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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: Representatives Marcello, Ajello, Reilly, Hearn, and Malik

Date Introduced: February 15, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 38-2-1, 38-2-2, 38-2-3, 38-2-4, 38-2-6, 38-2-7, 38-2-8 and 38-2-9
2 of the General Laws in Chapter 38-2 entitled "Access to Public Records" are hereby amended to
3 read as follows:

4 **38-2-1. Purpose.** -- The public's right to access to public records and the individual's
5 right to dignity and privacy are both recognized to be principles of the utmost importance in a
6 free society. The purpose of this chapter is to facilitate public access to public records. It is also
7 the intent of this chapter to protect from disclosure information about particular individuals
8 maintained in the files of public bodies when disclosure would constitute an unwarranted
9 invasion of personal privacy; as specified by the exemptions contained herein.

10 **38-2-2. Definitions.** -- As used in this chapter:

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

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

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

3 (4) (i) "Public record" or "public records" shall mean all documents, papers, letters,
4 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
5 processing records, computer stored data (including electronic mail messages, ~~except specifically~~
6 ~~for any electronic mail messages of or to elected officials with or relating to those they represent~~
7 ~~and correspondence of or to elected officials in their official capacities~~) or other material
8 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
9 connection with the transaction of official business by any agency. For the purposes of this
10 chapter, and subject to the provisions of subsection 38-2-3(b), the following records shall not be
11 deemed public:

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

20 (b) Personnel and other personal individually-identifiable records otherwise deemed
21 confidential by federal law or regulation, or state law, or the disclosure of which would constitute
22 a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 (b)(6); provided,
23 however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe
24 benefits, gross amount received in overtime, and any other remuneration in addition to salary, job
25 title, job description, dates of employment and positions held with the state or municipality,
26 employment contract, work location, business telephone number, the city or town of residence,
27 and date of termination shall be public. For the purposes of this section "remuneration" shall
28 include any payments received by an employee as a result of termination, or otherwise leaving
29 employment, including, but not limited to, payments for accrued sick and/or vacation time,
30 severance pay, or compensation paid pursuant to a contract buy-out provision.

31 (II) Notwithstanding the provisions of this section, or any other provision of the general
32 laws to the contrary, the pension records of all persons who are either current or retired members
33 of the retirement systems ~~established by the general laws~~ as well as all persons who become
34 members of those retirement systems after June 17, 1991 shall be open for public inspection.

1 "Pension records" as used in this section shall include all records containing information
2 concerning pension and retirement benefits of current and retired members of the retirement
3 systems established in title 8, title 36, title 42, and title 45 and future members of said systems,
4 including all records concerning retirement credits purchased and the ability of any member of
5 the retirement system to purchase retirement credits, but excluding all information regarding the
6 medical condition of any person and all information identifying the member's designated
7 beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries
8 have received or are receiving pension and/or retirement benefits through the retirement system.

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

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

13 (D) All records maintained by law enforcement agencies for criminal law enforcement
14 and all records relating to the detection and investigation of crime, including those maintained on
15 any individual or compiled in the course of a criminal investigation by any law enforcement
16 agency. Provided, however, such records shall not be deemed public only to the extent that the
17 disclosure of the records or information (a) could reasonably be expected to interfere with
18 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
19 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
20 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
21 identity of a confidential source, including a state, local, or foreign agency or authority, or any
22 private institution which furnished information on a confidential basis, or the information
23 furnished by a confidential source, (e) would disclose techniques and procedures for law
24 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
25 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
26 safety of any individual. Records relating to management and direction of a law enforcement
27 agency and records or reports, including the initial narrative report, reflecting the ~~initial~~ arrest of
28 an adult and the charge or charges brought against an adult shall be public. The "initial narrative
29 report" means the written statement(s) accompanying the arrest report of an adult(s), recounting
30 the arrest and the incident(s) or circumstance(s) leading to the arrest, as prepared by the arresting
31 or investigating officer(s).

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

34 (F) Scientific and technological secrets and the security plans of military and law

1 enforcement agencies, the disclosure of which would endanger the public welfare and security.

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

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

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

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

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

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

18 (M) Correspondence of or to elected officials with or relating to those they represent and
19 correspondence of or to elected officials that has no demonstrable connection to the exercise of
20 official functions or influence. ~~and correspondence of or to elected officials in their official~~
21 ~~capacities.~~

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

27 (O) All tax returns.

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

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

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

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

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

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

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

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

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

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

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

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

31 (5) ~~(6)~~ "Prevailing plaintiff" ~~means and~~ shall include those persons and entities ~~deemed~~
32 defined as prevailing parties pursuant to 42 U.S.C. section 1988: and shall also include plaintiffs
33 who obtain any relief as a result of filing suit, whether or not a formal judgment is entered in their
34 favor.

1 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

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

6 **(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-**
7 **2(4) shall be available for public inspection after the deletion of the information which is the basis**
8 **of the exclusion. If an entire document or record is deemed non-public, the public body shall state**
9 **in writing that no portion of the document or record contains reasonable segregable information**
10 **that is releasable.**

11 ~~(b)~~(c) Each public body shall make, keep, and maintain written or recorded minutes of
12 all meetings.

13 ~~(e)~~(d) Each public body shall establish written procedures regarding access to public
14 records but shall not require written requests for public information available pursuant to R.I.G.L.
15 section 42-35-2 or for other documents prepared for or readily available to the public.

