HOUSE . . . . . No. 4333

The Commonwealth of Massachusetts

Report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2127; and striking out the title and inserting in place thereof the following title: "An Act improving the administration and enforcement of public records law") of the House Bill relative to improve public records (House, No. 3858, amended), reports recommending passage of the accompanying bill (House, No. 4333). May 23, 2016.

Peter V. Kocot	Joan B. Lovely
Stephen Kulik	Jason M. Lewis
Mathew J. Muratore	Donald F. Humason, Jr.

HOUSE DOCKET, NO. FILED ON:

HOUSE . . . . . No. 4333

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to improve public records.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 7 of chapter 4 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “transportation”, in line 226, the following words:- , cyber security.

SECTION 2. Said section 7 of said chapter 4, as so appearing, is hereby further amended by striking out, in line 229, the words “subsection (b)” and inserting in place thereof the following words:- subsection (c).

SECTION 3. Said section 7 of said chapter 4, as so appearing, is hereby further amended by inserting after the word “safety”, in line 230, the following words:- or cyber security.

SECTION 4. Said section 7 of said chapter 4, as so appearing, is hereby further amended by striking out, in lines 231 and 242, the words “and home” and inserting in place thereof the following words:-, personal email address and home.

12 SECTION 5. Said section 7 of said chapter 4, as so appearing, is hereby further amended
13 by striking out, in line 269, the word “ten” and inserting in place thereof the following word:-
14 10A.

15 SECTION 6. Chapter 10 of the General Laws is hereby amended by inserting after
16 section 35CCC the following section:-

17 Section 35DDD. There shall be established and set up on the books of the commonwealth
18 a Public Records Assistance Fund, which shall be administered by the Massachusetts office of
19 information technology. The fund shall be credited with:

20 (i) all punitive damages assessed pursuant to paragraph (4) of subsection (d) of
21 section 10A of chapter 66;

22 (ii) any appropriations, bond proceeds or other monies authorized or transferred by
23 the general court and specifically designated to be credited to the fund;

24 (iii) gifts, grants and other private contributions designated to be credited to the fund;

25 (iv) all other amounts credited or transferred to the fund from any other fund or
26 source; and

27 (v) interest or investment earnings on any such monies. Amounts credited to the fund
28 may be expended by the chief information officer, without further appropriation, to provide
29 grants to municipalities to support the information technology capabilities of municipalities to
30 foster best practices for increasing access to public records and facilitating compliance with said
31 chapter 66.

32 The unexpended balance in the fund at the end of a fiscal year shall not revert to the
33 General Fund but shall remain available for expenditure in subsequent fiscal years. No
34 expenditure made from the fund shall cause the fund to become deficient at any point.

35 SECTION 7. Chapter 66 of the General Laws is hereby amended by inserting after
36 section 1 the following section:-

37 Section 1A. The supervisor of records shall:

38 (i) create educational materials or guides for agencies and municipalities, and may
39 make available training in order to foster awareness and compliance with this chapter; and

40 (ii) prepare forms, guidelines and reference materials for agencies and municipalities
41 to use and disseminate to individuals seeking access to public records to assist them in making
42 informed public records requests.

43 The supervisor of records shall make the forms, guidelines and reference materials
44 available at no cost on a website operated by the secretary of the commonwealth. Upon request
45 and to the extent feasible, the supervisor of public records shall assist each agency and
46 municipality in developing best practices to facilitate compliance with this chapter and to
47 promote access to public records.

48 SECTION 8. Section 3 of chapter 66 of the General Laws, as so appearing, is hereby
49 amended by inserting after the words "process", the second time it appears in line 12, the
50 following words:- , or by electronic means.

51 SECTION 9. Said chapter 66 is hereby further amended by inserting after section 6 the
52 following section:-

53 Section 6A. (a) Each agency and municipality shall designate 1 or more employees as
54 records access officers. In a municipality, the municipal clerk, or the clerk's designees, or any
55 designee of a municipality that the chief executive officer of the municipality may appoint, shall
56 serve as records access officers. For the purposes of this chapter the term "agency" shall mean
57 any entity, other than a municipality, that is identified in clause twenty-sixth of section 7 of
58 chapter 4 as possessing "public records," as defined therein.

59 (b) A records access officer shall coordinate an agency's or a municipality's response to
60 requests for access to public records and shall facilitate the resolution of such requests by the
61 timely and thorough production of public records. Each records access officer shall:

62 (i) assist persons seeking public records to identify the records sought;

63 (ii) assist the custodian of records in preserving public records in accordance with all
64 applicable laws, rules, regulations and schedules; and

65 (iii) prepare guidelines that enable a person seeking access to public records in the
66 custody of the agency or municipality to make informed requests regarding the availability of
67 such public records electronically or otherwise.

