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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS

Introduced By: Senators Felag, Lombardi, Lombardo, and DiPalma

Date Introduced: March 12, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

3 **38-2-2. Definitions.**

4 As used in this chapter:

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

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

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

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

1 of physical form or characteristics made or received pursuant to law or ordinance or in connection
2 with the transaction of official business by any agency. For the purposes of this chapter, the
3 following records shall not be deemed public:

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

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

19 [\(c\) All records relating to winners of Rhode Island lottery prizes and/or games.](#)

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

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

16 (E) Any records that would not be available by law or rule of court to an opposing party in
17 litigation.

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

20 (G) Any records that disclose the identity of the contributor of a bona fide and lawful
21 charitable contribution to the public body whenever public anonymity has been requested of the
22 public body with respect to the contribution by the contributor.

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

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

27 (J) Any minutes of a meeting of a public body that are not required to be disclosed pursuant
28 to chapter 46 of title 42.

29 (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work
30 products, including those involving research at state institutions of higher education on commercial,
31 scientific, artistic, technical, or scholarly issues, whether in electronic or other format; provided,
32 however, any documents submitted at a public meeting of a public body shall be deemed public.

33 (L) Test questions, scoring keys, and other examination data used to administer a licensing
34 examination, examination for employment or promotion, or academic examinations; provided,

1 however, that a person shall have the right to review the results of his or her examination.

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

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

9 (O) All tax returns.

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

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

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

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

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

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

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

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

34 (X) Credit card account numbers in the possession of state or local government are

1 confidential and shall not be deemed public records.

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

4 (Z) Any individually identifiable evaluations of public school employees made pursuant to
5 state or federal law or regulation.

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

8 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

9 **Procedures for access.**

10 (a) Except as provided [for in the exemptions contained](#) in ~~§ 38-2-2(4)~~ [§ 38-2-2](#), all records
11 maintained or kept on file by any public body, whether or not those records are required by any law
12 or by any rule or regulation, shall be public records and every person or entity shall have the right
13 to inspect and/or copy those records at such reasonable time as may be determined by the custodian
14 thereof.

15 (b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-
16 2(4) shall be available for public inspection after the deletion of the information which is the basis
17 of the exclusion. If an entire document or record is deemed non-public, the public body shall state
18 in writing that no portion of the document or record contains reasonable segregable information
19 that is releasable.

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

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

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

33 (e) A public body receiving a request shall permit the inspection or copying within ten (10)
34 business days after receiving a request. If the inspection or copying is not permitted within ten (10)

1 business days, the public body shall forthwith explain in writing the need for additional time to
2 comply with the request. Any such explanation must be particularized to the specific request made.
3 In such cases the public body may have up to an additional twenty (20) business days to comply
4 with the request if it can demonstrate that the voluminous nature of the request, the number of
5 requests for records pending, or the difficulty in searching for and retrieving or copying the
6 requested records, is such that additional time is necessary to avoid imposing an undue burden on
7 the public body.

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

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

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

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

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

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

31 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 an exemption to the access to public records law for winners of
2 lottery prizes.

3 This act would take effect upon passage.

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