

SENATE No. 1676

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

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>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>

SENATE No. 1676

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1676) of Jason M. Lewis, Barbara L'Italien, Ruth B. Balsler, Michael J. Barrett and other members of the General Court for legislation to improve access to public records. State Administration and Regulatory Oversight.

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 in line 139 after the word
3 “characteristics,” the following words:--

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

6 SECTION 2. Section 3 of chapter 66 of the General Laws, as appearing in the 2012
7 Official Edition, is hereby amended by striking the first two sentences.

8 SECTION 3. Chapter 66 of the General Laws, as appearing in the 2012 Official Edition,
9 is hereby amended by inserting after section 3A the following new section:-

10 “Section 3B. When designing or acquiring an electronic recordkeeping system or
11 database, any person having custody of a public record shall ensure that such system or database

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

20 SECTION 4. Said Chapter 66 is hereby amended by inserting after section 6 the
21 following new section:--

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

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

33 (a) Assists requesters seeking records to identify the records sought;

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

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

40 (d) Coordinates with the Supervisor of Public Records and the Records Management Unit
41 to ensure that public records are preserved in accordance with relevant Massachusetts law,
42 regulation, and administrative guidance, prepares and maintains reference materials to enhance
43 access to electronic public records in its custody and enable requestors to make informed
44 requests. These reference materials shall be updated at least annually and shall include:

45 (i) a reasonably detailed list of categories of records maintained by the agency, whether
46 or not open for public inspection;

47 (ii) a list and description of all major databases maintained by the agency; and

48 (iii) a record of all public records requests received on or after January 1, 2015 and the
49 responses to those requests, to the extent that such responses may be preserved in electronic
50 form.

51 Each state agency that maintains a website shall post these reference materials on its
52 website.”

53 SECTION 5. Section 10 of said chapter 66 is hereby amended by striking subsections (a)
54 and (b) and inserting the following:--

55 “(a) Every person having custody of any public record, as defined in clause Twenty-sixth
56 of section seven of chapter four, shall, at reasonable times and without unreasonable delay,
57 permit it, or any segregable portion of a record which is an independent public record, including
58 public record information which may be separately retrieved from an electronic record, to be
59 inspected and examined by any person, under his supervision, and shall furnish one copy thereof
60 upon payment of a reasonable fee not to exceed the actual cost of reproducing the record. In
61 determining the actual cost of reproducing a record, the custodian of the record may include
62 only: (i) the actual cost of any storage devices or materials provided to the requester in
63 complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest
64 paid employee who has the necessary skill required to prepare a copy of the requested record,
65 provided that no fee shall be charged unless at least two hours of employee time is needed to
66 prepare a copy of the record requested, and (iii) when the custodian’s information technology
67 capabilities are inadequate to prepare a copy of the record, the custodian may charge the
68 requestor the actual cost of engaging an outside service to prepare a copy, provided that no fee
69 shall be charged in excess of the hourly salary attributed to the lowest paid state employee who
70 has the necessary skill required to prepare such a copy. In no case shall fees for black and white
71 photocopies or computer printouts exceed 5 cents per letter size page or smaller or 7 cents per
72 legal size page. A page shall be defined as one side of a sheet of paper.

73 Each person having custody of a record shall inform the requester of the estimated cost of
74 preparing a copy of the record if more than two hours of an employee’s time is needed, or if an
75 outside professional service would be retained to prepare a copy of the record. No fee shall be
76 charged for review of the content of requested records to determine the extent to which exempt
77 and public information must be segregated.

78 Records shall be furnished without any charge or at a reduced charge if disclosure of the
79 information is in the public interest because it is likely to contribute significantly to public
80 understanding of operations or activities of the government and is not primarily in the
81 commercial interest of the requester.