68 Guidelines shall be updated periodically and shall include a list of categories of public
69 records maintained by the agency or municipality. Each agency and municipality that maintains a
70 website shall post the guidelines on its website.

71 (c) Each agency and municipality shall post in a conspicuous location at its offices and on
72 its website, if any, the name, title, business address, business telephone number, and business
73 email address of each records access officer. The designation of 1 or more records access officers

74 shall not be construed to prohibit employees who have been previously authorized to make
75 public records or information available to the public from continuing to do so. Any employee
76 responsible for making public records available shall provide the records in accordance with this
77 chapter.

78 (d) The records access officer shall provide the public records to a requestor by electronic
79 means unless the record is not available in electronic form or the requestor does not have the
80 ability to receive or access the records in a usable electronic form. The records access officer
81 shall, to the extent feasible, provide the public record in the requestor's preferred format or, in
82 the absence of a preferred format, in a searchable, machine readable format. The records access
83 officer shall not be required to create a new public record in order to comply with a request,
84 provided that furnishing a segregable portion of a public record shall not be deemed to be
85 creation of a new record. If the public record requested is available on a public website pursuant
86 to subsection (b) of section 19 of this chapter, section 14C of chapter 7 or any other appropriately
87 indexed and searchable public website, the records access officer may furnish the public record
88 by providing reasonable assistance in locating the requested record on the public website. An
89 electronically produced document submitted to an agency or municipality for use in deliberations
90 by a public body shall be provided in an electronic format at the time of submission.

91 (e) Each records access officer of an agency shall document each request for public
92 records submitted to the records access officer. The records access officer shall document:

93 (i) the nature of the request and the date on which the request was received;

94 (ii) the date on which a response is provided to the requestor;

95 (iii) the date on which a public record is provided to the requestor;

96 (iv) the number of hours required to fulfill the request;

97 (v) fees charged to the person making the request, if any;

98 (vi) petitions submitted under clause (iv) of subsection (d) of section 10;

99 (vii) requests appealed under section 10A;

100 (viii) the time required to comply with supervisor of records orders under said section
101 10A; and

102 (ix) the final adjudication of any court proceedings under subsection (d) of said
103 section 10A.

104 Nothing in this subsection shall require a records access officer to disclose information
105 otherwise protected from public access. The secretary of the commonwealth shall prescribe a
106 form for recording such information and shall annually collect the information from the records
107 access officers, post the information on a website maintained by the secretary and report the
108 same to the clerks of the house of representatives and senate.

109 (f) The supervisor of records shall document appeals filed under section 10A, including:

110 (i) the date the request was submitted to the records access officer;

111 (ii) the date the records access officer responded;

112 (iii) the amount of fees charged to the requestor, if any;

113 (iv) petitions made pursuant to clause (iv) of subsection (d) of section 10;

114 (v) the time required to comply with supervisor of records orders under said section
115 10A; and

116 (vi) the final adjudication of any court proceedings under subsection (d) of said
117 section 10A.

118 Nothing in this subsection shall require the supervisor to disclose information otherwise
119 protected from public access. The secretary of the commonwealth shall prescribe a form for
120 recording such information and shall post the information on a website maintained by the
121 secretary.

122 SECTION 10. Said chapter 66 is hereby further amended by striking out section 10, as
123 appearing in the 2014 Official Edition, and inserting in place thereof the following 4 sections:-

124 Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee,
125 shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of
126 any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable
127 portion of a public record, not later than 10 business days following the receipt of the request,
128 provided that:

129 (i) the request reasonably describes the public record sought;

130 (ii) the public record is within the possession, custody or control of the agency or
131 municipality that the records access officer serves; and

132 (iii) the records access officer receives payment of a reasonable fee as set forth in
133 subsection (d).

134 A request for public records may be delivered to the records access officer by hand or via
135 first class mail at the record officer's business address, or via electronic mail to the address
136 posted by the agency or municipality that the records access officer serves..

