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LC01232/SUB A/4
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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 38-2-2, 38-2-3, 38-2-4, 38-2-7, 38-2-8 and 38-2-9 of the General
2 Laws in Chapter 38-2 entitled "Access to Public Records" are hereby amended to read as follows:

3 **38-2-2. Definitions.** -- As used in this chapter:

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

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

13 ~~(3) "Prevailing plaintiff" means and shall include those persons and entities deemed~~
14 ~~prevailing parties pursuant to 42 U.S.C. section 1988.~~

15 ~~(4)~~(3) "Public business" means any matter over which the public body has supervision,
16 control, jurisdiction, or advisory power.

17 ~~(5)~~(4) ~~(4)~~ "Public record" or "public records" shall mean all documents, papers, letters,
18 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
19 processing records, computer stored data (including electronic mail messages, except specifically

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

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

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

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

1 designated beneficiary or beneficiaries unless and until the member's designated beneficiary or
2 beneficiaries have received or are receiving pension and/or retirement benefits through the
3 retirement system.

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

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

8 (D) All records maintained by law enforcement agencies for criminal law enforcement
9 and all records relating to the detection and investigation of crime, including those maintained on
10 any individual or compiled in the course of a criminal investigation by any law enforcement
11 agency. Provided, however, such records shall not be deemed public only to the extent that the
12 disclosure of the records or information (a) could reasonably be expected to interfere with
13 investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of
14 a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an
15 unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the
16 identity of a confidential source, including a state, local, or foreign agency or authority, or any
17 private institution which furnished information on a confidential basis, or the information
18 furnished by a confidential source, (e) would disclose techniques and procedures for law
19 enforcement investigations or prosecutions, or would disclose guidelines for law enforcement
20 investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical
21 safety of any individual. Records relating to management and direction of a law enforcement
22 agency and records or reports reflecting the initial arrest of an adult and the charge or charges
23 brought against an adult shall be public.

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

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

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

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

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

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

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

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

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

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

17 (O) All tax returns.

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

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

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

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

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

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

34 (V) Printouts from TELE -- TEXT devices used by people who are deaf or hard of

1 hearing or speech impaired.

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

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

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

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

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

21 (6) "Records or reports reflecting the initial arrest" means the initial face sheet of the law
22 enforcement department's report pertaining to the arrest of an adult together with the written
23 statement(s) recounting the arrest, as prepared by the arresting officers.

24 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

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

29 (b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-
30 2(5) shall be available for public inspection after the deletion of the information which is the basis
31 of the exclusion. If an entire document or record is deemed non-public, the public body shall state
32 in writing that no portion of the document or record contains reasonable segregable information
33 that is releasable.

34 ~~(b)~~(c) Each public body shall make, keep, and maintain written or recorded minutes of

1 all meetings.

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

5 These procedures must include, but need not be limited to, the identification of a
6 designated public records officer or unit, how to make a public records request, and where a
7 public record request should be made, and a copy of these procedures shall be posted on the
8 public body's website if such a website is maintained and be made otherwise readily available to
9 the public. The unavailability of a designated public records officer shall not be deemed good
10 cause for failure to timely comply with a request to inspect and/or copy public records pursuant to
11 subsection (e). A written request for public records need not be made on a form established by a
12 public body if the request is otherwise readily identifiable as a request for public records.

13 (e) A public body receiving a request shall permit the inspection or copying within ten
14 (10) business days after receiving a request. If the inspection or copying is not permitted within
15 ten (10) business days, the public body shall forthwith explain in writing the need for additional
16 time to comply with the request. Any such explanation must be particularized to the specific
17 request made. In such cases the public body may have up to an additional twenty (20) business
18 days to respond to the request if it can demonstrate that the voluminous nature of the request, the
19 number of requests for records pending, or the difficulty in searching for and retrieving or
20 copying the requested records, is such that additional time is necessary to avoid imposing an
21 undue burden on the public body.

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

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

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

34 ~~(i)~~ (i) Nothing in this section is intended to affect the public record status of information

1 merely because it is stored in a computer.

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

6 (k) At the election of the person or entity requesting the public records, the public body
7 shall provide copies of the public records electronically, by facsimile, or by mail in accordance
8 with the requesting person or entity's choice, unless complying with that preference would be
9 unduly burdensome due to the volume of records requested and the costs that would be incurred.
10 The person requesting delivery shall be responsible for the actual cost of delivery, if any.

11 **38-2-4. Cost.** -- (a) Subject to the provisions of section 38-2-3, a public body must allow
12 copies to be made or provide copies of public records. The cost per copied page of written
13 documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents
14 copyable on common business or legal size paper. A public body may not charge more than the
15 reasonable actual cost for providing electronic records or retrieving records from storage where
16 the public body is assessed a retrieval fee.

