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LC002510

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO PUBLIC RECORDS - PUBLIC RECORDS ADMINISTRATION

Introduced By: Representatives Millea, McKiernan, Almeida, Vella-Wilkinson, and Morin

Date Introduced: May 02, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 38-3-2, 38-3-3, 38-3-4, 38-3-5.1, 38-3-6 and 38-3-7 of the General
2 Laws in Chapter 38-3 entitled "Public Records Administration" are hereby amended to read as
3 follows:

4 **38-3-2. Definitions.**

5 ~~For the purpose of~~ As used in this chapter:

6 (1) "Administrator" means the public records administrator who coordinates and manages
7 the activities and responsibilities of the public records administration program. The administrator
8 shall be appointed by and serve at the pleasure of the secretary of state.

9 ~~(1)(2)~~ "Agency" or "public body" shall mean means any executive, legislative, judicial,
10 regulatory, administrative body of the state, or any political subdivision thereof; including, but
11 not limited to, any department, division, agency, commission, board, office, bureau, authority,
12 any school, fire, or water district, or other agency or quasi-public agency of state or local
13 government which exercises governmental functions, or any other public or private agency,
14 person, partnership, corporation, or business entity acting on behalf of any public agency.

15 ~~(2)(3)~~ "Program" shall mean means the public records administration program of the
16 secretary of state.

17 ~~(3)(4)~~ "Public record" or "public records" shall mean means all documents, papers,
18 letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes,
19 electronic data processing records, computer stored data including electronic mail messages or

1 other material regardless of physical form or characteristics made or received pursuant to law or
2 ordinance or in connection with the transaction of official business by any agency.

3 ~~(4) "Public records repository" shall mean the establishment maintained by the program~~
4 ~~for preservation of those public records determined by the program to have permanent value~~
5 ~~warranting their continued preservation and which has been accepted by the program for transfer~~
6 ~~to its custody.~~

7 (5) "Records center" ~~shall mean an establishment maintained by the program for the~~
8 means a facility, under the direction of the administrator, that provides storage, processing,
9 servicing, and security of public records that must be retained for varying periods of time but
10 need not be retained in an agency's office equipment or space.

11 (6) "Records control schedule" ~~shall mean~~ means the document or documents
12 establishing the official retention, maintenance, and disposal requirements for a record or record
13 series, ~~or type of record~~ based ~~on~~ upon any administrative, legal, fiscal, ~~and~~ and/or historical
14 ~~values for the scheduled records~~ value related to that record or record series.

15 (7) "Records officer" means the representative designated by an agency as responsible for
16 the operation of the records management program for the agency and related communications
17 with the public records administration.

18 (8) "Record copy" means the record that an agency designates as the official record for
19 legal and business purposes, and to which the agency applies records management policy
20 measures for the protection, security, maintenance and/or preservation thereof.

21 (9) "Record series" means a collection of records maintained as a group and derived from
22 or related to a particular subject, activity or function of an agency.

23 (10) "Retention" means the duration of time that a record, record series, or other
24 information shall be maintained in its original form.

25 (11) "Secretary" means the Rhode Island secretary of state.

26 (12) "State archives" means the official state repository for long-term or permanent
27 records of legal, historical, or enduring value.

28 (13) "State archivist" means the individual who coordinates, directs, and administers the
29 activities and responsibilities of the state archives. The state archivist shall be appointed by and
30 serve at the pleasure of the secretary of state.

31 **38-3-3. Public records administration program.**

32 (a) The public records administration program shall be organized as deemed necessary by
33 the secretary ~~of state~~ for the proper discharge of its duties and responsibilities under this chapter.
34 All personnel, furnishings, equipment, finances, property, and contractual arrangements of the

1 public records administration shall be the responsibility of the secretary of state.

