

HOUSE No. 2846

The Commonwealth of Massachusetts

PRESENTED BY:

Peter V. Kocot

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 to improve access to public records..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/18/2013</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	
<i>David M. Rogers</i>	<i>24th Middlesex</i>	

HOUSE No. 2846

By Mr. Kocot of Northampton, a petition (accompanied by bill, House, No. 2846) of Peter V. Kocot and others relative to access to public records. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to improve 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 An Act to improve access to public records.

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

4 SECTION 1. Clause Twenty-sixth of Section 7 of Chapter 4 of the General Laws, as
5 appearing in the 2008 Official Edition, is hereby amended by inserting after the word
6 “characteristics,” the following words:--

7 “...including public record information which may be separately retrieved from an
8 electronic record,”

9 SECTION 2. Section 3 of Chapter 66 of the General Laws, as appearing in the 2008
10 Official Edition, is hereby amended by striking the first two sentences.

11 SECTION 3. Chapter 66 of the General Laws, as appearing in the 2008 Official Edition,
12 is hereby amended by inserting after Section 3 the following new section:-

13 “Section 3A. When designing or acquiring an electronic recordkeeping system or
14 database, any person having custody of a public record shall ensure that such system or database
15 is capable of providing data in a common format such as, but not limited to, the American
16 Standard Code for Information Interchange or the Uniform Character Set Transformation
17 Format. When records maintained electronically include both public record information and
18 exempt information that may be withheld from public inspection, the custodian shall design its
19 information storage and retrieval methods in a manner that permits the segregation and retrieval

of public record information in order to provide maximum public access. No custodian of a public record may enter into a contract for the storage of electronic records containing public record information that impairs or restricts public access to those records.”

SECTION 4. Said Chapter 66 is hereby amended by inserting after Section 6 the following new section:--

“Section 6A. Every state agency, as defined in chapter 66A, shall designate one or more employees as records access officers, who shall have the custody of all its public records other than those records for which a clerk is the statutory custodian. Each agency shall publicize by posting in a conspicuous location at its offices and in a conspicuous location on its website, if any, the name, title, business address and business telephone number of the designated records access officers. The designation of one or more records access officers shall not be construed to prohibit employees who have in the past been authorized to make records or information available to the public from continuing to do so.

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

- (a) Assists requesters seeking records to identify the records sought;
- (b) Indicates, when responding to a request, whether the records are available in electronic form and the manner in which the records are stored, filed, retrieved or generated, to assist requesters in describing the records sought;
- (c) Contacts requesters when the response to a request would be voluminous so the agency may, at the option of the requester, assist the requester in focusing the request in order to facilitate the timely and thorough production of the records sought;
- (d) Coordinates with the Supervisor of Public Records and the Records Management Unit to ensure that public records are preserved in accordance with relevant Massachusetts law, regulation, and administrative guidance, prepares and maintains reference materials to enhance access to electronic public records in its custody and enable requestors to make informed requests. These reference materials shall be updated at least annually and shall include:
 - (i) a reasonably detailed list of categories of records maintained by the agency, whether or not open for public inspection;
 - (ii) a list and description of all major databases maintained by the agency; and

(iii) a record of all public records requests received on or after January 1, 2014 and the responses to those requests, to the extent that such responses may be preserved in electronic form.

Each state agency that maintains a website shall post these reference materials on its website.”

SECTION 5. Section 10 of said Chapter 66 is hereby amended by striking subsection (a) and inserting the following:--

“(a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, including public record information which may be separately retrieved from an electronic record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee not to exceed the actual cost of reproducing the record. In determining the actual cost of reproducing a record, the custodian of the record may include only: (i) the actual cost of any storage devices or materials provided to the requester in complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, provided that no fee shall be charged unless at least two hours of employee time is needed to prepare a copy of the record requested, and (iii) when the custodian’s information technology capabilities are inadequate to prepare a copy of the record, the custodian may charge the requestor the actual cost of engaging an outside service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary attributed to the lowest paid state employee who has the necessary skill required to prepare such a copy. In no case shall fees for black and white photocopies or computer printouts exceed 5 cents per letter size page or smaller or 7 cents per legal size page.

Each person having custody of a record shall inform the requester of the estimated cost of preparing a copy of the record if more than two hours of an employee’s time is needed, or if an outside professional service would be retained to prepare a copy of the record. No fee shall be charged for review of the content of requested records to determine the extent to which exempt and public information must be segregated.

The custodian may waive part or all of the fee if release of the public record requested is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government and is not primarily in the commercial interest of the requester.”

SECTION 6. Said section 10 of Chapter 66 is hereby further amended by inserting after the final sentence of subsection (b), the following:--

88 “Proceedings arising under this section shall take precedence on the docket over other
89 civil cases and shall be expedited. In any such proceeding, the court shall award reasonable
90 attorney’s fees to the party seeking public records if that party has substantially prevailed. A
91 judgment or settlement in plaintiff’s favor shall not be a prerequisite to obtaining an award of
92 attorney’s fees or costs if the court determines that defendant’s case lacked grounding in fact or
93 in existing law or a good faith argument for extension, modification or reversal of existing law.”