17 (b) A reasonable charge may be made for the search or retrieval of documents. Hourly
18 costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs
19 shall be charged for the first hour of a search or retrieval. For the purposes of this subsection,
20 multiple requests from any person or entity to the same public body within a thirty (30) day time
21 period shall be considered one request.

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

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

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

31 **38-2-7. Denial of access.** -- (a) Any denial of the right to inspect or copy records, in
32 whole or in part provided for under this chapter shall be made to the person or entity requesting
33 the right ~~by the public body official who has custody or control of the public record~~ in writing
34 giving the specific reasons for the denial within ten (10) business days of the request and

1 indicating the procedures for appealing the denial. Except for good cause shown, any reason not
2 specifically set forth in the denial shall be deemed waived by the public body.

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

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

13 **38-2-8. Administrative appeals.** -- (a) Any person or entity denied the right to inspect a
14 record of a public body ~~by the custodian of the record~~ may petition the chief administrative
15 officer of that public body for a review of the determinations made by his or her subordinate. The
16 chief administrative officer shall make a final determination whether or not to allow public
17 inspection within ten (10) business days after the submission of the review petition.

18 (b) If the custodian of the records or the chief administrative officer determines that the
19 record is not subject to public inspection, the person or entity seeking disclosure may file a
20 complaint with the attorney general. The attorney general shall investigate the complaint and if
21 the attorney general shall determine that the allegations of the complaint are meritorious, he or
22 she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in
23 the superior court of the county where the record is maintained. Nothing within this section shall
24 prohibit any individual or entity from retaining private counsel for the purpose of instituting
25 proceedings for injunctive or declaratory relief in the superior court of the county where the
26 record is maintained.

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

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

31 **38-2-9. Jurisdiction of superior court.** -- (a) Jurisdiction to hear and determine civil
32 actions brought under this chapter is hereby vested in the superior court.

33 (b) The court may examine any record which is the subject of a suit in camera to
34 determine whether the record or any part thereof may be withheld from public inspection under

1 the terms of this chapter.

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

5 (d) The court shall impose a civil fine not exceeding ~~one thousand dollars (\$1,000)~~ two
6 thousand dollars (\$2,000) against a public body or official found to have committed a knowing
7 and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000)
8 against a public body found to have recklessly violated this chapter. ~~and~~ The court shall award
9 reasonable attorney fees and costs to the prevailing plaintiff if the court determines that the
10 defendant's case lacked a grounding in fact or in existing law or a good faith argument for
11 extension, modification, or reversal of existing law. The court shall further order a public body
12 found to have wrongfully denied access to public records to provide the records at no cost to the
13 prevailing party; provided, further, that in the event that the court, having found in favor of the
14 defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in
15 good faith argument for the extension, modification, or reversal of existing law, the court may
16 award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff's favor
17 shall not be a prerequisite to either party obtaining an award of attorneys' fees and/or costs from
18 the court.

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

21 **38-2-3.2. Arrest logs.** – (a) Notwithstanding the provisions of subsection 38-2-3(e), the
22 following information reflecting an initial arrest of an adult and charge or charges shall be made
23 available within twenty-four (24) hours after receipt of a request unless a request is made on a
24 weekend or holiday, in which event the information shall be made available the earlier of forty-
25 eight (48) hours or the next business day, to the extent such information is known by the public
26 body:

- 27 (1) Full name of the arrested adult;
- 28 (2) Home address of the arrested adult, unless doing so would identify a minor crime
29 victim as prohibited in sections 11-37-8.5 or 9-1-44;
- 30 (3) Year of birth of the arrested adult;
- 31 (4) Charge or charges;
- 32 (5) Date of the arrest;
- 33 (6) Time of the arrest;
- 34 (7) Gender of the arrested adult;

1 (8) Race of the arrested adult; and

2 (9) Name of the arresting officer.

3 (b) The provisions of this section shall apply to arrests made within five (5) days prior to
4 the request.

5 **38-2-3.16. Compliance by agencies and public bodies.** – Not later than January 1, 2013,
6 and annually thereafter, the chief administrator of each agency and each public body shall state in
7 writing to the attorney general that all officers and employees who have the authority to grant or
8 deny persons or entities access to records under this chapter have been provided orientation and
9 training regarding this chapter. The attorney general may, in accordance with the provisions of
10 chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements
11 of this section.

12 SECTION 3. Section 38-2-6 of the General Laws in Chapter 38-2 entitled "Access to
13 Public Records" is hereby repealed.

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

20 SECTION 4. This act shall take effect on September 1, 2012.

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LC01232/SUB A/4
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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 ten (10) 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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