

2009 -- H 5136 AS AMENDED

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

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A N A C T

RELATING TO PUBLIC RECORDS -- ACCESS TO PUBLIC RECORDS

Introduced By: Representatives Ajello, Walsh, A Rice, Handy, and Dennigan

Date Introduced: January 22, 2009

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 38-2-2, 38-2-3, 38-2-4, 38-2-6, 38-2-7, 38-2-8 and 38-2-9 of the
2 General Laws in Chapter 38-2 entitled "Access to Public Records" are hereby amended to read as
3 follows:

4 **38-2-2. Definitions.** -- As used in this chapter:

5 (1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory,
6 or administrative body of the state, or any political subdivision thereof; including, but not limited
7 to, any department, division, agency, commission, board, office, bureau, authority, any school,
8 fire, or water district, or other agency of Rhode Island state or local government which exercises
9 governmental functions, any authority as defined in section 42-35-1(b), or any other public or
10 private agency, person, partnership, corporation, or business entity acting on behalf of and/or in
11 place of any public agency.

12 (2) "Chief administrative officer" means the highest authority of the public body ~~as~~
13 ~~defined in subsection (a) of this section.~~

14 (3) "Public business" means any matter over which the public body has supervision,
15 control, jurisdiction, or advisory power.

16 (4) (i) "Public record" or "public records" shall mean all documents, papers, letters,
17 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
18 processing records, computer stored data (including electronic mail messages, except specifically
19 for any electronic mail messages of or to elected officials with or relating to those they represent

1 and correspondence of or to elected officials in their official capacities) or other material
2 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
3 connection with the transaction of official business by any agency. For the purposes of this
4 chapter, the following records shall not be deemed public:

5 (A) (I) All records which are identifiable to an individual applicant for benefits, client,
6 patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare,
7 employment security, pupil records, all records relating to a client/attorney relationship and to a
8 doctor/patient relationship, and all personal or medical information relating to an individual in
9 any files, including information relating to medical or psychological facts, personal finances,
10 welfare, employment security, student performance, or information in personnel files maintained
11 to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with
12 respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross
13 amount received in overtime, and other remuneration in addition to salary, job title, job
14 description, dates of employment and positions held with the state or municipality, work location,
15 business telephone number, the city or town of residence, and date of termination shall be public.
16 The provisions of public employee employment contracts in their entirety shall be public. For the
17 purposes of this section, "remuneration" shall include any payments received by an employee as a
18 result of termination, or otherwise leaving employment.

19 (II) Notwithstanding the provisions of this section, or any other provision of the general
20 laws to the contrary, the pension records of all persons who are either current or retired members
21 of the retirement systems ~~established by the general laws~~ as well as all persons who become
22 members of those retirement systems after June 17, 1991 shall be open for public inspection.
23 "Pension records" as used in this section shall include all records containing information
24 concerning pension and retirement benefits of current and retired members of the retirement
25 systems ~~established in title 8, title 36, title 42, and title 45~~ and future members of said systems,
26 including all records concerning retirement credits purchased and the ability of any member of
27 the retirement system to purchase retirement credits, but excluding all information regarding the
28 medical condition of any person and all information identifying the member's designated
29 beneficiary or beneficiaries.

30 (B) Trade secrets and commercial or financial information obtained from a person, firm,
31 or corporation which is of a privileged or confidential nature.

32 (C) Child custody and adoption records, records of illegitimate births, and records of
33 juvenile proceedings before the family court.

34 (D) All records maintained by law enforcement agencies for criminal law enforcement

1 and all records relating to the detection and investigation of crime, including those maintained on
2 any individual or compiled in the course of a criminal investigation by any law enforcement
3 agency. Provided, however, such records shall not be deemed public only to the extent that the
4 disclosure of the records or information (a) could reasonably be expected to interfere with
5 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
6 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
7 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
8 identity of a confidential source, including a state, local, or foreign agency or authority, or any
9 private institution which furnished information on a confidential basis, or the information
10 furnished by a confidential source, (e) would disclose techniques and procedures for law
11 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
12 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
13 safety of any individual. Records relating to management and direction of a law enforcement
14 agency and records or reports reflecting the initial arrest of an adult and the charge or charges
15 brought against an adult shall be public.

16 (E) Any records which would not be available by law or rule of court to an opposing
17 party in litigation.

18 (F) Scientific and technological secrets and the security plans of military and law
19 enforcement agencies, the disclosure of which would endanger the public welfare and security.

20 (G) Any records which disclose the identity of the contributor of a bona fide and lawful
21 charitable contribution to the public body whenever public anonymity has been requested of the
22 public body with respect to the contribution by the contributor.

