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LC01031

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO PUBLIC RECORDS -- ACCESS TO PUBLIC RECORDS

Introduced By: Representatives Ajello, Dennigan, Walsh, Rice, and Handy

Date Introduced: February 12, 2008

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

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

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

31 (D) All records maintained by law enforcement agencies for criminal law enforcement
32 and all records relating to the detection and investigation of crime, including those maintained on
33 any individual or compiled in the course of a criminal investigation by any law enforcement
34 agency. Provided, however, such records shall not be deemed public only to the extent that the

1 disclosure of the records or information (a) could reasonably be expected to interfere with
2 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
3 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
4 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
5 identity of a confidential source, including a state, local, or foreign agency or authority, or any
6 private institution which furnished information on a confidential basis, or the information
7 furnished by a confidential source, (e) would disclose techniques and procedures for law
8 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
9 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
10 safety of any individual. Records relating to management and direction of a law enforcement
11 agency and records or reports, including narrative reports, relating to ~~reflecting~~ the initial arrest
12 of an adult and the charge or charges brought against an adult shall be public.

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

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

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

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

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

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

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

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

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

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

6 (O) All tax returns.

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

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

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

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

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

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

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

25 (W) All records received by the insurance division of the department of business
26 regulation from other states, either directly or through the National Association of Insurance
27 Commissioners, if those records are accorded confidential treatment in that state. Nothing
28 contained in this title or any other provision of law shall prevent or be construed as prohibiting
29 the commissioner of insurance from disclosing otherwise confidential information to the
30 insurance department of this or any other state or country, at any time, so long as the agency or
31 office receiving the records agrees in writing to hold it confidential in a manner consistent with
32 the laws of this state.

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

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

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

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

10 (6) "Prevailing plaintiff" means and shall include those persons and entities deemed
11 prevailing parties pursuant to 42 U.S.C. section 1988. [A judgment in the plaintiff's favor shall not](#)
12 [be a prerequisite to the award of attorneys' fees.](#)

13 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

14 **Procedures for access.** -- (a) ~~Except as provided in section 38-2-2(4), all~~ [All](#) records maintained
15 or kept on file by any public body, [that are not exempt from disclosure pursuant to the provisions](#)
16 [of subdivision 38-2-2\(4\)\(i\)\(A\) through \(X\)](#), whether or not those records are required by any law
17 or by any rule or regulation, shall be public records and every person or entity shall have the right
18 to inspect and/or copy those records at such reasonable time as may be determined by the
19 custodian thereof. [No public body shall require, as a condition of fulfilling a request for records,](#)
20 [that a requester provide personally identifiable information about him/herself.](#)

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

23 (c) Each public body shall establish procedures regarding access to public records but
24 shall not require written requests for public information available pursuant to R.I.G.L. section 42-
25 35-2 or for other documents prepared for or readily available to the public.

26 [\(d\) A public body receiving a request shall permit the inspection within three \(3\)](#)
27 [business days after receiving a request. If the inspection is not permitted within three \(3\) business](#)
28 [days, the public body shall forthwith explain in writing the need for additional time to comply](#)
29 [with the request, but which in any event shall not be more than ten \(10\) business days after](#)
30 [receiving a request. Any such explanation must be particularized to the specific request made.](#)
31 [Notwithstanding the foregoing, a public body may have up to twenty \(20\) business days to](#)
32 [respond to a request if it can demonstrate that the voluminous nature of the request, the number of](#)
33 [requests for records pending, or the difficulty in searching for and retrieving the requested](#)
34 [records, in such that additional time is necessary to avoid imposing an undue burden on the public](#)

1 body.

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

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

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

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

16 ~~(h)~~ (i) No public records shall be withheld based on the purpose for which the records
17 are sought, nor shall a public body require a person or entity seeking records to provide a reason
18 for the request.

19 (j) At the election of the person or entity requesting the public records, the public body
20 shall provide the public records by mail unless such mailing would be unduly burdensome due to
21 the volume of the records requested and the costs that would be incurred.