82 (b) A custodian of a public record shall, within fifteen days following receipt of a request
83 for inspection or copy of a public record, comply with such request. Such request may be
84 delivered in hand to the office of the custodian, mailed via first class mail, or sent by email. If the
85 custodian refuses or fails to comply with such a request, the person making the request may
86 petition the supervisor of records to compel the custodian to respond or for a determination
87 whether the record requested is public. Upon the determination by the supervisor of records that
88 the record is public, he shall order the custodian of the public record to comply with the person's
89 request. If the custodian refuses or fails to comply with any such order, the supervisor of records
90 shall notify the attorney general or the appropriate district attorney thereof who shall take
91 whatever measures necessary to insure compliance with the provisions of this section, including
92 enforcement of the penalties prescribed under section 15. The administrative remedy provided by
93 this section shall in no way limit the availability of the administrative remedies provided by the
94 commissioner of administration and finance with respect to any officer or employee of any
95 agency, executive office, department or board; nor shall the administrative remedy provided by
96 this section in any way limit the availability of judicial remedies otherwise available to any
97 person requesting a public record. If a custodian of a public record refuses or fails to comply
98 with the request of any person for inspection or copy of a public record or with an administrative
99 order under this section, the supreme judicial or superior court shall have jurisdiction to order
100 compliance. Proceedings arising under this section shall take precedence on the docket over

101 other civil cases and shall be expedited. In any such proceeding, the court shall award reasonable
102 attorney's fees to the party seeking public records if that party has substantially prevailed. A
103 judgment or settlement in plaintiff's favor shall not be a prerequisite to obtaining an award of
104 attorney's fees or costs..”

105 SECTION 6. Said section 10 of chapter 66 is hereby further amended by inserting at the
106 end thereof the following paragraphs:--

107 “(e) If a public record or public record information is available in electronic form, the
108 custodian shall, at the option of the requester, provide it in that form. In making a record
109 available to a requestor, the custodian shall provide the record in any format requested if the
110 record is readily reproducible in that format. If a request does not specify the format for
111 producing electronically stored information, the custodian shall provide the record information in
112 a common format that is reasonably usable. For public records in electronic form, a custodian
113 may charge the requestor only the actual cost of any storage devices or materials provided to the
114 requestor. Any programming necessary to retrieve a public record or public record information
115 and provide the record or record information in the requested format, or to allow the record or
116 record information to be read or printed, shall not be deemed to be the preparation or creation of
117 a new record.

118 (f) Every state agency, as defined by Chapter 66A, that has the ability to provide public
119 internet access, at no charge, to a public record in its custody, shall make reasonable efforts to do
120 so. A custodian state agency shall be required to provide public internet access, at no charge, to
121 the following types of public records in searchable format: (i) final opinions, decisions, orders, or
122 votes from agency proceedings; (ii) annual reports; (iii) reports to the General Court; (iv) notices

123 of regulations proposed under chapter 30A; (v) notices of hearings; (vi) winning bids for public
124 contracts; (vii) applications and awards of federal, state, and municipal government grants; (viii)
125 minutes of open meetings; (ix) agency budgets; and (x) any public record information of
126 significant interest to the general public including, but not limited to, public record information
127 which has been the subject of multiple public records requests or which could reasonably be
128 anticipated to be the subject of multiple public records requests in the future.

129 (g) The secretary of each executive office shall, on or before October 1, 2015, promulgate
130 rules and regulations to carry out the purposes of this act which shall be applicable to all
131 agencies, departments, boards, commissions, authorities, and instrumentalities within each of
132 said executive offices subject to the approval of the secretary of administration and finance, in
133 consultation with the chief information officer of the commonwealth. Any agency not within any
134 such executive office shall be subject to the regulations of the secretary of administration and
135 finance. The attorney general, the state secretary, the state treasurer and the state auditor shall
136 adopt applicable regulations for their respective departments on or before October 1, 2015.”

137 SECTION 7. Said section 15 of chapter 66 is hereby amended by striking the last
138 sentence and replacing it with the following:--

139 “Any public officer who refuses or neglects to perform any duty required of him by this
140 chapter, including failure to comply with an order from the supervisor of records made pursuant
141 to paragraph (b) of section 10, shall for each day of such neglect or refusal be punished by a fine
142 of not more than \$100.”