

# **HOUSE . . . . . No. 3858**

---

---

## The Commonwealth of Massachusetts

---

HOUSE OF REPRESENTATIVES, November 18, 2015.

The committee on Ways and Means, to whom was referred the Bill to improve public records (House, No. 3665), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3858).

For the committee,

BRIAN S. DEMPSEY.

**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. Subsection (n) of clause Twenty-sixth of section 7 of chapter 4 of the  
2   General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in  
3   line 229, the words “subsection (b)” and inserting in place thereof the following words:-  
4   subsection (c).

5           SECTION 2. Said section 7 of said chapter 4, as so appearing, is hereby further amended  
6   by striking out, in line 269, the word “ten” and inserting in place thereof the following word:-  
7   10A.

8           SECTION 3. Section 3 of chapter 66 of the General Laws, as so appearing, is hereby  
9   amended by inserting after the words “microphotographic process”, in line 12, the following  
10   words:- , or by electronic means.

11           SECTION 4. Said chapter 66 is hereby further amended by inserting after section 6 the  
12   following section:-

13           Section 6A. (a) Each agency shall designate 1 or more employees as records access  
14 officers. In a municipality, the municipal clerk, or the clerk's designees, or any designee of a  
15 municipality that the chief executive officer of the municipality may appoint, shall serve as  
16 records access officers. For the purposes of this chapter the term "agency" shall mean any entity,  
17 other than a municipality, that is identified in clause Twenty-sixth of section 7 of chapter 4 as  
18 possessing "public records," as defined therein.

19           (b) A records access officer shall coordinate an agency's or a municipality's response to  
20 requests for access to public records and shall facilitate the resolution of such requests by the  
21 timely and thorough production of public records. Each officer shall: (i) assist persons seeking  
22 public records to identify the records sought; (ii) assist the custodian of records in preserving  
23 public records in accordance with all applicable laws, rules, regulations and schedules; and (iii)  
24 prepare guidelines that enable a person seeking access to public records in the custody of the  
25 agency or municipality to make informed requests regarding the availability of such public  
26 records electronically or otherwise. Guidelines shall be updated periodically and shall include a  
27 list of categories of public records maintained by the agency or municipality. Each agency that  
28 maintains a website shall post such guidelines on its website.

29           (c) Each agency and municipality shall post in a conspicuous location at its offices and  
30 on its website, if any, the name, title, business address, business telephone number, and business  
31 email address of each records access officer. The designation of 1 or more records access  
32 officers shall not be construed to prohibit employees who have been previously authorized to  
33 make public records or information available to the public from continuing to do so; provided  
34 that such employees provide public records in accordance with this chapter.

35 (d) If a public record is originally available in electronic form, the records access officer  
36 shall, at the option of the requester, provide it in that electronic form. In making a public record  
37 available, the records access officer may provide the public record in any commonly available  
38 electronic format if the public record is readily reproducible in that format. If a request for  
39 public records does not specify the format for producing electronically stored information, the  
40 records access officer shall provide the public record in a commonly available electronic format.

41 (e) Each records access officer shall document completed requests for public records and  
42 record the nature of the request, the time required to fulfill the request and any fees charged to  
43 the person making the request. The secretary of the commonwealth shall prescribe a form for  
44 recording such information and shall annually collect the information from the records access  
45 officers and report the same to the clerks of the house and senate on or before March 1.

46 SECTION 5. Said chapter 66 is hereby further amended by striking out section 10 and  
47 inserting in place thereof the following 3 sections:-

48 Section 10. (a) A records access officer appointed pursuant to section 6A shall, upon  
49 request, permit inspection or furnish a copy of any public record, as defined in clause Twenty-  
50 sixth of section 7 of chapter 4, or any segregable portion thereof, not later than 10 business days  
51 following the receipt of the request; provided, that the request reasonably describes the public  
52 record sought; the public record is within the possession, custody or control of the agency or  
53 municipality that the records access officer serves; and the records access officer receives  
54 payment of a reasonable fee as set forth in subsection (e). A request for public records may be  
55 delivered to the records access officer in hand or via first class mail at the record access officer's

56 business address, or via electronic mail to the address posted by the agency or municipality that  
57 the records access officer serves.

