

HOUSE No. 2973

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2973) of Antonio F.D. Cabral and others relative to the public records law. State Administration and Regulatory Oversight.

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 passage of the accompanying bill:

An Act relative to the Public Records Law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol
Steven J. D'Amico	4th Bristol
William Lantigua	16th Essex
Dennis Rosa	4th Worcester
Stephen Stat Smith	28th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE PUBLIC RECORDS LAW.

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 10 of Chapter 66 of the General Laws is hereby amended by striking out
2 subsections (a) and (b) and inserting in place thereof the following:

3 (a) Every person having custody of any public record, as defined in clause twenty-six of section seven
4 of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable
5 portion of a record which is an independent public record, to be inspected and examined by any person,
6 under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Such fee
7 shall not exceed the actual cost to the custodian of furnishing said copy, which shall equal the amount of
8 time reasonably spent conducting said search multiplied by the hourly wage rate of the staff member or
9 members who conducted said search. The following fees shall apply to any public record in the custody
10 of the state police, the Massachusetts bay transportation authority police or any municipal police
11 department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for
12 not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance
13 report, five dollars for not more than six pages plus fifty cents for each additional page; for preparing and
14 mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in
15 hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an
16 eight and one-half inch by eleven inch sheet of paper. Any claim by the custodian that the record or
17 portion thereof, is not a public record shall be accompanied by an index identifying and describing the
18 record and its source in sufficient detail to enable the requester and the supervisor of records or a court to
19 determine the validity of the custodian's claim. Personal notebooks, notes, and calendars shall not be
20 separate exemptions.

21 (b) A custodian of a public record shall, within ten days following receipt of a request for inspection
22 or copy of a public record, comply with such request. Such request may be delivered in hand to the office
23 of the custodian or mailed via first class mail or sent electronically if the office has designated a secure
24 means of receiving such requests electronically that allows the requester to obtain a written receipt of said
25 request. If the record is maintained electronically, the custodian shall provide the requested public record
26 in electronic form if so requested. If the custodian refuses or fails to comply with such a request, the
27 person making the request may petition the supervisor of records for a determination whether the record

28 requested is public. Upon the determination by the supervisor of records that the record is public, he shall
29 order the custodian of the public record to comply with the person's request. If the custodian refuses or
30 fails to comply with any such order, the supervisor of records shall, within five days, notify the attorney
31 general or the appropriate district attorney thereof who shall take whatever measures he deems necessary
32 to insure compliance with the provisions of this section. The supervisor of records may also seek
33 compliance with his order pursuant to section 1 where neither the attorney general nor the appropriate
34 district attorney has achieved enforcement of the order within sixty days of notification. The
35 administrative remedy provided by this section shall in no way limit the availability of the administrative
36 remedies provided by the commissioner of administration and finance with respect to any officer or
37 employee of any agency, executive office, department or board; nor shall the administrative remedy
38 provided by this section in any way limit the availability of judicial remedies otherwise available to any
39 person requesting a public record. If a custodian of a public record refuses or fails to comply with the
40 request of any person for inspection or copy of a public record or with an administrative order under this
41 section, the supreme judicial or superior court shall have jurisdiction to order compliance. The person
42 making the request shall be entitled to an award of reasonable attorney's fees and costs if the custodian
43 withholding the public record was in violation of this chapter.

44 SECTION 2. Chapter 66 of the General Laws is hereby amended by striking Section 15 in its
45 entirety and inserting in place thereof the following:-

46 Section 15. Whoever unlawfully keeps in his possession any public record or
47 removes it from the room where it is usually kept, or alters, defaces, mutilates or destroys any
48 public record or violates any provision of this chapter shall be punished by a fine of not less than
49 five hundred nor more than five thousand dollars, or by imprisonment for not more than one
50 year, or both. Any public officer who refuses or neglects to perform any duty required of him by
51 this chapter shall for each month of such neglect or refusal be punished by a fine of not more
52 than five hundred dollars.