137 (b) If the agency or municipality does not intend to permit inspection or furnish a copy of
138 a requested record, or the magnitude or difficulty of the request, or of multiple requests from the
139 same requestor, unduly burdens the other responsibilities of the agency or municipality such that
140 the agency or municipality is unable to do so within the timeframe established in subsection (a),
141 the agency or municipality shall inform the requestor in writing not later than 10 business days
142 after the initial receipt of the request for public records. The written response shall be made via
143 first class or electronic mail and shall:

144 (i) confirm receipt of the request;

145 (ii) identify any public records or categories of public records sought that are not
146 within the possession, custody, or control of the agency or municipality that the records access
147 officer serves;

148 (iii) identify the agency or municipality that may be in possession, custody or control
149 of the public record sought, if known;

150 (iv) identify any records, categories of records or portions of records that the agency
151 or municipality intends to withhold, and provide the specific reasons for such withholding,
152 including the specific exemption or exemptions upon which the withholding is based, provided
153 that nothing in the written response shall limit an agency's or municipality's ability to redact or
154 withhold information in accordance with state or federal law;

155 (v) identify any public records, categories of records, or portions of records that the
156 agency or municipality intends to produce, and provide a detailed statement describing why the
157 magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or
158 municipality and therefore requires additional time to produce the public records sought;

159 (vi) identify a reasonable timeframe in which the agency or municipality shall produce
160 the public records sought; provided, that for an agency, the timeframe shall not exceed 15
161 business days following the initial receipt of the request for public records and for a municipality
162 the timeframe shall not exceed 25 business days following the initial receipt of the request for
163 public records; and provided further, that the requestor may voluntarily agree to a response date
164 beyond the timeframes set forth herein;

165 (vii) suggest a reasonable modification of the scope of the request or offer to assist the
166 requestor to modify the scope of the request if doing so would enable the agency or municipality
167 to produce records sought more efficiently and affordably;

168 (viii) include an itemized, good faith estimate of any fees that may be charged to
169 produce the records; and

170 (ix) include a statement informing the requestor of the right of appeal to the supervisor
171 of records under subsection (a) of section 10A and the right to seek judicial review of an
172 unfavorable decision by commencing a civil action in the superior court under subsection (c) of
173 section 10A.

174 (c) If the magnitude or difficulty of a request, or the receipt of multiple requests from the
175 same requestor, unduly burdens the other responsibilities of the agency or municipality such that
176 an agency or municipality is unable to complete the request within the time provided in clause

177 (vi) of subsection (b), a records access officer may, as soon as practical and within 20 business
178 days after initial receipt of the request, or within 10 business days after receipt of a determination
179 by the supervisor of public records that the requested record constitutes a public record, petition
180 the supervisor of records for an extension of the time for the agency or municipality to furnish
181 copies of the requested record, or any portion of the requested record, that the agency or
182 municipality has within its possession, custody or control and intends to furnish. The records
183 access officer shall, upon submitting the petition to the supervisor of records, furnish a copy of
184 the petition to the requestor. Upon a showing of good cause, the supervisor of records may grant
185 a single extension to an agency not to exceed 20 business days and a single extension to a
186 municipality not to exceed 30 business days. In determining whether the agency or municipality
187 has established good cause, the supervisor of records shall consider, but shall not be limited to
188 considering:

189 (i) the need to search for, collect, segregate or examine records;

190 (ii) the scope of redaction required to prevent unlawful disclosure;

191 (iii) the capacity or the normal business hours of operation of the agency or
192 municipality to produce the request without the extension;

193 (iv) efforts undertaken by the agency or municipality in fulfilling the current request
194 and previous requests;

195 (v) whether the request, either individually or as part of a series of requests from the
196 same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and

197 (vi) the public interest served by expeditious disclosure.

198 If the supervisor of records determines that the request is part of a series of
199 contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests
200 are not intended for the broad dissemination of information to the public about actual or alleged
201 government activity, the supervisor of records may grant a longer extension or relieve the
202 agency or municipality of its obligation to provide copies of the records sought. The supervisor
203 of records shall issue a written decision regarding a petition submitted by a records access officer
204 under this subsection within 5 business days following receipt of the petition. The supervisor of
205 records shall provide the decision to the agency or municipality and the requestor and shall
206 inform the requestor of the right to seek judicial review of an unfavorable decision by
207 commencing a civil action in the superior court.

208 (d) A records access officer may assess a reasonable fee for the production of a public
209 record except those records that are freely available for public inspection. The reasonable fee
210 shall not exceed the actual cost of reproducing the record. Unless expressly provided for
211 otherwise, the fee shall be determined in accordance with the following:

212 (i) the actual cost of any storage device or material provided to a person in response
213 to a request for public records under subsection (a) may be included as part of the fee, but the fee
214 assessed for standard black and white paper copies or printouts of records shall not exceed 5
215 cents per page, for both single and double-sided black and white copies or printouts;

216 (ii) if an agency is required to devote more than 4 hours of employee time to search
217 for, compile, segregate, redact or reproduce the record or records requested, the records access
218 officer may also include as part of the fee an hourly rate equal to or less than the hourly rate
219 attributed to the lowest paid employee who has the necessary skill required to search for,