2 ~~(b) There shall be a public records advisory commission consisting of seventeen (17)~~
3 ~~members, one of whom shall be a member of the senate chosen by the president of the senate, one~~
4 ~~of whom shall be a member of the house of representatives chosen by the speaker of the house,~~
5 ~~six (6) of whom shall be chosen by the governor, and seven (7) of whom shall be chosen by the~~
6 ~~secretary of state. The secretary of state or designee shall serve as a permanent member of the~~
7 ~~commission. The state archivist shall serve as a permanent member of the commission. The~~
8 ~~appointments shall consist of persons who are qualified by training and experience with proven~~
9 ~~interest in historical records and public records management. In the first instance, five (5)~~
10 ~~members shall be appointed for a one year term, two (2) by the governor and three (3) by the~~
11 ~~secretary of state; five (5) members shall be appointed for a two (2) year term, one by the speaker~~
12 ~~of the house, one by the president of the senate, two (2) by the governor, and one by the secretary~~
13 ~~of state; five (5) members shall be appointed for a three (3) year term, two (2) by the governor,~~
14 ~~and three (3) by the secretary of state. The members shall hold office until July 1, in the years in~~
15 ~~which their respective terms end. Thereafter, prior to July 1, successors shall be appointed to the~~
16 ~~commission to the members of the commission whose terms expired. Vacancy of a member shall~~
17 ~~be filled by appointment by the corresponding authority for the remainder of the unexpired terms.~~

18 ~~(e) The secretary of state or designee shall serve as the chairperson of the commission.~~
19 ~~The state archivist or designee shall serve as the secretary of the commission with voting rights.~~

20 ~~(d) It shall be the duty of the public records advisory commission to provide professional~~
21 ~~and technical assistance to the public records administration program, the state archives, and the~~
22 ~~local governments of the state in all matters relating to the administration of public records.~~
23 ~~Members of the commission shall serve without pay.~~

24 ~~(e) The secretary of state may appoint an administrator of the program and shall establish~~
25 ~~his or her qualifications other than the professional competence required. The administrator shall~~
26 ~~coordinate, direct, and administer the activities and responsibilities of the program. The~~
27 ~~administrator shall serve at the pleasure of the secretary of state.~~

28 ~~(f)~~(b) The program may make and enter into contracts and agreements with other
29 agencies, organizations, associations, corporations, and individuals, or federal agencies as it may
30 determine are necessary, expedient, or incidental to the performance of its duties or the execution
31 of its powers under this chapter.

32 ~~(g) The program shall adopt rules and regulations deemed necessary to carry out its duties~~
33 ~~and responsibilities under this chapter which rules shall be binding on all agencies and persons~~
34 ~~affected thereby. The willful violation of any of the rules and regulations adopted by the program~~

1 ~~shall constitute a misdemeanor.~~

2 ~~(b)~~(c) The program may accept gifts, grants, bequests, loans, and endowments for
3 purposes not inconsistent with its responsibilities under this chapter.

4 **38-3-4. Duties of administrator.**

5 (a) It shall be the duty and responsibility of the administrator to render all services
6 required by the program herein set forth that can advantageously and effectively be centralized
7 ~~and to: . The office shall perform such other functions and duties as the secretary of state may~~
8 ~~direct.~~

9 ~~(b) The administrator shall supervise, direct, and coordinate the activities of the program.~~

10 ~~(c) The administrator shall be designated "the public records administrator".~~

11 (1) Establish and administer a public records management program, including the
12 operation of a record center or centers, and apply efficient and economical management methods
13 relating to the creation, utilization, retention, preservation, and disposal of records;

14 (2) Analyze, develop, establish, and coordinate standards, procedures, and techniques of
15 record making and record keeping to ensure the access, security, and preservation of public
16 records;

17 (3) Institute and maintain a training and information program, including, but not limited
18 to, the publication of educational materials, on all phases of records management to bring to the
19 attention of all agencies approved and current practices, methods, procedures, and devices for the
20 efficient, and economical management of records;

21 (4) Make continuous surveys of record keeping operations, to examine the condition of
22 public records and recommend improvements to public officials in current records management
23 practices, space, equipment, supplies, and personnel in creating, maintaining, and making
24 available the public records in their custody;

25 (5) Establish and maintain a program, in cooperation with each agency, for the selection
26 and protection of public records considered essential to the operation of government and to the
27 protection of the rights and privileges of citizens;

28 (6) Create forms for the development of the required records control schedules submitted
29 by an agency to the program;

30 (7) Create, analyze, and uphold records control schedules of public records in the custody
31 of state and local agencies;

32 (8) Adopt rules and regulations, if necessary, to carry out the purposes of this chapter,
33 including a schedule of administrative penalties to be assessed for violations, such as the
34 unauthorized destruction or improper storage of a public record;

1 (9) Collect fines for violations of any rules and regulations adopted to carry out the
2 purposes of this chapter;