58 (b) If an agency or municipality is unable to permit inspection or furnish a copy of a  
59 requested public record within the timeframe established in subsection (a), the records access  
60 officer shall, not later than 10 business days following the initial receipt of a request for public  
61 records, issue a written response to the person who submitted the request. The written response  
62 may be made via first class or electronic mail and shall include the following information:

63 (i) confirmation of the receipt of the request;

64 (ii) identification of any known public records or categories of public records that the  
65 agency or municipality intends to produce and any, known records, categories of records, or any  
66 portion of a record, that the agency or municipality intends to withhold accompanied by specific  
67 reasons for such withholding; provided, that nothing in the written response shall limit an  
68 agency's or municipality's ability to redact or withhold information in accordance with state or  
69 federal law;

70 (iii) identification of any public record sought that does not exist or is not within the  
71 possession, custody, or control of the agency or municipality that the records access officer  
72 serves;

73 (iv) a statement as to why the agency or municipality requires additional time to produce  
74 all other public records sought;

75 (v) a reasonable timeframe in which the agency or municipality shall produce all other  
76 public records sought; provided, that, for an agency, the timeframe provided shall not exceed 60

77 days following the initial receipt of the request for public records; and, for a municipality, the  
78 timeframe provided shall not exceed 75 days following the initial receipt of the request for public  
79 records; provided further, that an agency or municipality may, by agreement of the requester,  
80 establish a date beyond the timeframes set forth herein;

81 (vi) an estimate of any fees that may be charged to produce the records; and

82 (vii) an invitation to the person making the request for public records to contact the  
83 records access officer to discuss a reasonable modification of the scope of the request.

84 If an agency or municipality fails to issue any written response to the person who  
85 submitted the request for public records within 10 business days following the initial receipt of  
86 the request, the person who submitted the request for public records may petition the supervisor  
87 of records who shall order the records access officer to issue a response in accordance with this  
88 subsection no later than 5 business days from the issuance of the order by the supervisor.

89 (c) Whenever an agency or municipality issues a response that the agency or  
90 municipality intends to withhold a record, or any portion thereof, the person who submitted the  
91 initial request for public records under subsection (a) may, not later than 30 days following  
92 receipt of such a response, petition the supervisor of records for a determination as to whether  
93 the requested document constitutes a public record, as defined in clause Twenty-sixth of section  
94 7 of chapter 4. In assessing the propriety of a withholding, the supervisor of records shall be  
95 permitted to inspect any record or copy thereof in camera when the agency or municipality  
96 claims that the record, or any portion thereof, is being withheld in accordance with the  
97 exemptions set forth in clause Twenty-sixth of section 7 of chapter 4; provided, that the agency  
98 or municipality may withhold from inspection a record, or any portion thereof, that is privileged

99 or being withheld pursuant to an explicit state or federal statutory prohibition. Whenever an  
100 agency or municipality fails to respond to any portion of a request for public records pursuant to  
101 subsection (b), the person who submitted the initial request for public records may, not later than  
102 90 days following the initial submission of the request for public records, petition the supervisor  
103 of records for a determination whether the agency or municipality has failed to comply with  
104 subsection (b). The supervisor of records shall issue a decision regarding any petition submitted  
105 in accordance with this subsection not later than 10 business days following receipt of the  
106 petition. Upon a determination that a requested record, or any portion thereof, constitutes a  
107 public record, the supervisor of records shall order the records access officer to furnish the public  
108 record, or any portion thereof, as soon as practicable, and in any event no later than 60 days from  
109 the issuance of the order. The administrative remedy provided by this subsection shall not in any  
110 way limit the availability of judicial remedies set forth in this chapter. If the agency or  
111 municipality refuses or fails to comply with any order issued by the supervisor of records in  
112 accordance with this section, the supervisor of records may notify the attorney general, who,  
113 after consultation with the supervisor, shall take whatever measures the attorney general deems  
114 necessary to ensure compliance with the provisions of this section. The attorney general shall  
115 designate an individual within the office of the attorney general to serve as a primary point of  
116 contact for the supervisor including, but not limited to, a primary point of contact for any notice  
117 from the supervisor to the attorney general pursuant to this section.