23 (H) Reports and statements of strategy or negotiation involving labor negotiations or
24 collective bargaining.

25 (I) Reports and statements of strategy or negotiation with respect to the investment or
26 borrowing of public funds, until such time as those transactions are entered into.

27 (J) Any minutes of a meeting of a public body which are not required to be disclosed
28 pursuant to chapter 46 of title 42.

29 (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work
30 products; provided, however, any documents submitted at a public meeting of a public body shall
31 be deemed public.

32 (L) Test questions, scoring keys, and other examination data used to administer a
33 licensing examination, examination for employment or promotion, or academic examinations;
34 provided, however, that a person shall have the right to review the results of his or her

1 examination.

2 (M) Correspondence of or to elected officials with or relating to those they represent and
3 correspondence of or to elected officials in their official capacities.

4 (N) The contents of real estate appraisals, engineering, or feasibility estimates and
5 evaluations made for or by an agency relative to the acquisition of property or to prospective
6 public supply and construction contracts, until such time as all of the property has been acquired
7 or all proceedings or transactions have been terminated or abandoned; provided the law of
8 eminent domain shall not be affected by this provision.

9 (O) All tax returns.

10 (P) All investigatory records of public bodies, with the exception of law enforcement
11 agencies, pertaining to possible violations of statute, rule, or regulation other than records of final
12 actions taken provided that all records prior to formal notification of violations or noncompliance
13 shall not be deemed to be public.

14 (Q) Records of individual test scores on professional certification and licensing
15 examinations; provided, however, that a person shall have the right to review the results of his or
16 her examination.

17 (R) Requests for advisory opinions until such time as the public body issues its opinion.

18 (S) Records, reports, opinions, information, and statements required to be kept
19 confidential by federal law or regulation or state law, or rule of court.

20 (T) Judicial bodies are included in the definition only in respect to their administrative
21 function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt
22 from the operation of this chapter.

23 (U) Library records which by themselves or when examined with other public records,
24 would reveal the identity of the library user requesting, checking out, or using any library
25 materials.

26 (V) Printouts from TELE -- TEXT devices used by people who are deaf or hard of
27 hearing or speech impaired.

28 (W) All records received by the insurance division of the department of business
29 regulation from other states, either directly or through the National Association of Insurance
30 Commissioners, if those records are accorded confidential treatment in that state. Nothing
31 contained in this title or any other provision of law shall prevent or be construed as prohibiting
32 the commissioner of insurance from disclosing otherwise confidential information to the
33 insurance department of this or any other state or country, at any time, so long as the agency or
34 office receiving the records agrees in writing to hold it confidential in a manner consistent with

1 the laws of this state.

2 (X) Credit card account numbers in the possession of state or local government are
3 confidential and shall not be deemed public records.

4 (Y) Any documentary material, answers to written interrogatories, or oral testimony
5 provided under any subpoena issued under Rhode Island general law section 9-1.1-6.

6 (ii) However, any reasonably segregable portion of a public record excluded by this
7 section shall be available for public inspections after the deletion of the information which is the
8 basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this
9 section.

10 ~~(5) "Supervisor of the regulatory body" means the chief or head of a section having~~
11 ~~enforcement responsibility for a particular statute or set of rules and regulations within a~~
12 ~~regulatory agency.~~

13 ~~(6)~~(5) "Prevailing plaintiff" means and shall include those persons and entities deemed
14 prevailing parties pursuant to 42 U.S.C. section 1988.

15 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

16 **Procedures for access. --** (a) Except as provided in section 38-2-2(4), all records maintained or
17 kept on file by any public body, whether or not those records are required by any law or by any
18 rule or regulation, shall be public records and every person or entity shall have the right to inspect
19 and/or copy those records at such reasonable time as may be determined by the custodian thereof.

20 (b) Each public body shall make, keep, and maintain written or recorded minutes of all
21 meetings.

22 (c) Each public body shall establish procedures regarding access to public records but
23 shall not require written requests for public information available pursuant to R.I.G.L. section 42-
24 35-2 or for other documents prepared for or readily available to the public. These procedures
25 must include, but need not be limited to, the identification of a designated public records officer,
26 how to make a public records request, and where a public records request should be made, and a
27 copy of these procedures shall be posted on the public body's website if such a website is
28 maintained and be made otherwise readily available to the public. The unavailability of a
29 designated public records officer shall not be deemed good cause for failure to timely comply
30 with a request to inspect and/or copy public records pursuant to subsection (d). A written request
31 for public records need not be made on a form or in a specified format established by a public
32 body if the request is otherwise readily identifiable as a request for public records.

