

**HOUSE . . . . . No. 2772**

The Commonwealth of Massachusetts

PRESENTED BY:

*Peter V. Kocot*

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 public records.

PETITION OF:

| NAME:                         | DISTRICT/ADDRESS:     |
|-------------------------------|-----------------------|
| <i>Peter V. Kocot</i>         | <i>1st Hampshire</i>  |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i>   |
| <i>Cory Atkins</i>            | <i>14th Middlesex</i> |
| <i>Ruth B. Balsler</i>        | <i>12th Middlesex</i> |
| <i>Jennifer E. Benson</i>     | <i>37th Middlesex</i> |
| <i>Michael D. Brady</i>       | <i>9th Plymouth</i>   |
| <i>Paul Brodeur</i>           | <i>32nd Middlesex</i> |
| <i>Antonio F. D. Cabral</i>   | <i>13th Bristol</i>   |
| <i>Linda Dean Campbell</i>    | <i>15th Essex</i>     |
| <i>Gailanne M. Cariddi</i>    | <i>1st Berkshire</i>  |
| <i>Josh S. Cutler</i>         | <i>6th Plymouth</i>   |
| <i>Michael S. Day</i>         | <i>31st Middlesex</i> |
| <i>Diana DiZoglio</i>         | <i>14th Essex</i>     |
| <i>Carolyn C. Dykema</i>      | <i>8th Middlesex</i>  |
| <i>Lori A. Ehrlich</i>        | <i>8th Essex</i>      |
| <i>Sean Garballey</i>         | <i>23rd Middlesex</i> |
| <i>Denise C. Garlick</i>      | <i>13th Norfolk</i>   |
| <i>Kenneth I. Gordon</i>      | <i>21st Middlesex</i> |

|                                  |                        |
|----------------------------------|------------------------|
| <i>Jonathan Hecht</i>            | <i>29th Middlesex</i>  |
| <i>Daniel J. Hunt</i>            | <i>13th Suffolk</i>    |
| <i>Bradley H. Jones, Jr.</i>     | <i>20th Middlesex</i>  |
| <i>Louis L. Kafka</i>            | <i>8th Norfolk</i>     |
| <i>Jay R. Kaufman</i>            | <i>15th Middlesex</i>  |
| <i>Mary S. Keefe</i>             | <i>15th Worcester</i>  |
| <i>Kay Khan</i>                  | <i>11th Middlesex</i>  |
| <i>Jason M. Lewis</i>            | <i>Fifth Middlesex</i> |
| <i>Jay D. Livingstone</i>        | <i>8th Suffolk</i>     |
| <i>Elizabeth A. Malia</i>        | <i>11th Suffolk</i>    |
| <i>Joseph W. McGonagle, Jr.</i>  | <i>28th Middlesex</i>  |
| <i>Paul McMurtry</i>             | <i>11th Norfolk</i>    |
| <i>Leonard Mirra</i>             | <i>2nd Essex</i>       |
| <i>James J. O'Day</i>            | <i>14th Worcester</i>  |
| <i>Keiko M. Orrall</i>           | <i>12th Bristol</i>    |
| <i>Sarah K. Peake</i>            | <i>4th Barnstable</i>  |
| <i>Alice Hanlon Peisch</i>       | <i>14th Norfolk</i>    |
| <i>William Smitty Pignatelli</i> | <i>4th Berkshire</i>   |
| <i>Denise Provost</i>            | <i>27th Middlesex</i>  |
| <i>Tom Sannicandro</i>           | <i>7th Middlesex</i>   |
| <i>John W. Scibak</i>            | <i>2nd Hampshire</i>   |
| <i>Frank I. Smizik</i>           | <i>15th Norfolk</i>    |
| <i>Benjamin Swan</i>             | <i>11th Hampden</i>    |
| <i>Steven Ultrino</i>            | <i>33rd Middlesex</i>  |
| <i>Chris Walsh</i>               | <i>6th Middlesex</i>   |
| <i>Timothy R. Whelan</i>         | <i>1st Barnstable</i>  |
| <i>Ellen Story</i>               | <i>3rd Hampshire</i>   |

**HOUSE . . . . . No. 2772**

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By Mr. Kocot of Northampton, a petition (accompanied by bill, House, No. 2772) of Peter V. Kocot and others relative to the storage and dissemination of certain public records in an electronic format. State Administration and Regulatory Oversight.

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The Commonwealth of Massachusetts

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

An Act to improve 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 in line 139 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. Section 3 of chapter 66 of the General Laws, as appearing in the 2012  
6 Official Edition, is hereby amended by striking the first two sentences.

