

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Updated Public Records Law (Chapter 121 of the Acts of 2016)

DATE: January 5, 2017

On June 3, 2016 the Legislature passed “An Act to Improve Public Records”, with the majority of provisions taking effect on January 1, 2017. In addition, the Secretary of State’s Office promulgated updated regulations relative to Public Records Access in December of 2016 with an effective date of January 1, 2017. These regulations may be found at 950 CMR 32.00. The new law and regulations are available on the Secretary of State’s website along with a summary of the new law.

Changes to the public records law largely address the procedure that public entities must now follow in processing a request for records. The definition of what is a public record has not changed under the new law. In addition, the exemptions to the public records law have remained largely unchanged, with “personal email” being added to the exemptions for public employees and their families and a new exemption created for the contact information for victims of adjudicated crimes and domestic violence. Finally, PERAC regulations found at 840 CMR 6.00, Standard Rules for Disclosure of Information, remain intact relative to maintaining and disclosing records, particularly records containing personal data.

Below are certain new requirements pursuant to Chapter 121 of the Acts of 2016 that are applicable to agencies and municipalities:

- ☐ The designation of a Records Access Officer (RAO) who shall be responsible for coordinating the entities’ response to requests for access to public records. The contact information for the RAO shall be posted at its offices in a conspicuous place and on its website if it maintains one. RAO’s must provide public records to a requestor in an electronic format *unless* the record is not available in such format or the requestor does not have the ability to receive or access the records in a usable electronic format.



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- ☐ Agencies are required to maintain on their website (and municipalities to the extent feasible) electronic copies of commonly requested records, including final opinions, annual reports, minutes of open meetings and agency budgets.
- ☐ Beginning January 1, 2017 an RAO must permit inspection or furnish a copy of a requested public record within 10 *business* days. (Currently a records custodian must respond to a request for records in writing within 10 calendar days). RAOs may petition the Supervisor of Records for an extension if they are unable to grant access to the requested public records in this time period.
- ☐ Fees may be charged at 5 cents per page for black and white paper copies or computer printouts of public records for both single and double sided sheets. If a response to a public records request requires more than 4 hours of agency employee time (2 hours for a municipality) the RAO may assess a fee of the hourly rate of the lowest paid employee with the skills necessary to search for, compile, segregate, redact or reproduce a requested record. The fee shall not exceed \$25 an hour.

These are the main changes in the new law and are by no means exhaustive or completely detailed. As the public records law is overseen by the Secretary of State through its Public Records Division, questions that arise in the implementation of the new changes and the law generally should be directed to that agency.

PERAC has received questions as to whether local, county, and regional retirement boards are considered agencies or municipalities under the provisions of the new statute. This determination has a significant effect on the duties of the retirement board, as to scope of duties and date of implementation. In order to clarify this question, PERAC is seeking an advisory opinion of the Secretary of State as to the definition of an agency pursuant to this statute. In the meanwhile, many of the provisions summarized above apply to all public entities and must be complied with effective January 1, 2017.

We trust the foregoing is of assistance. If you have any questions concerning this matter, do not hesitate to contact this office.

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