

HOUSE 3858: **AN ACT IMPROVING THE ADMINISTRATION AND ENFORCEMENT OF THE PUBLIC RECORDS LAW**
(summary reflects text as redrafted)

LEGISLATIVE HISTORY: 11/18/15 Reported from the Committee on House Ways and Means as a new draft of H.3665; ordered to a third reading, rules suspended, read third; several amendments adopted; passed to be engrossed (157 Yeas to 0 Nays); and referred to the Committee on Senate Ways and Means

EXISTING LAWS AFFECTED: M.G.L. c.4 §7 and c.66 §§ 3 and 10

- PROPOSED LEGISLATION:**
- Clarifies that records relating to the cyber-security of systems in the commonwealth may be exempted from classification as public records.
 - Provides technical updates to cross-references.
 - Requires the supervisor of public records to publish educational materials or guides to foster awareness and compliance with the public records law.
 - Updates the definition of a record to reflect that a public record may be made by electronic means.
 - Requires state government entities and municipalities to designate a record access officer.
 - Requires record access officers to coordinate the response and timely and thorough production of public records requests.
 - Requires records access officers to prepare guidelines or reference materials that enable requestors to make informed public records requests.
 - Requires government entities to conspicuously post business contact information for records access officers.
 - Requires public records be provided by electronic means unless otherwise requested or unless the public record is not available in

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electronic form.

- Requires public records be provided, to the extent feasible, in a requestor's preferred format and in a searchable, machine readable format.
- Clarifies that a government entity is not required to create a new public record in order to comply with a public records request.
- Specifies that government entities may furnish public records by posting the public records on a searchable, appropriately indexed public website and providing reasonable assistance in locating the record on the website.
- Requires state entities to document and track public record requests.
- Requires the supervisor of records to document and track all public records requests appealed to the supervisor of records.
- Eliminates certain outdated references to fees that apply to public record requests submitted to the State Police, the Massachusetts Bay Transportation Authority Police, or any municipal police or fire department.
- Increases the time, from 10 to 15 days, in which a government entity must comply with requests for public records absent a showing that the request unduly burdens the responsibilities of the government entity such that compliance in 15 days is not feasible.
- Requires government entities unable to comply in 15 days with the request to issue a written response to the requestor within 10 days of receipt of the request.
- Requires the written response to include several provisions, including a detailed statement why the request could not be complied with in 15 days, an itemized estimate of any fees that may be charged, and an offer to assist the requestor to modify the scope of the request to enable the records to be produced more efficiently and affordably.
- Further requires the response to include a reasonable time in which the records will be produced, but that time cannot exceed 30 days

from when the government entity received the request unless the requestor and the government entity agree in writing to establish a time beyond 30 days.

- Authorizes a government entity to petition the supervisor of records for an extension beyond 30 days of receipt of the request if the magnitude or difficulty of the request unduly burdens the other responsibilities of the entity such that compliance is not feasible.
- Authorizes the supervisor of public records to grant a single 30 day extension beyond 30 days of the receipt of the request by the government entity if the government entity has proven it has good cause for the extension, unless the request is part of a series of requests designed to intimidate or harass the government entity and not intended for the dissemination of actual or alleged government activity, in which case the supervisor or records could grant an extension beyond 30 days.
- Requires the supervisor of records, when considering if the government entity has proven good cause for an extension, to consider certain factors, including the need to search for and examine records, the capacity of the government entity to produce the record without an extension, and the public interest served by expeditious disclosure.
- Requires government entities provide public records upon payment of a reasonable fee not to exceed the actual cost of reproducing the record.
- Limits charges for standard black and white paper copies or printouts to 5 cents per page.
- Specifies that state entities shall not charge for the first 4 hours of employee time spent working on each public records request.
- Specifies that state entities may charge, after the first 4 hours, an hourly rate equal to or less than the rate of the lowest paid employee capable of producing the record, but not to exceed \$25 per hour.
- Specifies that municipalities shall not charge for the first 2 hours of employee time spent working on each public records request.

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- Specifies that municipalities may charge, after the first 2 hours, an hourly rate equal to or less than the rate of the lowest paid employee capable of producing the record, but not to exceed \$25 per hour unless the rate is approved by the supervisor of records.
- Specifies that government entities may not charge for time spent segregating or redacting records unless the segregation or redaction is required by law or approved by the supervisor of records.
- Authorizes the supervisor of records to approve redaction charges or a rate from a municipality in excess of \$25 per hour if the charge is made in good faith, is necessary for the prudent completion of the request, and is not designed to deter access to public records.
- Authorizes government entities to waive or reduce any fees charged to a requestor if the request is in the public interest or the requestor lacks the financial ability to pay the reasonable fee.
- Prohibits a government entity from charging any fee for a public record unless it furnished the public record in 15 days or responded to the request in 10 days.
- Authorizes a public records requestor to petition the supervisor of records for timely and appropriate relief if the requestor believes a government entity violated the requirements of the public records law and requires the supervisor of records to issue a determination on the matter in 15 days.
- Requires the supervisor of records to notify the Attorney General if a government entity fails to comply with an order from the supervisor of records and gives the Attorney General authority to take necessary measures to ensure compliance with the public records law.
- Authorizes a requestor to initiate a civil action against a government entity in superior court to enforce the requirements of the public records law.
- Requires the superior court to expedite public record proceedings when feasible.

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- States that a superior court shall award reasonable attorney fees when a requestor obtains relief through a judicial order or consent decree unless the government entity reasonably relied on an opinion of the supervisor of records, the Attorney General, or an appellate court, or unless the request was designed to harass or made for a private or commercial purpose unrelated to disseminating information about government activity.
- Authorizes the superior court to award reasonable attorney fees if the requestor obtains relief through a voluntary or unilateral change in position by the government entity.
- Requires the superior court to issue written findings specifying the basis for not awarding reasonable attorney fees.
- Requires the superior court to order a government entity to waive any fee assessed for producing a public record if the requestor receives reasonable attorney fees from the court, and authorizes the court to order the waiver of any fee assessed if the requestor obtains relief but does not receive attorney fees.
- Requires the superior court to issue written findings specifying the basis for not ordering the waiver of fees assessed if the requestor obtains relief.
- Requires a government entity that did not act in good faith to pay punitive damages between \$1,000 and \$5,000 if a requestor has obtained judgment in superior court.
- Directs any punitive damages paid to be expended to support municipal improvements to the information technology capabilities of a municipality to foster best practices and compliance with the public records law.
- Directs government entities, when designing or acquiring electronic recordkeeping systems or databases, to ensure to the extent feasible that the system or database is capable of providing data in an electronic machine readable format and to allow for storage and retrieval methods that provide maximum public access.
- Requires state entities to provide on a searchable website certain public records and other public record information of significant

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interest.

- Directs the State Comptroller to issue guidance on state entities accessing the centralized accounting or payroll systems or associated data warehouses to ensure that data prohibited from disclosure is not wrongfully disclosed.
- Requires municipalities, to the extent feasible, to post certain commonly available public record documents on a website maintained by the municipality.

ESTIMATED

COST:

The cost of this bill shall be borne through existing appropriation.