

HOUSE No. 3219

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., relative to regulating access to public records. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO IMPROVE ACCESS TO PUBLIC DOCUMENTS.

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

1 SECTION 1. Section 10 of Chapter 66 of the General Laws is
2 hereby amended by striking out subsections (a) and (b) and inserting
3 in place thereof the following:—

4 (a) Every person having custody of any public record, as defined
5 in clause Twenty-six of Section seven of Chapter four, shall, at rea-
6 sonable times and without unreasonable delay, permit it, or any seg-
7 regable portion of a record which is an independent public record, to
8 be inspected and examined by any person, under his supervision,
9 and shall furnish one copy thereof upon payment of a reasonable fee.
10 Any claim by the custodian that the record, or portion thereof, is not
11 a public record shall be accompanied by an index identifying and
12 describing the record and its source in sufficient detail to enable the
13 requester and the supervisor of records or a court to determine the
14 validity of the custodian's claim. Personal notebooks, notes, and cal-
15 endars shall not be separate exemptions. Every person for whom a
16 search of public records is made shall, at the direction of the person
17 having custody of such records, pay the actual expense of such
18 search. The following fees shall apply to any public record in the
19 custody of the state police, the Massachusetts bay transportation
20 authority police or any municipal police department or fire depart-
21 ment:—

22 for preparing and mailing a motor vehicle accident report, five
23 dollars for not more than six pages and fifty cents for each additional
24 page;

25 for preparing and mailing a fire insurance report, five dollars for
26 not more than six pages plus fifty cents for each additional page;

27 for preparing and mailing crime, incident or miscellaneous
28 reports, one dollar per page;

29 for furnishing any public record, in hand, to a person requesting
30 such records, fifty cents per page.

31 A page shall be defined as one side of an eight and one-half inch
32 by eleven inch sheet of paper.

33 (b) A custodian of a public record shall, within ten days following
34 receipt of a request for inspection or copy of a public record, comply
35 with such request. Such request may be delivered in hand to the
36 office of the custodian or mailed via first class mail or facsimile. If
37 the custodian refuses or fails to comply with such a request, the
38 person making the request may petition the supervisor of records for
39 a determination whether the record requested is public. Upon the
40 determination by the supervisor of records that the record is public,
41 he shall order the custodian of the public record to comply with the
42 person's request. If the custodian refuses or fails to comply with any
43 such order, the supervisor of records shall, within five days, notify
44 the attorney general or the appropriate district attorney thereof who
45 shall take whatever measures he deems necessary to insure compli-
46 ance with the provisions of this section. The supervisor of records
47 may also seek compliance with his order where neither the attorney
48 general nor the appropriate district attorney has achieved enforce-
49 ment of the order within sixty days of notification. The administra-
50 tive remedy provided by this section shall in no way limit the
51 availability of the administrative remedies provided by the commis-
52 sioner of administration and finance with respect to any officer or
53 employee of any agency, executive office, department or board; nor
54 shall the administrative remedy provided by this section in any way
55 limit the availability of judicial remedies otherwise available to any
56 person requesting a public record. If a custodian of a public record
57 refuses or fails to comply with the request of any person for inspec-
58 tion or copy of a public record or with an administrative order under
59 this section, the supreme judicial or superior court shall have juris-
60 diction to order compliance. The person making the request shall be
61 entitled to an award of reasonable attorney's fees and costs if the
62 custodian withholding the public record was in violation of this
62 chapter.

1 SECTION 2. Chapter 66 of the General Laws is hereby amended
2 by striking Section 15 in its entirety and inserting in place thereof
3 the following:—

4 Section 15. Whoever unlawfully keeps in his possession any
5 public record or removes it from the room where it is usually kept,
6 or alters, defaces, mutilates or destroys any public record or violates
7 any provision of this chapter shall be punished by a fine of not less
8 than five hundred nor more than five thousand dollars, or by impris-
9 onment for not more than one year, or both. Any public officer who
10 refuses or neglects to perform any duty required of him by this
11 chapter shall for each month of such neglect or refusal be punished
12 by a fine of not less than three hundred nor more than five hundred
13 dollars.