

SENATE No. 2127

Senate, February 4, 2016 -- Text of the Senate amendment to the House Bill to improve public records (House, No. 3858) (being the text of Senate, No. 2120, printed as amended)

The Commonwealth of Massachusetts

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

1 SECTION 1. Section 7 of chapter 4 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the word “transportation”, in line 226, the
3 following words:- , cybersecurity.

4 SECTION 2. Said section 7 of said chapter 4, as so appearing, is hereby further amended
5 by striking out, in line 229, the words “ (b) of section 10” and inserting in place thereof the
6 following words:- (a) of section 10A.

7 SECTION 3. Said section 7 of said chapter 4, as so appearing, is hereby further amended
8 by inserting after the word “safety”, in line 230, the following words:- or cybersecurity.

9 SECTION 3A. Said section 7 of said chapter 4, as so appearing, is hereby further
10 amended by striking out, in line 231, and in line 242, the second time it appears, the word
11 “home”.

12 SECTION 4. Said section 7 of said chapter 4, as so appearing, is hereby further amended
13 by striking out, in line 269, the words “ten of chapter sixty-six” and inserting in place thereof the
14 following words:- 10A of chapter 66.

15 SECTION 4A. Chapter 10 of the General Laws is hereby amended by inserting after
16 section 35CCC the following section:-

17 Section 35DDD. There shall be established and set up on the books of the
18 commonwealth a Public Records Assistance Fund, which shall be administered by the
19 Massachusetts office of information technology. The fund shall be credited with: (i) all punitive
20 damages assessed pursuant to paragraph (4) of subsection (d) of section 10A of chapter 66; (ii)
21 any appropriations, bond proceeds or other monies authorized or transferred by the general court
22 and specifically designated to be credited to the fund; (iii) gifts, grants and other private
23 contributions designated to be credited to the fund; (iv) all other amounts credited or transferred
24 to the fund from any other fund or source; and (v) interest or investment earnings on any such
25 monies. Amounts credited to the fund may be expended by the chief information officer,
26 without further appropriation, to provide grants to municipalities to support the information
27 technology capabilities of municipalities to foster best practices for increasing access to public
28 records and facilitating compliance with said chapter 66.

29 The unexpended balance in the fund at the end of a fiscal year shall not revert to the
30 General Fund but shall remain available for expenditure in subsequent fiscal years. No
31 expenditure made from the fund shall cause the fund to become deficient at any point.

32 SECTION 5. Chapter 66 of the General Laws is hereby amended by inserting after
33 section 1 the following section:-

34 Section 1A. The supervisor of records shall: (i) create educational materials or guides and
35 may make available training to an agency or municipality in order to foster awareness and
36 compliance with this chapter; and (ii) prepare forms, guidelines and reference materials for

37 agencies and municipalities to use and disseminate to individuals seeking access to public
38 records to assist an individual in making an informed public records request. The supervisor of
39 records shall make the forms, guidelines and reference materials available at no cost on a website
40 operated by the secretary of the commonwealth. Upon request and to the extent feasible, the
41 supervisor of public records shall assist each agency and municipality in developing best
42 practices to facilitate compliance with this chapter and to promote access to public records.

43 SECTION 6. Section 3 of said chapter 66, as so appearing, is hereby amended by
44 inserting after the word “process”, in line 12, the second time it appears, the following words:- ,
45 or by electronic means.

46 SECTION 7. Said chapter 66 is hereby further amended by inserting after section 6 the
47 following section:-

48 Section 6A. (a) Every agency and municipality shall designate at least 1 employee as a
49 records access officer. In a municipality, the municipal clerk or any person the clerk may
50 designate, shall serve as a records access officer and the local chief executive officer or chief
51 administrative officer, as defined in section 7 of chapter 4, may appoint additional records access
52 officers. For the purposes of this chapter, “agency” shall mean an entity, other than a
53 municipality, that is identified in clause Twenty-sixth of section 7 of said chapter 4 as possessing
54 public records.