118 (d) At any time within 45 days following the initial receipt of a request for public records  
119 submitted in accordance with subsection (a), within 30 days following the receipt of an order  
120 issued by the supervisor of records in accordance with subsection (c), or within any other  
121 timeframe agreed upon by the requester and the agency or municipality, a records access officer

122 may petition the supervisor of records for an extension of the time periods allotted in subsection  
123 (b) for the agency or municipality to furnish copies of the requested record, or any portion  
124 thereof, that the agency or municipality has within its possession, custody, or control, and intends  
125 to furnish; provided, that the supervisor may only grant 1 such request for an extension and shall  
126 issue a decision regarding such a petition within 5 business days following receipt of the petition.  
127 When granting a request for extension, the supervisor of records may extend or modify the  
128 timeframes set forth in subsection (b) for the agency or municipality to furnish copies of the  
129 records requested upon good cause shown by the agency or municipality; provided that, in  
130 determining whether good cause has been shown by the agency, municipality, the supervisor of  
131 records shall consider, but shall not be limited to considering, the following: (i) the need to  
132 search for and collect the requested record or records from disparate locations; (ii) the need to  
133 search for, collect, segregate or examine a voluminous number of records; (iii) the need to redact  
134 a significant number of records; (iv) the refusal of a requester to reasonably modify the scope of  
135 a request or agree to an alternative time frame for processing a request; (v) the administrative  
136 capacity of the agency or municipality to produce the request within the timeframe; and (vi) that  
137 the request for public records is designed or intended to harass or intimidate the agency,  
138 municipality.

139 (e) Each records access officer shall furnish public records in response to a request for  
140 public records and upon payment of a reasonable fee, as determined by the records access officer  
141 in accordance with the following provisions:

142 (i) the actual cost of any storage device or material provided to a person in response to a  
143 request for public records under subsection (a) may be included as part of the fee; provided, that

144 the charge for black and white paper copies or printouts of records shall not exceed 5 cents per  
145 page, for both single and double-sided black and white copies;

146 (ii) in the event that an agency is required to devote more than 4 hours of employee time  
147 to search for, compile, segregate, redact or reproduce the record or records requested, the records  
148 access officer may also include as part of the fee an hourly rate for each hour any employee  
149 devotes to responding to the request; provided, that an agency shall not charge an hourly rate  
150 more than \$25 per hour; provided further, that the requester shall not be charged for the first 4  
151 hours of work performed;

152 (iii) in the event that a municipality is required to devote more than 2 hours of employee  
153 time to search for, compile, segregate, redact or reproduce the record or records requested, the  
154 records access officer may also include as part of the fee an hourly rate that is equal to or less  
155 than the hourly rate attributed to the lowest paid employee who has the necessary skill required  
156 to search for, compile, segregate, redact or reproduce the record or records requested; provided  
157 further, that the requester shall not be charged for the first 2 hours of work performed;

158 (iv) in the event that an agency or municipality lacks the qualified staffing or  
159 technological capabilities required to search for, compile, segregate, redact or reproduce the  
160 records requested, the records access officer may charge the requester the reasonable and actual  
161 costs of engaging a vendor to furnish the requested record or records; provided, that prior to  
162 contracting with a vendor for such services, the person who submitted the initial request under  
163 subsection (a) signs an enforceable written agreement to reimburse the agency or municipality  
164 for the reasonable and actual costs of engaging a vendor to furnish the requested record or  
165 records, up to a dollar amount specified in the written agreement; provided further, that if the

166 requester refuses to sign a reasonable enforceable written agreement to reimburse the agency or  
167 municipality for the reasonable and actual costs of engaging a vendor to furnish the requested  
168 record or records, the agency or municipality shall not be required to comply with the request;  
169 and

170 (v) the records access officer may waive or reduce the amount of any fee or vendor quote  
171 provided for under this subsection upon a showing that disclosure of the requested record or  
172 records is in the public interest because it is likely to contribute significantly to public  
173 understanding of the operations or activities of the government and is not primarily in the  
174 commercial interest of the requester, or upon a showing that the requester lacks the financial  
175 ability to pay the full amount of the reasonable fee.

