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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS

Introduced By: Representatives Marcello, Serpa, Silva, Ajello, and Keable

Date Introduced: March 03, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

4 **38-2-1. Purpose.** -- The public's right to access to public records and the individual's
5 right to dignity and privacy are both recognized to be principles of the utmost importance in a
6 free society. The purpose of this chapter is to facilitate public access to public records. It is also
7 the intent of this chapter to protect from disclosure information about particular individuals
8 maintained in the files of public bodies when disclosure would constitute an unwarranted
9 invasion of personal privacy: [as specified herein.](#)

10 **38-2-2. Definitions.** -- As used in this chapter:

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

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

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

3 (4) (i) "Public record" or "public records" shall mean all documents, papers, letters,
4 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
5 processing records, computer stored data (including electronic mail messages, except specifically
6 for any electronic mail messages of or to elected officials with or relating to those they represent
7 ~~and correspondence of or to elected officials in their official capacities~~) or other material
8 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
9 connection with the transaction of official business by any agency. For the purposes of this
10 chapter, and subject to the provisions of subsection 38-2-3(b), the following records shall not be
11 deemed public:

12 (A) (I) (a) All records ~~which are identifiable to an individual applicant for benefits,~~
13 ~~client, patient, student, or employee, including, but not limited to, personnel, medical treatment,~~
14 ~~welfare, employment security, pupil records, all records~~ relating to a client/attorney relationship
15 and to a doctor/patient relationship, including and all ~~personal or~~ medical information relating to
16 an individual in any files; ~~including information relating to medical or psychological facts,~~
17 ~~personal finances, welfare, employment security, student performance, or information in~~
18 ~~personnel files maintained to hire, evaluate, promote, or discipline any employee of a public~~
19 ~~body;~~

20 (b) Personnel and other personal individually-identifiable records otherwise deemed
21 confidential by federal or state law; and

22 (c) Other personnel and other personal individually-identifiable records, the disclosure of
23 which would constitute a clearly unwarranted invasion of personal privacy; provided, however,
24 with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits,
25 gross amount received in overtime, and any other remuneration in addition to salary, job title, job
26 description, dates of employment and positions held with the state or municipality, employment
27 contract, work location, business telephone number, the city or town of residence, and date of
28 termination shall be public. For the purposes of this section "remuneration" shall include any
29 payments received by an employee as a result of termination, or otherwise leaving employment.

30 (II) Notwithstanding the provisions of this section, or any other provision of the general
31 laws to the contrary, the pension records of all persons who are either current or retired members
32 of the retirement systems ~~established by the general laws~~ as well as all persons who become
33 members of those retirement systems after June 17, 1991 shall be open for public inspection.
34 ~~"Pension records" as used in this section shall include all records containing information~~

~~1 concerning pension and retirement benefits of current and retired members of the retirement
2 systems established in title 8, title 36, title 42, and title 45 and future members of said systems,
3 including all records concerning retirement credits purchased and the ability of any member of
4 the retirement system to purchase retirement credits, but excluding all information regarding the
5 medical condition of any person and all information identifying the member's designated
6 beneficiary or beneficiaries.~~

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

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

11 (D) All records maintained by law enforcement agencies for criminal law enforcement
12 and all records relating to the detection and investigation of crime, including those maintained on
13 any individual or compiled in the course of a criminal investigation by any law enforcement
14 agency. Provided, however, such records shall not be deemed public only to the extent that the
15 disclosure of the records or information (a) could reasonably be expected to interfere with
16 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
17 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
18 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
19 identity of a confidential source, including a state, local, or foreign agency or authority, or any
20 private institution which furnished information on a confidential basis, or the information
21 furnished by a confidential source, (e) would disclose techniques and procedures for law
22 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
23 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
24 safety of any individual. Records relating to management and direction of a law enforcement
25 agency and records or reports [including the narrative report](#), reflecting the initial arrest of an adult
26 and the charge or charges brought against an adult shall be public.

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

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

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

34 (H) Reports and statements of strategy or negotiation involving labor negotiations or

1 collective bargaining.