3 (10) Establish safeguards against unauthorized or unlawful removal or loss of records;

4 (11) Initiate appropriate action to recover records removed unlawfully or without
5 authorization;

6 (12) Preserve and administer such public records as shall be transferred to the state
7 archives according to approved conservation and security practices, and to permit them to be
8 inspected, examined, and copied at reasonable times and under supervision of the program;
9 provided that any record placed in keeping of the program under special terms or conditions
10 restricting their use shall be made available only in accordance with the terms and conditions;

11 (13) Provide a public research room where, upon policies established by the program, the
12 records in the state archives may be studied;

13 (14) Make certified copies under seal of any records transferred to it upon the application
14 of any person, and sign the certificates which shall have the same force and effect as if made by
15 the agency from which the records were received. The program may charge a reasonable fee for
16 this service;

17 (15) Assist agencies in identifying, securing, and transferring records of permanent legal,
18 historical or enduring value to the state archives;

19 (16) Approve emergency destruction of public records which were damaged due to
20 catastrophic, environmental, or otherwise unforeseen circumstance but have not met their
21 established retention; and

22 (17) To perform such other functions and duties as the secretary may direct.

23 **38-3-5.1. ~~Reproduction of public records -- Destruction of original records.~~**

24 **Reproduction of public records.**

25 (a) If any department or agency of government, in the regular course of business or
26 activity, has kept or recorded any ~~memorandum, writing, state tax returns, report, application,~~
27 ~~payment, entry, print, representation, or combination thereof, or any act, transaction, occurrence,~~
28 ~~or event~~ public record, and, in the regular course of business, has caused any or all of the public
29 records to be recorded, copied, or reproduced by a photographic, ~~photostatic~~, microfilm, micro-
30 card, ~~optical disk, miniature photographic~~, or other digital media process which accurately
31 reproduces or forms a durable medium for reproducing the original, ~~the~~;

32 (1) The original may be destroyed, and the reproduction established as the record copy, in
33 the regular course of business, provided the process meets standards established by the public
34 records administration, and provided all the provisions of § 38-3-6 concerning disposal of public

1 records and accessibility are fulfilled;

2 (ii) The reproduction, when satisfactorily identified, shall be admissible in evidence as
3 the original in any judicial or administrative proceeding whether or not the original exists or is
4 available and an enlargement or facsimile of the reproduction shall be likewise admissible in
5 evidence if the original is in existence and available for inspection under the direction of the
6 court.

7 (b) The introduction of a reproduced record, enlargement, or facsimile into evidence shall
8 not preclude the admission into evidence of the original, if available.

9 (c) The duplicate of any record made pursuant to this chapter, and designated as a record
10 copy, shall have the same force and effect for all purposes as the original record.

11 (d) When provided in response to a request from the public, a certified copy shall have
12 the same force and effect for all purposes as the original record.

13 (e) This section shall not be construed to exclude from introduction into evidence any
14 document or copy thereof which is otherwise admissible under the Rhode Island general laws, as
15 amended.

16 **38-3-6. Public records custody and disposal.**

17 ~~(a) Each agency shall prepare and submit to the program, in accordance with the rules~~
18 ~~and regulations of the program, record control schedules for all public records in the custody of~~
19 ~~the agency.~~

20 ~~(b)~~(a) The offices of the attorney general and the auditor general will advise the program
21 on the legal and fiscal values of records covered by proposed records control schedules.

22 ~~(e)~~(b) Those records which are determined by an agency not to be needed in the
23 transaction of current business but which, for legal or fiscal requirements, must be retained for
24 specific time periods beyond administrative needs, shall be sent to the records center. The records
25 will be kept in the center until time for disposition as provided in record control schedules.

26 ~~(c)~~(c) Public records, with a minimum retention of twenty (20) years, possessing
27 ~~permanent~~ enduring value, as determined by the administrator in consultation with the state
28 archivist, may ~~approved records control schedules shall~~ be transferred to the public records
29 ~~repository when no longer needed by an agency in transaction of current business~~ state archivist
30 after the twentieth year.

31 (d) Public records determined to be of permanent value according to the records retention
32 schedule and by the administrator in consultation with the state archivist, shall be transferred to
33 the state archives following assessment after the twentieth year.