176 (f) Whenever an agency or municipality assesses a fee or quotes an estimate for the  
177 actual costs of engaging a vendor to furnish the requested record or records in accordance with  
178 subsection (e), the person who submitted the initial request for public records may, within 30  
179 days following notice of the fee or vendor quote amount, or within 30 days following notice of  
180 the records access officer's decision on a request for fee or vendor quote waiver or reduction, as  
181 set forth in subsection (e), whichever is later, petition the supervisor of records to reduce the  
182 amount of any fee or vendor quote assessed by the records access officer in accordance with  
183 subsection (e); provided, that the supervisor of records shall reduce any unreasonable fee or  
184 vendor quote assessed and shall issue a decision regarding such a petition within 5 business days  
185 following receipt of the petition; provided further, that whenever an agency or municipality  
186 assesses a fee that is \$25,000 or more, or claims that the reasonable and actual costs of engaging  
187 a vendor are \$25,000 or more, the requester may immediately file an action seeking judicial

188 review of the reasonableness of the fee or vendor quote in accordance with subsection (f) of  
189 section 10A.

190           Section 10A. (a) Whenever an agency or municipality fails to furnish a copy of any  
191 public record or any portion thereof, the furnishing of which is not disputed by the agency or  
192 municipality, within the timeframes set forth in section 10, including any extension of the  
193 timeframe granted by the supervisor of records in accordance with the provisions of said section  
194 10 or any timeframe agreed upon by the requester and the agency or municipality, the person  
195 who submitted the initial request under subsection (a) of said section 10 may, within 30 days of  
196 the expiration of the relevant timeframe, file a complaint against the agency or municipality in  
197 accordance with chapter 231A of the general laws in the superior court of the county where the  
198 records are situated, or, for any agency, in the superior court for Suffolk county.

199           (b) Whenever an agency or municipality issues a response in accordance with subsection  
200 (b) of section 10 that identifies any requested record, category of record requested or any portion  
201 thereof and indicates that the agency or municipality does not intend to produce such record,  
202 category of record requested or any portion thereof, the person who submitted the initial request  
203 under subsection (a) of said section 10 may, within 30 days of the issuance of the response, file a  
204 complaint against the agency or municipality in accordance with chapter 231A in the superior  
205 court of the county where the record or any portion thereof is situated, or, for any agency, in the  
206 superior court for Suffolk county.

207           (c) Whenever an agency or municipality fails to comply with any order issued by the  
208 supervisor of records, the person who submitted the initial request for public records under  
209 section 10 may file a complaint against the agency or municipality in accordance with chapter

210 231A in the superior court of the county where the record or any portion thereof is situated, or,  
211 for any agency, in the superior court for Suffolk county.

212 (d) In any action filed pursuant to subsection (a), (b) or (c) of this section:

213 (i) the superior court shall have jurisdiction to enjoin the agency or municipality from  
214 withholding any public record or any portion thereof and order production of any record or  
215 portion thereof improperly withheld;

216 (ii) the superior court shall determine the propriety of any withholding de novo and may  
217 inspect the contents of any defendant agency or municipality record in camera to determine  
218 whether any such record or any portion thereof may be withheld in accordance with state or  
219 federal law;

220 (iii) there shall be a presumption that each record sought is public, and the burden shall  
221 be on the defendant agency or municipality to prove, by a preponderance of the evidence, that  
222 such record or portion thereof may be withheld in accordance with state or federal law;

223 (iv) whenever a complainant has obtained relief in such a case through a judicial order;  
224 enforceable written agreement; consent decree; or a voluntary or unilateral change in position by  
225 the agency or municipality, if the complainant's claim is not insubstantial; the superior court may  
226 award reasonable attorney fees and other litigation costs reasonably incurred to the complainant,  
227 and may order the agency or municipality to waive or reasonably reduce any fee assessed in  
228 accordance with subsection (e) of section 10; provided, that if the superior court determines that  
229 the assessment of reasonable attorney fees and other litigation costs reasonably incurred is not  
230 warranted, the judge shall issue written findings specifying the reasons for such denial; and

231 (v) whenever a complainant has obtained judgment in such a case, and has demonstrated  
232 by a preponderance of the evidence that the defendant agency or municipality, in withholding or  
233 failing to timely furnish the requested record or any portion thereof, acted maliciously or in bad  
234 faith, the superior court may assess punitive damages against the defendant agency or  
235 municipality an amount not less than \$1,000 nor more than \$5,000, to be awarded to the  
236 complainant.

