

HOUSE No. 2772

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 public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>

<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

HOUSE No. 2772

By Mr. Kocot of Northampton, a petition (accompanied by bill, House, No. 2772) of Peter V. Kocot and others relative to the storage and dissemination of certain public records in an electronic format. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

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

An Act to improve 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 2012 Official Edition, is hereby amended in line 139 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. Section 3 of chapter 66 of the General Laws, as appearing in the 2012
6 Official Edition, is hereby amended by striking the first two sentences.

7 SECTION 3. Chapter 66 of the General Laws, as appearing in the 2012 Official Edition,
8 is hereby amended by inserting after section 3A the following new section:--“Section 3B. When
9 designing or acquiring an electronic recordkeeping system or database, any person having
10 custody of a public record shall ensure that such system or database is capable of providing data
11 in a common format such as, but not limited to, the American Standard Code for Information
12 Interchange or the Uniform Character Set Transformation Format. When records maintained

13 electronically include both public record information and exempt information that may be
14 withheld from public inspection, the custodian shall design its information storage and retrieval
15 methods in a manner that permits the segregation and retrieval of public record information in
16 order to provide maximum public access. No custodian of a public record may enter into a
17 contract for the storage of electronic records containing public record information that impairs or
18 restricts public access to those records.”

19 SECTION 4. Said Chapter 66 is hereby amended by inserting after section 6 the
20 following new section:--“Section 6A. Every state agency, as defined in chapter 66A, shall
21 designate one or more employees as records access officers. Each agency shall publicize by
22 posting in a conspicuous location at its offices and in a conspicuous location on its website, if
23 any, the name, title, business address, business telephone number, and email address of the
24 designated records access officers. The designation of one or more records access officers shall
25 not be construed to prohibit employees who have in the past been authorized to make records or
26 information available to the public from continuing to do so. Records access officers shall be
27 responsible for coordinating such agency’s response to requests for access to records under the
28 provisions of this chapter, shall facilitate the informal resolution of requests by timely and
29 thorough production of records, and shall ensure that the agency:(a) Assists requesters seeking
30 records to identify the records sought;(b) Indicates, when responding to a request, whether the
31 records are available in electronic form and the manner in which the records are stored, filed,
32 retrieved or generated, to assist requesters in describing the records sought;(c) Contacts
33 requesters when the response to a request would be voluminous so the agency may, at the option
34 of the requester, assist the requester in focusing the request in order to facilitate the timely and
35 thorough production of the records sought; (d) coordinates with the Supervisor of Public Records

36 and the Records Management Unit to ensure that public records are preserved in accordance with
37 relevant Massachusetts law, regulation, and administrative guidance, prepares and maintains
38 reference materials to enhance access to electronic public records in its custody and enable
39 requestors to make informed requests. These reference materials shall be updated at least
40 annually and shall include: (i) a reasonably detailed list of categories of records maintained by
41 the agency, whether or not open for public inspection; (ii) a list and description of all major
42 databases maintained by the agency; and (iii) a record of all public records requests received on
43 or after January 1, 2015 and the responses to those requests, to the extent that such responses
44 may be preserved in electronic form. Each state agency that maintains a website shall post these
45 reference materials on its website.”

46 SECTION 5. Section 10 of said chapter 66 is hereby amended by striking subsections (a)
47 and (b) and inserting the following:--“(a) Every person having custody of any public record, as
48 defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and
49 without unreasonable delay, permit it, or any segregable portion of a record which is an
50 independent public record, including public record information which may be separately
51 retrieved from an electronic record, to be inspected and examined by any person, under his
52 supervision, and shall furnish one copy thereof upon payment of a reasonable fee not to exceed
53 the actual cost of reproducing the record. In determining the actual cost of reproducing a record,
54 the custodian of the record may include only: (i) the actual cost of any storage devices or
55 materials provided to the requester in complying with such request; (ii) an amount equal to the
56 hourly salary attributed to the lowest paid employee who has the necessary skill required to
57 prepare a copy of the requested record, provided that no fee shall be charged unless at least two
58 hours of employee time is needed to prepare a copy of the record requested, and (iii) when the