55 (b) A records access officer shall coordinate an agency’s or a municipality’s response to
56 requests for access to public records and shall facilitate the resolution of such requests by the
57 timely and thorough production of public records. Each officer shall further: (i) assist persons
58 seeking public records to identify the records sought; (ii) assist the custodian of records in

59 preserving public records in accordance with all applicable laws, rules, regulations and
60 schedules; and (iii) prepare guidelines or reference materials that enable a person seeking access
61 to public records in the custody of the agency or municipality to make informed requests. The
62 guidelines or reference materials shall be updated periodically and shall include a list of
63 categories of public records maintained by the agency or municipality and a list and description
64 of pertinent databases and record keeping systems maintained by the agency or municipality the
65 contents of which are public records. Each agency and municipality that maintains a website
66 shall post such guidelines or reference materials on its website.

67 (c) Each agency and municipality shall post in a conspicuous location at its offices and
68 on its website, if any, the name, title, business address, business telephone number and business
69 email address of each records access officer. The designation of a records access officer shall
70 not be construed to prohibit other authorized employees from responding to public records
71 requests, making public records or information available to the public or from otherwise taking
72 actions necessary to comply with this chapter; provided, however, that such employees shall act
73 in accordance with the law.

74 (d) The records access officer shall provide the public records to a requestor by
75 electronic means unless the record is not available in electronic form or the requestor does not
76 have the ability to receive or access the records in a usable electronic form. The records access
77 officer shall, to the extent feasible, provide the public record in the requestor's preferred format
78 or, in the absence of a preferred format, in a searchable, machine readable format. The records
79 access officer shall not be required to create a new public record in order to comply with a
80 request. If the public record requested is available on a public website pursuant to subsection (b)
81 of section 19, section 14C of chapter 7 or any other appropriately indexed and searchable public

82 website, the records access officer may furnish the public record by providing reasonable
83 assistance in locating the requested record on the public website. Any document submitted to an
84 agency or municipality for use in deliberations by a public body shall be provided in an
85 electronic format at the time of submission.

86 (e) Each records access officer of an agency shall document each request for public
87 records submitted to the records access officer. The records access officer shall document (i) the
88 nature of the request and the date on which the request was received; (ii) the date on which a
89 response is provided to the requestor; (iii) the date on which a public record is provided to the
90 requestor; (iv) the number of hours required to fulfill the request; (v) fees charged to the person
91 making the request, if any; (vi) petitions submitted under clause (iv) of subsection (d) of section
92 10; (vii) requests appealed under section 10A; (viii) the time required to comply with supervisor
93 of records orders under said section 10A; and (ix) the final adjudication of any court proceedings
94 under subsection (d) of said section 10A. Nothing in this subsection shall require a records
95 access officer to disclose information otherwise protected from public access. The secretary of
96 the commonwealth shall prescribe a form for recording such information and shall annually
97 collect the information from the records access officers, post the information on a website
98 maintained by the secretary and report the same to the clerks of the house of representatives and
99 senate.

100 (f) The supervisor of records shall document requests for public records appealed to the
101 supervisor of records by the requestor. The supervisor of records shall document: (i) the date the
102 request was submitted to the records access officer; (ii) the date the records access officer
103 responded; (iii) the amount of fees charged to the requestor, if any; (iv) petitions under clause
104 (iv) of subsection (d) of section 10; (v) the time required to comply with supervisor of records

105 orders under said section 10A; and (vi) the final adjudication of any court proceedings under
106 subsection (d) of said section 10A. Nothing in this subsection shall require the supervisor to
107 disclose information otherwise protected from public access. The secretary of the
108 commonwealth shall prescribe a form for recording such information and shall post the
109 information on a website maintained by the secretary.

110 SECTION 8. Said chapter 66 is hereby further amended by striking out section 10, as
111 appearing in the 2014 Official Edition, and inserting in place thereof the following 3 sections:-

112 Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee,
113 shall, at reasonable times and without unreasonable delay, permit inspection or furnish a copy of
114 any public record, as defined in clause Twenty-sixth of section 7 of chapter 4, or any segregable
115 portion of a public record, not later than 15 calendar days following the receipt of the request if:
116 (i) the request reasonably describes the public record sought; (ii) the public record is within the
117 possession, custody or control of the agency or municipality that the records access officer
118 serves; and (iii) the records access officer receives payment of a reasonable fee as set forth in
119 subsection (d). If the agency or municipality does not intend to permit inspection or furnish a
120 copy of the requested record because the record does not exist or is not within the possession,
121 custody or control of the agency or municipality or because the record is not a public record, the
122 agency or municipality shall inform the requestor in writing within a reasonable time, not to
123 exceed 10 calendar days; provided, however, that the written response shall include the identity,
124 if known, of the agency or municipality who may be in possession, custody or control of the
125 public record sought or the specific reason for any withholding, including the specific exemption
126 or exemptions upon which the withholding is based.