34 (e) Title to any record placed in the records center shall remain ~~in~~ with the agency placing

1 the record in the center.

2 (f) Title to any record transferred to the ~~public records repository~~ state archives, as
3 authorized in this chapter, shall be vested in the program.

4 ~~(g) The program shall preserve and administer such public records as shall be transferred~~
5 ~~to its custody according to approved conservation and security practices, and to permit them to be~~
6 ~~inspected, examined, and copied at reasonable times and under supervision of the program;~~
7 ~~provided that any record placed in keeping of the program under special terms or conditions~~
8 ~~restricting their use shall be made available only in accordance with the terms and conditions.~~

9 ~~(h) Provide a public research room where, upon policies established by the program, the~~
10 ~~records in the public records repository may be studied.~~

11 ~~(i) The program may make certified copies under seal of any records transferred to it~~
12 ~~upon the application of any person, and the certificates, signed by the administrator or his or her~~
13 ~~designee, shall have the same force and effect as if made by the agency from which the records~~
14 ~~were received. The program may charge a reasonable fee for this service.~~

15 ~~(j)(g)~~ No public record shall be destroyed or otherwise disposed of by any agency without
16 prior notice to, and approval by, the program.

17 ~~(k) The program shall adopt reasonable rules and regulations not inconsistent with this~~
18 ~~chapter relating to the destruction and disposal of records. The rules and regulations shall provide~~
19 ~~but not be limited to:~~

20 ~~(1) Procedures for preparing and submitting record control schedules to the program.~~

21 ~~(2) Procedures for the physical destruction or other disposal of records.~~

22 ~~(3) Standards for the reproduction of records for security or with a view to the disposal of~~
23 ~~the original record.~~

24 ~~(l) The program shall:~~

25 ~~(1) Establish safeguards against unauthorized or unlawful removal or loss of records; and~~

26 ~~(2) Initiate appropriate action to recover records removed unlawfully or without~~
27 ~~authorization.~~

28 ~~(m) The program may prepare and publish handbooks, guides, indexes, and other~~
29 ~~literature directed toward encouraging the management, preservation, and uses of the state's~~
30 ~~public records resource.~~

31 **38-3-7. Agency responsibilities. Duties and responsibilities of agencies.**

32 It shall be the duty of each agency to:

33 (1) Cooperate with the program in complying with the provisions of this chapter.;

34 (2) Establish and maintain an active and continuous program procedure(s) for the

1 economical and efficient management of public records, including, but not limited to, working
2 with the administrator to create and update records control schedules;

3 (3) Submit a certificate of records destruction for approval by the program for each public
4 record the agency seeks to destroy once it has met its approved retention period;

5 (4) Not later than January 1, 2020, designate a records officer who has responsibility for
6 compliance with this chapter and has been provided orientation and training regarding this
7 chapter. The records officer may delegate responsibilities to an individual within the agency at his
8 or her discretion; and

9 (5) Submit an annual report to the program documenting records-management activities,
10 including an electronic records and digitization plan; requests for amendments to records control
11 schedules; destruction of records, and any other information deemed necessary by the secretary to
12 fulfill the provisions of this chapter.

13 SECTION 2. Section 38-3-5 of the General Laws in Chapter 38-3 entitled "Public
14 Records Administration" is hereby repealed.

15 **38-3-5. Duties of program.**

16 ~~It shall be the duty and responsibility of the public records administration program to:~~

17 ~~(1) Establish and administer a public records management program, including the~~
18 ~~operation of a record center or centers, and appoint a director who will apply efficient and~~
19 ~~economical management methods relating to the creation, utilization, maintenance, retention,~~
20 ~~preservation, and disposal of records.~~

21 ~~(2) Analyze, develop, establish, and coordinate standards, procedures, and techniques of~~
22 ~~record making and record keeping.~~

23 ~~(3) Insure the maintenance and security of records which are deemed appropriate for~~
24 ~~preservation.~~

25 ~~(4) Institute and maintain a training and information program in all phases of records~~
26 ~~management to bring to the attention of all agencies approved and current practices, methods,~~
27 ~~procedures, and devices for the efficient and economical management of records.~~

28 ~~(5) Make available a centralized program of microfilming for the benefit of all agencies.~~

29 ~~(6) Make continuous surveys of record keeping operations.~~

30 ~~(7) Recommend improvements in current records management practices, including the~~
31 ~~use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.~~