59 custodian`s information technology capabilities are inadequate to prepare a copy of the record,
60 the custodian may charge the requestor the actual cost of engaging an outside service to prepare a
61 copy, provided that no fee shall be charged in excess of the hourly salary attributed to the lowest
62 paid state employee who has the necessary skill required to prepare such a copy. In no case shall
63 fees for black and white photocopies or computer printouts exceed 5 cents per letter size page or
64 smaller or 7 cents per legal size page. A page shall be defined as one side of a sheet of
65 paper. Each person having custody of a record shall inform the requester of the estimated cost of
66 preparing a copy of the record if more than two hours of an employee`s time is needed, or if an
67 outside professional service would be retained to prepare a copy of the record. No fee shall be
68 charged for review of the content of requested records to determine the extent to which exempt
69 and public information must be segregated. Records shall be furnished without any charge or at a
70 reduced charge if disclosure of the information is in the public interest because it is likely to
71 contribute significantly to public understanding of operations or activities of the government and
72 is not primarily in the commercial interest of the requester. (b) A custodian of a public record
73 shall, within fifteen days following receipt of a request for inspection or copy of a public record,
74 comply with such request. Such request may be delivered in hand to the office of the custodian,
75 mailed via first class mail, or sent by email. If the custodian refuses or fails to comply with such
76 a request, the person making the request may petition the supervisor of records to compel the
77 custodian to respond or for a determination whether the record requested is public. Upon the
78 determination by the supervisor of records that the record is public, he shall order the custodian
79 of the public record to comply with the person`s request. If the custodian refuses or fails to
80 comply with any such order, the supervisor of records shall notify the attorney general or the
81 appropriate district attorney thereof who shall take whatever measures necessary to insure

82 compliance with the provisions of this section, including enforcement of the penalties prescribed
83 under section 15. The administrative remedy provided by this section shall in no way limit the
84 availability of the administrative remedies provided by the commissioner of administration and
85 finance with respect to any officer or employee of any agency, executive office, department or
86 board; nor shall the administrative remedy provided by this section in any way limit the
87 availability of judicial remedies otherwise available to any person requesting a public record. If a
88 custodian of a public record refuses or fails to comply with the request of any person for
89 inspection or copy of a public record or with an administrative order under this section, the
90 supreme judicial or superior court shall have jurisdiction to order compliance. Proceedings
91 arising under this section shall take precedence on the docket over other civil cases and shall be
92 expedited. In any such proceeding, the court shall award reasonable attorney's fees to the party
93 seeking public records if that party has substantially prevailed. A judgment or settlement in
94 plaintiff's favor shall not be a prerequisite to obtaining an award of attorney's fees or costs..”

95 SECTION 6. Said section 10 of chapter 66 is hereby further amended by inserting at the
96 end thereof the following paragraphs:--“(e) If a public record or public record information is
97 available in electronic form, the custodian shall, at the option of the requester, provide it in that
98 form. In making a record available to a requestor, the custodian shall provide the record in any
99 format requested if the record is readily reproducible in that format. If a request does not specify
100 the format for producing electronically stored information, the custodian shall provide the record
101 information in a common format that is reasonably usable. For public records in electronic form,
102 a custodian may charge the requestor only the actual cost of any storage devices or materials
103 provided to the requestor. Any programming necessary to retrieve a public record or public
104 record information and provide the record or record information in the requested format, or to

105 allow the record or record information to be read or printed, shall not be deemed to be the
106 preparation or creation of a new record.(f) Every state agency, as defined by Chapter 66A, that
107 has the ability to provide public internet access, at no charge, to a public record in its custody,
108 shall make reasonable efforts to do so. A custodian state agency shall be required to provide
109 public internet access, at no charge, to the following types of public records in searchable format:
110 (i) final opinions, decisions, orders, or votes from agency proceedings; (ii) annual reports; (iii)
111 reports to the General Court; (iv) notices of regulations proposed under chapter 30A; (v) notices
112 of hearings; (vi) winning bids for public contracts; (vii) applications and awards of federal, state,
113 and municipal government grants; (viii) minutes of open meetings; (ix) agency budgets; and (x)
114 any public record information of significant interest to the general public including, but not
115 limited to, public record information which has been the subject of multiple public records
116 requests or which could reasonably be anticipated to be the subject of multiple public records
117 requests in the future.(g) The secretary of each executive office shall, on or before October 1,
118 2015, promulgate rules and regulations to carry out the purposes of this act which shall be
119 applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities
120 within each of said executive offices subject to the approval of the secretary of administration
121 and finance, in consultation with the chief information officer of the commonwealth. Any agency
122 not within any such executive office shall be subject to the regulations of the secretary of
123 administration and finance. The attorney general, the state secretary, the state treasurer and the
124 state auditor shall adopt applicable regulations for their respective departments on or before
125 October 1, 2015.”

126 SECTION 7. Said section 15 of chapter 66 is hereby amended by striking the last
127 sentence and replacing it with the following:--“Any public officer who refuses or neglects to

128 perform any duty required of him by this chapter, including failure to comply with an order from
129 the supervisor of records made pursuant to paragraph (b) of section 10, shall for each day of such
130 neglect or refusal be punished by a fine of not more than \$100.”