127 (b) If the magnitude or difficulty of the request, or the receipt of multiple requests from
128 the same requestor, unduly burdens the other responsibilities of the agency or municipality such
129 that the agency or municipality is unable to permit inspection or furnish a copy of a requested
130 public record within 15 calendar days, the records access officer shall, not later than 10 calendar
131 days following the initial receipt of a request for public records, issue a written response to the
132 person who submitted the request. The written response shall be made via first class or
133 electronic mail and shall include the following:

134 (i) confirmation of the receipt of the request;

135 (ii) identification of any known public records or categories of public records that the
136 agency or municipality intends to produce and any, known records, categories of records, or any
137 portion of a record, that the agency or municipality intends to withhold accompanied by specific
138 reasons for such withholding, including the specific exemption or exemptions upon which the
139 withholding is based; provided, that nothing in the written response shall limit an agency's or
140 municipality's ability to redact or withhold information in accordance with state or federal law;

141 (iii) identification of any public record sought that does not exist or is not within the
142 possession, custody or control of the agency or municipality that the records access officer serves
143 and, if known, identification of the agency or municipality who may be in possession, custody or
144 control of the public record sought;

145 (iv) a detailed statement describing why the magnitude or difficulty of the request unduly
146 burdens the other responsibilities of the agency or municipality and therefore requires additional
147 time to produce the public record sought;

148 (v) an itemized, good faith estimate of any fees that may be charged to produce the
149 records;

150 (vi) a reasonable time in which the agency or municipality shall produce the public
151 records sought but this time shall not exceed 30 calendar days following the initial receipt of the
152 request for public records unless the agency or municipality and the requestor agree, in writing,
153 to establish a time beyond 30 calendar days of the initial receipt of the request;

154 (vii) a proposed reasonable modification of the scope of the request or an invitation to
155 assist the person making the request for public records to modify the scope of the request in
156 order to produce records sought more efficiently and affordably; and

157 (viii) a statement informing the requestor of the right of appeal to the supervisor of
158 records under subsection (a) and the right to seek judicial review of an unfavorable decision by
159 commencing a civil action in the superior court under subsection (c) of section 10A.

160 (c) If the magnitude or difficulty of a request, or the receipt of multiple requests from the
161 same requestor, unduly burdens the other responsibilities of the agency or municipality such that
162 an agency or municipality is unable to complete the request within the time provided in clause
163 (vi) of subsection (b), a records access officer may, as soon as practical and within 20 calendar
164 days after initial receipt of the request, or within 5 calendar days after receipt of a determination
165 by the supervisor of public records that the requested record constitutes a public record, petition
166 the supervisor of records for an extension of the time for the agency or municipality to furnish
167 copies of the requested record, or any portion of the requested record, that the agency or
168 municipality has within its possession, custody or control and intends to furnish. The records
169 access officer shall, upon submitting the petition to the supervisor of records, furnish a copy of

170 the petition to the requestor. Upon a showing of good cause, the supervisor of records may grant
171 a single extension not to exceed 30 calendar days. In determining whether the agency or
172 municipality has proven good cause, the supervisor of records shall consider, but shall not be
173 limited to considering: (i) the need to search for, collect, segregate or examine records; (ii) the
174 scope of redaction required to prevent unlawful disclosure; (iii) the capacity or the normal
175 business hours of operation of the agency or municipality to produce the request without the
176 extension; (iv) efforts undertaken by the agency or municipality in fulfilling the current request
177 and previous requests; (v) whether the request, either individually or as part of a series of
178 requests from the same requestor, is frivolous or intended to harass or intimidate the agency or
179 municipality; and (vi) the public interest served by expeditious disclosure. If the supervisor of
180 records determines that the request is part of a series of contemporaneous requests that are
181 frivolous or designed to intimidate or harass, and the requests are not intended for the broad
182 dissemination of information to the public about actual or alleged government activity, the
183 supervisor of records may grant an extension beyond 30 calendar days or relieve the agency or
184 municipality of its obligation to provide copies of the records sought. The supervisor of records
185 shall issue a written decision regarding a petition submitted by a records access officer under this
186 subsection within 7 calendar days following receipt of the petition and shall provide the decision
187 to the agency or municipality and the requestor and shall inform the requestor of the right to seek
188 judicial review of an unfavorable decision by commencing a civil action in the superior court.

