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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS

Introduced By: Senator Ryan W. Pearson

Date Introduced: February 11, 2015

Referred To: Senate Special Legislation and Veterans Affairs

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.** -- As used in this chapter:

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

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

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

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

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

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

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

19 [\(c\) 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
25 benefits of current and retired members of the retirement systems and future members of said
26 systems, including all records concerning retirement credits purchased and the ability of any
27 member of the retirement system to purchase retirement credits, but excluding all information
28 regarding the medical condition of any person and all information identifying the member's
29 designated beneficiary or beneficiaries unless and until the member's designated beneficiary or
30 beneficiaries have received or are receiving pension and/or retirement benefits through the
31 retirement system.

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

34 (C) Child custody and adoption records, records of illegitimate births, and records of

1 juvenile proceedings before the family court.

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

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

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

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

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

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

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

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

34 (L) Test questions, scoring keys, and other examination data used to administer a

1 licensing examination, examination for employment or promotion, or academic examinations;
2 provided, however, that a person shall have the right to review the results of his or her
3 examination.

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

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

11 (O) All tax returns.

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

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

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

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

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

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

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

30 (W) All records received by the insurance division of the department of business
31 regulation from other states, either directly or through the National Association of Insurance
32 Commissioners, if those records are accorded confidential treatment in that state. Nothing
33 contained in this title or any other provision of law shall prevent or be construed as prohibiting
34 the commissioner of insurance from disclosing otherwise confidential information to the

1 insurance department of this or any other state or country, at any time, so long as the agency or
2 office receiving the records agrees in writing to hold it confidential in a manner consistent with
3 the laws of this state.

4 (X) Credit card account numbers in the possession of state or local government are
5 confidential and shall not be deemed public records.

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

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

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

12 **38-2-3. Right to inspect and copy records -- Duty to maintain minutes of meetings --**

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

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

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

24 (d) Each public body shall establish written procedures regarding access to public
25 records but shall not require written requests for public information available pursuant to R.I.G.L.
26 § 42-35-2 or for other documents prepared for or readily available to the public.

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

1 (e) A public body receiving a request shall permit the inspection or copying within ten
2 (10) business days after receiving a request. If the inspection or copying is not permitted within
3 ten (10) business days, the public body shall forthwith explain in writing the need for additional
4 time to comply with the request. Any such explanation must be particularized to the specific
5 request made. In such cases the public body may have up to an additional twenty (20) business
6 days to comply with the request if it can demonstrate that the voluminous nature of the request,
7 the number of requests for records pending, or the difficulty in searching for and retrieving or
8 copying the requested records, is such that additional time is necessary to avoid imposing an
9 undue burden on the public body.

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

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

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

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

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

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

1 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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