220 compile, segregate, redact or reproduce a record requested, but the fee (A) shall not be more than
221 $25 per hour; (B) shall not be assessed for the first 4 hours of work performed; and (C) shall not
222 be assessed for time spent segregating or redacting records unless such segregation or redaction
223 is required by law or approved by the supervisor of records under clause (iv);

224 (iii) if a municipality is required to devote more than 2 hours of employee time to
225 search for, compile, segregate, redact or reproduce a record requested, the records access officer
226 may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the
227 lowest paid employee who has the necessary skill required to search for, compile, segregate,
228 redact or reproduce the record requested but the fee (A) shall not be more than $25 per hour
229 unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be
230 assessed for the first 2 hours of work performed where the responding municipality has a
231 population of over 20,000 people; and (C) shall not be assessed for time spent segregating or
232 redacting records unless such segregation or redaction is required by law or approved by the
233 supervisor of records under clause (iv);

234 (iv) the supervisor of records may approve a petition from an agency or municipality
235 to charge for time spent segregating or redacting, or a petition from a municipality to charge in
236 excess of $25 per hour, if the supervisor of records determines that (A) the request is for a
237 commercial purpose; or (B) the fee represents an actual and good faith representation by the
238 agency or municipality to comply with the request, the fee is necessary such that the request
239 could not have been prudently completed without the redaction, segregation or fee in excess of
240 $25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or
241 prevent access to requested public records; provided, however, that:

242 1. in making a determination regarding any such petition, the supervisor of records
243 shall consider the public interest served by limiting the cost of public access to the records, the
244 financial ability of the requestor to pay the additional or increased fees and any other relevant
245 extenuating circumstances;

246 2. an agency or municipality, upon submitting a petition under this clause, shall
247 furnish a copy of the petition to the requestor;

248 3. the supervisor of records shall issue a written determination with findings
249 regarding any such petition within 5 business days following receipt of the petition by the
250 supervisor of public records; and

251 4. the supervisor of records shall provide the determination to the agency or
252 municipality and the requestor and shall inform the requestor of the right to seek judicial review
253 of an unfavorable decision by commencing a civil action in the superior court;

254 (v) the records access officer may waive or reduce the amount of any fee charged
255 under this subsection upon a showing that disclosure of a requested record is in the public
256 interest because it is likely to contribute significantly to public understanding of the operations or
257 activities of the government and is not primarily in the commercial interest of the requestor, or
258 upon a showing that the requestor lacks the financial ability to pay the full amount of the
259 reasonable fee;

260 (vi) the records access officer may deny public records requests from a requester who
261 has failed to compensate the agency or municipality for previously produced public records;

262 (vii) the records access officer shall provide a written notification to the requester
263 detailing the reasons behind the denial, including an itemized list of any balances attributed to
264 previously produced records;

265 (viii) a records access officer may not require the requester to specify the purpose for a
266 request, except to determine whether the records are requested for a commercial purpose or
267 whether to grant a request for a fee waiver; and

268 (ix) for purposes of this section "commercial purpose" shall mean the sale or resale of
269 any portion of the public record or the use of information from the public record to advance the
270 requester's strategic business interests in a manner that the requester can reasonably expect to
271 make a profit, and shall not include gathering or reporting news or gathering information to
272 promote citizen oversight or further the understanding of the operation or activities of
273 government or for academic, scientific, journalistic or public research or education

274 (e) A records access officer shall not charge a fee for a public record unless the records
275 access officer responded to the requestor within 10 business days under subsection (b).

276 (f) As used in this section, "employee time" means time required by employees or
277 necessary vendors, including outside legal counsel, technology and payroll consultants or others
278 as needed by the municipality.

279 Section 10A. (a) If an agency or municipality fails to comply with a requirement of
280 section 10 or issues a response the requestor believes in violation of section 10, the person who
281 submitted the initial request for public records may petition the supervisor of records for a
282 determination as to whether a violation has occurred. In assessing whether a violation has
283 occurred, the supervisor of records may inspect any record or copy of a record in camera;

284 provided, however, that where a record has been withheld on the basis of a claim of the attorney-
285 client privilege, the supervisor of records shall not inspect the record but shall require, as part of
286 the decision making process, that the agency or municipality provide a detailed description of the
287 record, including the names of the author and recipients, the date, the substance of such record,
288 and the grounds upon which the attorney-client privilege is being claimed. If an agency or
289 municipality elects to provide a record, claimed to be subject to the attorney-client privilege, to
290 the supervisor of records for in camera inspection, said inspection shall not waive any legally
291 applicable privileges, including without limitation, the attorney- client privilege and the attorney
292 work product privilege. The supervisor of records shall issue a written determination regarding
293 any petition submitted in accordance with this section not later than 10 business days following
294 receipt of the petition by the supervisor of records. Upon a determination by the supervisor of
295 records that a violation has occurred, the supervisor of records shall order timely and appropriate
296 relief. A requestor, aggrieved by an order issued by the supervisor of records or upon the failure
297 of the supervisor of records to issue a timely determination, may obtain judicial review only
298 through an action in superior court seeking relief in the nature of certiorari under section 4 of
299 chapter 249 and as prescribed in subsection (d).

