

**HOUSE . . . . . No. 2994**

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**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>1/19/2023</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>1/26/2023</i>
<i>Paul A. Schmid III</i>	<i>8th Bristol</i>	<i>2/1/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/1/2023</i>

**HOUSE . . . . . No. 2994**

By Representative Cabral of New Bedford, a petition (accompanied by bill, House, No. 2994) of Antonio F. D. Cabral and others relative to further regulating access to public records. State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

In the One Hundred and Ninety-Third General Court  
(2023-2024)

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 2020  
2 Official Edition, is hereby repealed.

3 SECTION 2. Chapter 66 of the General Laws, as so appearing, is hereby amended by  
4 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 online.

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:-

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

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

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

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

81 (a) Establishment of the Division.

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

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

86 (b) The Chief Administrative Magistrate.

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

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

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

99 (c) Powers and Responsibilities of the Division.

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

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

108 (3) The division may institute, by its own initiative, appropriate proceedings in the court  
109 with appropriate jurisdiction for enforcement of its final orders or decisions. Any party aggrieved  
110 by a final order or decision of the division following a hearing pursuant to any section of this  
111 chapter or chapter 31A may institute proceedings for judicial review in the superior court within  
112 30 days after receipt of such order or decision. Any proceedings in the court with appropriate  
113 jurisdiction shall, insofar as applicable, be governed by the provisions of section 14 of chapter  
114 30A, and may be instituted in the court with appropriate jurisdiction.

115 SECTION 6. Chapter 66 of the General Laws, as so appearing, is hereby amended by  
116 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”.