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

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

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

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

13 (M) Correspondence of or to elected officials with or relating to those they represent, ~~and~~
14 ~~correspondence of or to elected officials in their official capacities.~~

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

20 (O) All tax returns.

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

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

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

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

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

34 (U) Library records which by themselves or when examined with other public records,

1 would reveal the identity of the library user requesting, checking out, or using any library
2 materials.

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

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

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

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

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

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

24 (5) (6) "Prevailing plaintiff" means and shall include those persons and entities deemed
25 defined as prevailing parties pursuant to 42 U.S.C. section 1988: and shall also include plaintiffs
26 who obtain any relief as a result of filing suit, whether or not a formal judgment is entered in their
27 favor.

28 (6) "Pension records" shall include all records containing information concerning pension
29 and retirement benefits of current and retired members of the retirement systems and members of
30 said systems, including all records concerning retirement credits purchased and the ability of any
31 member of the retirement system to purchase retirement credits, but excluding all information
32 regarding the medical condition of any person and all information identifying the member's
33 designated beneficiary or beneficiaries.

34 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

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

5 (b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-
6 2(4) shall be available for public inspection after the deletion of the information which is the basis
7 of the exclusion. If an entire document or record is deemed non-public, the public body shall
8 certify in writing that no portion of the document or record contains reasonable segregable
9 information that is releasable.

10 ~~(b)~~(c) Each public body shall make, keep, and maintain written or recorded minutes of
11 all meetings.

12 ~~(c)~~(d) Each public body shall establish written procedures regarding access to public
13 records but shall not require written requests for public information available pursuant to R.I.G.L.
14 section 42-35-2 or for other documents prepared for or readily available to the public.

15 These procedures must include, but need not be limited to, the identification of a
16 designated public records officer, how to make a public records request, and where a public
17 record request should be made, and a copy of these procedures shall be posted on the public
18 body's website if such a website if maintained and be made otherwise readily available to the
19 public. The unavailability of a designated public records officer shall not be deemed good cause
20 for failure to timely comply with a request to inspect and/or copy public records pursuant to
21 subsection (d). A written request for public records need not be made on a form or in a specified
22 format established by a public body if the request is other wise readily identifiable as a request for
23 public records.

24 (e) A public body receiving a request shall permit the inspection or copying within seven
25 (7) business days after receiving a request. If the inspection or copying is not permitted within
26 seven (7) business days, the public body shall forthwith explain in writing the need for additional
27 time to comply with the request. Any such explanation must be particularized to the specific
28 request made. In such cases the public body may have up to twenty (20) business days to respond
29 to the request if it can demonstrate that the voluminous nature of the request, the number of
30 requests for records pending, or the difficulty in searching for and retrieving or copying the
31 requested records, is such that additional time is necessary to avoid imposing an undue burden on
32 the public body. If the volume of a request is such that search and retrieval is reasonably expected
33 to exceed twenty (20) business days, a public body may apply to a justice of the superior court to
34 further extend the time to comply.

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

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

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

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

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

19 ~~(k)~~ (k) At the election of the person or entity requesting the public records, the public body
20 shall provide copies of the public records electronically, by fax, or by mail in accordance with the
21 requesting person or entity's choice, unless complying with that preference would be unduly
22 burdensome due to the volume of records requested and the costs that would be incurred.

23 **38-2-4. Cost. --** (a) Subject to the provisions of section 38-2-3, a public body must allow
24 copies to be made or provide copies of public records. The cost per copied page of written
25 documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents
26 copyable on common business or legal size paper. A public body may not charge more than the
27 reasonable actual cost for providing electronic records or retrieving records from storage where
28 the public body is assessed a retrieval fee.

29 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
30 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
31 shall be charged for the first hour of a search or retrieval.

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

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

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

7 **38-2-6. Commercial use of public records.** -- No person or business entity shall use
8 information obtained from public records pursuant to this chapter ~~to solicit for commercial~~
9 ~~purposes or~~ to obtain a commercial advantage over the party furnishing that information to the
10 public body. Anyone who knowingly and willfully violates the provision of this section shall, in
11 addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500)
12 and/or imprisonment for no longer than one year.