300 (b) If an agency or municipality refuses or fails to comply with an order issued by the
301 supervisor of records, the supervisor of records may notify the attorney general who, after
302 consultation with the supervisor of records, may take whatever measures the attorney general
303 considers necessary to ensure compliance. If the attorney general files an action to compel
304 compliance, the action shall be filed in Suffolk superior court with respect to state agencies and,
305 with respect to municipalities, in the superior court in the county in which the municipality is
306 located. The attorney general shall designate an individual within the office of the attorney

307 general to serve as a primary point of contact for the supervisor of records. In addition to any
308 other duties the attorney general may impose, the designee shall serve as a primary point of
309 contact within the office of the attorney general regarding notice from the supervisor of records
310 that an agency or municipality has refused or failed to comply with an order issued by the
311 supervisor of records.

312 (c) Notwithstanding the procedure in subsections (a) or (b), a requestor may initiate a
313 civil action to enforce the requirements of this chapter. Any action under this subsection shall be
314 filed in Suffolk superior court with respect to agencies and, with respect to municipalities, in the
315 superior court in the county in which the municipality is located. The superior court shall have
316 available all remedies at law or in equity; provided, however, that any damages awarded shall be
317 consistent with subsection (d).

318 (d)(1) In any action filed by a requestor pursuant to this section:

319 (i) the superior court shall have jurisdiction to enjoin agency or municipal action;

320 (ii) the superior court shall determine the propriety of any agency or municipal action
321 de novo and may inspect the contents of any defendant agency or municipality record in camera,
322 provided, however, that the in camera review shall not waive any legally applicable privileges,
323 including without limitation, the attorney- client privilege and the attorney work product
324 privilege;

325 (iii) the superior court shall, when feasible, expedite the proceeding;

326 (iv) a presumption shall exist that each record sought is public and the burden shall be
327 on the defendant agency or municipality to prove, by a preponderance of the evidence, that such
328 record or portion of the record may be withheld in accordance with state or federal law.

329 (2) The superior court may award reasonable attorney fees and costs in any case in which
330 the requester obtains relief through a judicial order, consent decree, or the provision of requested
331 documents after the filing of a complaint. There shall be a presumption in favor of an award of
332 fees and costs unless the agency or municipality establishes that:

333 (i) the supervisor found that the agency or municipality did not violate this chapter;

334 (ii) the agency or municipality reasonably relied upon a published opinion of an
335 appellate court of the commonwealth based on substantially similar facts;

336 (iii) the agency or municipality reasonably relied upon a published opinion by the
337 attorney general based on substantially similar facts;

338 (iv) the request was designed or intended to harass or intimidate; or

339 (v) the request was not in the public interest and made for a commercial purpose
340 unrelated to disseminating information to the public about actual or alleged government activity.

341 If the superior court determines that an award of reasonable attorney fees or costs is not
342 warranted, the judge shall issue written findings specifying the reasons for the denial.

343 (3) If the superior court awards reasonable attorneys' fees and other litigation costs
344 reasonably incurred to the requestor, it shall order the agency or municipality to waive any fee
345 assessed under subsection (d) of section 10. If the superior court does not award reasonable
346 attorneys' fees and other litigation costs reasonably incurred to the requestor, it may order the

347 agency or municipality to waive any fee assessed under said subsection (d) of said section 10.
348 Whether the superior court determines to waive any fee assessed under said subsection (d) of
349 said section 10, it shall issue findings specifying the basis for such decision.

350 (4) If a requestor has obtained judgment in superior court in a case under this section
351 and has demonstrated that the defendant agency or municipality, in withholding or failing to
352 timely furnish the requested record or any portion of the record or in assessing an unreasonable
353 fee, did not act in good faith, the superior court may assess punitive damages against the
354 defendant agency or municipality in an amount not less than $1,000 nor more than $5,000, to be
355 deposited into the Public Records Assistance Fund established in section 35DDD of chapter 10.

