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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

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A N A C T

RELATING TO PUBLIC RECORDS -- ACCESS TO PUBLIC RECORDS

Introduced By: Senators Lenihan, Cote, Sosnowski, Sheehan, and Connors

Date Introduced: February 12, 2009

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

4 **38-2-2. Definitions.** -- As used in this chapter:

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

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

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

16 (4) (i) "Public record" or "public records" shall mean all documents, papers, letters,
17 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
18 processing records, computer stored data (including electronic mail messages, except specifically
19 for any electronic mail messages of or to elected officials with or relating to those they represent

1 and correspondence of or to elected officials in their official capacities) or other material
2 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
3 connection with the transaction of official business by any agency. For the purposes of this
4 chapter, the following records shall not be deemed public:

5 (A) (I) All records which are identifiable to an individual applicant for benefits, client,
6 patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare,
7 employment security, pupil records, all records relating to a client/attorney relationship and to a
8 doctor/patient relationship, and all personal or medical information relating to an individual in
9 any files, including information relating to medical or psychological facts, personal finances,
10 welfare, employment security, student performance, or information in personnel files maintained
11 to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with
12 respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross
13 amount received in overtime, and other remuneration in addition to salary, job title, job
14 description, dates of employment and positions held with the state or municipality, work location,
15 business telephone number, the city or town of residence, and date of termination shall be public.
16 For the purposes of this section, "remuneration" shall include any payments received by an
17 employee as a result of termination, or otherwise leaving employment.

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

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

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

33 (D) All records maintained by law enforcement agencies for criminal law enforcement
34 and all records relating to the detection and investigation of crime, including those maintained on

1 any individual or compiled in the course of a criminal investigation by any law enforcement
2 agency. Provided, however, such records shall not be deemed public only to the extent that the
3 disclosure of the records or information (a) could reasonably be expected to interfere with
4 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
5 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
6 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
7 identity of a confidential source, including a state, local, or foreign agency or authority, or any
8 private institution which furnished information on a confidential basis, or the information
9 furnished by a confidential source, (e) would disclose techniques and procedures for law
10 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
11 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
12 safety of any individual. Records relating to management and direction of a law enforcement
13 agency and records or reports reflecting the initial arrest of an adult and the charge or charges
14 brought against an adult, including the narrative report supporting the initial arrest and the charge
15 or charges, shall be public although specific language contained within these documents may be
16 exempt on a case by case basis as set forth in this chapter.

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

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

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

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

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

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

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

33 (L) Test questions, scoring keys, and other examination data used to administer a
34 licensing examination, examination for employment or promotion, or academic examinations;

1 provided, however, that a person shall have the right to review the results of his or her
2 examination.

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

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

10 (O) All tax returns.

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

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

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

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

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

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

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

29 (W) All records received by the insurance division of the department of business
30 regulation from other states, either directly or through the National Association of Insurance
31 Commissioners, if those records are accorded confidential treatment in that state. Nothing
32 contained in this title or any other provision of law shall prevent or be construed as prohibiting
33 the commissioner of insurance from disclosing otherwise confidential information to the
34 insurance department of this or any other state or country, at any time, so long as the agency or

1 office receiving the records agrees in writing to hold it confidential in a manner consistent with
2 the laws of this state.

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

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

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

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

14 ~~(6)~~(5) "Prevailing plaintiff" means and shall include those persons and entities deemed
15 prevailing parties pursuant to 42 U.S.C. section 1988-; provided, however, that a judgment in the
16 plaintiff's favor shall not be a prerequisite to a plaintiff seeking an award of attorneys' fees.

17 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

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

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

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

1 (d) A public body receiving a request shall permit the inspection or copying within seven
2 (7) business days after receiving a request. If the inspection or copying is not permitted within
3 seven (7) business days, the public body shall forthwith explain in writing the need for additional
4 time to comply with the request. Any such explanation must be particularized to the specific
5 request made. In such case, the public body may have up to twenty (20) business days to respond
6 to the request if it can demonstrate that the voluminous nature of the request, the number of
7 requests for records pending, or the difficulty in searching for and retrieving or copying the
8 requested records, is such that additional time is necessary to avoid imposing an undue burden on
9 the public body. If a request is so voluminous that search and retrieval is reasonably expected to
10 exceed twenty (20) business days, a public body may apply to a justice of the superior court to
11 further extend the time to comply.