33 (d) A public body receiving a request shall permit the inspection or copying within seven
34 (7) business days after receiving a request. If the inspection or copying is not permitted within

1 seven (7) business days, the public body shall forthwith explain in writing the need for additional
2 time to comply with the request. Any such explanation must be particularized to the specific
3 request made. In such case, the public body may have up to twenty (20) business days to respond
4 to the request if it can demonstrate that the voluminous nature of the request, the number of
5 requests for records pending, or the difficulty n searching for and retrieving or copying the
6 requested records, is such tat additional time is necessary to avoid imposing an undue burden on
7 the public body. If a request is so voluminous that search and retrieval is reasonable expected to
8 exceed twenty (20) business days, a public body may apply to a justice of the superior court to
9 further extend the time to comply.

10 ~~(e)~~(e) If a public record is in active use or in storage and, therefore, not available at the
11 time a person or entity requests access, the custodian shall so inform the person or entity and
12 make an appointment for the ~~citizen~~ person or entity to examine such records as expeditiously as
13 they may be made available.

14 ~~(f)~~(f) Any person or entity requesting copies of public records may elect to obtain them
15 in any and all media in which the public agency is capable of providing them. Any public body
16 which maintains its records in a computer storage system shall provide any data properly
17 identified in a printout or other reasonable format, as requested.

18 ~~(g)~~(g) Nothing in this section shall be construed as requiring a public body to reorganize,
19 consolidate, or compile data not maintained by the public body in the form requested at the time
20 the request to inspect the public records was made except to the extent that such records are in an
21 electronic format and the public body would not be unduly burdened in providing such data.

22 ~~(h)~~(h) Nothing in this section is intended to affect the public record status of information
23 merely because it is stored in a computer.

24 ~~(i)~~(i) No public records shall be withheld based on the purpose for which the records are
25 sought, nor shall a public body require, as a condition of fulfilling a public records request, that a
26 person or entity provide a reason for the request or provide personally identifiable information
27 about him/herself.

28 (j) At the election of the person or entity requesting the public records, the public body
29 shall provide copies of the public records electronically, by fax, or by mail unless doing so would
30 be unduly burdensome due to the volume of the records requested and the costs that would be
31 incurred.

32 (k) Notwithstanding the provisions of subsection (d), the following information reflecting
33 the initial arrest of an adult and charge or charges shall be made available within twenty-four (24)
34 hours after receipt of a request and may not be redacted except as provided in this subsection.

- 1 (1) Full name of the arrested adult;
- 2 (10) Home address of the arrested adult unless doing so would identify a minor crime
- 3 victim as prohibited in sections 11-2708.5 or 9-1-44;
- 4 (3) Date of birth of the arrested adult'
- 5 (4) Charge or charges;
- 6 (5) Date of the arrest;
- 7 (6) Time of the arrest;
- 8 (7) Gender of the arrested adult'
- 9 (8) Race of the arrested adult'
- 10 (9) Name of the arresting officer.

11 **38-2-4. Cost.** -- (a) Subject to the provisions of section 38-2-3, a public body must allow
12 copies to be made or provide copies of public records. The cost per copied page of written
13 documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents
14 copyable on common business or legal size paper. A public body may not charge more than the
15 reasonable actual cost for providing electronic records, or retrieving records from storage where
16 the public body is assessed a retrieval fee.

17 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
18 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
19 shall be charged for the first hour of a search or retrieval. A public body may also charge the
20 reasonable actual cost of mailing records to a requester.

21 (c) Copies of documents shall be provided and the search and retrieval of documents
22 accomplished within a reasonable time after a request. A public body shall, upon request, provide
23 an estimate of the costs of a request for documents prior to providing copies.

24 (d) Upon request, the public body shall provide a detailed itemization of the costs
25 charged for search and retrieval.

26 (e) A court may reduce or waive the fees for costs charged for search or retrieval if it
27 determines that the information requested is in the public interest because it is likely to contribute
28 significantly to public understanding of the operations or activities of the government and is not
29 primarily in the commercial interest of the requester.

30 **38-2-6. Commercial use of public records.** -- No person or business entity shall use
31 information obtained from public records pursuant to this chapter ~~to solicit for commercial~~
32 ~~purposes or~~ to obtain a commercial advantage over the party furnishing that information to the
33 public body. Anyone who knowingly and willfully violates the provision of this section shall, in
34 addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500)

1 and/or imprisonment for no longer than one year.

2 **38-2-7. Denial of access.** -- (a) Any denial of the right to inspect or copy records, in
3 whole or in part, provided for under this chapter shall be made to the person or entity requesting
4 the right ~~by the public body official who has custody or control of the public record~~ in writing
5 giving the specific reasons for the denial within ~~ten (10)~~ seven (7) business days of the request
6 and indicating the procedures for appealing the denial. Except for good cause shown, any reason
7 not specifically set forth in the denial shall be deemed waived by the public body.

