

HOUSE No. 2973

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the Public Records Law..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 10 of Chapter 66 of the General Laws is hereby amended by striking out
2 subsections (a) and (b) and inserting in place thereof the following:

3 (a) Every person having custody of any public record, as defined in clause twenty-six
4 of section seven of chapter four, shall, at reasonable times and without unreasonable delay,
5 permit it, or any segregable portion of a record which is an independent public record, to be
6 inspected and examined by any person, under his supervision, and shall furnish one copy thereof
7 upon payment of a reasonable fee. Such fee shall not exceed the actual cost to the custodian of
8 furnishing said copy, which shall equal the amount of time reasonably spent conducting said
9 search multiplied by the hourly wage rate of the staff member or members who conducted said
10 search. The following fees shall apply to any public record in the custody of the state police, the
11 Massachusetts bay transportation authority police or any municipal police department or fire
12 department: for preparing and mailing a motor vehicle accident report, five dollars for not more
13 than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance
14 report, five dollars for not more than six pages plus fifty cents for each additional page; for

15 preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for
16 furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A
17 page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.
18 Any claim by the custodian that the record or portion thereof, is not a public record shall be
19 accompanied by an index identifying and describing the record and its source in sufficient detail
20 to enable the requester and the supervisor of records or a court to determine the validity of the
21 custodian's claim. Personal notebooks, notes, and calendars shall not be separate exemptions.

22 (b) A custodian of a public record shall, within ten days following receipt of a request
23 for inspection or copy of a public record, comply with such request. Such request may be
24 delivered in hand to the office of the custodian or mailed via first class mail or sent electronically
25 if the office has designated a secure means of receiving such requests electronically that allows
26 the requester to obtain a written receipt of said request. If the record is maintained electronically,
27 the custodian shall provide the requested public record in electronic form if so requested. If the
28 custodian refuses or fails to comply with such a request, the person making the request may
29 petition the supervisor of records for a determination whether the record requested is public.
30 Upon the determination by the supervisor of records that the record is public, he shall order the
31 custodian of the public record to comply with the person's request. If the custodian refuses or
32 fails to comply with any such order, the supervisor of records shall, within five days, notify the
33 attorney general or the appropriate district attorney thereof who shall take whatever measures he
34 deems necessary to insure compliance with the provisions of this section. The supervisor of
35 records may also seek compliance with his order pursuant to section 1 where neither the attorney
36 general nor the appropriate district attorney has achieved enforcement of the order within sixty
37 days of notification. The administrative remedy provided by this section shall in no way limit the

38 availability of the administrative remedies provided by the commissioner of administration and
39 finance with respect to any officer or employee of any agency, executive office, department or
40 board; nor shall the administrative remedy provided by this section in any way limit the
41 availability of judicial remedies otherwise available to any person requesting a public record. If a
42 custodian of a public record refuses or fails to comply with the request of any person for
43 inspection or copy of a public record or with an administrative order under this section, the
44 supreme judicial or superior court shall have jurisdiction to order compliance. The person
45 making the request shall be entitled to an award of reasonable attorney's fees and costs if the
46 custodian withholding the public record was in violation of this chapter.

47 SECTION 2. Chapter 66 of the General Laws is hereby amended by striking Section 15
48 in its entirety and inserting in place thereof the following:-

49 Section 15. Whoever unlawfully keeps in his possession any public record
50 or removes it from the room where it is usually kept, or alters, defaces, mutilates or destroys any
51 public record or violates any provision of this chapter shall be punished by a fine of not less than
52 five hundred nor more than five thousand dollars, or by imprisonment for not more than one
53 year, or both. Any public officer who refuses or neglects to perform any duty required of him by
54 this chapter shall for each month of such neglect or refusal be punished by a fine of not more
55 than five hundred dollars.

