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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS

Introduced By: Representatives Amore, Canario, Noret, Hull, and Johnston

Date Introduced: January 30, 2020

Referred To: House Judiciary

(by request)

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 38-2-1, 38-2-2 and 38-2-9 of the General Laws in Chapter 38-2  
2 entitled "Access to Public Records" are hereby amended to read as follows:

3           **38-2-1. Purpose.**

4           The public's right to access to public records and the individual's right to dignity, [safety](#),  
5 and privacy are ~~both~~ recognized to be principles of the utmost importance in a free society. The  
6 purpose of this chapter is to facilitate public access to public records. It is also the intent of this  
7 chapter to protect from disclosure information about particular individuals maintained in the files  
8 of public bodies when disclosure would constitute an unwarranted invasion of personal privacy [or](#)  
9 [otherwise pose a risk to the individual or their family.](#)

10           **38-2-2. Definitions.**

11           As used in this chapter:

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

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

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

3 (4) "Public record" or "public records" shall mean all documents, papers, letters, maps,  
4 books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data  
5 processing records, computer stored data (including electronic mail messages, except specifically  
6 for any electronic mail messages of or to elected officials with or relating to those they represent  
7 and correspondence of or to elected officials in their official capacities), or other material  
8 regardless of physical form or characteristics made or received pursuant to law or ordinance or in  
9 connection with the transaction of official business by any agency. For the purposes of this  
10 chapter, the following records shall not be deemed public:

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

13 (b) Personnel and other personal individually identifiable records otherwise deemed  
14 confidential by federal or state law or regulation, or the disclosure of which would constitute a  
15 clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et seq.; provided,  
16 however, with respect to employees, and employees of contractors and subcontractors working on  
17 public works projects that are required to be listed as certified payrolls, the name, gross salary,  
18 salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other  
19 remuneration in addition to salary, job title, job description, dates of employment and positions  
20 held with the state, municipality, or public works contractor or subcontractor on public works  
21 projects, employment contract, work location, and/or project, business telephone number, the city  
22 or town of residence, and date of termination shall be public. For the purposes of this section  
23 "remuneration" shall include any payments received by an employee as a result of termination, or  
24 otherwise leaving employment, including, but not limited to, payments for accrued sick and/or  
25 vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.  
26 Notwithstanding the provisions of this section, pursuant to § 38-2-9 any person or organization  
27 representing a group of similarly situated persons may petition the superior court to determine  
28 whether disclosing the person's city or town of residence poses a risk to the person or their  
29 family;

30 (i) Persons whose city or town of residence is determined by the court, pursuant to § 38-  
31 2-9, to not be public records should inform their personnel department or their keeper of records  
32 of such determination; and

33 (ii) Persons who were not part of the initial record determining the existence of a class  
34 exception pursuant to § 38-2-9 may upon becoming a member of the class inform their personnel

1 [department or the keeper of records that they are part of a class exception and do not wish to have](#)  
2 [the city or town of their residence disclosed as part of the public record.](#)

3 (II) Notwithstanding the provisions of this section, or any other provision of the general  
4 laws to the contrary, the pension records of all persons who are either current or retired members  
5 of any public retirement systems, as well as all persons who become members of those retirement  
6 systems after June 17, 1991, shall be open for public inspection. "Pension records" as used in this  
7 section, shall include all records containing information concerning pension and retirement  
8 benefits of current and retired members of the retirement systems and future members of said  
9 systems, including all records concerning retirement credits purchased and the ability of any  
10 member of the retirement system to purchase retirement credits, but excluding all information  
11 regarding the medical condition of any person and all information identifying the member's  
12 designated beneficiary or beneficiaries unless and until the member's designated beneficiary or  
13 beneficiaries have received or are receiving pension and/or retirement benefits through the  
14 retirement system.

15 (B) Trade secrets and commercial or financial information obtained from a person, firm,  
16 or corporation that is of a privileged or confidential nature.

17 (C) Child custody and adoption records, records of illegitimate births, and records of  
18 juvenile proceedings before the family court.

19 (D) All records maintained by law enforcement agencies for criminal law enforcement  
20 and all records relating to the detection and investigation of crime, including those maintained on  
21 any individual or compiled in the course of a criminal investigation by any law enforcement  
22 agency. Provided, however, such records shall not be deemed public only to the extent that the  
23 disclosure of the records or information (a) Could reasonably be expected to interfere with  
24 investigations of criminal activity or with enforcement proceedings; (b) Would deprive a person  
25 of a right to a fair trial or an impartial adjudication; (c) Could reasonably be expected to  
26 constitute an unwarranted invasion of personal privacy; (d) Could reasonably be expected to  
27 disclose the identity of a confidential source, including a state, local, or foreign agency or  
28 authority, or any private institution that furnished information on a confidential basis, or the  
29 information furnished by a confidential source; (e) Would disclose techniques and procedures for  
30 law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement  
31 investigations or prosecutions; or (f) Could reasonably be expected to endanger the life or  
32 physical safety of any individual. Records relating to management and direction of a law  
33 enforcement agency and records or reports reflecting the initial arrest of an adult and the charge  
34 or charges brought against an adult shall be public.

