

SENATE No. 1633

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 improving access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>

SENATE No. 1633

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1633) of James B. Eldridge, Jason M. Lewis, Mary S. Keefe, Carmine L. Gentile and other members of the General Court for legislation to improve access to public records. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1481 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act improving 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. Clause Twenty-sixth of Section 7 of Chapter 4 of the General Laws, as
2 appearing in the 2012 Official Edition, is hereby amended by inserting 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. Chapter 66 of the General Laws, as appearing in the 20010 Official Edition,
6 is hereby amended by inserting after Section 6 the following new section:--

7 Section 6A. Every state agency, as defined in chapter 66A, shall designate one or more
8 employees as records access officers, who shall have the custody of all its public records other
9 than those records for which a clerk is the statutory custodian. Each agency shall publicize by

10 posting in a conspicuous location at its offices and in a conspicuous location on its website, if
11 any, the name, title, business address and business telephone number of the designated records
12 access officers. The designation of one or more records access officers shall not be construed to
13 prohibit employees who have in the past been authorized to make records or information
14 available to the public from continuing to do so.

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

19 (a) Assist requesters seeking records to identify the records sought;

20 (b) In responding to a request, indicate whether the records are available in electronic
21 form and the manner in which the records are stored, filed, retrieved or generated, to assist
22 requesters in describing the records sought;

23 (c) Contact requesters when the response to a request would be voluminous so the agency
24 may, at the option of the requester, assist the requester in focusing the request in order to
25 facilitate the timely and thorough production of the records sought;

26 (d) Maintain a reasonably detailed document classification scheme outlining categories of
27 records maintained by the agency, whether or not open for public inspection. The document
28 classification scheme shall be updated annually, conspicuously marked with the date of the most
29 recent update, and posted on the agency's website, if any.

30 SECTION 3. Section 10 of said Chapter 66 is hereby amended by striking subsection (a)
31 and inserting in place thereof the following:-

32 (a) Every person having custody of any public record, as defined in clause Twenty-sixth
33 of section seven of chapter four, shall, at reasonable times and without unreasonable delay,
34 permit it, or any segregable portion of a record which is an independent public record, including
35 public record information which may be separately retrieved from an electronic record, to be
36 inspected and examined by any person, under his supervision, and shall furnish one copy thereof
37 upon payment of a reasonable fee not to exceed the actual cost of reproducing the record.

38 In determining the actual cost of reproducing a record, the custodian of the record may
39 include only: (i) the actual cost of any storage devices or materials provided to the requester in
40 complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest
41 paid employee who has the necessary skill required to prepare a copy of the requested record,
42 provided that no fee shall be charged unless at least two hours of employee time is needed to
43 prepare a copy of the record requested, and further provided that no fee shall be charged for
44 employee time to prepare photocopies of records or retrieve electronic public record information;
45 and (iii) when the custodian`s information technology capabilities are inadequate to prepare a
46 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside
47 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary
48 attributed to the lowest paid state employee who has the necessary skill required to prepare such
49 a copy. In no case shall fees for black and white photocopies exceed 5 cents per letter size page
50 or smaller, or 7 cents per larger page.

51 Every person having custody of a record shall inform the requester of the estimated cost
52 of preparing a copy of the record if more than two hours of an employee`s time is needed, or if
53 an outside professional service would be retained to prepare a copy of the record. No fee shall be
54 charged for the following: (1) search time; or (2) review of the content of requested records to
55 determine the extent to which exempt and public information must be segregated.

56 SECTION 4. Said section 10 of said Chapter 66 is hereby further amended by inserting
57 after the final sentence of subsection (b), the following:- In any such proceeding, the court may
58 award reasonable attorney`s fees to the party seeking public records if that party has substantially
59 prevailed.