237 (e) Notwithstanding any other provision of this chapter, the attorney general may, at any  
238 time, file a complaint in accordance with chapter 231A in the superior court of the county where  
239 the record or any portion thereof is situated, or, for any agency, in the superior court for Suffolk  
240 county, to ensure compliance with the provisions of this chapter; provided, that in any such  
241 proceeding:

242 (i) the superior court shall have jurisdiction to enjoin the agency or municipality from  
243 withholding any public record or any portion thereof and order production of any record or  
244 portion thereof improperly withheld;

245 (ii) the superior court shall determine the propriety of any withholding de novo and may  
246 inspect the contents of any defendant agency or municipality record in camera to determine  
247 whether any such record or any portion thereof may be withheld in accordance with state or  
248 federal law;

249 (iii) there shall be a presumption that each record sought is public, and the burden shall  
250 be on the defendant agency or municipality to prove, by a preponderance of the evidence, that  
251 such record or portion thereof may be withheld in accordance with state or federal law;

252 (iv) whenever the attorney general has obtained judgment in such a case, the superior  
253 court shall assess against the defendant agency or municipality a civil penalty in an amount not  
254 less than \$1,000 nor more than \$5,000 for each violation found; payment of any such civil  
255 penalty paid to or received by the attorney general shall be paid into the general fund of the  
256 commonwealth.

257 (f) Any person who submitted a request under subsection (a) of section 10 who is  
258 aggrieved by an order issued by the supervisor of records related to such request may, within 30  
259 days of receipt of any such order, file an action seeking judicial review in the superior court of  
260 the county where the record or any portion thereof is situated, or, for any agency, in the superior  
261 court for Suffolk county. Any such proceeding shall, insofar as applicable, be governed by the  
262 provisions of section 14 of chapter 30A; provided, that any record or portion thereof that is  
263 withheld by the agency or municipality shall not be made part of the administrative record filed  
264 in answer to the complaint; provided further, that in any such proceeding, the superior court may  
265 inspect the contents of any defendant agency or municipality record in camera to determine  
266 whether any such record or any portion thereof may be withheld in accordance with state or  
267 federal law; provided further, that in any action seeking judicial review of a decision issued by  
268 the supervisor of records in accordance with subsection (f) of section 10, the superior court shall  
269 review de novo the reasonableness of the fee or vendor quote assessed under subsection (e) of  
270 section 10.

271 (g) Any agency or municipality that is aggrieved by an order issued by the supervisor of  
272 records in accordance with subsection (d) or subsection (f) of section 10 may, within 30 days of  
273 receipt of any such order, file an action seeking judicial review in the superior court of the  
274 county where the record or any person thereof is situated, or in the superior court for Suffolk

275 county. Any such proceeding shall, insofar as applicable, be governed by the provisions of  
276 section 14 of chapter 30A; provided, that in any such action, the superior court shall review de  
277 novo the reasonableness of the fee or vendor quote assessed under subsection (e) of section 10.

278 (h) Any agency or municipality that is aggrieved by an order issued by the supervisor of  
279 records in accordance with subsection (c) of section 10 may, within 30 days of receipt of any  
280 such order, file an action seeking judicial review in the superior court of the county where the  
281 record or any portion thereof is situated, or in the superior court for Suffolk county. Any such  
282 proceeding shall, insofar as applicable, be governed by the provisions of section 14 of chapter  
283 30A; provided, that in any such proceeding:

284 (i) any record or portion thereof that is withheld by the agency or municipality shall not  
285 be made part of the administrative record filed in answer to the complaint;

286 (ii) the superior court shall determine the propriety of any withholding de novo and may  
287 inspect the contents of any defendant agency or municipality record in camera to determine  
288 whether any such record or any portion thereof may be withheld in accordance with state or  
289 federal law;

290 (iii) there shall be a presumption that each record sought is public, and the burden shall  
291 be on the defendant agency or municipality to prove, by a preponderance of the evidence, that  
292 such record or portion thereof may be withheld in accordance with state or federal law; and

293 (iv) the superior court shall have jurisdiction to enjoin the agency or municipality from  
294 withholding any public record or any portion thereof and order production of any record or  
295 portion thereof improperly withheld.