189 (d) A records access officer may charge a reasonable fee for a public record. The
190 reasonable fee shall not exceed the actual cost of reproducing the record. Unless expressly
191 provided for otherwise, the fee shall be determined in accordance with the following:

192 (i) the actual cost of any storage device or material provided to a person in response to a
193 request for public records under subsection (a) may be included as part of the fee but the charge
194 for standard black and white paper copies or printouts of records shall not exceed 5 cents per
195 page, for both single and double-sided black and white copies or printouts;

196 (ii) if an agency is required to devote more than 4 hours of employee time to search for,
197 compile, segregate, redact or reproduce the record or records requested, the records access
198 officer may also include as part of the fee an hourly rate equal to or less than the hourly rate
199 attributed to the lowest paid employee who has the necessary skill required to search for,
200 compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25
201 per hour and an agency shall not charge for the first 4 hours of work performed; provided,
202 however, that an agency shall not charge for time spent segregating or redacting unless such
203 segregation or redaction is required by law or approved by the supervisor of records under clause
204 (iv);

205 (iii) if a municipality is required to devote more than 2 hours of employee time to search
206 for, compile, segregate, redact or reproduce a record requested, the records access officer may
207 also include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the
208 lowest paid employee who has the necessary skill required to search for, compile, segregate,
209 redact or reproduce the record requested but the municipality shall not charge more than \$25 per
210 hour unless such rate is approved by the supervisor of records under clause (iv); provided,
211 however, that a municipality shall not charge for the first 2 hours of work performed or time
212 spent segregating or redacting unless such segregation or redaction is required by law or
213 approved by the supervisor of records under clause (iv);

214 (iv) the supervisor of records may approve a petition from an agency or municipality to
215 charge for time spent segregating or redacting, or a petition from a municipality to charge in
216 excess of \$25 per hour, if the supervisor of records determines that: (1) the charge represents an
217 actual and good faith representation by the agency or municipality to comply with the request;
218 (2) the charge is necessary such that the request could not have been prudently completed
219 without the redaction, segregation or charge in excess of \$25 per hour; and (3) the charge is not
220 designed to limit, deter or prevent access to requested public records; provided, however, that in
221 making a determination regarding any such petition, the supervisor of records shall consider the
222 public interest served by limiting the cost of public access to the records, the financial ability of
223 the requestor to pay the additional or increased charges and any other relevant extenuating
224 circumstances.; provided, further that an agency or municipality, upon submitting a petition
225 under this clause, shall furnish a copy of the petition to the requestor; provided further, that the
226 supervisor of records shall issue a written determination with findings regarding any such
227 petition within 7 calendar days following receipt of the petition by the supervisor of public
228 records; and provided further, that the supervisor of records shall provide the determination to
229 the agency or municipality and the requestor and shall inform the requestor of the right to seek
230 judicial review of an unfavorable decision by commencing a civil action in the superior court;
231 and

232 (v) the records access officer may waive or reduce the amount of any fee under this
233 subsection upon a showing that disclosure of a requested record is in the public interest because
234 it is likely to contribute significantly to public understanding of the operations or activities of the
235 government and is not primarily in the commercial interest of the requestor or upon a showing
236 that the requestor lacks the financial ability to pay the full amount of the reasonable fee.

237 A records access officer shall not charge a fee for a public record unless the records
238 access officer furnished the public record within 15 calendar days under subsection (a) or
239 responded to the requestor in 10 calendar days under subsection (b).