56 SECTION 3. Chapter 66 of the general laws, as appearing in the 2002 Official Edition is
57 hereby amended by adding the following new section to be known as Section 4A: -

58 Section 4A. Notwithstanding any general or special law of the Commonwealth, all
59 electronic public records as defined herein, shall be created, maintained and preserved in

60 accordance with the regulations promulgated by the supervisor of records under the authority
61 granted under this chapter, so as to ensure the integrity, authenticity, reliability and usability of
62 said record for the period of time proscribed by the supervisor, the record conservation board
63 pursuant to their authority under section 42 of chapter 30 of the general laws.

64 In addition, all electronic public records created or received by employees, officers or
65 agents of the executive department as that term is defined herein and in other applicable law shall
66 also comply with all information technology standards issued by the executive department's chief
67 information officer.

68 At least once every three years, on a form provided by the supervisor and the record
69 conservation board, the executive director or head municipal official in charge of such
70 government agency or municipality shall certify that all electronic records systems and records
71 meet the electronic record regulations as promulgated. The supreme judicial court or superior
72 court shall have jurisdiction in mandamus, on petition of the supervisor and pursuant to section 5
73 of chapter 249 of the general laws, to order compliance with the provisions of this section.

74 The provisions of this section shall not apply to any electronic record created prior to the
75 date of enactment. All government agencies and municipalities shall use their best efforts to
76 comply with the reporting provision by January 1, 2006. The supervisor and the records
77 conservation board shall work in cooperation with government agencies and municipalities in
78 order to bring about full compliance with the reporting provision by January 1, 2008.

79 SECTION 4. Section 3 of chapter 66 is hereby amended by adding the following
80 paragraph: -

81 Any information, created, generated, sent, communicated, received, or stored by
82 electronic means, detailing the transaction of government business shall be termed an electronic
83 public record for purposes of this chapter and shall include but is not limited to all books, maps,
84 papers, photographs, machine-readable materials and any other electronic documentary materials
85 which are made, sent or received by an employee, officer or agent of the Commonwealth of
86 Massachusetts.

87 SECTION 5. Section 1 of Chapter 66 of the General Laws, as appearing in the 2000
88 Official Edition, is hereby amended in line 11, by adding at the end thereof the following four
89 paragraphs:—

90 The Secretary of the Commonwealth, supervisor of records, or any officer the Secretary
91 so designates, in his discretion:

92 (1) may make such inquiry as he deems necessary to determine whether any person has
93 violated any provision of this chapter or any regulation hereunder, or to aid in the enforcement of
94 this chapter or in the prescribing of further regulations hereunder;

95 (2) may require or permit any person to file a statement in writing, under oath or
96 otherwise, as the Secretary, supervisor of records, or the officer designated by the Secretary
97 determines, as to all the facts and circumstances concerning the matter to be investigated, and

98 (3) may upon a finding that there has been a violation of this chapter, issue an order
99 requiring the violator to comply with statutory requirements of said chapter, or the regulations
100 promulgated by the supervisor of records pursuant to the authority granted in this chapter and
101 take whatever action appropriate to enforce such order including, but not limited to, initiating
102 judicial action in a court of competent jurisdiction on his own motion.

103 (b) For the purpose of any investigation or enforcement of any order issued under this
104 chapter, the Secretary, supervisor of records, or any officer designated by the Secretary may
105 issue a subpoena duces tecum to require the production of any records, books, papers,
106 correspondence, memoranda, agreements, or other documents which the Secretary, supervisor of
107 records, or the officer designated by the Secretary deems relevant or material to an inquiry or the
108 enforcement of an order.

109 (c) The Secretary, supervisor of records, or officer designated by the Secretary, may file
110 on his own motion a civil action in a court of competent jurisdiction to enforce such order, as
111 defined in subsection (a)(3) of this section. Additionally, the Secretary, supervisor of records, or
112 officer designated by the Secretary, may independently seek further remedies as listed in section
113 15 of this chapter.

114 SECTION 6. Chapter 447 of the acts of 1947 is hereby amended by striking the
115 following:

116 “; provided, that the substance of debates by and among the members of the city council
117 shall not be so published or published elsewhere at the expense of said city”