

SENATE No. 1638

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 enhancing access to electronic 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>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

SENATE No. 1638

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1638) of James B. Eldridge, Jason M. Lewis, Mary S. Keefe, Benjamin B. Downing and other members of the General Court for legislation to enhance access to electronic public records. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1480 OF 2013-2014.]

The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
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An Act enhancing access to electronic 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 2010 Official Edition, is hereby amended by inserting in line 133 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 so appearing is hereby amended by
6 inserting after Section 3 the following new section:-

7 Section 3B. When designing or acquiring an electronic recordkeeping system or
8 database, any person having custody of a public record shall ensure that such system or database
9 is capable of providing data in a common format such as, but not limited to, the American

10 Standard Code for Information Interchange or the Uniform Character Set Transformation
11 Format. When records maintained electronically include both public record information and
12 exempt information that may be withheld from public inspection, the custodian shall design its
13 information storage and retrieval methods in a manner that permits the segregation and retrieval
14 of public record information in order to provide maximum public access. No custodian of a
15 public record may enter into a contract for the storage of electronic records containing public
16 record information that impairs or restricts public access to those records.

17 SECTION 3. Section 10 of said chapter 66, as so appearing, is hereby amended by
18 inserting after the word "record," in line 4, the following:- including public record information
19 which may be separately retrieved from an electronic record,

20 SECTION 4. Said section 10 of said chapter 66, as so appearing, is hereby further
21 amended by inserting at the end thereof the following paragraph:-

22 (e) If a public record or public record information is available in electronic form, the
23 custodian shall, at the option of the requester, provide it in that form. In making a record
24 available to a requestor, the custodian shall provide the record in any format requested if the
25 record is readily reproducible in that format. If a request does not specify the format for
26 producing electronically stored information, the custodian shall provide the record information in
27 a common format that is reasonably usable. For public records in electronic form, a custodian
28 may charge the requestor only the actual cost of any storage devices or materials provided to the
29 requestor. When the custodian's information technology capabilities are inadequate to prepare a
30 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside
31 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary

32 attributed to the lowest paid state employee who has the necessary skill required to prepare such
33 a copy. Any programming necessary to retrieve a public record or public record information and
34 provide the record or record information in the requested format, or to allow the record or record
35 information to be read or printed, shall not be deemed to be the preparation or creation of a new
36 record.

37 SECTION 5. Said chapter 66 of the General Laws, as so appearing, is hereby further
38 amended by inserting after Section 10 the following new section:--

39 Section 10A. (a) Every state agency, as defined by Chapter 66A, that has the ability to
40 provide public internet access, at no charge, to a public record in its custody, shall make
41 reasonable efforts to do so. A custodian state agency shall be required to provide public internet
42 access, at no charge, to the following types of public records in searchable format: (i) final
43 opinions, decisions, orders, or votes from agency proceedings; (ii) annual reports; (iii) reports to
44 the General Court; (iv) notices of regulations proposed under chapter 30A; (v) notices of
45 hearings; (vi) winning bids for public contracts; and (vii) any public record information of
46 significant interest to the general public including, but not limited to, public record information
47 which is the subject of multiple public records requests.

48 (b) Every state agency shall prepare and maintain reference materials to enhance
49 access to public records in its custody and enable requestors to make informed requests,
50 including: (i) a reasonably detailed document classification scheme, to be updated annually,
51 outlining categories of records maintained by the agency, whether or not open for public
52 inspection,; and (ii) an index and description of all major databases, document management
53 applications, and electronic recordkeeping and locator systems maintained by the agency,

54 including an indication of which records are publicly accessible, at no charge, on the internet.
55 Each state agency that maintains a website shall post such reference materials on its website.

56 (c) The secretary of each executive office shall, on or before January 1, 2016,
57 promulgate rules and regulations to carry out the purposes of this act which shall be applicable to
58 all agencies, departments, boards, commissions, authorities, and instrumentalities within each of
59 said executive offices subject to the approval of the secretary of administration and finance, in
60 consultation with the chief information officer of the commonwealth. Any agency not within any
61 such executive office shall be subject to the regulations of the secretary of administration and
62 finance. The attorney general, the state secretary, the state treasurer and the state auditor shall
63 adopt applicable regulations for their respective departments on or before January 1, 2016.