HOUSE DOCKET, NO. 1506 FILED ON: 1/20/2011

# HOUSE . . . . . No. 1737

## 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 to improve access to public records.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Antonio F. D. Cabral* | *13th Bristol* |
| *James B. Eldridge* | ☐ *[District]* ☐ |
| *Patricia D. Jehlen* | ☐ *[District]* ☐ |
| *Peter V. Kocot* | *1st Hampshire* |
| *Martha M. Walz* | *8th Suffolk* |
| *John W. Scibak* | *2nd Hampshire* |
| *Anne M. Gobi* | *5th Worcester* |
| *Frank I. Smizik* | *15th Norfolk* |
| *Byron Rushing* | *9th Suffolk* |
| *Cory Atkins* | *14th Middlesex* |
| *David B. Sullivan* | *6th Bristol* |
| *Robert M. Koczera* | *11th Bristol* |
| *Denise Andrews* | *2nd Franklin* |
| *James Arciero* | *2nd Middlesex* |

| | |
|---|---|
| *Stephen Stat Smith* | *28th Middlesex* |
| *Gailanne M. Cariddi* | *1st Berkshire* |
| *Angelo L. D'Emilia* | *8th Plymouth* |
| *Jonathan Hecht* | *29th Middlesex* |
| *John P. Fresolo* | *16th Worcester* |
| *Carl M. Sciortino, Jr.* | *34th Middlesex* |
| *Ruth B. Balser* | *12th Middlesex* |
| *Jason M. Lewis* | *31st Middlesex* |
| *William N. Brownsberger* | ☐ *[District]* ☐ |
| *Jennifer E. Benson* | *37th Middlesex* |
| *Denise Provost* | *27th Middlesex* |

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# HOUSE . . . . . No. 1737

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 1737) of Antonio F. D. Cabral and others relative to access to public records in state agencies. State Administration and Regulatory Oversight.

## The Commonwealth of Massachusetts

An Act to improve 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. Clause Twenty-sixth of Section 7 of Chapter 4 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "characteristics," the following words:--

including public record information which may be separately retrieved from an electronic record,

SECTION 2. Chapter 66 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after Section 6 the following new section:--

Section 6A. Every state agency, as defined in chapter 66A, shall designate one or more employees as records access officers, who shall have the custody of all its public records other than those records for which a clerk is the statutory custodian. Each agency shall publicize by posting in a conspicuous location at its offices and in a conspicuous location on its website, if any, the name, title, business address and business telephone number of the designated records access officers. The designation of one or more records access officers shall not be construed to prohibit employees who have in the past been authorized to make records or information available to the public from continuing to do so.

Records access officers shall be responsible for coordinating such agency's response to requests for access to records under the provisions of this chapter, shall facilitate the informal resolution of requests by timely and thorough production of records, and shall ensure that the agency:

(a) Assist requesters seeking records to identify the records sought;

21 (b) In responding to a request, indicate whether the records are available in electronic
22 form and the manner in which the records are stored, filed, retrieved or generated, to assist
23 requesters in describing the records sought;

24 (c) Contact requesters when the response to a request would be voluminous so the
25 agency may, at the option of the requester, assist the requester in focusing the request in order to
26 facilitate the timely and thorough production of the records sought;

27 (d) Maintain a reasonably detailed document classification scheme outlining
28 categories of records maintained by the agency, whether or not open for public inspection. The
29 document classification scheme shall be updated annually, conspicuously marked with the date
30 of the most recent update, and posted on the agency's website, if any.

31 SECTION 3. Section 10 of said Chapter 66 is hereby amended by striking subsection (a)
32 and inserting the following:--

33 (a) Every person having custody of any public record, as defined in clause Twenty-sixth
34 of section seven of chapter four, shall, at reasonable times and without unreasonable delay,
35 permit it, or any segregable portion of a record which is an independent public record, including
36 public record information which may be separately retrieved from an electronic record, to be
37 inspected and examined by any person, under his supervision, and shall furnish one copy thereof
38 upon payment of a reasonable fee not to exceed the actual cost of reproducing the record.

39 In determining the actual cost of reproducing a record, the custodian of the record may
40 include only: (i) the actual cost of any storage devices or materials provided to the requester in
41 complying with such request; (ii) an amount equal to the hourly salary attributed to the lowest
42 paid employee who has the necessary skill required to prepare a copy of the requested record,
43 provided that no fee shall be charged unless at least two hours of employee time is needed to
44 prepare a copy of the record requested, and further provided that no fee shall be charged for
45 employee time to prepare photocopies of records or retrieve electronic public record information;
46 and (iii) when the custodian`s information technology capabilities are inadequate to prepare a
47 copy of the record, the custodian may charge the requestor the actual cost of engaging an outside
48 service to prepare a copy, provided that no fee shall be charged in excess of the hourly salary
49 attributed to the lowest paid state employee who has the necessary skill required to prepare such
50 a copy. In no case shall fees for black and white photocopies exceed 5 cents per letter size page
51 or smaller, or 7 cents per larger page.

52 Every person having custody of a record shall inform the requester of the estimated cost
53 of preparing a copy of the record if more than two hours of an employee`s time is needed, or if
54 an outside professional service would be retained to prepare a copy of the record. No fee shall
55 be charged for the following: (1) search time; or (2) review of the content of requested records to
56 determine the extent to which exempt and public information must be segregated.

57 SECTION 4. Section 10 of said Chapter 66 is hereby further amended by inserting after
58 the final sentence of subsection (b), the following:--

59 In any such proceeding, the court may award reasonable attorney's fees to the party
60 seeking public records if that party has substantially prevailed.