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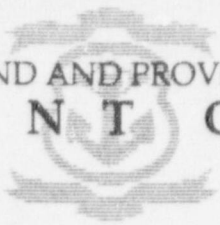
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DEPARTMENT OF HEALTH



Safe and Healthy Lives in Safe and Healthy Communities

R: SP-98-097

22 December 1998

Richard L. Bangart, Director
Office of State Programs
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Bangart:

Your inquiry regarding R.I. State laws as they pertain to protecting an "allegor" has been referred to me for response.

The State of Rhode Island has an "Open Records" statute, Section 38-2-1 et seq. of the R.I. General Laws. A copy of the Act is enclosed herewith. Generally speaking, records compiled by State agencies in the investigation of an illegal act are confidential until such time as a final action has been taken. Once the investigation has been completed and the subject case goes on for hearing, or is otherwise settled, the file and hearing are accessible to the public, including the identities of complaining witnesses. As a departure from the general rule of accessibility, if the complaining individual comes within one of the exemptions from public disclosure, then his/her name and other identifying data may be redacted. For records which might be exempt from disclosure, I call your attention to Section 38-2-2 (4), as amended. Any request for exemption should be received by the agency in writing.

If you have further questions, please feel free to contact our office.

Very truly yours,

(MEM)
Maureen A. Hobson
Maureen A. Hobson, Esq.
Deputy Chief Legal Counsel
(Legal Services)
(401) 222-2135

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Enclosures
cc: Marie Stoeckel

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OSP

38-1-11. Assistance of the public records administration program. — The public records administration program of the department of administration shall have the right to examine the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing, and making available the public records in their custody. When requested by the program, public officials shall assist the program in the preparation of records control schedules of public records in their custody approved by the head of the agency having custody of the records. Upon review and approval of the schedules by the program, the program shall, subject to the availability of necessary space, staff, and other facilities for those purposes, make available space in its record center for the filing of semi-current records so scheduled and in its public records repository for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

History of Section.

P.L. 1981, ch. 353, § 4.

Cross References.

Public records administration program, § 38-3-3.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.		SECTION.	
38-2-1.	Purpose.	38-2-6.	Commercial use of public records.
38-2-2.	Definitions.	38-2-7.	Denial of access.
38-2-3.	Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access.	38-2-8.	Administrative appeals.
38-2-4.	Cost.	38-2-9.	Jurisdiction of superior court.
38-2-5.	Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings.	38-2-10.	Burden of proof.
		38-2-11.	Right supplemental.
		38-2-12.	Severability.
		38-2-13.	Records access continuing.
		38-2-14.	Financial information relating to settlement of legal claims.

38-2-1. Purpose. — The public's right to access to records pertaining to the policy making responsibilities of government and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to governmental records which pertain to the policy making functions of public bodies and/or are relevant to the public health, safety, and welfare. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

History of Section.

P.L. 1979, ch. 202, § 1.

Cross References. Hazardous waste management facilities, siting and impact agree-

ments and related documents, public access, § 23-19.7-12.

Comparative Legislation. Access to public records:

Conn. Gen. Stat. § 1-19 et seq.
Mass. Ann. Laws ch. 66, § 10.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Balancing of rights.

1. In General¹

The underlying policy of the Access to Public Records Act favors the free flow and disclosure of information to the public. However, the Legislature did not intend to empower the press and the public with carte blanche to demand all records held by public agencies.

Providence Journal Co. v. Sundlun, 616 A.2d 1131 (R.I. 1992).

2. Balancing of Rights.

Right of privacy of officers accused of police brutality did not outweigh right of public to know their identity so as to prevent release, pursuant to records-access law, of reports of hearing examiners investigating accusations of police brutality. *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982).

Collateral References. State Freedom of Information Act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A). 114 A.L.R. Fed. 287.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files. 106 A.L.R. Fed. 94.

38-2-2. Definitions. — As used in this chapter:

(1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(2) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

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

(4)(i) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A)(I) All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including informa-

tion relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of that retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 36, title 42, and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries.

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

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

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency but only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual; provided, however, records

relating to management and direction of a law enforcement agency and records reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

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

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

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

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

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

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

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products.

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

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

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

(O) All tax returns.

(P) All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

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

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

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

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

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

(V) Printouts from telecommunication devices for the deaf or hearing and speech impaired.

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

(ii) However, any reasonably segregable portion as determined by the chief administrative officer of the public body of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

(5) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1980, ch. 269, § 1; P.L. 1981, ch. 353, § 5; P.L. 1982, ch. 416, § 1; P.L. 1984, ch. 372, § 2; P.L. 1986, ch. 203, § 1; P.L. 1991, ch. 208, § 1; P.L. 1991, ch. 263, § 1; P.L. 1995, ch. 112, § 1.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) rearranged the definitions into alphabetical order, redesignated the subdivisions, and substituted "June 17, 1991" for "the effective date of this act" in subdivision (4)(i)(A)(b), which substitution was first made by the compiler.