16 **These procedures must include, but need not be limited to, the identification of a**
17 **designated public records officer, how to make a public records request, and where a public**
18 **record request should be made, and a copy of these procedures shall be posted on the public**
19 **body's website if such a website is maintained and be made otherwise readily available to the**
20 **public. The unavailability of a designated public records officer shall not be deemed good cause**
21 **for failure to timely comply with a request to inspect and/or copy public records pursuant to**
22 **subsection (e). A written request for public records need not be made on a form or in a specified**
23 **format established by a public body if the request is other wise readily identifiable as a request for**
24 **public records.**

25 **(e) A public body receiving a request shall permit the inspection or copying within seven**
26 **(7) business days after receiving a request. If the inspection or copying is not permitted within**
27 **seven (7) business days, the public body shall forthwith explain in writing the need for additional**
28 **time to comply with the request. Any such explanation must be particularized to the specific**
29 **request made. In such cases the public body may have up to an additional twenty (20) business**
30 **days to respond to the request if it can demonstrate that the voluminous nature of the request, the**
31 **number of requests for records pending, or the difficulty in searching for and retrieving or**
32 **copying the requested records, is such that additional time is necessary to avoid imposing an**
33 **undue burden on the public body. If the volume of a request is such that search and retrieval is**
34 **reasonably expected to exceed twenty (20) business days, a public body may apply to a justice of**

1 [the superior court to further extend the time to comply.](#)

2 ~~(d)~~ (f) 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)~~ (g) 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)~~ (h) 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)~~ (i) 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)~~ (j) No public records shall be withheld based on the purpose for which the records
17 are sought, [nor shall a public body require, as a condition of fulfilling a public records request,](#)
18 [that a person or entity provide a reason for the request or provide personally identifiable](#)
19 [information about him/herself.](#)

20 [\(k\) At the election of the person or entity requesting the public records, the public body](#)
21 [shall provide copies of the public records electronically, by fax, or by mail in accordance with the](#)
22 [requesting person or entity's choice, unless complying with that preference would be unduly](#)
23 [burdensome due to the volume of records requested and the costs that would be incurred.](#)

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

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

33 (c) Copies of documents shall be provided and the search and retrieval of documents
34 accomplished within a reasonable time after a request. A public body [upon request](#), shall provide

1 an estimate of the costs of a request for documents prior to providing copies.

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

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

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

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

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

27 (c) A public body that receives a request to inspect or copy records that do not exist or are
28 not within its custody or control shall, in responding to the request in accordance with this
29 chapter, state that it does not have or maintain the requested records.

30 **38-2-8. Administrative appeals.** -- (a) Any person or entity denied the right to inspect a
31 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
32 officer of that public body for a review of the determinations made by his or her subordinate. The
33 chief administrative officer shall make a final determination whether or not to allow public
34 inspection within ~~ten (10)~~ seven (7) business days after the submission of the review petition.

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

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

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

14 **38-2-9. Jurisdiction of superior court.** -- (a) Jurisdiction to hear and determine civil
15 actions brought under this chapter is hereby vested in the superior court.

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

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

22 (d) The court shall impose a civil fine not exceeding ~~one thousand dollars (\$1,000)~~ [two](#)
23 [thousand five hundred dollars \(\\$2,500\)](#) against a public body or official found to have committed
24 a knowing and willful violation of this chapter, [and a civil fine not to exceed one thousand dollars](#)
25 [\(\\$1,000\) against a public body found to have recklessly violated this chapter.](#) and shall award
26 reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public
27 body found to have wrongfully denied access to public records to provide the records at no cost to
28 the prevailing party; provided, further, that in the event that the court, having found in favor of
29 the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or
30 in good faith argument for the extension, modification, or reversal of existing law, the court may
31 award attorneys fees and costs to the prevailing defendant.

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

34 **38-2-3.2. Arrest logs.** – [Notwithstanding the provisions of subsection 38-2-3\(e\), the](#)

1 following information reflecting an initial arrest of an adult and charge or charges shall be made
2 available within twenty-four (24) hours after receipt of a request, to the extent such information is
3 known by the public body:

- 4 (1) Full name of the arrested adult;
- 5 (2) Home address of the arrested adult, unless doing so would identify a minor crime
6 victim as prohibited in sections 11-37-8.5 or 9-1-44;
- 7 (3) Date of birth of the arrested adult;
- 8 (4) Charge or charges;
- 9 (5) Date of the arrest;
- 10 (6) Time of the arrest;
- 11 (7) Gender of the arrested adult;
- 12 (8) Race of the arrested adult; and
- 13 (9) Name of the arresting officer.

14 **38-2-3.16. Compliance by agencies and public bodies.** – Not later than January 1, 2013,
15 and annually thereafter, the chief administrator of each agency and each public body shall state in
16 writing to the attorney general that all officers and employees who have the authority to grant or
17 deny persons or entities access to records under this chapter have been provided orientation and
18 training regarding this chapter. The attorney general may, in accordance with the provisions of
19 chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements
20 of this section.

21 SECTION 3. This act shall take effect on September 1, 2012.

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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 amend the access to public records requirements by ordering compliance
2 with a request to take place within seven (7) business days and up to an additional twenty (20)
3 business days once it is shown that the request is of a voluminous nature.

4 This act would take effect on September 1, 2012.

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