240 Section 10A. (a) If an agency or municipality fails to comply with a requirement of
241 section 10 or issues a response the requestor believes in violation of section 10, the person who
242 submitted the initial request for public records may petition the supervisor of records for a
243 determination as to whether a violation has occurred. In assessing whether a violation has
244 occurred, the supervisor of records may inspect any record or copy of a record in camera. The
245 supervisor of records shall issue a written determination regarding any petition submitted in
246 accordance with this section not later than 15 calendar days following receipt of the petition by
247 the supervisor of records. Upon a determination by the supervisor of records that a violation has
248 occurred, the supervisor of records shall order timely and appropriate relief. A requestor,
249 aggrieved by an order issued by the supervisor of records or upon the failure of the supervisor of
250 records to issue a timely determination, may obtain judicial review only through an action in
251 superior court seeking relief in the nature of certiorari under section 4 of chapter 249 and as
252 prescribed in subsection (d).

253 (b) If an agency or municipality refuses or fails to comply with an order issued by the
254 supervisor of records, the supervisor of records shall notify the attorney general who, after
255 consultation with the supervisor of records, may take whatever measures the attorney general
256 considers necessary to ensure compliance. If the attorney general files an action to compel
257 compliance, the action shall be filed in Suffolk superior court with respect to state agencies and,
258 with respect to municipalities, in the superior court of the county in which the municipality is
259 located. The attorney general shall designate an individual within the office of the attorney

260 general to serve as a primary point of contact for the supervisor of records. In addition to any
261 other duties the attorney general may impose, the designee shall serve as a primary point of
262 contact within the office of the attorney general regarding notice from the supervisor of records
263 that an agency or municipality has refused or failed to comply with an order issued by the
264 supervisor of records.

265 (c) Notwithstanding the procedure in subsections (a) or (b), a requestor may initiate a
266 civil action to enforce the requirements of this chapter. Any action under this subsection shall be
267 filed in Suffolk superior court with respect to agencies and, with respect to municipalities, in the
268 superior court in the county in which the municipality is located. The superior court shall have
269 available all remedies at law or in equity; provided, however, that any damages awarded shall be
270 consistent with subsection (d).

271 (d)(1) In any action filed by a requestor pursuant to this section:

272 (i) the superior court shall have jurisdiction to enjoin agency or municipal action;

273 (ii) the superior court shall determine the propriety of any agency or municipal action de
274 novo and may inspect the contents of any defendant agency or municipality record in camera;

275 (iii) the superior court shall, when feasible, expedite the proceeding;

276 (iv) a presumption shall exist that each record sought is public and the burden shall be on
277 the defendant agency or municipality to prove, by a preponderance of the evidence, that such
278 record or portion of the record may be withheld in accordance with state or federal law.

279 (2) (A) The superior court shall award reasonable attorneys' fees and other litigation
280 costs reasonably incurred to the requestor in any case in which the requestor has obtained relief
281 through a judicial order or consent decree unless:

282 (i) the supervisor of records under subsection (a) found that the agency or municipal action
283 did not violate this chapter or the agency or municipality reasonably relied on, based on
284 similar facts, a published opinion by the supervisor of records or the attorney general;

285 (ii) the agency or municipality reasonably relied upon a published opinion of an appellate
286 court based on similar facts;

287 (iii) the request was designed or intended to harass or intimidate; or

288 (iv) the request was not in the public interest and made for a private or commercial purpose
289 unrelated to disseminating information to the public about actual or alleged government
290 activity.

291 If the superior court determines that 1 of the conditions exists under clauses (i) to (iv),
292 inclusive, the superior court may award reasonable attorneys' fees and other litigation costs
293 reasonably incurred to the requestor.

294 (B) If a requestor has obtained relief in a superior court case through a voluntary or
295 unilateral change in position by the agency or municipality and if the requestor's claim is not
296 insubstantial, the superior court may award reasonable attorneys' fees and other litigation costs
297 reasonably incurred to the requestor.

298 (C) If a requestor has obtained relief under subparagraph (A) and the superior court
299 determines that at least 1 of the conditions exists under clauses (i) to (iv), inclusive, or

300 subparagraph (B), whether the superior court determines that the assessment of reasonable
301 attorneys' fees and other litigation costs reasonably incurred are warranted or not warranted, the
302 judge shall issue findings specifying the basis for allowing or denying those fees and costs.

