

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

---

**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      |

# 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  
12 for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire  
13 insurance report, five dollars for not more than six pages plus fifty cents for each additional page; for  
14 preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any  
15 public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined  
16 as one side of an eight and one-half inch by eleven inch sheet of paper. Any claim by the custodian that  
17 the record or portion thereof, is not a public record shall be accompanied by an index identifying and  
18 describing the record and its source in sufficient detail to enable the requester and the supervisor of  
19 records or a court to determine the validity of the custodian's claim. Personal notebooks, notes, and  
20 calendars shall not be separate exemptions.

21  
22           (b) A custodian of a public record shall, within ten days following receipt of a request for inspection  
23 or copy of a public record, comply with such request. Such request may be delivered in hand to the

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

46  
47 SECTION 2. Chapter 66 of the General Laws is hereby amended by striking Section 15 in its  
48 entirety and inserting in place thereof the following:-

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

56  
57 SECTION 3. Chapter 66 of the general laws, as appearing in the 2002 Official Edition is hereby amended  
58 by adding the following new section to be known as Section 4A: -

59  
60 Section 4A. Notwithstanding any general or special law of the Commonwealth, all  
61 electronic public records as defined herein, shall be created, maintained and preserved  
62 in accordance with the regulations promulgated by the supervisor of records under the  
63 authority granted under this chapter, so as to ensure the integrity, authenticity,

64 reliability and usability of said record for the period of time proscribed by the  
65 supervisor, the record conservation board pursuant to their authority under section 42  
66 of chapter 30 of the general laws.

67

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

72

73 At least once every three years, on a form provided by the supervisor and the record  
74 conservation board, the executive director or head municipal official in charge of such  
75 government agency or municipality shall certify that all electronic records systems and  
76 records meet the electronic record regulations as promulgated. The supreme judicial  
77 court or superior court shall have jurisdiction in mandamus, on petition of the  
78 supervisor and pursuant to section 5 of chapter 249 of the general laws, to order  
79 compliance with the provisions of this section.

80

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

87

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

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

95

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

99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135

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

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

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

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

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

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

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

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