NOTES TO DECISIONS

ANALYSIS

1. Personnel records.
2. Records kept confidential pursuant to law or rule of court.
3. Tax records.
4. Nursing home financial data.
5. Records identifying state employees.
6. Records identifying "terminated" teachers.

1. Personnel Records.

Where procedure was established whereby any civilian complaint of police brutality was

to be subject of evidentiary hearing before hearing officer, after which hearing a written finding of policeman's guilt or innocence was to be forwarded to police chief for his approval or rejection, finding was not a recommendation as to further personnel action but was a final action in itself, and thus was not subject to the personnel-record or investigatory-record exception. *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982).

Items of information could not be considered as coming under the "personnel records" exception merely by virtue of the fact that agency considered them to be personnel

records and maintained them in files designated as "personnel files." *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982).

Reports concerning civilian complaints of police brutality from which names of complainants and police officers had been deleted rendered such records as not "identifiable to an individual applicant" and thus as not coming under the personnel-records exception. *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982).

A management study of school operations, specifically relating to the job performance of a school principal, is exempted from public access under the personnel-records exception of this section. *Pawtucket Teachers Alliance Local No. 920 v. Brady*, 556 A.2d 556 (R.I. 1989).

The plaintiff's request for information that will uniquely identify state employees by name, address, and employment history directly contravenes the clear proscription set forth in this section against disclosure of all records which are identifiable to an individual employee, including personnel records. *Providence Journal Co. v. Kane*, 577 A.2d 661 (R.I. 1990).

2. Records Kept Confidential Pursuant to Law or Rule of Court.

Consent judgment of superior court pursuant to which a procedure was established for processing and hearing citizen complaints of police misconduct was not a "rule of court" under subsection (d)(19) and, regardless, did not by its terms require confidentiality of reports of hearings. *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1982).

The exemption in subsection (d)(5) limits production of records pertaining to litigation under the Access to Public Records Act, 38-2-1 et seq., to those documents which would be subject to discovery under Super. Ct. R. Civ. P. 26 and 34. *Hydron Labs., Inc. v. Department of Att'y Gen.*, 492 A.2d 135 (R.I. 1985).

As long as the court in which litigation is ongoing has made a determination, based on the law or upon rules of court, that a document will not be required to be disclosed, then that holding precludes production of those same documents under the Access to Public Records Act, 38-2-1 et seq., through application of § 38-2-2(d)(5). *Hydron Labs., Inc. v. Department of Att'y Gen.*, 492 A.2d 135 (R.I. 1985).

This section does not provide a remedy to compel nondisclosure in the event that a public official or body is about to disclose material that might be entitled to an exemp-

tion under the provisions of this section. *Rhode Island Fed'n of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991).

3. Tax Records.

A protective order of the public utilities commission which seeks to protect the confidentiality of requested tax documents through the use of in camera proceedings, but does not prevent the use of the information before the commission subject to the limitations set out in the order, does not deprive an aggrieved party of a meaningful public hearing or of some right to have the information made public. *Town of New Shoreham v. Rhode Island Pub. Utils. Comm'n*, 464 A.2d 730 (R.I. 1983).

4. Nursing Home Financial Data.

Financial data which a nursing home was required to report in order to receive medicaid funds is a public record within the meaning of this section, subject to deletion of detailed personnel information which would be identifiable to individual employees and tax returns before making the data available to the public. *Charlesgate Nursing Center v. Bordeleau*, 568 A.2d 775 (R.I. 1990).

5. Records Identifying State Employees.

Records revealing the names and positions of state employees who were scheduled to be laid off but never issued notices due to a subsequent agreement to pay cuts were exempt from disclosure pursuant to this section even though the lists did not reveal personal information about the employees. This section limits the public's access not only to personal information contained in an employee's personnel file but also to any record that identifies a particular employee. *Providence Journal Co. v. Sundlun*, 616 A.2d 1131 (R.I. 1992).

Records identifying the names of state employees scheduled for layoffs are subject to disclosure when termination becomes final. Under this section the public is entitled to know the identities of those employees who will be indefinitely released from the state-government payroll. *Providence Journal Co. v. Sundlun*, 616 A.2d 1131 (R.I. 1992).

6. Records Identifying "Terminated" Teachers.

The name of a teacher who receives notice of a layoff is exempt from disclosure under the Access to Public Records Act until that teacher's employment is actually terminated. *Edward A. Sherman Publishing Co. v. Carpender*, 659 A.2d 1117 (R.I. 1995).

Collateral References. Failed applicant's right of access to bar examination questions and answers. 57 A.L.R.4th 1212.