303 (3) If the superior court awards reasonable attorneys' fees and other litigation costs
304 reasonably incurred to the requestor, it shall order the agency or municipality to waive any fee
305 assessed under subsection (d) of section 10. If the superior court does not award reasonable
306 attorneys' fees and other litigation costs reasonably incurred to the requestor, it may order the
307 agency or municipality to waive any fee assessed under said subsection (d) of said section 10.
308 Whether the superior court determines to waive any fee assessed under said subsection (d) of
309 said section 10, it shall issue findings specifying the basis for such decision.

310 (4) If a requestor has obtained judgment in superior court in a case under this section and
311 has demonstrated that the defendant agency or municipality, in withholding or failing to timely
312 furnish the requested record or any portion of the record or in assessing an unreasonable fee, did
313 not act in good faith, the superior court shall assess punitive damages against the defendant
314 agency or municipality in an amount not less than \$1,000 nor more than \$5,000, to be deposited
315 into the Public Records Assistance Fund established in section 35DDD of chapter 10.

316 (e) Notwithstanding any other provision of this chapter, the attorney general may, at any
317 time, file a complaint in Suffolk superior court with respect to agencies and, with respect to
318 municipalities, in the superior court in the county in which the municipality is located, to ensure
319 compliance with this chapter and may further intervene as of right in any action filed in
320 accordance with this section. In any action filed or in which the attorney general has intervened

321 under this subsection, paragraphs (1) and (4) of subsection (d) shall apply and any public records
322 the court orders produced shall be provided without a fee.

323 Section 10B. The commissioner of criminal justice information services, the department
324 of criminal justice information services and its agents, servants and attorneys, including the
325 keeper of the records of the firearms record bureau of the department or any licensing authority,
326 as defined in section 121 of chapter 140, shall not disclose any records divulging or tending to
327 divulge the names and addresses of persons who own or possess firearms, rifles, shotguns,
328 machine guns and ammunition therefor, as defined in said section 121 of said chapter 140, and
329 the names and addresses of persons licensed to carry or possess the same to any person, firm,
330 corporation, entity or agency except criminal justice agencies as defined in section 167 of
331 chapter 6 and except to the extent such information relates solely to the person making the
332 request and is necessary to the official interests of the entity making the request.

333 The home address and telephone number of law enforcement, judicial, prosecutorial,
334 department of youth services, department of children and families, department of correction and
335 any other public safety and criminal justice system personnel, and of unelected general court
336 personnel, shall not be public records in the custody of the employers of such personnel or the
337 public employee retirement administration commission or any retirement board established under
338 chapter 32 and shall not be disclosed, but such information may be disclosed to an employee
339 organization under chapter 150E, a nonprofit organization for retired public employees under
340 chapter 180 or to criminal justice agencies as defined in said section 167 of said chapter 6. The
341 name and home address and telephone number of a family member of any such personnel shall
342 not be public records in the custody of the employers of the foregoing persons or the public
343 employee retirement administration commission or any retirement board established under

344 chapter 32 and shall not be disclosed. The home address and telephone number or place of
345 employment or education of victims of adjudicated crimes, of victims of domestic violence and
346 of persons providing or training in family planning services and the name and home address and
347 telephone number, or place of employment or education of a family member of any of the
348 foregoing shall not be public records in the custody of a government agency which maintains
349 records identifying such persons as falling within such categories and shall not be disclosed.

350 SECTION 8A. Said chapter 66 is hereby further amended by striking out section 11, as
351 so appearing, and inserting in place thereof the following section:-

352 Section 11. Public records, other than the records in the custody of teachers of the public
353 schools, shall be stored in fireproof rooms, safes or vaults, furnished with fittings of non-
354 combustible materials only or in buildings, vaults or file rooms that comply with National Fire
355 Protection Association Standards, or standards promulgated by the supervisor of records, for the
356 safe keeping of the public records.”

357 SECTION 8B. Section 12 of said chapter 66, as so appearing, is hereby amended by
358 striking out, in line 4, the words “provided for them” and inserting in place thereof the following
359 words:- or buildings, vaults or file rooms that comply with the National Fire Protection
360 Association Standards or standards promulgated by the supervisor of records.