7 □□SECTION 3. Chapter 66 of the General Laws, as appearing in the 2012 Official  
8 Edition, is hereby amended by inserting after section 3A the following new section:--□□“Section  
9 3B. When designing or acquiring an electronic recordkeeping system or database, any person  
10 having custody of a public record shall ensure that such system or database is capable of  
11 providing data in a common format such as, but not limited to, the American Standard Code for  
12 Information Interchange or the Uniform Character Set Transformation Format. When records

13 maintained electronically include both public record information and exempt information that  
14 may be withheld from public inspection, the custodian shall design its information storage and  
15 retrieval methods in a manner that permits the segregation and retrieval of public record  
16 information in order to provide maximum public access. No custodian of a public record may  
17 enter into a contract for the storage of electronic records containing public record information  
18 that impairs or restricts public access to those records.” □□

19 SECTION 4. Said Chapter 66 is hereby amended by inserting after section 6 the  
20 following new section:--□□“Section 6A. Every state agency, as defined in chapter 66A, shall  
21 designate one or more employees as records access officers. Each agency shall publicize by  
22 posting in a conspicuous location at its offices and in a conspicuous location on its website, if  
23 any, the name, title, business address, business telephone number, and email address of the  
24 designated records access officers. The designation of one or more records access officers shall  
25 not be construed to prohibit employees who have in the past been authorized to make records or  
26 information available to the public from continuing to do so. □□Records access officers shall be  
27 responsible for coordinating such agency’s response to requests for access to records under the  
28 provisions of this chapter, shall facilitate the informal resolution of requests by timely and  
29 thorough production of records, and shall ensure that the agency:□□(a) Assists requesters  
30 seeking records to identify the records sought;□□(b) Indicates, when responding to a request,  
31 whether the records are available in electronic form and the manner in which the records are  
32 stored, filed, retrieved or generated, to assist requesters in describing the records sought;□□(c)  
33 Contacts requesters when the response to a request would be voluminous so the agency may, at  
34 the option of the requester, assist the requester in focusing the request in order to facilitate the  
35 timely and thorough production of the records sought;□□ (d) coordinates with the Supervisor of

36 Public Records and the Records Management Unit to ensure that public records are preserved in  
37 accordance with relevant Massachusetts law, regulation, and administrative guidance, prepares  
38 and maintains reference materials to enhance access to electronic public records in its custody  
39 and enable requestors to make informed requests. These reference materials shall be updated at  
40 least annually and shall include:   (i) a reasonably detailed list of categories of records  
41 maintained by the agency, whether or not open for public inspection;   (ii) a list and  
42 description of all major databases maintained by the agency; and   (iii) a record of all public  
43 records requests received on or after January 1, 2015 and the responses to those requests, to the  
44 extent that such responses may be preserved in electronic form.   Each state agency that  
45 maintains a website shall post these reference materials on its website.”

46 SECTION 5. Section 10 of said chapter 66 is hereby amended by striking subsections (a)  
47 and (b) and inserting the following:--   “(a) Every person having custody of any public record,  
48 as defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and  
49 without unreasonable delay, permit it, or any segregable portion of a record which is an  
50 independent public record, including public record information which may be separately  
51 retrieved from an electronic record, to be inspected and examined by any person, under his  
52 supervision, and shall furnish one copy thereof upon payment of a reasonable fee not to exceed  
53 the actual cost of reproducing the record. In determining the actual cost of reproducing a record,  
54 the custodian of the record may include only: (i) the actual cost of any storage devices or  
55 materials provided to the requester in complying with such request; (ii) an amount equal to the  
56 hourly salary attributed to the lowest paid employee who has the necessary skill required to  
57 prepare a copy of the requested record, provided that no fee shall be charged unless at least two  
58 hours of employee time is needed to prepare a copy of the record requested, and (iii) when the