8 (b) Failure to timely comply with a request to inspect or copy the public record ~~within~~
9 ~~the ten (10) business day period~~ within the seven (7) business day period shall be deemed to be a
10 denial. Except that for good cause, this limit may be extended ~~for a period not to exceed thirty~~
11 ~~(30) business days.~~ in accordance with the provisions of subsection 38-2-3(d) of this chapter. All
12 copying and search and retrieval fees shall be waived if a public body fails to produce requested
13 records in a timely manner; provided, however, that the production of records shall not be
14 deemed untimely if the public body is awaiting receipt of payment for costs properly charged
15 under 38-2-4.

16 (c) A public body that receives a request to inspect or copy records not within its custody
17 or control shall respond to the request in accordance with this chapter and indicate that it does not
18 maintain such requested records.

19 **38-2-8. Administrative appeals.** -- (a) Any person or entity denied the right to inspect a
20 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
21 officer of that public body for a review of the determinations made by his or her subordinate. The
22 chief administrative officer shall make a final determination whether or not to allow public
23 inspection within ten (10) business days after the submission of the review petition.

24 (b) If the custodian of the records or the chief administrative officer determines that the
25 record is not subject to public inspection, the person or entity seeking disclosure may file a
26 complaint with the attorney general. The attorney general shall investigate the complaint and if
27 the attorney general shall determine that the allegations of the complaint are meritorious, he or
28 she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in
29 the superior court of the county where the record is maintained. Nothing within this section shall
30 prohibit any individual or entity from retaining private counsel for the purpose of instituting
31 proceedings for injunctive or declaratory relief in the superior court of the county where the
32 record is maintained.

33 (c) The attorney general shall consider all complaints filed under this chapter to have
34 also been filed pursuant to the provisions of section 42-46-8(a), if applicable.

1 (d) Nothing within this section shall prohibit the attorney general from initiating a
2 complaint on behalf of the public interest.

3 **38-2-9. Jurisdiction of superior court.** – (a) Jurisdiction to hear and determine civil
4 actions brought under this chapter is hereby vested in the superior court.

5 (b) The court may examine any record which is the subject of a suit in camera to
6 determine whether the record or any part thereof may be withheld from public inspection under
7 the terms of this chapter.

8 (c) Actions brought under this chapter may be advanced on the calendar upon motion of.
9 any party, or sua sponte by the court made in accordance with the rules of civil procedure of the
10 superior court.

11 (d) The court shall impose a civil fine not exceeding ~~one thousand dollars (\$1,000)~~ five
12 thousand dollars (\$5,000) against a public body or official found to have committed a knowing
13 and willful violation of this chapter, and a civil fine not to exceed two thousand dollars (\$2000)
14 against a public body or official found to have recklessly violated this chapter, and shall award
15 reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public
16 body found to have wrongfully denied access to public records to provide the records at no cost to
17 the prevailing party; provided, further, that in the event that the court, having found in favor of
18 the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or
19 in good faith argument for the extension, modification, or reversal of existing law, the court may
20 award attorneys fees and costs to the prevailing defendant.

21 SECTION 2. Chapter 38-2 of the General Laws entitled "Access to Public Records" is
22 hereby amended by adding thereto the following section:

23 **38-2-16. ~~Compliance by state agencies~~ Compliance by agencies and public bodies.** –
24 No later than January 1, 2010, and annually thereafter, the chief administrator of each agency and
25 each public body shall certify in writing to the attorney general that all officers and employees
26 who have the authority to grant or deny persons or entities access to records under this chapter
27 have been provided orientation and training regarding this chapter. The attorney general may, in
28 accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations
29 necessary to implement the requirements of this section.

30 SECTION 3. This act shall take effect on September 1, 2009.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC RECORDS -- ACCESS TO PUBLIC RECORDS

1 This act would mandate that a public body receiving a request for access to public
2 records comply within seven (7) business days. It would also prevent a public body from
3 requiring that a requester of public records provide personally identifiable information or the
4 reason for the request. It would also raise the maximum civil fine that may be imposed for a
5 willful and knowingly violation of the chapter from one thousand dollars (\$1,000) to ten thousand
6 dollars (\$10,000). The act would also impose a new fine not to exceed five thousand dollars
7 (\$5,000) for reckless violation of the chapter.

8 The act would also require all state agencies to annually certify in writing to the attorney
9 general that each agency has provided orientation and training to all officers and employees
10 authorized to grant or deny access to public records.

11 This act would take effect upon on September 1, 2009.

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