361 SECTION 8C. Section 13 of said chapter 66, as so appearing, is hereby amended by
362 inserting after the word “person”, in line 2, the following word:- unlawfully.

363 SECTION 8D. Said chapter 66 is hereby further amended by striking out section 17, as
364 so appearing, and inserting in place thereof the following section:-

365 Section 17. Except as otherwise provided by law, all public records shall be kept in the
366 custody of the person having the custody of similar records in the county, city or town to which
367 the records originally belonged; provided, however, that the custodian of public records may
368 enter into a contract for the storage of records containing public record information, but no
369 contract for the storage of public records shall be entered into if the contract prevents or unduly
370 restricts a records access officer or custodian of records from providing or storing the records in
371 accordance with this chapter. Records not directly in the custodian's possession shall be
372 considered in the custody of the custodian if subject to a contract for the storage of public
373 records that is permitted by this section. If the custodian does not have custody of public
374 records, the custodian shall demand delivery from any person unlawfully having possession of
375 the records, and the records shall immediately be delivered by such person to the custodian. A
376 person who refuses or neglects to perform any duty required by this section shall be punished by
377 fine of not more than \$20.

378 SECTION 8E. Said chapter 66 is hereby further amended by inserting after section 17E
379 the following 2 sections:-

380 Section 17F. A document made or received by the Massachusetts Bay Transportation
381 Authority Retirement Board or any other legal entity, public or private, which receives funds
382 from the Massachusetts Bay Transportation Authority for the payment or administration of
383 pensions for any employee of the Massachusetts Bay Transportation Authority shall be
384 considered a public record under this chapter and clause Twenty-sixth of section 7 of chapter 4.

385 Section 17G. Notwithstanding section 6 of chapter 174A or section 6 of chapter 175A,
386 records of the division of insurance related to homeowners insurance rate filings received or

387 created pursuant to said section 6 of said chapter 174A and said section 6 of said chapter 175A
388 shall be public records at the time of initial filing and thereafter. Such records shall be available
389 to the public online within 3 business days after they are filed.

390 SECTION 9. Said chapter 66 is hereby further amended by adding the following 2
391 sections:-

392 Section 19. (a) When designing or acquiring an electronic recordkeeping system or
393 database, records access officers shall, consistent with section 17 of chapter 110G, consult with
394 their chief executive officer, chief administrative officer or the Massachusetts office of
395 information technology pursuant to chapter 7D to ensure, to the extent feasible, that the system
396 or database is capable of providing data in a commonly available electronic, machine readable
397 format. Such database designs or acquisitions shall allow for, to the extent feasible, information
398 storage and retrieval methods that permit the segregation and retrieval of public records and
399 redacting of exempt information in order to provide maximum public access. No agency or
400 municipality shall enter into a contract for the storage of electronic records containing public
401 records if the contract prevents or unduly restricts the records access officer from providing the
402 public records in accordance with this chapter.

403 (b) Every agency shall provide on a searchable website electronic copies, accessible in a
404 commonly available electronic format, of the following types of public records: (i) final
405 opinions, decisions, orders or votes from agency proceedings; (ii) annual reports; (iii) reports to
406 the general court; (iv) notices of regulations proposed under chapter 30A; (v) notices of hearings;
407 (vi) winning bids for public contracts; (vii) awards of federal, state and municipal government
408 grants; (viii) minutes of open meetings; (ix) agency budgets; and (x) any public record

409 information of significant interest or which could reasonably be anticipated to be the subject of
410 multiple requests that the agency deems appropriate to post; provided, that any agency may
411 withhold any record or portion of a record in accordance with state or federal law.

412 Section 20. For requests of payroll, financial and other data residing in the centralized
413 state accounting and payroll systems, or associated data warehouses, the comptroller shall make
414 available guidelines on how agencies using these systems may access and disclose public records
415 to ensure that data that is exempted or prohibited from disclosure is not wrongfully disclosed and
416 the security of the system is maintained.

417 SECTION 9A. Section 3 of chapter 268B of the General Laws, as appearing in the 2014
418 Official Edition, is hereby amended by inserting after the word "reports", in line 22, the
419 following words:- ; provided, however, that the commission may make statements and reports
420 filed with the commission available by electronic mail in a read-only format upon the written
421 request of any individual that delivers the request by electronic mail and provides identification
422 acceptable to the commission, including the individual's affiliation, if any.

