

**SENATE . . . . . No. 1576**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***James B. Eldridge***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act improving access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Patricia D. Jehlen</i>	
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>William N. Brownsberger</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1576) of Patricia D. Jehlen, Jason M. Lewis, William N. Brownsberger, Sal N. DiDomenico and other members of the General Court for legislation to improve access to public records. State Administration and Regulatory Oversight.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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An Act improving access to public records.

*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 1. Clause Twenty-sixth of Section 7 of Chapter 4 of the General Laws, as  
2 appearing in the 2008 Official Edition, is hereby amended by inserting after the word  
3 “characteristics,” the following words:-- “including public record information which may be  
4 separately retrieved from an electronic record,”

5           SECTION 2. Chapter 66 of the General Laws, as appearing in the 2008 Official  
6 Edition, is hereby amended by inserting after Section 6 the following new section:--

7           Section 6A. Every state agency, as defined in chapter 66A, shall designate one or  
8 more employees as records access officers, who shall have the custody of all its public records  
9 other than those records for which a clerk is the statutory custodian. Each agency shall publicize  
10 by posting in a conspicuous location at its offices and in a conspicuous location on its website, if  
11 any, the name, title, business address and business telephone number of the designated records  
12 access officers. The designation of one or more records access officers shall not be construed to

13 prohibit employees who have in the past been authorized to make records or information  
14 available to the public from continuing to do so.

15 Records access officers shall be responsible for coordinating such agency's response  
16 to requests for access to records under the provisions of this chapter, shall facilitate the informal  
17 resolution of requests by timely and thorough production of records, and shall ensure that the  
18 agency:

19 (a) Assist requesters seeking records to identify the records sought;

20 (b) In responding to a request, indicate whether the records are available in electronic  
21 form and the manner in which the records are stored, filed, retrieved or generated, to assist  
22 requesters in describing the records sought;

23 (c) Contact requesters when the response to a request would be voluminous so the  
24 agency may, at the option of the requester, assist the requester in focusing the request in order to  
25 facilitate the timely and thorough production of the records sought;

26 (d) Maintain a reasonably detailed document classification scheme outlining  
27 categories of records maintained by the agency, whether or not open for public inspection. The  
28 document classification scheme shall be updated annually, conspicuously marked with the date  
29 of the most recent update, and posted on the agency's website, if any.

30 SECTION 3. Section 10 of said Chapter 66 is hereby amended by striking subsection  
31 (a) and inserting the following:--

32 (a) Every person having custody of any public record, as defined in clause Twenty-  
33 sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay,

34 permit it, or any segregable portion of a record which is an independent public record, including  
35 public record information which may be separately retrieved from an electronic record, to be  
36 inspected and examined by any person, under his supervision, and shall furnish one copy thereof  
37 upon payment of a reasonable fee not to exceed the actual cost of reproducing the record.

38           In determining the actual cost of reproducing a record, the custodian of the record may  
39 include only: (i) the actual cost of any storage devices or materials provided to the requester in  
40 complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest  
41 paid employee who has the necessary skill required to prepare a copy of the requested record,  
42 provided that no fee shall be charged unless at least two hours of employee time is needed to  
43 prepare a copy of the record requested, and further provided that no fee shall be charged for  
44 employee time to prepare photocopies of records or retrieve electronic public record information;  
45 and (iii) when the custodian`s information technology capabilities are inadequate to prepare a  
46 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside  
47 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary  
48 attributed to the lowest paid state employee who has the necessary skill required to prepare such  
49 a copy. In no case shall fees for black and white photocopies exceed 5 cents per letter size page  
50 or smaller, or 7 cents per larger page.

51           Every person having custody of a record shall inform the requester of the estimated  
52 cost of preparing a copy of the record if more than two hours of an employee`s time is needed, or  
53 if an outside professional service would be retained to prepare a copy of the record. No fee shall  
54 be charged for the following: (1) search time; or (2) review of the content of requested records to  
55 determine the extent to which exempt and public information must be segregated.

56                   SECTION 4. Section 10 of said Chapter 66 is hereby further amended by inserting  
57 after the final sentence of subsection (b), the following:-- In any such proceeding, the court may  
58 award reasonable attorney's fees to the party seeking public records if that party has substantially  
59 prevailed.