1 (E) Any records that would not be available by law or rule of court to an opposing party  
2 in litigation.

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

5 (G) Any records that disclose the identity of the contributor of a bona fide and lawful  
6 charitable contribution to the public body whenever public anonymity has been requested of the  
7 public body with respect to the contribution by the contributor.

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

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

12 (J) Any minutes of a meeting of a public body that are not required to be disclosed  
13 pursuant to chapter 46 of title 42.

14 (K) Preliminary drafts, notes, impressions, memoranda, working papers, and work  
15 products, including those involving research at state institutions of higher education on  
16 commercial, scientific, artistic, technical, or scholarly issues, whether in electronic or other  
17 format; provided, however, any documents submitted at a public meeting of a public body shall  
18 be deemed public.

19 (L) Test questions, scoring keys, and other examination data used to administer a  
20 licensing examination, examination for employment or promotion, or academic examinations;  
21 provided, however, that a person shall have the right to review the results of his or her  
22 examination.

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

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

30 (O) All tax returns.

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

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

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

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

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

10 (U) Library records that, by themselves or when examined with other public records,  
11 would reveal the identity of the library user requesting, checking out, or using any library  
12 materials.

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

15 (W) All records received by the insurance division of the department of business  
16 regulation from other states, either directly or through the National Association of Insurance  
17 Commissioners, if those records are accorded confidential treatment in that state. Nothing  
18 contained in this title or any other provision of law shall prevent or be construed as prohibiting  
19 the commissioner of insurance from disclosing otherwise confidential information to the  
20 insurance department of this or any other state or country, at any time, so long as the agency or  
21 office receiving the records agrees in writing to hold it confidential in a manner consistent with  
22 the laws of this state.

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

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

27 (Z) Any individually identifiable evaluations of public school employees made pursuant  
28 to state or federal law or regulation.

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

31 **38-2-9. Jurisdiction of superior court.**

32 (a) Jurisdiction to hear and determine civil actions [and any other petition](#) brought under  
33 this chapter is hereby vested in the superior court.

34 (b) The court may examine any record which is the subject of a suit [or other petition](#) in

1 camera to determine whether the record or any part thereof may be withheld from public  
2 inspection [or release](#) under the terms of this chapter.

3 (c) Actions brought under this chapter may be advanced on the calendar upon motion of  
4 any party, or sua sponte by the court made in accordance with the rules of civil procedure of the  
5 superior court.

6 (d) The court shall impose a civil fine not exceeding two thousand dollars (\$2,000)  
7 against a public body or official found to have committed a knowing and willful violation of this  
8 chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found  
9 to have recklessly violated this chapter and shall award reasonable attorney fees and costs to the  
10 prevailing plaintiff. The court shall further order a public body found to have wrongfully denied  
11 access to public records to provide the records at no cost to the prevailing party; provided, further,  
12 that in the event that the court, having found in favor of the defendant, finds further that the  
13 plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the  
14 extension, modification, or reversal of existing law, the court may award ~~attorneys~~ [attorneys'](#) fees  
15 and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a  
16 prerequisite to obtaining an award of attorneys' fees and/or costs if the court determines that the  
17 defendant's case lacked grounding in fact or in existing law or a good faith argument for  
18 extension, modification or reversal of existing law. [Attorneys' fees shall not be available to those](#)  
19 [persons who petition the court to determine whether the city or town in which they reside shall be](#)  
20 [made public.](#)

21 [\(e\) The court upon determining that city or town in which the petitioner resides shall not](#)  
22 [be made public shall forward such determination to the keeper of records and specify whether the](#)  
23 [exemption applies to those individuals listed in the petition or if there exists a class exception for](#)  
24 [which all future persons who become part of the class may request the same exception without](#)  
25 [further need to petition the court.](#)

26 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

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1           This act would allow any person who is a public employee of any city or town or any  
2 organization representing a group of similarly situated public employees, to petition the superior  
3 court pursuant to § 38-2-9, for a determination that disclosing the person's or groups' city or town  
4 of residence poses a risk to the person or their family. If any such petition is granted, individuals  
5 who become part of that group of similarly situated persons would also be able to prevent the city  
6 or town of their residence from being part of any public records request. The persons affected by  
7 this act would provide a copy of any such order to the personnel department or keeper of records  
8 of the city or town.

9           This act would take effect upon passage.

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