423 SECTION 10. Municipal records access officers shall, to the extent feasible, post the
424 commonly available public record documents identified in subsection (b) of section 19 of chapter
425 66 of the General Laws on a website maintained by the municipality.

426 SECTION 12. Pursuant to section 1 of chapter 66 of the General Laws, the supervisor of
427 records shall adopt regulations necessary to implement the changes to said chapter 66 pursuant to
428 this act. The regulations shall be adopted not later than September 1, 2016.

429 SECTION 13. Notwithstanding any general or special law to the contrary, this act shall
430 not apply to public records requests submitted under section 10 of chapter 66 of the General

431 Laws before the effective date of this act and no obligation imposed by this act shall be
432 enforceable or deemed relevant in any appeal pending before the supervisor of records or any
433 court on the effective date of this act.

434 SECTION 13A. There shall be a working group to review and evaluate the application of
435 subsection (f) of clause Twenty-sixth of section 7 of chapter 4 of the General Laws as it relates to
436 law enforcement. The working group shall review determinations of the supervisor of records
437 and judicial decisions regarding the application of said subsection (f) of said clause Twenty-sixth
438 of said section 7 of said chapter 4 and issue findings regarding: (i) the public interest in releasing
439 records made and kept by police departments, including arrest records; (ii) privacy and
440 confidentiality concerns related to releasing records made and kept by police departments; and
441 (iii) the interaction of said subsection (f) of said clause Twenty-sixth of said section 7 of said
442 chapter 4 and the criminal offender record information system.

443 The working group shall consist of: the secretary of the commonwealth who shall serve
444 as chair; the secretary of public safety and security, or a designee; the court administrator of the
445 trial court, or a designee; 2 members of the senate, 1 of whom shall be the minority leader, or a
446 designee; 2 members of the house of representatives, 1 of whom shall be the minority leader, or a
447 designee; a representative of the American Civil Liberties Union of Massachusetts, Inc.; a
448 representative of the Massachusetts Newspaper Publishers Association; a representative of the
449 Massachusetts Chiefs of Police Association, Inc.; a representative of the State Police
450 Commissioned Officers Association of Massachusetts, Inc.; a representative of the
451 Massachusetts Coalition of Police, Inc.; and a representative of the Massachusetts Municipal
452 Association, Inc..

453 The working group shall file a report of its findings and recommendations, along with
454 any drafts of legislation necessary to carry those recommendations into effect, with the clerks of
455 the senate and house of representatives not later than December 31, 2016.

456 SECTION 13B. Notwithstanding any general or special law to the contrary,
457 municipalities or other governmental agencies may contract with online data service providers
458 for the collection, storage and public dissemination of motor vehicle accident reports prepared by
459 or submitted to law enforcement. Municipalities or other governmental agencies may charge a
460 reasonable convenience fee for such service not to exceed \$10; provided, however, that a
461 municipality or government agency charging such a convenience fee shall make available public
462 records from motor vehicle accident reports consistent with chapter 66 of the General Laws to a
463 person required to submit such a report under section 26 of chapter 90 of the General Laws or
464 individuals directly involved in the accident. Municipalities or other governmental agencies may
465 provide reports from data service providers in an alternative format.

466 SECTION 13C. Notwithstanding section 15, a municipality that maintains a website
467 shall not be required to post guidelines or reference materials on its website, as required by
468 subsection (b) of section 6A of chapter 66 of the General Laws, until January 1, 2017.

469 SECTION 14. Section 17F of chapter 66 of the General Laws shall apply to any
470 document made or received by the Massachusetts Bay Transportation Authority Retirement
471 Board or any other legal entity, public or private, which receives funds from the Massachusetts
472 Bay Transportation Authority for the payment or administration of pensions for any employee of
473 the Massachusetts Bay Transportation Authority on or after the effective date of this act.

474 SECTION 15. Sections 1 to 6, inclusive, and 8 to 10, inclusive, shall take effect on
475 October 1, 2016

476 SECTION 16. Section 7 shall take effect on July 1, 2016.