

HOUSE No. 01737

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 passage of the accompanying bill:

An Act to improve access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Stephen Stat Smith</i>	<i>28th Middlesex</i>
<i>Gailanne Cariddi</i>	<i>1st Berkshire</i>
<i>Angelo D'Emilia</i>	<i>8th Plymouth</i>

<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

HOUSE No. 01737

By Mr. Antonio F. D. Cabral of New Bedford, petition (accompanied by bill, House, No. 01737) of Denise Provost and others relative to access to public records in state agencies. Joint Committee on State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to improve 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 Be it enacted by the Senate and House of Representatives in General Court assembled, and by
- 2 the authority of the same, as follows:
- 3 SECTION 1. Clause Twenty-sixth of Section 7 of Chapter 4 of the General Laws, as appearing
- 4 in the 2008 Official Edition, is hereby amended by inserting after the word “characteristics,” the
- 5 following words:--
- 6 including public record information which may be separately retrieved from an electronic record,
- 7 SECTION 2. Chapter 66 of the General Laws, as appearing in the 2008 Official Edition, is
- 8 hereby amended by inserting after Section 6 the following new section:--
- 9 Section 6A. Every state agency, as defined in chapter 66A, shall designate one or more
- 10 employees as records access officers, who shall have the custody of all its public records other

11 than those records for which a clerk is the statutory custodian. Each agency shall publicize by
12 posting in a conspicuous location at its offices and in a conspicuous location on its website, if
13 any, the name, title, business address and business telephone number of the designated records
14 access officers. The designation of one or more records access officers shall not be construed to
15 prohibit employees who have in the past been authorized to make records or information
16 available to the public from continuing to do so.

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

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

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

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

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

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

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

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

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

57 SECTION 4. Section 10 of said Chapter 66 is hereby further amended by inserting after the final
58 sentence of subsection (b), the following:--

59 In any such proceeding, the court may award reasonable attorney's fees to the party seeking
60 public records if that party has substantially prevailed.