

HOUSE No. 3356

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:

Antonio F. D. Cabral

DISTRICT/ADDRESS:

13th Bristol

HOUSE No. 3356

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 3356) of Antonio F. D. Cabral for legislation to establish a public records division within the office of the State Secretary. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 Section 4 of chapter 9 of the General Laws is hereby repealed.

2 SECTION 2. Chapter 66 of the General Laws is hereby amended by striking out section
3 1, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

4 “Section 1. Public records division; commission of public records.

5 (a) There is established a public records division within the office of the secretary of the
6 commonwealth.

7 (b) Commission of public records. There shall be a commission of public records to
8 govern the division of public records.

9 (1) Membership of the commission. The commission shall be composed of five members.

10 (2) Three members shall be appointed by the governor, one of whom shall be the
11 president of the Massachusetts Municipal Association or his designee and one of whom shall be
12 the president of the Massachusetts Newspaper Publishers Association or his designee. One
13 member shall be appointed by the secretary of state and shall serve as chairman and one member
14 shall be appointed by the attorney general.

15 (3) Members shall serve for terms of five years.

16 (4) No member or employee of the commission shall hold or be a candidate for any other
17 public office while a member or employee or for 1 year thereafter.

18 (5) Members may be removed by a majority vote of the governor, state secretary and
19 attorney general for substantial neglect of duty, inability to discharge the powers and duties of
20 office, violation of subsection d of this section, gross misconduct or conviction of a felony.

21 (6) Any vacancy occurring on the commission shall be filled within 90 days by the
22 original appointing authority. A person appointed to fill a vacancy occurring other than by
23 expiration of a term of office shall be appointed for the unexpired term of the member he
24 succeeds.

25 (7) The commission shall elect a vice chairman, who shall serve as chairman in the
26 chairman's absence. Three members shall constitute a quorum and three affirmative votes shall
27 be required for any action or recommendation of the commission. Any member may call a
28 meeting; at least seven days advance notice of all meetings shall be given to all members and to
29 any other person who requests such notice and posted on line.

30 (c) Members shall be compensated for work performed for the commission at such rate as
31 the secretary of state and the secretary of administration and finance shall jointly determine, and
32 shall be reimbursed for their reasonable expenses.

33 (d) The commission shall annually report to the general court and the governor
34 concerning the action it has taken; the names and salaries and duties of all individuals in its
35 employ and the money it has disbursed; and shall make such further reports on matters within its
36 jurisdiction as may appear necessary.

37 (e) The commission shall hire and employ a supervisor of public records and, subject to
38 appropriations, such other staff as it shall require, who shall serve at the pleasure of the
39 commission.

40 SECTION 3. Chapter 66 is hereby amended by inserting after section 1A the following
41 section:-

42 “Section 2. The supervisor of public records (in this chapter referred to as the ‘supervisor
43 of records’) shall take necessary measures to put the records of the commonwealth, counties,
44 cities or towns in the custody and condition required by law and to secure their preservation. He
45 shall see that the records of churches, parishes or religious societies are kept in the custody and
46 condition contemplated by the various laws relating to churches, parishes or religious societies,
47 and for these purposes he may expend from the amount appropriated for expenses such amount
48 as he considers necessary. The supervisor of records shall adopt regulations pursuant to the
49 provisions of chapter 30A to implement the provisions of this chapter.”.

50 SECTION 4. Section 10 of chapter 66 is hereby amended by striking out subsection (b)
51 and inserting in place thereof the following subsection:-

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

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

77 SECTION 5. Chapter 66 is hereby amended by inserting after section 10 the following
78 section:-

79 “Section 10A. The Division of Public Record Appeals.

80 (a) Establishment of the Division.

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

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

85 (b) The Chief Administrative Magistrate.

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

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

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

98 (c) Powers and Responsibilities of the Division.

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

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

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

114 SECTION 6. Chapter 66 of the General Laws is hereby amended by striking out section
115 15, as appearing in the 2014 Official Edition, and inserting in place thereof the following
116 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 striking
124 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”.