13 **38-2-7. Denial of access.** -- (a) Any denial of the right to inspect or copy records, in
14 whole or in part provided for under this chapter shall be made to the person or entity requesting
15 the right ~~by the public body official who has custody or control of the public record~~ in writing
16 giving the specific reasons for the denial within ~~ten (10)~~ seven (7) business days of the request
17 and indicating the procedures for appealing the denial. Except for good cause shown, any reason
18 not specifically set forth in the denial shall be deemed waived by the public body.

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

26 (c) A public body that receives a request to inspect or copy records that do not exist or are
27 not within its custody or control shall, in responding to the request in accordance with this
28 chapter, certify that it does not have or maintain the requested records.

29 **38-2-8. Administrative appeals.** -- (a) Any person or entity denied the right to inspect a
30 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
31 officer of that public body for a review of the determinations made by his or her subordinate. The
32 chief administrative officer shall make a final determination whether or not to allow public
33 inspection within ten (10) business days after the submission of the review petition.

34 (b) If the custodian of the records or the chief administrative officer determines that the

1 record is not subject to public inspection, the person or entity seeking disclosure may file a
2 complaint with the attorney general. The attorney general shall investigate the complaint and if
3 the attorney general shall determine that the allegations of the complaint are meritorious, he or
4 she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in
5 the superior court of the county where the record is maintained. Nothing within this section shall
6 prohibit any individual or entity from retaining private counsel for the purpose of instituting
7 proceedings for injunctive or declaratory relief in the superior court of the county where the
8 record is maintained.

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

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

13 **38-2-9. Jurisdiction of superior court.** – (a) Jurisdiction to hear and determine civil
14 actions brought under this chapter is hereby vested in the superior court.

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

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

21 (d) The court shall impose a civil fine not exceeding ~~one thousand dollars (\$1,000)~~ five
22 thousand dollars (\$5,000) against a public body or official found to have committed a knowing
23 and willful violation of this chapter, and a civil fine not to exceed two thousand (\$2,000) against a
24 public body found to have recklessly violated this chapter. and shall award reasonable attorney
25 fees and costs to the prevailing plaintiff. The court shall further order a public body found to have
26 wrongfully denied access to public records to provide the records at no cost to the prevailing
27 party; provided, further, that in the event that the court, having found in favor of the defendant,
28 finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith
29 argument for the extension, modification, or reversal of existing law, the court may award
30 attorneys fees and costs to the prevailing defendant.

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

33 **38-2-3.2. Arrest logs.** – Notwithstanding the provisions of subsection 38-2-2(e),
34 following information reflecting an initial arrest of an adult and charge or charges shall be made

1 available within twenty-four (24) hours after receipt of a request, to the extent such information is
2 known by the public body:

3 (1) Full name of the arrested adult;

4 (2) Home address of the arrested adult, unless doing so would identify a minor crime
5 victim as prohibited in sections 11-37-8.5 or 9-1-44;

6 (3) Date of birth of the arrested adult;

7 (4) Charge or charges;

8 (5) Date of the arrest;

9 (6) Time of the arrest;

10 (7) Gender of the arrested adult;

11 (8) Race of the arrested adult; and

12 (9) Name of the arresting officer.

13 **38-2-3.16. Compliance by agencies and public bodies.** – Not later than January 1, 2012,
14 and annually thereafter, the chief administrator of each agency and each public body shall certify,
15 in writing to the attorney general that all officers and employees who have the authority to grant
16 or deny persons or entities access to records under this chapter have been provided orientation
17 and training regarding this chapter. The attorney general may, in accordance with the provisions
18 of chapter 35 of title 42, promulgate rules and regulations necessary to implement the
19 requirements of this section.

20 SECTION 3. This act shall take effect on September 1, 2011.

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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 amend the access to public records requirements by ordering compliance
2 with a request to take place within seven (7) business days and up to twenty (20) business days
3 once it is shown that the request is of a voluminous nature.

4 This act would take effect on September 1, 2011.

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