32 ~~(8)(i) Establish and maintain a program, in cooperation with each agency, for the~~
33 ~~selection and protection of public records considered essential to the operation of government and~~
34 ~~to the protection of the rights and privileges of citizens.~~

1 ~~(ii) Make or to have made duplicates of essential records, or to designate existing record~~
2 ~~copies as essential records to be protected in the place and manner of safekeeping as prescribed~~
3 ~~by the program.~~

4 ~~(iii) The duplicate of any record made pursuant to this chapter shall have the same force~~
5 ~~and effect for all purposes as the original record. A transcript, exemplification, or certified copy~~
6 ~~of the duplicate shall be deemed, for all purposes, to be the original record.~~

7 SECTION 3. Chapter 38-3 of the General Laws entitled "Public Records Administration"
8 is hereby amended by adding thereto the following sections:

9 **38-3-8. Public records advisory commission.**

10 (a) There shall be a public records advisory commission consisting of seventeen (17)
11 members, one of whom shall be a member of the senate chosen by the president of the senate, one
12 of whom shall be a member of the house of representatives chosen by the speaker of the house,
13 six (6) of whom shall be chosen by the governor, and seven (7) of whom shall be chosen by the
14 secretary. The secretary or designee and the state archivist shall serve as permanent members of
15 the commission. The appointments shall consist of persons who are qualified by training and
16 experience with proven interest in historical records and public records management. In the first
17 instance, five (5) members shall be appointed for a one year term, two (2) by the governor and
18 three (3) by the secretary; five (5) members shall be appointed for a two (2) year term, one by the
19 speaker of the house, one by the president of the senate, two (2) by the governor, and one by the
20 secretary; five (5) members shall be appointed for a three (3) year term, two (2) by the governor,
21 and three (3) by the secretary. The members shall hold office until July 1, in the years in which
22 their respective terms end. Thereafter, prior to July 1, successors shall be appointed to the
23 commission to replace members of the commission whose terms expired. Vacancy of a member
24 shall be filled by appointment by the corresponding authority for the remainder of the unexpired
25 term.

26 (b) The secretary or designee shall serve as the chairperson of the commission. The state
27 archivist or designee shall serve as the secretary of the commission with voting rights.

28 (c) It shall be the duty of the public records advisory commission to provide professional
29 and technical assistance to the public records administration program, the state archives, and the
30 local governments of the state in all matters relating to the administration of public records.
31 Members of the commission shall serve without pay.

32 **38-3-9. Public reporting of compliance.**

33 Every year the secretary shall prepare a report summarizing the compliance with the
34 provisions of this chapter, which shall be submitted to the general assembly and which shall be

1 published electronically on the department of state website.

2 **38-3-10. Violations.**

3 (a) The administrator shall, whenever he or she finds that any provisions of this chapter
4 have been or are being violated, inform in writing the head of the agency concerned of the
5 violations and make recommendations regarding means of correcting them. Unless corrective
6 measures satisfactory to the administrator are instituted within a reasonable time, the
7 administrator may fine the agency in accordance with § 38-3-11.

8 (b) Any penalty imposed by the administrator in accordance with this section shall be
9 appealable by the aggrieved party to the superior court pursuant to the provisions of chapter 35 of
10 title 42.

11 (c) The administrator may, as a result of violations of the provisions of this chapter, refer
12 a violation to the attorney general for prosecution under § 38-3-11.

13 **38-3-11. Penalties.**

14 Any agency that violates the provisions of this chapter shall be punished by a fine not
15 exceeding one thousand dollars (\$1,000).

16 **38-3-12. Severability.**

17 If any provision of this chapter or the application of this chapter to any person or
18 circumstances is held invalid, the invalidity shall not affect other provisions or applications of this
19 chapter which can be given effect without the invalid provision or application, and to this end the
20 provisions of this chapter are declared to be severable.

21 SECTION 4. This act shall take effect upon passage.

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LC002510
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC RECORDS - PUBLIC RECORDS ADMINISTRATION

1 This act would establish a public records administration program managed by an
2 administrator in conjunction with a state archivist relating to the custody and disposal of public
3 records of the state and its agencies assisted by a seventeen (17) member public records advisory
4 commission with civil penalties for violations.

5 This act would take effect upon passage.

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