

2016 -- S 2308

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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: Senators Archambault, DiPalma, Lombardi, McCaffrey, and Jabour

Date Introduced: February 09, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 38-2-1, 38-2-2, 38-2-3, 38-2-3.2, 38-2-3.16, 38-2-4, 38-2-9, 38-2-
2 14 and 38-2-15 of the General Laws in Chapter 38-2 entitled "Access to Public Records" are
3 hereby amended to 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" means any executive, legislative, judicial, regulatory, or
12 administrative body of the state, or any political subdivision thereof; including, but not limited to,
13 any department, division, agency, commission, board, office, bureau, authority, any school, fire,
14 or water district, or other agency of Rhode Island state or local government which exercises
15 governmental functions, any authority as defined in § 42-35-1(b), or any other public or private
16 agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of
17 any public agency, [and shall also include the police department of any private educational](#)
18 [institution of higher learning employing any special police officers pursuant to §12-2.1-1 or peace](#)
19 [officers as defined in §12-7-21.](#)

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

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

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

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

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

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 any public retirement systems as well as all persons who become members of those retirement
34 systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this

1 section shall include all records containing information concerning pension and retirement
2 benefits of current and retired members of the retirement systems and future members of said
3 systems, including all records concerning retirement credits purchased and the ability of any
4 member of the retirement system to purchase retirement credits, but excluding all information
5 regarding the medical condition of any person and all information identifying the member's
6 designated beneficiary or beneficiaries unless and until the member's designated beneficiary or
7 beneficiaries have received or are receiving pension and/or retirement benefits through the
8 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) and/or circumstance(s) leading to the arrest, as prepared by the
31 arresting or investigating officer(s). A police report of an incident that does not lead to an arrest
32 shall not be deemed presumptively exempt from disclosure.

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

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

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

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

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

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

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

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

19 (M) Correspondence of or to elected officials with or relating to those they represent and
20 correspondence of or to elected officials that have no demonstrable connection to the exercise of
21 official functions or influence ~~in their official 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, except upon showing of good cause.

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 § 9-1.1-6.

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

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

28 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

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

34 (b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-

1 2(4), including any record deemed confidential pursuant to any other state law, shall be available
2 for public inspection after the deletion of the information which is the basis of the exclusion. If an
3 entire document or record is deemed non-public, the public body shall state in writing that no
4 portion of the document or record contains reasonable segregable information that is releasable.
5 In withholding any document or any portion of a document, the public body shall identify each
6 document withheld; state the statutory exemption claimed; and explain how disclosure would
7 damage the interests protected by the claimed exemption.

8 (c) Each public body shall make, keep, and maintain written or recorded minutes of all
9 meetings.

10 (d) Each public body shall establish written procedures regarding access to public
11 records but shall not require written requests for public information available pursuant to R.I.G.L.
12 § 42-35-2 or for other documents prepared for or readily available to the public.

13 These procedures must include, but need not be limited to, the identification of a
14 designated public records officer or unit, how to make a public records request, and where a
15 public record request should be made, and a copy of these procedures shall be posted on the
16 public body's website if such a website is maintained and shall be made otherwise readily
17 available to the public. A link to the public body's procedures shall be prominently displayed on
18 the home page of its website, including a link to the appropriate webpage if the public body
19 requires that requests be submitted to another public body of the state or municipality. ~~The~~
20 ~~unavailability of a designated public records officer shall not be deemed good cause for failure to~~
21 ~~timely comply with a request to inspect and/or copy public records pursuant to subsection (e).~~ A
22 written request for public records need not be made on a form established by a public body if the
23 request is otherwise readily identifiable as a request for public records. The procedures shall
24 allow requests for public records to be submitted in person, by regular mail, fax and electronic
25 mail.

26 (e) A public body receiving a request shall permit the inspection or copying within ten
27 (10) business days after receiving a request. If the inspection or copying is not permitted within
28 ten (10) business days, the public body shall forthwith explain in writing the need for additional
29 time to comply with the request. Any such explanation must be particularized to the specific
30 request made. In such cases the public body may have up to an additional twenty (20) business
31 days to comply with the request if it can demonstrate with specificity that the voluminous nature
32 of the request, the number of requests for records pending (in which case the number of pending
33 requests shall be cited in the response), or the difficulty in searching for and retrieving or copying
34 the requested records, is such that additional time is necessary to avoid imposing an undue burden

1 on the public body. The response times established by this subsection may be waived only with
2 the explicit written consent of the requester.

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

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

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

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

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

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

26 (l) Notwithstanding the provisions of §38-2-2(4), any documents reviewed, considered,
27 or submitted at a public meeting of a public body shall be deemed public.

28 (m) A requester's failure to follow the written procedures established by a public body
29 shall not, by itself, serve as a basis to fail to comply with a request for public records.

30 (n) If a request for records is sent to a public body other than through the designated
31 public records officer or unit, the recipient of the request shall be responsible for forwarding it to
32 the designated officer or unit. In such circumstances, the public body shall have an additional five
33 (5) days to respond to the request, notwithstanding the provisions of §38-2-7.

