

HOUSE No. 2717

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 to improve access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>

HOUSE No. 2717

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2717) of Antonio F. D. Cabral, Jason M. Lewis and David M. Rogers relative to access to public records in state agencies. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2784 OF 2013-2014.]

The Commonwealth of Massachusetts

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

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 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:--

4 including public record information which may be separately retrieved from an electronic
5 record,

6 SECTION 2. Chapter 66 of the general laws, as so appearing, is hereby amended by
7 inserting after section 3 the following new section:--

8 Section 3A. When designing or acquiring an electronic recordkeeping system or
9 database, any person having custody of a public record shall ensure that such system or database

10 is capable of providing data in a common format such as, but not limited to, the American
11 Standard Code for Information Interchange or the Uniform Character Set Transformation
12 Format. When records maintained electronically include both public record information and
13 exempt information that may be withheld from public inspection, the custodian shall design its
14 information storage and retrieval methods in a manner that permits the segregation and retrieval
15 of public record information in order to provide maximum public access. No custodian of a
16 public record may enter into a contract for the storage of electronic records containing public
17 record information that impairs or restricts public access to those records.

18 SECTION 3. Chapter 66 of the general laws, as so appearing, is hereby amended by
19 inserting after section 6 the following new section:--

20 Section 6A. Every state agency, as defined in chapter 66A, shall designate one or more
21 employees as records access officers, who shall have the custody of all its public records other
22 than those records for which a clerk is the statutory custodian. Each agency shall publicize by
23 posting in a conspicuous location at its offices and in a conspicuous location on its website, if
24 any, the name, title, business address and business telephone number of the designated records
25 access officers. The designation of one or more records access officers shall not be construed to
26 prohibit employees who have in the past been authorized to make records or information
27 available to the public from continuing to do so.

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

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

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

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

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

43 SECTION 4. Section 10 of said Chapter 66 of the general laws, as so appearing, is
44 hereby amended by striking subsection (a) and inserting the following:--

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

51 In determining the actual cost of reproducing a record, the custodian of the record may
52 include only: (i) the actual cost of any storage devices or materials provided to the requester in

53 complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest
54 paid employee who has the necessary skill required to prepare a copy of the requested record,
55 provided that no fee shall be charged unless at least two hours of employee time is needed to
56 prepare a copy of the record requested, and further provided that no fee shall be charged for
57 employee time to prepare photocopies of records or retrieve electronic public record information;
58 and (iii) when the custodian's information technology capabilities are inadequate to prepare a
59 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside
60 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary
61 attributed to the lowest paid state employee who has the necessary skill required to prepare such
62 a copy. In no case shall fees for black and white photocopies exceed 5 cents per letter size page
63 or smaller, or 7 cents per larger page.

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

69 SECTION 5. Section 10 of said Chapter 66 of the general laws, as so appearing, is
70 hereby further amended by inserting after the final sentence of subsection (b), the following:--

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

73 SECTION 6. Section 10 of Chapter 66 of the general laws, as so appearing, is hereby
74 amended by inserting after the word "record," in line 4, the following:--

75 including public record information which may be separately retrieved from an electronic
76 record,

77 SECTION 7. Section 10 of Chapter 66 of the general laws, as so appearing, is hereby
78 further amended by inserting at the end thereof the following paragraph:--

79 (e) If a public record or public record information is available in electronic form, the
80 custodian shall, at the option of the requester, provide it in that form. In making a record
81 available to a requestor, the custodian shall provide the record in any format requested if the
82 record is readily reproducible in that format. If a request does not specify the format for
83 producing electronically stored information, the custodian shall provide the record information in
84 a common format that is reasonably usable. For public records in electronic form, a custodian
85 may charge the requestor only the actual cost of any storage devices or materials provided to the
86 requestor. When the custodian`s information technology capabilities are inadequate to prepare a
87 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside
88 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary
89 attributed to the lowest paid state employee who has the necessary skill required to prepare such
90 a copy. Any programming necessary to retrieve a public record or public record information and
91 provide the record or record information in the requested format, or to allow the record or record
92 information to be read or printed, shall not be deemed to be the preparation or creation of a new
93 record.

94 SECTION 8. Chapter 66 of the general laws, as so appearing, is hereby amended by
95 inserting after Section 10 the following new section:--

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

105 (b) Every state agency shall prepare and maintain reference materials to enhance
106 access to public records in its custody and enable requestors to make informed requests,
107 including: (i) a reasonably detailed document classification scheme, to be updated annually,
108 outlining categories of records maintained by the agency, whether or not open for public
109 inspection,; and (ii) an index and description of all major databases, document management
110 applications, and electronic recordkeeping and locator systems maintained by the agency,
111 including an indication of which records are publicly accessible, at no charge, on the internet.
112 Each state agency that maintains a website shall post such reference materials on its website.

113 (c) The secretary of each executive office shall, on or before January 1, 2017,
114 promulgate rules and regulations to carry out the purposes of this act which shall be applicable to
115 all agencies, departments, boards, commissions, authorities, and instrumentalities within each of
116 said executive offices subject to the approval of the secretary of administration and finance, in
117 consultation with the chief information officer of the commonwealth. Any agency not within any
118 such executive office shall be subject to the regulations of the secretary of administration and

119 finance. The attorney general, the state secretary, the state treasurer and the state auditor shall
120 adopt applicable regulations for their respective departments on or before January 1, 2017.