HOUSE DOCKET, NO. 1487 FILED ON: 1/20/2011

HOUSE . . . . . No. 1735

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act further regulating access to public records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F. D. Cabral	*13th Bristol*

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HOUSE . . . . . No. 1735

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 1735) of Antonio F. D. Cabral relative to access to public records. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

An Act further regulating access to public records.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 4 of chapter 9 of the General Laws, as appearing in the 2008 Official Edition, is hereby repealed.

SECTION 2. Section 1 of chapter 66 is hereby deleted and replaced with the following:—

Section 1. Public records division; commission of public records.

(a) There is established a public records division within the office of the secretary of the commonwealth.

(b) There shall be established a commission of public records to govern the division of public records. The commission shall be composed of five members.

(c) Three members shall be appointed by the governor, one of whom shall be the president of the Massachusetts Municipal Association or his designee and one of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee. One member shall be appointed by the secretary of state and shall serve as chairman and one member shall be appointed by the attorney general.

(d) Members shall serve for terms of five years.

(e) No member or employee of the commission shall hold or be a candidate for any other public office while a member or employee or for one year thereafter.

(f) Members may be removed by a majority vote of the governor, state secretary and attorney general for substantial neglect of duty, inability to discharge the powers and duties of office, violation of subsection d of this section, gross misconduct or conviction of a felony.

21 (g) Any vacancy occurring on the commission shall be filled within ninety days by
22 the original appointing authority. A person appointed to fill a vacancy occurring other than by
23 expiration of a term of office shall be appointed for the unexpired term of the member he
24 succeeds.

25 (h) The commission shall elect a vice chairman, who shall serve as chairman in the
26 chairman's absence. Three members shall constitute a quorum and three affirmative votes shall
27 be required for any action or recommendation of the commission. Any member may call a
28 meeting; at least seven days advance notice of all meetings shall be given to all members and to
29 any other person who requests such notice and posted on line.

30 (i) Members shall be compensated for work performed for the commission at such
31 rate as the secretary of state and the secretary of administration and finance shall jointly
32 determine, and shall be reimbursed for their reasonable expenses.

33 (j) The commission shall annually report to the general court and the governor
34 concerning the action it has taken; the names and salaries and duties of all individuals in its
35 employ and the money it has disbursed; and shall make such further reports on matters within its
36 jurisdiction as may appear necessary.

37 (k) The commission shall hire and employ a supervisor of public records and, subject
38 to appropriations, such other staff as it shall require, who shall serve at the pleasure of the
39 commission.

40 SECTION 3. Chapter 66 is hereby amended by inserting after section 1 the following:—

41 Section 2. The supervisor of public records, in this chapter called the supervisor of
42 records, shall take necessary measures to put the records of the commonwealth, counties, cities
43 or towns in the custody and condition required by law and to secure their preservation. He shall
44 see that the records of churches, parishes or religious societies are kept in the custody and
45 condition contemplated by the various laws relating to churches, parishes or religious societies,
46 and for these purposes he may expend from the amount appropriated for expenses such amount
47 as he considers necessary. The supervisor of records shall adopt regulations pursuant to the
48 provisions of chapter thirty A to implement the provisions of this chapter.

49 SECTION 4. Section 10 of chapter 66 is hereby amended by deleting paragraph (b) and
50 inserting in place thereof the following:—

51 (b) A custodian of a public record shall, within ten days following receipt of a request for
52 inspection or copy of a public record, comply with such request. Such request may be delivered
53 in hand to the office of the custodian or mailed via first class mail or sent electronically if the
54 office has designated a secure means of receiving such requests electronically that allows the
55 requester to obtain a written receipt of said request. If the record is maintained electronically, the

56 custodian shall provide the requested public record in electronic form if so requested. If the
57 custodian refuses or fails to comply with such a request, the person making the request may
58 petition the supervisor of records for a determination whether the record requested is public.
59 Upon the determination by the supervisor of records that the record is public, he shall order the
60 custodian of the public record to comply with the person's request. If the custodian refuses or
61 fails to comply with any such order, the supervisor of records shall, within five days, notify the
62 attorney general or the appropriate district attorney thereof who shall take whatever measures he
63 deems necessary to insure compliance with the provisions of this section. The supervisor of
64 records may also seek compliance with his order pursuant to section 10A where neither the
65 attorney general nor the appropriate district attorney has achieved enforcement of the order
66 within sixty days of notification. The administrative remedy provided by this section shall in no
67 way limit the availability of the administrative remedies provided by the commissioner of
68 administration and finance with respect to any officer or employee of any agency, executive
69 office, department or board; nor shall the administrative remedy provided by this section in any
70 way limit the availability of judicial remedies otherwise available to any person requesting a
71 public record. If a custodian of a public record refuses or fails to comply with the request of any
72 person for inspection or copy of a public record or with an administrative order under this
73 section, the supreme judicial or superior court shall have jurisdiction to order compliance. The
74 person making the request shall be entitled to an award of reasonable attorney's fees and costs if
75 the custodian withholding the public record was in violation of this chapter.

76 SECTION 5. Chapter 66 is hereby amended by inserting after section 10 the
77 following:—

78 Section 10A. The supervisor of records is hereby authorized to conduct adjudicatory
79 proceedings and promulgate regulations relative to conducting said proceedings. There shall be
80 within the division a division of administrative law appeals under the direction of a chief
81 administrative magistrate who shall be appointed by the supervisor of records. Said chief
82 administrative magistrate, shall be a resident of the commonwealth at the time of his
83 appointment and shall be a person with substantial experience as a trial attorney. He shall hear,
84 or assign for hearing, appeals filed pursuant to this chapter or regulations promulgated thereof
85 and may, subject to appropriation, appoint and make available presiding officers who serve as
86 administrative magistrates or the equivalent thereof, to hear appeals assigned pursuant to this
87 chapter. Said presiding officers shall serve under the direction, supervision and control of the
88 supervisor of records and shall be utilized to expedite appeals of the public records division. The
89 chief administrative magistrate, shall, when necessary, promulgate regulations governing the
90 proceedings or appeals to be so conducted or heard prior to conducting or hearing any
91 proceedings or appeals.

92 It shall be the responsibility of said chief administrative magistrate to organize his
93 division to provide speedy and fair disposition of all appeals and to establish policies that will
94 encourage and aid parties in their compliance with this chapter. The division may summon

95 witnesses, administer oath and require the production of books, records, papers, electronic
96 records and any other document at any hearing before the division, upon any matter within its
97 jurisdiction. Witnesses may be summoned by any party to the proceeding in the same manner, be
98 paid the same fees and be subject to the same penalties as witnesses in civil cases before the
99 courts of the commonwealth.

100 The division may institute by its own initiative appropriate proceedings in the court with
101 appropriate jurisdiction for enforcement of its final orders or decisions. Any party aggrieved by a
102 final order or decision of the division following a hearing pursuant to any section of this chapter
103 or chapter thirty-one A may institute proceedings for judicial review in the superior court within
104 thirty days after receipt of such order or decision. Any proceedings in the court with appropriate
105 jurisdiction shall, insofar as applicable, be governed by the provisions of section fourteen of
106 chapter thirty A, and may be instituted in the court with appropriate jurisdiction.

107 SECTION 6. Chapter 66 of the General Laws is hereby amended by striking Section 15
108 in its entirety and inserting in place thereof the following:-

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

116 SECTION 7. Chapter 447 of the acts of 1947 is hereby amended by striking the
117 following:

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