

HOUSE No. 2716

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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 further regulating access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/16/2015</i>

HOUSE No. 2716

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2716) of Antonio F. D. Cabral relative to access to public records. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2787 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act further regulating 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. Section 4 of chapter 9 of the general laws, as appearing in the 2012 official
2 edition, is hereby repealed.

3 SECTION 2. Section 1 of chapter 66 is hereby deleted and replaced with the
4 following:—

5 Section 1. Public records division; commission of public records.

6 (a) There is established a public records division within the office of the secretary of
7 the commonwealth.

8 (b) There shall be established a commission of public records to govern the division
9 of public records. The commission shall be composed of five members.

10 (c) Three members shall be appointed by the governor, one of whom shall be the
11 president of the Massachusetts Municipal Association or his designee and one of whom shall be
12 the president of the Massachusetts Newspaper Publishers Association or his designee. One
13 member shall be appointed by the secretary of state and shall serve as chairman and one member
14 shall be appointed by the attorney general.

15 (d) Members shall serve for terms of five years.

16 (e) No member or employee of the commission shall hold or be a candidate for any
17 other public office while a member or employee or for one year thereafter.

18 (f) Members may be removed by a majority vote of the governor, state secretary and
19 attorney general for substantial neglect of duty, inability to discharge the powers and duties of
20 office, violation of subsection d of this section, gross misconduct or conviction of a felony.

21 (g) Any vacancy occurring on the commission shall be filled within ninety days by
22 the original appointing authority. A person appointed to fill a vacancy occurring other than by
23 expiration of a term of office shall be appointed for the unexpired term of the member he
24 succeeds.

25 (h) The commission shall elect a vice chairman, who shall serve as chairman in the
26 chairman's absence. Three members shall constitute a quorum and three affirmative votes shall
27 be required for any action or recommendation of the commission. Any member may call a
28 meeting; at least seven days advance notice of all meetings shall be given to all members and to
29 any other person who requests such notice and posted on line.

(i) Members shall be compensated for work performed for the commission at such rate as the secretary of state and the secretary of administration and finance shall jointly determine, and shall be reimbursed for their reasonable expenses.

(j) The commission shall annually report to the general court and the governor concerning the action it has taken; the names and salaries and duties of all individuals in its employ and the money it has disbursed; and shall make such further reports on matters within its jurisdiction as may appear necessary.

(k) The commission shall hire and employ a supervisor of public records and, subject to appropriations, such other staff as it shall require, who shall serve at the pleasure of the commission.

SECTION 3. Chapter 66 is hereby amended by inserting after section 1 the following:—

Section 2. The supervisor of public records, in this chapter called the supervisor of records, shall take necessary measures to put the records of the commonwealth, counties, cities or towns in the custody and condition required by law and to secure their preservation. He shall see that the records of churches, parishes or religious societies are kept in the custody and condition contemplated by the various laws relating to churches, parishes or religious societies, and for these purposes he may expend from the amount appropriated for expenses such amount as he considers necessary. The supervisor of records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

SECTION 4. Section 10 of chapter 66 is hereby amended by deleting paragraph (b) and inserting in place thereof the following:—

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail or sent electronically if the office has designated a secure means of receiving such requests electronically that allows the requester to obtain a written receipt of said request. If the record is maintained electronically, the custodian shall provide the requested public record in electronic form if so requested. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records shall, within five days, notify the attorney general or the appropriate district attorney thereof who shall take whatever measures he deems necessary to insure compliance with the provisions of this section. The supervisor of records may also seek compliance with his order pursuant to section 10A where neither the attorney general nor the appropriate district attorney has achieved enforcement of the order within sixty days of notification. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance. The

74 person making the request shall be entitled to an award of reasonable attorney's fees and costs if
75 the custodian withholding the public record was in violation of this chapter.

76 SECTION 5. Chapter 66 is hereby amended by inserting after section 10 the
77 following:—

78 Section 10A. The supervisor of records is hereby authorized to conduct adjudicatory
79 proceedings and promulgate regulations relative to conducting said proceedings. There shall be
80 within the division a division of administrative law appeals under the direction of a chief
81 administrative magistrate who shall be appointed by the supervisor of records. Said chief
82 administrative magistrate, shall be a resident of the commonwealth at the time of his
83 appointment and shall be a person with substantial experience as a trial attorney. He shall hear,
84 or assign for hearing, appeals filed pursuant to this chapter or regulations promulgated thereof
85 and may, subject to appropriation, appoint and make available presiding officers who serve as
86 administrative magistrates or the equivalent thereof, to hear appeals assigned pursuant to this
87 chapter. Said presiding officers shall serve under the direction, supervision and control of the
88 supervisor of records and shall be utilized to expedite appeals of the public records division. The
89 chief administrative magistrate, shall, when necessary, promulgate regulations governing the
90 proceedings or appeals to be so conducted or heard prior to conducting or hearing any
91 proceedings or appeals.

92 It shall be the responsibility of said chief administrative magistrate to organize his
93 division to provide speedy and fair disposition of all appeals and to establish policies that will
94 encourage and aid parties in their compliance with this chapter. The division may summon
95 witnesses, administer oath and require the production of books, records, papers, electronic

records and any other document at any hearing before the division, upon any matter within its jurisdiction. Witnesses may be summoned by any party to the proceeding in the same manner, be paid the same fees and be subject to the same penalties as witnesses in civil cases before the courts of the commonwealth.

The division may institute by its own initiative appropriate proceedings in the court with appropriate jurisdiction for enforcement of its final orders or decisions. Any party aggrieved by a final order or decision of the division following a hearing pursuant to any section of this chapter or chapter thirty-one A may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision. Any proceedings in the court with appropriate jurisdiction shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A, and may be instituted in the court with appropriate jurisdiction.

SECTION 6. Chapter 66 of the General Laws is hereby amended by striking Section 15 in its entirety and inserting in place thereof the following:-

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

SECTION 7. Chapter 447 of the acts of 1947 is hereby amended by striking the following:

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