94 SECTION 7. Said section 10 of Chapter 66 is hereby further amended by inserting at the
95 end thereof the following paragraphs:--

96 “(e) If a public record or public record information is available in electronic form, the
97 custodian shall, at the option of the requester, provide it in that form. In making a record
98 available to a requestor, the custodian shall provide the record in any format requested if the
99 record is readily reproducible in that format. If a request does not specify the format for
100 producing electronically stored information, the custodian shall provide the record information in
101 a common format that is reasonably usable. For public records in electronic form, a custodian
102 may charge the requestor only the actual cost of any storage devices or materials provided to the
103 requestor. Any programming necessary to retrieve a public record or public record information
104 and provide the record or record information in the requested format, or to allow the record or
105 record information to be read or printed, shall not be deemed to be the preparation or creation of
106 a new record.

107 (f) Every state agency, as defined by Chapter 66A, that has the ability to provide public
108 internet access, at no charge, to a public record in its custody, shall make reasonable efforts to do
109 so. A custodian state agency shall be required to provide public internet access, at no charge, to
110 the following types of public records in searchable format: (i) final opinions, decisions, orders, or
111 votes from agency proceedings; (ii) annual reports; (iii) reports to the General Court; (iv) notices
112 of regulations proposed under chapter 30A; (v) notices of hearings; (vi) winning bids for public
113 contracts; and (vii) any public record information of significant interest to the general public
114 including, but not limited to, public record information which has been the subject of multiple
115 public records requests or which could reasonably be anticipated to be the subject of multiple
116 public records requests in the future.

117 (g) The secretary of each executive office shall, on or before October 1, 2014, promulgate
118 rules and regulations to carry out the purposes of this act which shall be applicable to all
119 agencies, departments, boards, commissions, authorities, and instrumentalities within each of
120 said executive offices subject to the approval of the secretary of administration and finance, in
121 consultation with the chief information officer of the commonwealth. Any agency not within any
122 such executive office shall be subject to the regulations of the secretary of administration and
123 finance. The attorney general, the state secretary, the state treasurer and the state auditor shall
124 adopt applicable regulations for their respective departments on or before October 1, 2014.”

SECTION 8. There shall be a special commission to study the availability to the general public of information concerning the legislative operations of the general court, to consist of: the chairs of the joint committee on state administration and regulatory oversight, who shall serve as co-chairs; 3 additional members of the house of representatives, 1 of whom shall be appointed by the minority leader and 2 members to be selected by the speaker of the house; 3 additional members of the senate, 1 of whom shall be appointed by the minority leader and 2 members to be selected by the senate president, and two additional members appointed by the speaker of the house and the senate president jointly, who shall have experience in the use of technology to increase public access to information about government. The commission shall examine the procedures and practices of the Senate and the House of Representatives and their committees with regard to matters including, but not limited to: scheduling and notice of hearings and legislative sessions; management of the agenda, scope and substance of committee hearings, including the number of bills heard at each hearing; publication and availability of records concerning committee proceedings, including public hearing agendas, public testimony, and committee votes; rules and scheduling requirements for committee reports; content of committee reports, such as summary, explanatory, and analytical materials; contemporaneous and permanent online access to open sessions of the house and senate; publication of records concerning house and senate sessions, including but not limited to roll call votes; publication of proposed amendments to legislation and votes thereon; and the practicability of applying the provisions of the public records and open meetings laws to the General Court either by statute or by rule. In addition, the commission shall examine best practices in other states and in the United States Congress for open government and for making information concerning the legislative process available to the general public. As necessary, the commission shall: (i) partner with nongovernmental organizations and academic institutions that have expertise that can benefit the commission, including, but not limited to Common Cause, the ACLU, the Massachusetts Newspaper Publishers Association and the Massachusetts Taxpayers Foundation; (ii) solicit input from journalistic associations, public policy research institutions, other government institutions with expertise in public access to public proceedings, and other entities with an interest in the legislative process; and (iii) create advisory subgroups that include representatives of similar entities. The commission shall convene its first official meeting within 45 days of the passage of this legislation. The commission shall issue a report on or before October 1, 2014, which shall include recommendations for legislation or changes to legislative rules to: enhance the availability of information to the general public concerning the operations of the general court; improve the use of information technology for public access to information about the general court; promote substantive reporting by committees; ensure a permanent, accessible, and substantive record of public legislative proceedings, including house and senate sessions and public committee hearings; and apply to the General Court either by statute or by rule any provisions of the public records and open meetings laws the commission deems practicable. Said report shall be a public document, filed with the joint committee on rules, the

164 joint committee on ways and means, and the offices of the house and senate clerks, and shall be
165 posted online.