22 (k) Notwithstanding the provisions of subsection (d) hereof, any records or reports,
23 including narrative reports, relating to the initial arrest of an adult and the charge or charges
24 brought against an adult shall be accessible within twenty-four (24) hours after a receipt of a
25 request.

26 **38-2-4. Cost.** -- (a) Subject to the provisions of section 38-2-3, a public body must allow
27 copies to be made or provide copies of public records. The cost per copied page of written
28 documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents
29 copyable on common business or legal size paper. A public body may not charge more than the
30 reasonable actual cost for providing electronic records.

31 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
32 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
33 shall be charged for the first hour of a search or retrieval.

34 (c) Copies of documents shall be provided and the search and retrieval of documents

1 accomplished ~~within a reasonable time after a request~~ in accordance with the provisions of
2 subsection 38-2-3(d) of this chapter. A public body shall, upon request, provide an estimate of the
3 costs of a request for documents prior to providing copies.

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

6 (e) A court may reduce or waive the fees for costs charged for search or retrieval if it
7 determines that the information requested is in the public interest because it is likely to contribute
8 significantly to public understanding of the operations or activities of the government and is not
9 primarily in the commercial interest of the requester.

10 **38-2-6. Commercial use of public records.** -- No person or business entity shall use
11 information obtained from public records pursuant to this chapter ~~to solicit for commercial~~
12 ~~purposes or~~ to obtain a commercial advantage over the party furnishing that information to the
13 public body. Anyone who knowingly and willfully violates the provision of this section shall, in
14 addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500)
15 and/or imprisonment for no longer than one year.

16 **38-2-7. Denial of access.** -- (a) Any denial of the right to inspect or copy records, in
17 whole or in part, provided for under this chapter shall be made to the person or entity requesting
18 the right by the public body official who has custody or control of the public record in writing
19 giving the specific reasons for the denial within ~~ten (10)~~ three (3) business days of the request and
20 indicating the procedures for appealing the denial. Except for good cause shown, any reason not
21 specifically set forth in the denial shall be deemed waived by the public body.

22 (b) Failure to timely comply with a request to inspect or copy the public record ~~within~~
23 ~~the ten (10) business day period~~ shall be deemed to be a denial. Except that for good cause, this
24 limit may be extended ~~for a period not to exceed thirty (30) business days.~~ in accordance with the
25 provisions of subsection 38-2-3(d) of this chapter. All copying and search fees shall be waived if
26 a public body fails to produce requested records in a timely manner.

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)~~
20 fifteen thousand dollars (\$15,000) against a public body or official found to have committed a
21 knowing and willful violation of this chapter, and a civil fine not to exceed five thousand dollars
22 (\$5,000) against a public body or official found to have recklessly violated this chapter, and shall
23 award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a
24 public body found to have wrongfully denied access to public records to provide the records at no
25 cost to the prevailing party; provided, further, that in the event that the court, having found in
26 favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in
27 existing law or in good faith argument for the extension, modification, or reversal of existing law,
28 the court may 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.** – No later than January 1, 2009, and annually
32 thereafter, the chief administrator of each state agency shall certify in writing to the attorney
33 general that the agency has provided orientation and training regarding this chapter to all officers
34 and employees who have the authority to grant or deny persons or entities access to records under

1 [this chapter.](#)

2 SECTION 3. This act shall take effect upon passage.

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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 three (3) business days. It would also prevent a public body from requiring
3 that a requester of public records provide personally identifiable information or the reason for the
4 request. It would also raise the maximum civil fine that may be imposed for a willful and
5 knowingly violation of the chapter from one thousand dollars (\$1,000) to fifteen thousand dollars
6 (\$15,000).The act would also impose a new fine not to exceed five thousand dollars (\$5,000) for
7 reckless violation of the chapter.

8 The act would also require all state agencies to annually certify in writing to the attorney
9 general that each agency has provided orientation and training to all officers and employees
10 authorized to grant or deny access to public records.

11 This act would take effect upon passage.

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