

HOUSE No. 3665

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 is hereby
2 amended after the word “characteristics,” by adding the following:- “...including public record
3 information which may be separately retrieved from an electronic record,”

4 SECTION 2. Chapter 66 of the General Laws is hereby amended by inserting after
5 section 3A the following new section:-“Section 3B. When designing or acquiring an electronic
6 recordkeeping system or database, any person having custody of a public record shall ensure that
7 such system or database is capable of providing data in a common format such as, but not limited
8 to, the American Standard Code for Information Interchange or the Uniform Character Set
9 Transformation Format. When records maintained electronically include both public record
10 information and exempt information that may be withheld from public inspection, the custodian
11 shall design its information storage and retrieval methods in a manner that permits the
12 segregation and retrieval of public record information and redacting of exempt information in
13 order to provide maximum public access. No custodian of a public record may enter into a

14 contract for the storage of electronic records containing public record information that impairs or
15 restricts public access to those records.”

16 SECTION 3. Said Chapter 66 is hereby amended by inserting after section 6 the
17 following new section:- “Section 6A. Every state agency, as defined in chapter 66A, shall
18 designate one or more employees as records access officers. In a city or town, the city or town
19 clerk, or their designee(s), and any such designees of individual municipal agencies or other
20 entities that the chief executive of the municipality may select, shall serve as the records access
21 officer(s). Each agency, city or town shall publicize by posting in a conspicuous location at its
22 offices and in a conspicuous location on its website, if any, the name, title, business address,
23 business telephone number, and email address of the designated records access officers. The
24 designation of one or more records access officers shall not be construed to prohibit employees
25 who have in the past been authorized to make records or information available to the public from
26 continuing to do so. Records access officers shall be responsible for coordinating such agency’s
27 or governmental body’s response to requests for access to records under the provisions of this
28 chapter, shall facilitate the informal resolution of requests by timely and thorough production of
29 records, and shall ensure that the agency: (a) assists requesters seeking records to identify the
30 records sought; (b) indicates, when responding to a request, whether the records are available in
31 electronic form and the manner in which the records are stored, filed, retrieved or generated, to
32 assist requesters in describing the records sought; (c) contacts requesters when the response to a
33 request would be voluminous so the agency may, at the option of the requester, assist the
34 requester to modify the scope of the request or the timeframe for compliance; (d) coordinates
35 with the Supervisor of Public Records and the Records Management Unit to ensure that public
36 records are preserved in accordance with relevant Massachusetts law, regulation, and

37 administrative guidance; and (e) prepares and maintains reference materials to enhance access to
38 electronic public records in its custody and enable requestors to make informed requests. These
39 reference materials shall be updated at least annually and shall include: (i) a reasonably detailed
40 list of categories of records maintained by the agency, whether or not open for public inspection;
41 (ii) a list and description of all major databases maintained by the agency; and (iii) a record of all
42 public records requests received on or after October 1, 2016 and the responses to those requests,
43 to the extent that such responses may be preserved in electronic form. Each state agency that
44 maintains a website shall post these reference materials on its website.”

45 SECTION 4. Section 10 of chapter 66 of the General Laws is hereby amended by
46 striking subsections (a) and (b) and inserting the following:--“(a) Every person having custody of
47 any public record, as defined in clause twenty-sixth of section seven of chapter four, shall, at
48 reasonable times and without unreasonable delay, permit it, or any portion of a record which is
49 an independent public record, including public record information which may be separately
50 retrieved from an electronic record, to be inspected and examined by any person, under his
51 supervision, and shall furnish one copy thereof upon payment of a reasonable fee not to exceed
52 the actual cost of reproducing the record. In determining the actual cost of reproducing a record,
53 the custodian of the record may include only: (i) the actual cost of any storage devices or
54 materials provided to the requester in complying with such request; (ii) an amount equal to the
55 hourly salary attributed to the lowest paid employee who has the necessary skill required to
56 prepare a copy of the requested record, provided that no fee shall be charged unless at least two
57 hours of employee time is needed to prepare a copy of the record requested, and (iii) when the
58 custodian`s information technology capabilities are inadequate to prepare a copy of the record,
59 the custodian may charge the requestor the actual cost of engaging an outside service to prepare a