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

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

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

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

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

30 (j) At the election of the person or entity requesting the public records, the public body
31 shall provide copies of the public records electronically, by fax, or by mail unless doing so would
32 be unduly burdensome due to the volume of the records requested and the costs that would be
33 incurred.

34 (k) Notwithstanding the provisions of subsection (d), a report reflecting the initial arrest

1 and charge or charges which contains the following information shall be made available within
2 twenty-four (24) hours after receipt of a request to the extent such information is available.

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) Location of the arrest unless doing so would identify a minor crime victim as
11 prohibited in sections 11-37-8.5 or 9-1-44 or would be exempt on a case by case basis as set forth
12 in this chapter ;

13 (8) Gender of the arrested adult;

14 (9) Race of the arrested adult;

15 (10) Name of the arresting officer.

16 Any denial of a request for information contained in this subsection shall be made to the
17 person or entity requesting the information in writing giving the specific reasons for the denial
18 within twenty-four (24) hours of the request.

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

25 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
26 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
27 shall be charged for the first hour of a search or retrieval. A public body may also charge the
28 reasonable actual cost of mailing records to a requester.

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

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

34 (e) A court may reduce or waive the fees for costs charged for search or retrieval if it

1 determines that the information requested is in the public interest because it is likely to contribute
2 significantly to public understanding of the operations or activities of the government and is not
3 primarily in the commercial interest of the requester.

4 **38-2-6. Commercial use of public records.** -- No person or business entity shall use
5 information obtained from public records pursuant to this chapter ~~to solicit for commercial~~
6 ~~purposes or~~ to obtain a commercial advantage over the party furnishing that information to the
7 public body. Anyone who knowingly and willfully violates the provision of this section shall, in
8 addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500)
9 and/or imprisonment for no longer than one year.

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

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

24 (c) A public body that receives a request to inspect or copy records not within its custody
25 or control shall respond to the request in accordance with this chapter and indicate that it does not
26 maintain such requested records.

27 **38-2-8. Administrative appeals.** -- (a) Any person or entity denied the right to inspect a
28 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
29 officer of that public body for a review of the determinations made by his or her subordinate. The
30 chief administrative officer shall make a final determination whether or not to allow public
31 inspection within ten (10) business days after the submission of the review petition.

32 (b) If the custodian of the records or the chief administrative officer determines that the
33 record is not subject to public inspection, the person or entity seeking disclosure may file a
34 complaint with the attorney general. The attorney general shall investigate the complaint and if

1 the attorney general shall determine that the allegations of the complaint are meritorious, he or
2 she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in
3 the superior court of the county where the record is maintained. Nothing within this section shall
4 prohibit any individual or entity from retaining private counsel for the purpose of instituting
5 proceedings for injunctive or declaratory relief in the superior court of the county where the
6 record is maintained.

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

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

11 **38-2-9. Jurisdiction of superior court.** – (a) Jurisdiction to hear and determine civil
12 actions brought under this chapter is hereby vested in the superior court.

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

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

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

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

31 **38-2-16. ~~Compliance by state agencies~~ Compliance by agencies and public bodies.** –
32 No later than January 1, 2010, and annually thereafter, the chief administrator of each agency and
33 each public body shall certify in writing to the attorney general that all officers and employees
34 who have the authority to grant or deny persons or entities access to records under this chapter

1 have been provided orientation and training regarding this chapter. The attorney general may, in
2 accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations
3 necessary to implement the requirements of this section.

4 SECTION 3. This act shall take effect on September 1, 2009.

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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 mandate that a public body receiving a request for access to public
2 records comply within seven (7) business days. It would also prevent a public body from
3 requiring that a requester of public records provide personally identifiable information or the
4 reason for the request. It would also raise the maximum civil fine that may be imposed for a
5 willful and knowingly violation of the chapter from one thousand dollars (\$1,000) to five
6 thousand dollars (\$5,000).The act would also impose a new fine not to exceed two thousand
7 dollars (\$2,000) for reckless violation of the chapter.

8 The act would also require all agencies and public bodies to annually certify in writing to
9 the attorney general that each agency or public body has provided orientation and training to all
10 officers and employees authorized to grant or deny access to public records. The act would also
11 require that law enforcement agencies provide the ten (10) categories set forth in subsection 38-2-
12 3(k) within twenty-four (24) hours after receiving a request.

13 This act would take effect upon on September 1, 2009.

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