356 (e) Notwithstanding any other provision of this chapter, the attorney general may, at any
357 time, file a complaint in Suffolk superior court with respect to agencies and, with respect to
358 municipalities, in the superior court in the county in which the municipality is located, to ensure
359 compliance with this chapter and may further intervene as of right in any action filed in
360 accordance with this section. In any action filed or in which the attorney general has intervened
361 under this subsection, paragraphs (1) and (4) of subsection (d) shall apply and any public records
362 the court orders produced shall be provided without a fee.

363 Section 10B. The commissioner of the department of criminal justice information
364 services, the department of criminal justice information services and its agents, servants, and
365 attorneys including the keeper of the records of the firearms records bureau of said department,
366 or any licensing authority, as defined in section 121 of chapter 140, shall not disclose any records
367 divulging or tending to divulge the names and addresses of persons who own or possess firearms,
368 rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said

369 chapter 140, and names and addresses of persons licensed to carry or possess the same to any
370 person, firm, corporation, entity or agency except criminal justice agencies as defined in section
371 167 of chapter 6 and except to the extent such information relates solely to the person making the
372 request and is necessary to the official interests of the entity making the request.

373 The home address, personal email address and home telephone number of law
374 enforcement, judicial, prosecutorial, department of youth services, department of children and
375 families, department of correction and any other public safety and criminal justice system
376 personnel, and of unelected general court personnel, shall not be public records in the custody of
377 the employers of such personnel or the public employee retirement administration commission or
378 any retirement board established under chapter 32 and shall not be disclosed, but such
379 information may be disclosed to an employee organization under chapter 150E, a nonprofit
380 organization for retired public employees under chapter 180 or to criminal justice agencies as
381 defined in said section 167 of said chapter 6. The name, home address, telephone number and
382 personal email address of a family member of any such personnel shall not be public records in
383 the custody of the employers of the foregoing persons or the public employee retirement
384 administration commission or any retirement board established under chapter 32 and shall not be
385 disclosed. The home address, telephone number, personal email address or place of employment
386 or education of victims of adjudicated crimes, of victims of domestic violence and of persons
387 providing or training in family planning services and the name, home address, telephone number,
388 personal email address or place of employment or education of a family member of any of the
389 foregoing shall not be public records in the custody of a government agency which maintains
390 records identifying such persons as falling within such categories and shall not be disclosed.

391 SECTION 11. Section 12 of said chapter 66, as so appearing, is hereby amended by
392 striking out, in line 4, the words “provided for them” and inserting in place thereof the following
393 words:- or buildings, vaults or file rooms that comply with standards of the National Fire
394 Protection Association, or by electronic means with off-site secure storage, or in accordance with
395 standards promulgated by the records conservation board.

396 SECTION 12. Section 13 of said chapter 66, as so appearing, is hereby amended by
397 inserting after the word “person”, in line 2, the following word:- unlawfully.

398 SECTION 13. Said chapter 66 is hereby further amended by striking out section 17, as so
399 appearing, and inserting in place thereof the following section:-

400 Section 17. Except as otherwise provided by law, all public records shall be kept in the
401 custody of the person having the custody of similar records in the county or municipality to
402 which the records originally belonged; provided, however, that the custodian of public records
403 may enter into a contract for the storage of records containing public record information, but no
404 contract for the storage of public records shall be entered into if the contract prevents or unduly
405 restricts a records access officer or custodian of records from providing or storing the records in
406 accordance with this chapter. Records not directly in the custodian’s possession shall be
407 considered in the custody of the custodian if subject to a contract for the storage of public
408 records that is permitted by this section. If the custodian does not have custody of public records,
409 the custodian shall demand delivery from any person unlawfully having possession of the
410 records, and the records shall immediately be delivered by such person to the custodian. A
411 person who refuses or neglects to perform any duty required by this section shall be punished by
412 fine of not more than $20.

413 SECTION 14. Said chapter 66 is hereby further amended by adding the following 3
414 sections:-

415 Section 19. (a) When designing or acquiring an electronic record keeping system or
416 database, records access officers shall, consistent with section 17 of chapter 110G, consult with
417 their chief executive officer, chief administrative officer or the Massachusetts office of
418 information technology pursuant to chapter 7D to ensure, to the extent feasible, that the system
419 or database is capable of providing data in a commonly available electronic, machine readable
420 format. Such database designs or acquisitions shall allow for, to the extent feasible, information
421 storage and retrieval methods that permit the segregation and retrieval of public records and
422 redacting of exempt information in order to provide maximum public access. No agency or
423 municipality shall enter into a contract for the storage of electronic records containing public
424 records if the contract prevents or unduly restricts the records access officer from providing the
425 public records in accordance with this chapter.