60 copy, provided that no fee shall be charged in excess of the hourly salary attributed to the lowest
61 paid state employee who has the necessary skill required to prepare such a copy. In no case shall
62 fees for black and white photocopies or computer printouts exceed 5 cents per letter size page or
63 smaller or 7 cents per legal size page. A page shall be defined as one side of a sheet of paper.
64 Each person having custody of a record shall inform the requester of the estimated cost of
65 preparing a copy of the record if more than two hours of an employee`s time is needed, or if an
66 outside professional service would be retained to prepare a copy of the record. No fee shall be
67 charged to locate, review or segregate requested records except in exceptional circumstances as
68 defined in subsection (j) of this section. Records shall be furnished without any charge or at a
69 reduced charge if disclosure of the information is in the public interest because it is likely to
70 contribute significantly to public understanding of operations or activities of the government and
71 is not primarily in the commercial interest of the requester. (b) A custodian of a public record
72 shall, within fifteen days following receipt of a request for inspection or copy of a public record,
73 comply with such request except in exceptional circumstances as defined in subsection (j) of this
74 section. Such request may be delivered in hand to the office of the custodian, mailed via first
75 class mail, or sent by email. If the custodian refuses or fails to comply with such a request, the
76 person making the request may petition the supervisor of records to compel the custodian to
77 respond or for a determination whether the record requested is public. Upon the determination by
78 the supervisor of records that the record is public, he shall order the custodian of the public
79 record to comply with the person`s request. If the custodian refuses or fails to comply with any
80 such order, the supervisor of records shall notify the attorney general or the appropriate district
81 attorney thereof who shall take whatever measures necessary to insure compliance with the
82 provisions of this section, including enforcement of the penalties prescribed under section 15.

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

95 SECTION 5. Section 10 of Chapter 66 of the General Laws is hereby further amended in
96 paragraph three in subsection(d) by inserting after the word "number", the words "...personal
97 email address...".

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

106 provided to the requestor. Any programming necessary to retrieve a public record or public
107 record information and provide the record or record information in the requested format, or to
108 allow the record or record information to be read or printed, shall not be deemed to be the
109 preparation or creation of a new record. (f) Every state agency, as defined by Chapter 66A, that
110 has the ability to provide public internet access, at no charge, to a public record in its custody,
111 shall make reasonable efforts to do so. A custodian state agency shall be required to provide
112 public internet access, at no charge, to the following types of public records in searchable format:
113 (i) final opinions, decisions, orders, or votes from agency proceedings; (ii) annual reports; (iii)
114 reports to the General Court; (iv) notices of regulations proposed under chapter 30A; (v) notices
115 of hearings; (vi) winning bids for public contracts; (vii) applications and awards of federal, state,
116 and municipal government grants; (viii) minutes of open meetings; (ix) agency budgets; and (x)
117 any public record information of significant interest to the general public including, but not
118 limited to, public record information which has been the subject of multiple public records
119 requests or which could reasonably be anticipated to be the subject of multiple public records
120 requests in the future. (g) The secretary of each executive office shall, on or before October 1,
121 2016, promulgate rules and regulations to carry out the purposes of this act which shall be
122 applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities
123 within each of said executive offices subject to the approval of the secretary of administration
124 and finance, in consultation with the chief information officer of the commonwealth. Any agency
125 not within any such executive office shall be subject to the regulations of the secretary of
126 administration and finance. The attorney general, the state secretary, the state treasurer and the
127 state auditor shall adopt applicable regulations for their respective departments on or before
128 October 1, 2016. (h) in exceptional circumstances, a custodian of public records may, after

129 making a good faith attempt to work with the requestor to modify the scope of the request or the
130 timeframe for compliance, petition the supervisor of records for one or both of the following: (1)
131 additional time to comply with a request under subsection (b) of this section, not to exceed 30
132 days from the receipt of the request from the custodian; (2) authorization to charge a special
133 service fee as a condition to complying with a request under subsection (b) of this section, not to
134 exceed the actual time spent locating, reviewing and segregating the requested records, assessed
135 at the current state minimum wage. (i) A custodian of public records may submit a petition
136 under subsection (h) any time within fifteen days following receipt of a request. The custodian
137 shall deliver written copies of the petition to the supervisor and the requestor. The petition shall
138 specify the reasons that the request is being treated as exceptional, the amount of any additional
139 time requested and an itemized estimate of any service fee requested. The supervisor may grant
140 or deny any such petition in whole or in part. (j) For the purposes of this section, "exceptional
141 circumstances" shall mean one or both of the following: (1) The custodian has received more
142 than 15 requests from the same person in the previous 30 days, excluding requests in the public
143 interest under subsection (a) of this section; (2) The custodian reasonably estimates that the
144 response to the request will exceed 500 pages and that the time required to locate, compile and
145 copy the records will exceed 20 hours."

146 SECTION 7. Said section 15 of chapter 66 is hereby amended by striking the last
147 sentence and replacing it with the following:--"A court shall impose upon any public entity,
148 when an officer or employee thereof refuses or neglects to perform any duty imposed by this
149 chapter, a civil fine of \$20 a day for the first 30 days of such refusal or neglect, and \$50 a day for
150 every subsequent day. If a custodian of a public record refuses or fails to comply with a request
151 or order from the supervisor of records made under section 10 of this chapter, the fine shall be

152 assessed starting fifteen days after the custodian received the request or order. For other statutory
153 violations, the fine shall be assessed starting after the public officer has had a reasonable
154 opportunity to perform his duties. A court may reduce or waive this fine if it finds that the public
155 officer has made a good faith attempt to comply with the duties imposed by this chapter. In
156 determining whether to reduce or waive a fine, the court shall consider (1) the duration and
157 nature of the violation; (2) any past violations by the same public entity; and (3) the degree to
158 which the violation impedes access to public records.”