

2016 -- H 8124

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS

Introduced By: Representatives McEntee, Craven, O'Brien, Carson, and Marshall

Date Introduced: April 29, 2016

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 38-2-2 of the General Laws in Chapter 38-2 entitled "Access to
2 Public Records" is hereby amended to read as follows:

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

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

11 (2) "Chief administrative officer" means the highest authority of the public body.

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

14 (4) "Public record" or "public records" shall mean all documents, papers, letters, maps,
15 books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
16 processing records, computer stored data (including electronic mail messages, except specifically
17 for any electronic mail messages of or to elected officials with or relating to those they represent
18 and correspondence of or to elected officials in their official capacities) or other material
19 regardless of physical form or characteristics made or received pursuant to law or ordinance or in

1 connection with the transaction of official business by any agency. For the purposes of this
2 chapter, the following records shall not be deemed public:

3 (A) (I) (a) All records relating to a client/attorney relationship and to a doctor/patient
4 relationship, including all medical information relating to an individual in any files.

5 (b) Personnel and other personal individually-identifiable records otherwise deemed
6 confidential by federal or state law or regulation, or the disclosure of which would constitute a
7 clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et. seq.; provided,
8 however, with respect to employees, and employees of contractors and subcontractors working on
9 public works projects which are required to be listed as certified payrolls, the name, gross salary,
10 salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other
11 remuneration in addition to salary, job title, job description, dates of employment and positions
12 held with the state, municipality, employment contract, or public works contractor or
13 subcontractor on public works projects work location, and/or project, business telephone number,
14 the city or town of residence, and date of termination shall be public. For the purposes of this
15 section "remuneration" shall include any payments received by an employee as a result of
16 termination, or otherwise leaving employment, including, but not limited to, payments for
17 accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract
18 buy-out provision.

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

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

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

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

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 § 9-1.1-6.

7 (Z) Any individually identifiable evaluations of public school teachers made pursuant to
8 state or federal law or regulation.

9 (AA) All documents prepared by school districts intended to be used by school districts
10 in protecting the safety of their students from potential and actual threats.

11 (BB) Data, records, or information of a proprietary nature, produced or collected by or
12 for faculty or staff of state institutions of higher education in the conduct of or as a result of study
13 or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the
14 institution alone or in conjunction with a governmental body or private concern, where the data,
15 records, or information has not been publicly released, published, copyrighted, or patented.

16 (CC) Any data, records, or information developed, collected, or received by or on behalf
17 of faculty, staff, employees, or students of a state institution of higher education or any public or
18 private entity supporting or participating in the activities of a state institution of higher education
19 in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or
20 artistic issues, whether sponsored by the institution alone or in conjunction with a governmental
21 body or private entity until the information is published, patented, otherwise publicly
22 disseminated, or released to an agency whereupon the request must be made to the agency. This
23 item applies to, but is not limited to, information provided by participants in research, research
24 notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative
25 works.

26 SECTION 2. 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 provide that certain communications, data, records, or information of a
2 proprietary nature produced or received by faculty, staff, employees, or students at state
3 institutions of higher education would not be deemed a public record for purposes of public
4 access to public records.

5 This act would take effect upon passage.

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