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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PUBLIC RECORDS -- ACCESS TO PUBLIC RECORDS

Introduced By: Senators Sheehan, Miller, Jabour, Nesselbush, and Pichardo

Date Introduced: February 16, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

3 **38-2-2. Definitions.** – As used in this chapter:

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

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

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

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

17 (5) “Records or reports reflecting the initial arrest” means the initial face sheet of the law
18 enforcement department’s report, as well as the law enforcement department’s initial written
19 narrative statement, pertaining to the arrest of an adult.

1 ~~(5)~~(6) "Public record" or "public records" shall mean all documents, papers, letters, maps,
2 books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
3 processing records, computer stored data (including electronic mail messages, except specifically
4 for any electronic mail messages of or to elected officials with or relating to those they represent
5 and correspondence of or to elected officials in their official capacities) or other material
6 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
7 connection with the transaction of official business by any agency. For the purposes of this
8 chapter, the following records shall not be deemed public:

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

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

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

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

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

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

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

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

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

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

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

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

34 (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work

1 products; provided, however, any documents submitted at a public meeting of a public body shall
2 be deemed public.

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

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

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

14 (O) All tax returns.

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

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

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

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

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

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

31 (V) Printouts from TELE – TEXT devices used by people who are deaf or hard of
32 hearing or speech impaired.

33 (W) All records received by the insurance division of the department of business
34 regulation from other states, either directly or through the National Association of Insurance

1 Commissioners, if those records are accorded confidential treatment in that state. Nothing
2 contained in this title or any other provision of law shall prevent or be construed as prohibiting
3 the commissioner of insurance from disclosing otherwise confidential information to the
4 insurance department of this or any other state or country, at any time, so long as the agency or
5 office receiving the records agrees in writing to hold it confidential in a manner consistent with
6 the laws of this state.

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

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

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

15 ~~(6) "Supervisor of the regulatory body" means the chief or head of a section having~~
16 ~~enforcement responsibility for a particular statute or set of rules and regulations within a~~
17 ~~regulatory agency.~~

18 **38-2-3. Right to inspect and copy records – Duty to maintain minutes of meetings –**

19 **Procedures for access.** – (a) Except as provided in section 38-2-2~~(5)~~(6), all records maintained
20 or kept on file by any public body, whether or not those records are required by any law or by any
21 rule or regulation, shall be public records and every person or entity shall have the right to inspect
22 and/or copy those records at such reasonable time as may be determined by the custodian thereof.

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

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

1 otherwise readily identifiable as a request for public records.

2 (d) A public body shall permit the inspection or copying within ten (10) business days
3 after receiving a request. If the inspection or copying cannot be completed within ten (10)
4 business days, the public body may have an additional twenty (20) business days to respond if it
5 asserts in writing that due to the voluminous nature of the request, the number of requests for
6 records pending, the difficulty in searching for and retrieving or copying the requested records, or
7 the review of the records is such that additional time is necessary to avoid imposing an undue
8 burden on the public body. Any such explanation must be particularized to the specific request
9 made. If a request is such that search and retrieval is reasonably expected to exceed thirty (30)
10 business days, a public body may apply to the attorney general to further extend the time to
11 comply, except that where the request for records is made to the department of attorney general,
12 the attorney general may apply to the superior court to further extend the time to comply. All
13 copying and search and retrieval fees shall be waived if a public body fails to produce requested
14 records in a timely manner; provided, however, that the production of records shall not be
15 deemed untimely if the public body is awaiting receipt of payment for costs properly charged
16 under this chapter.

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

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

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

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

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

34 (j) At the election of the person or entity requesting the public records, the public body

1 shall provide copies of the public records electronically if available, by facsimile, or by mail in
2 accordance with the requesting person or entity's choice, unless complying with that preference
3 would be unduly burdensome. The person requesting delivery shall be responsible for the actual
4 cost of delivery, if any.

5 (k)(1) Notwithstanding the provisions of subsection (d), the following information
6 reflecting the arrest of an adult shall be made available within three (3) days after receiving a
7 request and may not be redacted except as provided below:

8 (i) Full name of the arrested adult;

9 (ii) Home address of the arrested adult unless doing so would identify a crime victim;

10 (iii) Date of birth of the arrested adult;

11 (iv) Race and gender of the arrested adult;

12 (v) Charge or charges;

13 (vi) Date of arrest;

14 (vii) Time of arrest;

15 (viii) Name of the arresting officer, unless doing so would identify an undercover officer.

16 (2) This provision shall apply to arrests made within five (5) days prior to the request.

17 **38-2-4. Cost.** – (a) Subject to the provisions of section 38-2-3, a public body must allow
18 copies to be made or provide copies of public records. The cost per copied page of written
19 documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents
20 copyable on common business or legal size paper. A public body may not charge more than the
21 reasonable actual cost for providing electronic records or retrieving records from storage where
22 the public body is assessed a retrieval fee.

23 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
24 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
25 shall be charged for the first hour of a search or retrieval. For purposes of this subsection any
26 person or entity submitting multiple requests to the same public body within a thirty (30) day time
27 period shall be considered as one request.

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

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

33 (e) A court may reduce or waive the fees for costs charged for search or retrieval if it
34 determines that the information requested is in the public interest because it is likely to contribute

1 significantly to public understanding of the operations or activities of the government and is not
2 primarily in the commercial interest of the requester.

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

9 (b) Failure to comply with a request to inspect or copy the public record within the ten
10 (10) business day period shall be deemed to be a denial. Except that for good cause, this limit
11 may be extended ~~for a period not to exceed thirty (30) business days~~ [in accordance with](#)
12 [subsection 38-2-3\(d\) of this chapter](#).

13 (c) [A public body that receives a request to inspect or copy records that do not exist or are](#)
14 [not within its custody or control shall, in responding to the request in accordance with this](#)
15 [chapter, state in writing that a reasonable search has been conducted for the requested records and](#)
16 [that it does not have or maintain the requested records](#).

17 **38-2-8. Administrative appeals.** – (a) Any person or entity denied the right to inspect a
18 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
19 officer of that public body for a review of the determinations made by his or her subordinate. The
20 chief administrative officer shall make a final determination whether or not to allow public
21 inspection within ten (10) business days after the submission of the review petition.

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

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

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

1 **38-2-9. Jurisdiction of superior court.** – (a) Jurisdiction to hear and determine civil
2 actions brought under this chapter is hereby vested in the superior court.

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

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

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

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 **38-2-3.16. Compliance by agencies and public bodies.** – Not later than January 1, 2013,
24 and annually thereafter, the chief administrator of each agency and each public body shall certify
25 to the attorney general that all officers and employees who have the authority to grant or deny
26 persons or entities access to records under this chapter have been provided orientation and
27 training regarding this chapter. The attorney general may, in accordance with the provisions of
28 chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements
29 of this section.

30 SECTION 3. Section 38-2-6 of the General Laws in Chapter 38-2 entitled "Access to
31 Public Records" is hereby repealed.

32 ~~**38-2-6. Commercial use of public records.** -- No person or business entity shall use~~
33 ~~information obtained from public records pursuant to this chapter to solicit for commercial~~
34 ~~purposes or to obtain a commercial advantage over the party furnishing that information to the~~

1 ~~public body. Anyone who knowingly and willfully violates the provision of this section shall, in~~
2 ~~addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500)~~
3 ~~and/or imprisonment for no longer than one year.~~

4 SECTION 4. This act shall take effect on September 1, 2012.

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LC00288/SUB A
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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 make various amendments to the access to public records act.
- 2 This act would take effect on September 1, 2012.

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