34 (o) The unavailability of a designated public records officer shall not be deemed good

1 [cause for failure to timely comply with a request to inspect and/or copy public records pursuant to](#)
2 [subsection \(e\) of this section.](#)

3 **38-2-3.2. Arrest logs.** -- (a) Notwithstanding the provisions of subsection 38-2-3(e), the
4 following information reflecting an initial arrest of an adult and charge or charges shall be made
5 available within forty-eight (48) hours after receipt of a request unless a request is made on a
6 weekend or holiday, in which event the information shall be made available within seventy-two
7 (72) hours, to the extent such information is known by the public body:

- 8 (1) Full name of the arrested adult;
- 9 (2) Home address of the arrested adult, unless doing so would identify a crime victim;
- 10 (3) Year of birth of the arrested adult;
- 11 (4) Charge or charges;
- 12 (5) Date of the arrest;
- 13 (6) Time of the arrest;
- 14 (7) Gender of the arrested adult;
- 15 (8) Race of the arrested adult; and
- 16 (9) Name of the arresting officer, unless doing so would identify an undercover officer.

17 (b) ~~The provisions of this section shall apply to arrests made within five (5) days prior to~~
18 ~~the request.~~ [The attorney general shall prepare a uniform log form for public bodies to use to](#)
19 [facilitate compliance with this section.](#)

20 **38-2-3.16. Compliance by agencies and public bodies.** -- Not later than January 1,
21 2013, and annually thereafter, the chief administrator of each agency and each public body shall
22 state in writing to the attorney general that all officers and employees who have the authority to
23 grant or deny persons or entities access to records under this chapter have been provided
24 orientation and training regarding this chapter. The attorney general may, in accordance with the
25 provisions of chapter 35 of title 42, promulgate rules and regulations necessary to implement the
26 requirements of this section, [and shall annually post online a list of those public bodies that have](#)
27 [provided the statement required by this section, and those public bodies that, having submitted a](#)
28 [statement in any previous year, have failed to do so for the current year.](#)

29 **38-2-4. Cost.** -- (a) Subject to the provisions of section 38-2-3, a public body must allow
30 copies to be made or provide copies of public records. The cost per copied page of written
31 documents provided to the public shall not exceed ~~fifteen cents (\$.15)~~ [ten cents \(\\$.10\)](#) per page
32 for documents copyable on common business or legal size paper. A public body may not charge
33 more than the reasonable actual cost for providing electronic records or retrieving records from
34 storage where the public body is assessed a retrieval fee.

1 (b) ~~A reasonable charge may be made~~ No charge shall be imposed for the search, ~~or~~
2 ~~retrieval~~ retrieval, review or redaction of documents or for the denial of a request for records.
3 ~~Hourly~~ Notwithstanding the foregoing, hourly costs for a search and retrieval ~~shall not exceed~~ not
4 exceeding fifteen dollars (\$15.00) ~~per hour and no costs shall be charged for~~ after the first hour of
5 a search or retrieval may be charged for any additional requests from any person or entity to the
6 same public body within a thirty (30) day time period. ~~For the purposes of this subsection,~~
7 ~~multiple requests from any person or entity to the same public body within a thirty (30) day time~~
8 ~~period shall be considered one request.~~

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

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

14 (e) A ~~court may~~ public body shall reduce or waive the fees for costs charged for search
15 or retrieval if requested and the public body ~~it~~ determines that the information requested is in the
16 public interest because it is likely to contribute significantly to public understanding of the
17 operations or activities of the government and is not primarily in the commercial interest of the
18 requester. Any denial of a request for a reduction or waiver of fees may be challenged in
19 accordance with the provisions of §38-2-9.

20 **38-2-9. Jurisdiction of superior court.** -- (a) Jurisdiction to hear and determine civil
21 actions brought under this chapter is hereby vested in the superior court.

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

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

28 (d) The court shall impose a civil fine not exceeding two thousand dollars (\$2,000)
29 against a public body or official found to have committed a knowing and willful violation of this
30 chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found
31 to have recklessly violated this chapter and shall award reasonable attorney fees and costs to the
32 prevailing plaintiff. The court may also impose a fine up to one hundred dollars (\$100) per day
33 for each day that records were improperly withheld, and may further award compensatory and
34 punitive damages. The court shall further order a public body found to have wrongfully denied

1 access to public records to provide the records at no cost to the prevailing party; provided, further,
2 that in the event that the court, having found in favor of the defendant, finds further that the
3 plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the
4 extension, modification, or reversal of existing law, the court may award attorneys fees and costs
5 to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to
6 obtaining an award of attorneys' fees and/or costs if the court determines that the defendant's case
7 lacked grounding in fact or in existing law or a good faith argument for extension, modification
8 or reversal of existing law.

9 **38-2-14. Information relating to settlement of legal claims. --** Settlement agreements
10 of any legal claims against [or by](#) a governmental entity shall be deemed public records.

11 **38-2-15. Reported violations. --** Every year the attorney general shall prepare a report
12 summarizing all the complaints received pursuant to this chapter, which shall be submitted to the
13 legislature and which shall include information as to how many complaints were found to be
14 meritorious and the action taken by the attorney general in response to those complaints. [The](#)
15 [attorney general shall publish the full text of all complaints and the action taken by the attorney](#)
16 [general in response to those complaints on a keyword searchable website.](#)

17 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 make revisions to the access to public records chapter pertaining to
2 definitions of a public body and public record, the right to inspect and copy records, arrest logs,
3 compliance, costs, superior court jurisdiction and judicial remedies, settlement of legal claims and
4 reported violations.

5 This act would take effect upon passage.

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