

HOUSE No. 3110

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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 further regulating access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/12/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/19/2021</i>

HOUSE No. 3110

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 3110) of Antonio F. D. Cabral and Christopher Hendricks relative to further regulating access to public records. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act further regulating 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. Section 4 of chapter 9 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby repealed.

3 SECTION 2. Chapter 66 of the General Laws, as appearing in the 2018 Official Edition,
4 is hereby amended by striking out section 1 and inserting in place thereof the following section:-

5 “Section 1. Public records division; commission of public records.

6 (a) There is established a public records division within the office of the secretary of the
7 commonwealth.

8 (b) Commission of public records. There shall be a commission of public records to
9 govern the division of public records.

10 (1) Membership of the commission. The commission shall be composed of five members.

11 (2) Three members shall be appointed by the governor, one of whom shall be the
12 president of the Massachusetts Municipal Association or his designee and one of whom shall be
13 the president of the Massachusetts Newspaper Publishers Association or his designee. One
14 member shall be appointed by the secretary of state and shall serve as chairman and one member
15 shall be appointed by the attorney general.

16 (3) Members shall serve for terms of five years.

17 (4) No member or employee of the commission shall hold or be a candidate for any other
18 public office while a member or employee or for 1 year thereafter.

19 (5) Members may be removed by a majority vote of the governor, state secretary and
20 attorney general for substantial neglect of duty, inability to discharge the powers and duties of
21 office, violation of subsection (d) of this section, gross misconduct or conviction of a felony.

22 (6) Any vacancy occurring on the commission shall be filled within 90 days by the
23 original appointing authority. A person appointed to fill a vacancy occurring other than by
24 expiration of a term of office shall be appointed for the unexpired term of the member he
25 succeeds.

26 (7) The commission shall elect a vice chairman, who shall serve as chairman in the
27 chairman's absence. Three members shall constitute a quorum and three affirmative votes shall
28 be required for any action or recommendation of the commission. Any member may call a
29 meeting; at least seven days advance notice of all meetings shall be given to all members and to
30 any other person who requests such notice and posted on line.

31 (c) Members shall be compensated for work performed for the commission at such rate as
32 the secretary of state and the secretary of administration and finance shall jointly determine, and
33 shall be reimbursed for their reasonable expenses.

34 (d) The commission shall annually report to the general court and the governor
35 concerning the action it has taken; the names and salaries and duties of all individuals in its
36 employ and the money it has disbursed; and shall make such further reports on matters within its
37 jurisdiction as may appear necessary.

38 (e) The commission shall hire and employ a supervisor of public records and, subject to
39 appropriations, such other staff as it shall require, who shall serve at the pleasure of the
40 commission.

41 SECTION 3. Chapter 66 of the General Laws, as so appearing, is hereby amended by
42 inserting after section 1A the following section:-

43 “Section 2. The supervisor of public records (in this chapter referred to as the ‘supervisor
44 of records’) shall take necessary measures to put the records of the commonwealth, counties,
45 cities or towns in the custody and condition required by law and to secure their preservation. He
46 shall see that the records of churches, parishes or religious societies are kept in the custody and
47 condition contemplated by the various laws relating to churches, parishes or religious societies,
48 and for these purposes he may expend from the amount appropriated for expenses such amount
49 as he considers necessary. The supervisor of records shall adopt regulations pursuant to the
50 provisions of chapter 30A to implement the provisions of this chapter.”.

51 SECTION 4. Section 10 of said chapter, as so appearing, is hereby amended by striking
52 out subsection (b) and inserting in place thereof the following subsection:-

“(b) A custodian of a public record shall, within 10 days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail or sent electronically if the office has designated a secure means of receiving such requests electronically that allows the requester to obtain a written receipt of said request. If the record is maintained electronically, the custodian shall provide the requested public record in electronic form if so requested. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records shall, within five days, notify the attorney general or the appropriate district attorney thereof who shall take whatever measures he deems necessary to ensure compliance with the provisions of this section. The supervisor of records may also seek compliance with his order pursuant to section 10A where neither the attorney general nor the appropriate district attorney has achieved enforcement of the order within 60 days of notification. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance. The

person making the request shall be entitled to an award of reasonable attorney's fees and costs if the custodian withholding the public record was in violation of this chapter.”.

SECTION 5. Chapter 66 of the General Laws, as so appearing, is hereby amended by inserting after section 10 the following section:-

“Section 10C. The Division of Public Record Appeals.

(a) Establishment of the Division.

(1) The supervisor of records may conduct adjudicatory proceedings and promulgate regulations relative to conducting said proceedings.

(2) There is established in the division of administrative law appeals a division of public record appeals (in this section referred to as the “division”).

(b) The Chief Administrative Magistrate.

(1) The division shall be under the direction of a chief administrative magistrate, who shall be appointed by the supervisor of records. Said chief administrative magistrate, shall be a resident of the commonwealth at the time of the chief administrative magistrate’s appointment and shall be a person with substantial experience as a trial attorney.

(2) The chief administrative magistrate shall hear, or assign for hearing, appeals filed pursuant to this chapter or regulations promulgated thereof and may, subject to appropriation, appoint and make available presiding officers who serve as administrative magistrates, or the equivalent thereof, to hear appeals assigned pursuant to this chapter. Said presiding officers shall serve under the direction, supervision and control of the supervisor of records and shall be utilized to expedite appeals of the public records division. The chief administrative magistrate,

shall, when necessary, promulgate regulations governing the proceedings or appeals to be so conducted or heard prior to conducting or hearing any proceedings or appeals.

(c) Powers and Responsibilities of the Division.

(1) It shall be the responsibility of said chief administrative magistrate to organize the division to provide speedy and fair disposition of all appeals and to establish policies that will encourage and aid parties in their compliance with this chapter.

(2) The division may summon witnesses, administer oath and require the production of books, records, papers, electronic records and any other document at any hearing before the division, upon any matter within its jurisdiction. Witnesses may be summoned by any party to the proceeding in the same manner, be paid the same fees and be subject to the same penalties as witnesses in civil cases before the courts of the commonwealth.

(3) The division may institute, by its own initiative, appropriate proceedings in the court with appropriate jurisdiction for enforcement of its final orders or decisions. Any party aggrieved by a final order or decision of the division following a hearing pursuant to any section of this chapter or chapter 31A may institute proceedings for judicial review in the superior court within 30 days after receipt of such order or decision. Any proceedings in the court with appropriate jurisdiction shall, insofar as applicable, be governed by the provisions of section 14 of chapter 30A, and may be instituted in the court with appropriate jurisdiction.”.

SECTION 6. Chapter 66 of the General Laws, as so appearing, is hereby amended by striking out section 15, and inserting in place thereof the following section:-

117 “Section 15. Whoever unlawfully keeps in his possession any public record or removes it
118 from the room where it is usually kept, or alters, defaces, mutilates or destroys any public record
119 or violates any provision of this chapter shall be punished by a fine of not less than \$500 nor
120 more than \$5,000, or by imprisonment for not more than 1 year, or both. Any public officer who
121 refuses or neglects to perform any duty required of him by this chapter shall for each month of
122 such neglect or refusal be punished by a fine of not more than \$500.”.

123 SECTION 7. Section 1 of chapter 447 of the acts of 1947, is hereby amended by
124 striking out the following words:-

125 “; provided, that the substance of debates by and among the members of the city council
126 shall not be so published or published elsewhere at the expense of said city”.