426 (b) Every agency shall provide on a searchable website electronic copies, accessible in a
427 commonly available electronic format, of the following types of records, provided that any
428 agency may withhold any record or portion thereof in accordance with state or federal law:

429 (i) final opinions, decisions, orders, or votes from agency proceedings;

430 (ii) annual reports;

431 (iii) notices of regulations proposed under chapter 30A;

432 (iv) notices of hearings;

433 (v) winning bids for public contracts;

434 (vi) awards of federal, state and municipal government grants;

435 (vii) minutes of open meetings;

436 (viii) agency budgets; and

437 (ix) any public record information of significant interest that the agency deems
438 appropriate to post.

439 Section 20. For requests of payroll, financial and other data residing in the centralized
440 state accounting and payroll systems, or associated data warehouses, the comptroller shall make
441 available guidelines on how agencies using these systems may access and disclose public records
442 to ensure that data that is exempted or prohibited from disclosure is not wrongfully disclosed and
443 the security of the system is maintained.

444 Section 21. A document made or received by the Massachusetts Bay Transportation
445 Authority Retirement Board or any other legal entity, public or private, which receives funds
446 from the Massachusetts Bay Transportation Authority for the payment or administration of
447 pensions for employees of the Massachusetts Bay Transportation Authority shall be considered a
448 public record under this chapter and under clause twenty-sixth of section 7 of chapter 4 and
449 subject to all applicable exemptions; provided, however, that subsection (6) of section 23 of
450 chapter 32 shall also apply to these documents.

451 SECTION 15. Section 3 of chapter 268B of the General Laws, as appearing in the 2014
452 Official Edition, is hereby amended by inserting after the word "reports", in line 22, the
453 following words:- ; provided, however, that the commission may make statements and reports
454 filed with the commission available by electronic mail in a read-only format upon the written

455 request of any individual that delivers the request by electronic mail and provides identification
456 acceptable to the commission, including the individual's affiliation, if any.

457 SECTION 16. A records access officer serving in a municipality pursuant to section 6A
458 of chapter 66 of the General Laws shall, to the extent feasible, post the commonly available
459 public record documents identified in subsection (b) of section 19 of said chapter 66 on a website
460 maintained by the municipality.

461 SECTION 17. The supervisor of records shall adopt regulations necessary to implement
462 this act. These regulations shall be adopted not later than January 1, 2017.

463 SECTION 18. Notwithstanding any general or special law to the contrary, sections 9 and
464 10 of this act shall not apply to public records requests submitted under section 10 of chapter 66
465 of the General Laws before the effective date of this act and no obligation imposed by sections 9
466 and 10 of this act shall be enforceable or deemed relevant in an appeal pending before the
467 supervisor of records or a court on the effective date of this act.

468 SECTION 19. There shall be a working group to review and evaluate the application of
469 subsection (f) of clause twenty-sixth of section 7 of chapter 4 of the General Laws as it relates to
470 law enforcement. The working group shall review determinations of the supervisor of records
471 and judicial decisions regarding the application of said subsection (f) of said clause twenty-sixth
472 of said section 7 of said chapter 4 and issue findings regarding:

473 (i) the public interest in releasing records made and kept by police
474 departments, including arrest records;

475 (ii) privacy and confidentiality concerns related to releasing records made and

476 kept by police departments; and

477 (iii) the interaction of said subsection (f) of said clause twenty-sixth of said

478 section 7 of said chapter 4 and the criminal offender record information system.

479 The working group shall consist of: the secretary of the commonwealth who shall serve
480 as chair; the secretary of public safety and security, or a designee; the court administrator of the
481 trial court, or a designee; 2 members of the senate, 1 of whom shall be the minority leader, or a
482 designee; 2 members of the house of representatives, 1 of whom shall be the minority leader, or a
483 designee; 1 of whom shall be the secretary of administration and finance, or a designee; a
484 representative of the American Civil Liberties Union of Massachusetts, Inc.; a representative of
485 the Massachusetts Newspaper Publishers Association; a representative of the Massachusetts
486 Town Clerks Association; a representative of the Massachusetts Chiefs of Police Association,
487 Incorporated.; the attorney general or a designee; a representative of the State Police
488 Commissioned Officers Association of Mass., Inc., a representative of the Massachusetts
489 Coalition of Police, Inc.; and a representative of the Massachusetts Municipal Association, Inc..

490 The working group shall file a report of its findings and recommendations, along with
491 any drafts of legislation necessary to carry those recommendations into effect, with the clerks of
492 the senate and house of representatives not later than December 30, 2017.