59 custodian`s information technology capabilities are inadequate to prepare a copy of the record,  
60 the custodian may charge the requestor the actual cost of engaging an outside service to prepare a  
61 copy, provided that no fee shall be charged in excess of the hourly salary attributed to the lowest  
62 paid state employee who has the necessary skill required to prepare such a copy. In no case shall  
63 fees for black and white photocopies or computer printouts exceed 5 cents per letter size page or  
64 smaller or 7 cents per legal size page. A page shall be defined as one side of a sheet of  
65 paper.□□Each person having custody of a record shall inform the requester of the estimated cost  
66 of preparing a copy of the record if more than two hours of an employee`s time is needed, or if  
67 an outside professional service would be retained to prepare a copy of the record. No fee shall be  
68 charged for review of the content of requested records to determine the extent to which exempt  
69 and public information must be segregated.□□Records shall be furnished without any charge or  
70 at a reduced charge if disclosure of the information is in the public interest because it is likely to  
71 contribute significantly to public understanding of operations or activities of the government and  
72 is not primarily in the commercial interest of the requester.□□(b) A custodian of a public record  
73 shall, within fifteen days following receipt of a request for inspection or copy of a public record,  
74 comply with such request. Such request may be delivered in hand to the office of the custodian,  
75 mailed via first class mail, or sent by email. If the custodian refuses or fails to comply with such  
76 a request, the person making the request may petition the supervisor of records to compel the  
77 custodian to respond or for a determination whether the record requested is public. Upon the  
78 determination by the supervisor of records that the record is public, he shall order the custodian  
79 of the public record to comply with the person`s request. If the custodian refuses or fails to  
80 comply with any such order, the supervisor of records shall notify the attorney general or the  
81 appropriate district attorney thereof who shall take whatever measures necessary to insure

82 compliance with the provisions of this section, including enforcement of the penalties prescribed  
83 under section 15. The administrative remedy provided by this section shall in no way limit the  
84 availability of the administrative remedies provided by the commissioner of administration and  
85 finance with respect to any officer or employee of any agency, executive office, department or  
86 board; nor shall the administrative remedy provided by this section in any way limit the  
87 availability of judicial remedies otherwise available to any person requesting a public record. If a  
88 custodian of a public record refuses or fails to comply with the request of any person for  
89 inspection or copy of a public record or with an administrative order under this section, the  
90 supreme judicial or superior court shall have jurisdiction to order compliance. Proceedings  
91 arising under this section shall take precedence on the docket over other civil cases and shall be  
92 expedited. In any such proceeding, the court shall award reasonable attorney's fees to the party  
93 seeking public records if that party has substantially prevailed. A judgment or settlement in  
94 plaintiff's favor shall not be a prerequisite to obtaining an award of attorney's fees or costs..”

95       □□SECTION 6. Said section 10 of chapter 66 is hereby further amended by inserting at  
96 the end thereof the following paragraphs:--□□“(e) If a public record or public record  
97 information is available in electronic form, the custodian shall, at the option of the requester,  
98 provide it in that form. In making a record available to a requestor, the custodian shall provide  
99 the record in any format requested if the record is readily reproducible in that format. If a request  
100 does not specify the format for producing electronically stored information, the custodian shall  
101 provide the record information in a common format that is reasonably usable. For public records  
102 in electronic form, a custodian may charge the requestor only the actual cost of any storage  
103 devices or materials provided to the requestor. Any programming necessary to retrieve a public  
104 record or public record information and provide the record or record information in the requested

105 format, or to allow the record or record information to be read or printed, shall not be deemed to  
106 be the preparation or creation of a new record. (f) Every state agency, as defined by Chapter  
107 66A, that has the ability to provide public internet access, at no charge, to a public record in its  
108 custody, shall make reasonable efforts to do so. A custodian state agency shall be required to  
109 provide public internet access, at no charge, to the following types of public records in  
110 searchable format: (i) final opinions, decisions, orders, or votes from agency proceedings; (ii)  
111 annual reports; (iii) reports to the General Court; (iv) notices of regulations proposed under  
112 chapter 30A; (v) notices of hearings; (vi) winning bids for public contracts; (vii) applications and  
113 awards of federal, state, and municipal government grants; (viii) minutes of open meetings; (ix)  
114 agency budgets; and (x) any public record information of significant interest to the general public  
115 including, but not limited to, public record information which has been the subject of multiple  
116 public records requests or which could reasonably be anticipated to be the subject of multiple  
117 public records requests in the future. (g) The secretary of each executive office shall, on or  
118 before October 1, 2015, promulgate rules and regulations to carry out the purposes of this act  
119 which shall be applicable to all agencies, departments, boards, commissions, authorities, and  
120 instrumentalities within each of said executive offices subject to the approval of the secretary of  
121 administration and finance, in consultation with the chief information officer of the  
122 commonwealth. Any agency not within any such executive office shall be subject to the  
123 regulations of the secretary of administration and finance. The attorney general, the state  
124 secretary, the state treasurer and the state auditor shall adopt applicable regulations for their  
125 respective departments on or before October 1, 2015.”

126 SECTION 7. Said section 15 of chapter 66 is hereby amended by striking the last  
127 sentence and replacing it with the following:--“Any public officer who refuses or neglects to



128 perform any duty required of him by this chapter, including failure to comply with an order from  
129 the supervisor of records made pursuant to paragraph (b) of section 10, shall for each day of such  
130 neglect or refusal be punished by a fine of not more than \$100.”