296 (i) The attorney general may intervene as of right in any action filed in accordance with  
297 this section.

298 Section 10B. The commissioner of the department of criminal justice information  
299 services, the department of criminal justice information services and its agents, servants, and  
300 attorneys including the keeper of the records of the firearms records bureau of said department,  
301 or any licensing authority, as defined in section 121 of chapter 140, shall not disclose any records  
302 divulging or tending to divulge the names and addresses of persons who own or possess firearms,  
303 rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said  
304 chapter 140, and names and addresses of persons licensed to carry or possess the same to any  
305 person, firm, corporation, entity or agency except criminal justice agencies as defined in section  
306 167 of chapter 6 and except to the extent such information relates solely to the person making the  
307 request and is necessary to the official interests of the entity making the request.

308 The home address and home telephone number of law enforcement, judicial,  
309 prosecutorial, department of youth services, department of children and families, department of  
310 correction and any other public safety and criminal justice system personnel, and of unelected  
311 general court personnel, shall not be public records in the custody of the employers of such  
312 personnel or the public employee retirement administration commission or any retirement board  
313 established under chapter 32 and shall not be disclosed, but such information may be disclosed to  
314 an employee organization under chapter 150E, a nonprofit organization for retired public  
315 employees under chapter 180 or to criminal justice agencies as defined in said section 167 of said  
316 chapter 6. The name and home address and telephone number of a family member of any such  
317 personnel shall not be public records in the custody of the employers of the foregoing persons or  
318 the public employee retirement administration commission or any retirement board established

319 under chapter 32 and shall not be disclosed. The home address and telephone number or place of  
320 employment or education of victims of adjudicated crimes, of victims of domestic violence and  
321 of persons providing or training in family planning services and the name and home address and  
322 telephone number, or place of employment or education of a family member of any of the  
323 foregoing shall not be public records in the custody of a government agency which maintains  
324 records identifying such persons as falling within such categories and shall not be disclosed.

325 SECTION 6. Said chapter 66 of the General Laws is hereby further amended by adding  
326 the following section:-

327 Section 19. (a) When designing or acquiring an electronic recordkeeping system or  
328 database, records access officers shall consult with their chief executive officer or the  
329 Massachusetts office of information technology pursuant to the provisions of chapter 7D to  
330 ensure, where feasible, that the system or database is capable of providing data in a commonly  
331 available electronic format. Such database designs shall include, to the extent feasible,  
332 information storage and retrieval methods that permit the segregation and retrieval of public  
333 record information and redacting of exempt information in order to provide maximum public  
334 access.

335 (b) Every agency shall provide on a searchable website electronic copies, accessible in a  
336 commonly available electronic format, of the following types of records: (i) final opinions,  
337 decisions, orders, or votes from agency proceedings; (ii) annual reports; (iii) reports to the  
338 General Court; (iv) notices of regulations proposed under chapter 30A; (v) notices of hearings;  
339 (vi) winning bids for public contracts; (vii) awards of federal, state and municipal government  
340 grants; (viii) minutes of open meetings; (ix) agency budgets; and (x) any public record

341 information of significant interest that the agency deems appropriate to post; provided, that any  
342 agency may withhold any record or portion thereof in accordance with state or federal law.

343 SECTION 7. On or before July 1, 2016, the secretary of the commonwealth shall  
344 promulgate rules and regulations necessary to implement the provisions of this act, including, but  
345 not limited to, when and how fees shall be reviewed by the secretary upon appeal by a person  
346 making a request for public records.

347 SECTION 8. Sections 6 and 7 of this act shall take effect on January 1, 2016.

348 SECTION 9. Section 4 shall take effect on July 1, 2016.

349 SECTION 10. Sections 1, 2, 3 and 5 of this act shall take effect on October 1, 2016.