Liability for interference with physician-patient relationship. 87 A.L.R.4th 845.

Patient's right to disclose of his or her own medical records under state freedom of information act. 26 A.L.R.4th 701.

Payroll records of individual government employees as subject to disclosure to public. 100 A.L.R.3d 699.

Public welfare recipients, confidentiality of records as to. 54 A.L.R.3d 768.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A). 114 A.L.R. Fed. 287.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information acts. 26 A.L.R.4th 639.

38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. —

(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

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

(c) Each public body shall establish procedures regarding access to public records.

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

(e) Any public body which maintains its records in a computer storage system shall provide a printout of any data properly identified.

(f) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1984, ch. 372, § 2; P.L. 1997, ch. 326, § 168.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "in this section" for "herein" in subsection (f).

Collateral References. Patient's right to

disclose of his or her own medical records under state freedom of information act. 26 A.L.R.4th 701.

State Freedom of Information Act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

38-2-4. Cost. — (a) Subject to the provisions of § 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written public documents shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first thirty (30) minutes of a search or retrieval.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body shall provide an estimate of the costs of a request for documents prior to providing copies.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1986, ch. 416,
§ 1; P.L. 1991, ch. 263, § 1.

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

History of Section.

P.L. 1979, ch. 202, § 1.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) redesignated the subdivisions.

38-2-6. Commercial use of public records. — No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one year.

History of Section.

P.L. 1979, ch. 202, § 1.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person requesting the right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1991, ch. 263,
§ 1.

38-2-8. Administrative appeals. — (a) Any person denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the chief administrative officer determines that the record is not subject to public inspection, the person seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1981, ch. 279,
§ 2.

NOTES TO DECISIONS

1. In General.

This section provides a judicial remedy to a person or entity denied access to records alleged to be public records. The first remedy is an administrative appeal under subsection (a). The second remedy pursuant to subsection (b) would be to seek the aid of the

attorney general in instituting proceedings for the injunctive or declaratory relief. This section also provides for a private action for injunctive or declaratory relief in the superior court of the county where the record is maintained. *Rhode Island Fed'n of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991).

38-2-9. Jurisdiction of superior court. — (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner made in accordance with the rules of civil procedure of the superior court.

(d) The court may impose a civil fine not exceeding one thousand dollars (\$1,000) against a public body or official found to have committed a willful violation of this chapter.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1988, ch. 87, § 1; P.L. 1991, ch. 263, § 1.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) substituted "superior court" for "state courts" in the section heading.

NOTES TO DECISIONS

1. In General.

This section confers jurisdiction upon the superior court to determine whether the record or any part thereof may be withheld by a public body, and also authorizes the imposi-

tion of a civil fine against a public body found to have committed a willful violation of the chapter. *Rhode Island Fed'n of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991).

38-2-10. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

History of Section.

P.L. 1979, ch. 202, § 1.

NOTES TO DECISIONS

1. In General.

This section imposes the burden of proof upon the public body to demonstrate that the record in dispute can be properly withheld from public inspection. No portion of the stat-

ute purports to provide a remedy for a person or an entity that seeks to prevent disclosure. *Rhode Island Fed'n of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991).

38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

History of Section.

P.L. 1979, ch. 202, § 1.

38-2-12. Severability. — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

History of Section.

P.L. 1979, ch. 202, § 1.

38-2-13. Records access continuing. — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so

deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

History of Section.

P.L. 1986, ch. 345, § 1.

38-2-14. Financial information relating to settlement of legal claims. — Records reflecting the financial settlement by public bodies of any legal claims against a governmental entity shall be deemed public records.

History of Section.

P.L. 1991, ch. 263, § 2.

CHAPTER 3

PUBLIC RECORDS ADMINISTRATION

SECTION.		SECTION.	
38-3-1.	Short title.	38-3-5.1.	Reproduction of public records —
38-3-2.	Definitions.		Destruction of original records.
38-3-3.	Public records administration program.	38-3-6.	Public records custody and disposal.
38-3-4.	Duties of administrator.	38-3-7.	Agency responsibilities.
38-3-5.	Duties of program.		

38-3-1. Short title. — This chapter shall be known as the "Public Records Administration Act."

History of Section.

P.L. 1981, ch. 353, § 6.

Comparative Legislation. State library and public records:

Conn. Gen. Stat. § 11-8 et seq.

Mass. Ann. Laws ch. 66, § 1.

38-3-2. Definitions. — For the purpose of this chapter:

(1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of state or local government which exercises governmental functions, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(2) "Records center" shall mean an establishment maintained by the program for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.

(3) "Records control schedule" shall mean the document establishing the official retention, maintenance, and disposal requirements for a series or type of record based on administrative, legal, fiscal, and historical values for the scheduled records.

(4) "Program" shall mean the public records administration program of the secretary of state.