493 SECTION 20. (a) There shall be established pursuant to section 2A of chapter 4 of the
494 General Laws a special legislative commission to examine the accessibility of information
495 concerning the legislative process of the general court and the expansion of the definition of
496 public records. Said special legislative commission shall consist of 14 members, 1 of whom shall
497 be the house chair of the joint committee on state administration and regulatory oversight, who

498 shall serve as co-chair; 1 of whom shall be the senate chair of the joint committee on state
499 administration and oversight, who shall serve as co-chair; 1 of whom shall be the chair of the
500 house committee on rules; 1 of whom shall be the chair of the senate committee on rules; 2 of
501 whom shall be members of the house of representatives appointed by the speaker of the house of
502 representatives; 1 of whom shall be a member of the house of representatives appointed by the
503 minority leader of the house; 2 of whom shall be members of the senate appointed by the
504 president of the senate; 1 of whom shall be a member of the senate appointed by the minority
505 leader of the senate; and 2 of whom shall be members of the house of representatives or senate
506 appointed jointly by the speaker of the house of representatives and the president of the senate.

507 (b) The special legislative commission shall examine the procedures and practices of the
508 general court and its committees with regard to legislative process including, but not limited to:

509 (i) scheduling and notice of public hearings and legislative sessions;

510 (ii) management of legislative calendars;

511 (iii) scope and substance of committee hearings, including the number of bills heard at
512 each hearing;

513 (iv) publication and availability of records concerning committee proceedings, including
514 public hearing agendas, public testimony and committee votes;

515 (v) rules and scheduling requirements for committee reports;

516 (vi) content of committee reports, such as summary, explanatory and analytical materials;

517 (vii) contemporaneous and permanent online access to open sessions of the house of
518 representatives and senate;

519 (viii) publication of records concerning house of representatives and senate sessions
520 including, but not limited to, roll call votes; and

521 (ix) publication of proposed amendments to legislation and votes.

522 (c) The special legislative commission shall also examine the constitutionality and
523 practicality of subjecting the general court, the executive office of the governor, and the judicial
524 branch to the public records law. In conducting its examination the special legislative
525 commission shall examine, without limitation, the applicability and impact of Article XXI of the
526 Declaration of Rights, Article XXX of the Declaration of Rights, Article 7 of Section 2 of
527 Chapter 1 of Part the Second of the Constitution of the Commonwealth and Article 10 of Section
528 3 of Chapter 1 of Part the Second of the Constitution of the Commonwealth.

529 (d) In undertaking its examination, the special legislative commission shall examine the
530 procedures used by legislatures in other states and those used by the United States Congress for
531 making information concerning the legislative process available to the public.

532 (e) Counsel to the House and Senate appointed pursuant to section 51 of chapter 3 of the
533 General Laws shall serve as counsel to the special legislative commission.

534 (f) The special legislative commission may:

535 (i) consult with nongovernmental organizations and academic institutions that have
536 expertise that may benefit the commission, including, but not limited to, Common Cause, the
537 American Civil Liberties Union of Massachusetts, Inc., the Massachusetts Newspaper Publishers
538 Association, the Massachusetts Town Clerks Association, consumer interest organizations, the
539 Massachusetts Taxpayers Foundation, Inc.;

540 (ii) consult with the attorney general;

541 (iii) consult with the secretary of administration and finance; and

542 (iv) solicit input from journalistic associations, public policy research institutions,
543 other government institutions with expertise in public access to public proceedings and other
544 entities with an interest in the legislative process and the issue of public records.

545 (g) The special legislative commission shall issue a report not later than December 30,
546 2017, that shall include recommendations for legislation or changes to legislative rules to:

547 (i) enhance the accessibility of information to the public concerning the legislative
548 operations of the general court;

549 (ii) improve the use of information technology for public access to information about
550 the general court;

551

552 (iii) promote substantive reporting by legislative committees; and

553 (iv) ensure a permanent, accessible, and substantive record of public legislative
554 proceedings, including house and senate sessions and public committee hearings.

555 The report shall include the constitutional basis for the special legislative commission's
556 recommendations. The report shall also include the special legislative commission's
557 recommendations, if any, on the expansion and reform of the public records statute as it relates to
558 all branches of government. Said report shall be filed with the joint committee on rules, the joint

559 committee on state administration and regulatory oversight, the joint committee on ways and
560 means, and the offices of the house and senate clerks, and shall be posted online.

561 SECTION 21. Notwithstanding section 16, a municipality that maintains a website shall
562 not be required to post guidelines or reference materials on its website, as required by subsection
563 (b) of section 6A of chapter 66 of the General Laws, until July 1, 2017.

564 SECTION 22. Sections 1 to 16, inclusive, shall take effect on January 1, 2017.