along the way.

The Commission is a state agency; however, it is different than every other state agency in that it's not created by statute. It was up until the late 1980's and the state constitution was amended to require the establishment of an independent and nonpartisan ethics commission that would have jurisdiction over all state and municipal elected officials, appointed officials and state employees.

The constitution requires the ethics commission to adopt a code of ethics. They wrote the code and enforce it through the Administrative Procedures Act. They educate about the code of ethics through going out to talk to people or just by answering questions if people call in.

Over the phone is considered an informal guidance and is not binding on the Ethics Commission, however, if someone needs formal advice then a written advisory opinion can be given and it is legally binding.

A general mission statement was created: the citizens of Rhode Island believe that every public official or employee should hold themselves to the highest standards of ethics conduct and avoid even the appearance of impropriety.

Today, he will be talking about the lowest standards someone can get by with, without breaking the law; however, there are much higher standards that one could hold him/herself to.

Conflicts of Interest:

- Definition of conflict of interest: Having a conflict of interest does not violate the Code of Ethics. What violates the code is not doing anything about it. It is an intersection of public duty with private life
- If it is reasonably foreseeable that some decision that you are helping to make on the board would have a financial impact on you or on a member of your family or on your employer or on a business entity or organization you have a business relationship with
 - Business association where you hold a leadership position in that entity
 - Another state agency or municipal agency would not be a business association-you can only have a business association with a private entity

- It still may make sense to recuse from decisions for the public perception, however the code does not prohibit one public entity from helping another public entity
- Board Members are allowed to have an opinion
- Class Exception: even though you or someone you know is being impacted by a decision, and that impact is on a very large class and everyone in the class is affected the same way-generally you could participate in these situations
- Must be fair and objective when making decisions
- Open Meetings Act Agenda-should look at each item of agenda-If I participate in this item...is it reasonably foreseeable that there would be a financial impact on me, a member of my family,my private employer or a business associate.
 - Generally, knowing if it impacts you is easy.
 - Family is everyone out to your first cousins, including your spouse's family.
 - Blood, Marriage or Adoption
 - Talk amongst yourselves if you think there may be a conflict of interest
 - Hearing from other people can help
 - Can call Ethics Commission for advice
- If you decide that you need to recuse
 - Notify the chair of the board or someone who will make sure that a quorum would still be present
 - When that agenda item gets called-that is the time to recuse-not at vote time
 - If you are the Chair-you do not continue to run meeting-must pass the gavel and take it back once the agenda item is over
 - Do not talk or give your opinion on agenda item
 - There is no written rule on whether you need to leave the room during the agenda item-Jason's rule is to imagine you are a member of the public-not on the board at that moment-so you are to follow the same rules as the public

Gifts:

- Anyone who has a financial interest in what the Board does is considered an interested person under the code. It is to those people that they worry about.
 - Never take any money, not even a penny
 - Gifts-rule is if the value is more than \$25.00 cannot accept it
 - Ask yourself whether there is an appearance of impropriety
 - Lunch-value of lunch under \$25.00, whether you are a speaker or not

Overview RIPTA's rules and regulations

Christian Capizzo

- RI General Law Sec. 39-18-2: Enabling legislation
 - The Board will administer their duties faithfully and impartially.

- Conflict of Interest
- Actions by Resolution
- Budget Requests
- Annual Reports
- By-Laws
 - Updated Nov 2010
 - Purpose of Authority
 - Structure of the Board
 - 4-Members are a quorum
 - Majority Vote required to take action
 - Committees may be establish
 - Indemnification
- Accountability and Transparency Act
 - RIPTA website has all necessary information
 - RIPTA Mission Statement
- Business Judgment Rule
- Audit Requirements:
 - Every five years Authority subject to performance audit
- Administrative Procedures Act
 - Process that will be going through with Fare Study

Questions:

- Can the Board Packet be sent electronically-Will look into this

Adjourn

Christian Capizzo adjourns the Board Orientation.