53 SECTION 3. Chapter 66 of the general laws, as appearing in the 2002 Official Edition is hereby amended
54 by adding the following new section to be known as Section 4A: -

55 Section 4A. Notwithstanding any general or special law of the Commonwealth, all
56 electronic public records as defined herein, shall be created, maintained and preserved in
57 accordance with the regulations promulgated by the supervisor of records under the
58 authority granted under this chapter, so as to ensure the integrity, authenticity, reliability
59 and usability of said record for the period of time proscribed by the supervisor, the record
60 conservation board pursuant to their authority under section 42 of chapter 30 of the
61 general laws.

62 In addition, all electronic public records created or received by employees, officers or
63 agents of the executive department as that term is defined herein and in other applicable
64 law shall also comply with all information technology standards issued by the executive
65 department's chief information officer.

66 At least once every three years, on a form provided by the supervisor and the record
67 conservation board, the executive director or head municipal official in charge of such
68 government agency or municipality shall certify that all electronic records systems and
69 records meet the electronic record regulations as promulgated. The supreme judicial

70 court or superior court shall have jurisdiction in mandamus, on petition of the supervisor
71 and pursuant to section 5 of chapter 249 of the general laws, to order compliance with the
72 provisions of this section.

73 The provisions of this section shall not apply to any electronic record created prior to the
74 date of enactment. All government agencies and municipalities shall use their best efforts
75 to comply with the reporting provision by January 1, 2006. The supervisor and the
76 records conservation board shall work in cooperation with government agencies and
77 municipalities in order to bring about full compliance with the reporting provision by
78 January 1, 2008.

79 SECTION 4. Section 3 of chapter 66 is hereby amended by adding the following paragraph: -

80 Any information, created, generated, sent, communicated, received, or stored by
81 electronic means, detailing the transaction of government business shall be termed
82 an electronic public record for purposes of this chapter and shall include but is not
83 limited to all books, maps, papers, photographs, machine-readable materials and
84 any other electronic documentary materials which are made, sent or received by
85 an employee, officer or agent of the Commonwealth of Massachusetts.

86 SECTION 5. Section 1 of Chapter 66 of the General Laws, as appearing in the 2000 Official
87 Edition, is hereby amended in line 11, by adding at the end thereof the following four
88 paragraphs:—

89 (a) The Secretary of the Commonwealth, supervisor of records, or any officer the Secretary
90 so designates, in his discretion:

91 (1) may make such inquiry as he deems necessary to determine whether any person has
92 violated any provision of this chapter or any regulation hereunder, or to aid in the
93 enforcement of this chapter or in the prescribing of further regulations hereunder;

94
95 (2) may require or permit any person to file a statement in writing, under oath or
96 otherwise, as the Secretary, supervisor of records, or the officer designated by the
97 Secretary determines, as to all the facts and circumstances concerning the matter to be
98 investigated, and
99

100 (3) may upon a finding that there has been a violation of this chapter, issue an order
101 requiring the violator to comply with statutory requirements of said chapter, or the
102 regulations promulgated by the supervisor of records pursuant to the authority granted
103 in this chapter and take whatever action appropriate to enforce such order including,
104 but not limited to, initiating judicial action in a court of competent jurisdiction on his
105 own motion.
106

107 (b) For the purpose of any investigation or enforcement of any order issued under this chapter, the
108 Secretary, supervisor of records, or any officer designated by the Secretary may issue a subpoena duces
109 tecum to require the production of any records, books, papers, correspondence, memoranda, agreements,
110 or other documents which the Secretary, supervisor of records, or the officer designated by the Secretary
111 deems relevant or material to an inquiry or the enforcement of an order.

112 (c) The Secretary, supervisor of records, or officer designated by the Secretary, may file on his own
113 motion a civil action in a court of competent jurisdiction to enforce such order, as defined in subsection
114 (a)(3) of this section. Additionally, the Secretary, supervisor of records, or officer designated by the
115 Secretary, may independently seek further remedies as listed in section 15 of this chapter.

116 SECTION 6. Chapter 447 of the acts of 1947 is hereby amended by striking the following:

117 “; provided, that the substance of debates by and among the members of the city council shall not be so
118 published or published elsewhere at the expense of said city”