(5) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(6) "Public records repository" shall mean the establishment maintained by the program for preservation of those public records determined by the program to have permanent value warranting their continued preservation and which has been accepted by the program for transfer to its custody.

History of Section.

P.L. 1981, ch. 353, § 6; P.L. 1991, ch. 179, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) rearranged the definitions into alphabetical order.

38-3-3. Public records administration program. — (1) The public records administration program shall be organized as deemed necessary by the secretary of state for the proper discharge of its duties and responsibilities under this chapter. All personnel, furnishings, equipment, finances, property, and contractual arrangements of the public records administration shall be the responsibility of the secretary of state.

(2) There shall be a public records advisory commission consisting of seventeen (17) members, one of whom shall be a member of the senate chosen by the senate majority leader, one of whom shall be a member of the house of representatives chosen by the speaker of the house, six (6) of whom shall be chosen by the governor, and seven (7) of whom shall be chosen by the secretary of state. The secretary of state or designee shall serve as a permanent member of the commission. The state archivist shall serve as a permanent member of the commission. The appointments shall consist of persons who are qualified by training and experience with proven interest in historical records and public records management. In the first instance, five (5) members shall be appointed for a one year term, two (2) by the governor and three (3) by the secretary of state; five (5) members shall be appointed for a two (2) year term, one by the speaker of the house, one by the senate majority leader, two (2) by the governor, and one by the secretary of state; five (5) members shall be appointed for a three (3) year term, two (2) by the governor, and three (3) by the secretary of state. The members shall hold office until July 1, in the years in which their respective terms end. Thereafter, prior to July 1, successors shall be appointed to the commission to the members of the commission whose terms expired. Vacancy of a member shall be filled by appointment by the corresponding authority for the remainder of the unexpired terms.

(3) The secretary of state or designee shall serve as the chairperson of the commission. The state archivist or designee shall serve as the secretary of the commission with voting rights.

(4) It shall be the duty of the public records advisory commission to provide professional and technical assistance to the public records administration program, the state archives, and the local governments of the state in all matters relating to the administration of public records. Members of the commission shall serve without pay.

(5) The secretary of state may appoint an administrator of the program and shall establish his or her qualifications other than the professional competence required. The administrator shall coordinate, direct, and administer the activities and responsibilities of the program. The administrator shall serve at the pleasure of the secretary of state.

(6) The program may make and enter into contracts and agreements with other agencies, organizations, associations, corporations, and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this chapter.

(7) The program shall adopt rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter which rules shall be binding on all agencies and persons affected thereby. The willful violation of any of the rules and regulations adopted by the program shall constitute a misdemeanor.

(8) The program may accept gifts, grants, bequests, loans, and endowments for purposes not inconsistent with its responsibilities under this chapter.

History of Section.

P.L. 1981, ch. 253, § 6; P.L. 1991, ch. 179, § 1.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) substituted "experience with" for "experience and possessed of" in the fourth sentence of subdivision (2).

38-3-4. Duties of administrator. — (a) It shall be the duty and responsibility of the administrator to render all services required by the program herein set forth that can advantageously and effectively be centralized. The office shall perform such other functions and duties as the secretary of state may direct.

(b) The administrator shall supervise, direct, and coordinate the activities of the program.

(c) The administrator shall be designated "the public records administrator".

History of Section.

P.L. 1981, ch. 353, § 6; P.L. 1991, ch. 179, § 1.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) redesignated the subsections.

Cross References. Appointment of public records administrator, § 38-3-3.

38-3-5. Duties of program. — It shall be the duty and responsibility of the public records administration program to:

(1) Establish and administer a public records management program, including the operation of a record center or centers, and appoint a director who will apply efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

(2) Analyze, develop, establish, and coordinate standards, procedures, and techniques of record making and record keeping.

(3) Insure the maintenance and security of records which are deemed appropriate for preservation.

(4) Institute and maintain a training and information program in all phases of records management to bring to the attention of all agencies approved and current practices, methods, procedures, and devices for the efficient and economical management of records.

(5) Make available a centralized program of microfilming for the benefit of all agencies.

(6) Make continuous surveys of record keeping operations.

(7) Recommend improvements in current records management practices, including the use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.

(8)(i) Establish and maintain a program, in cooperation with each agency, for the selection and protection of public records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

(ii) Make or to have made duplicates of essential records, or to designate existing record copies as essential records to be protected in the place and manner of safekeeping as prescribed by the program.

(iii) The duplicate of any record made pursuant to this chapter shall have the same force and effect for all purposes as the original record. A transcript, exemplification, or certified copy of the duplicate shall be deemed, for all purposes, to be the original record.

History of Section.

PL. 1981, ch. 353, § 6; PL. 1990, ch. 492, § 10.

Reenactments. The 1997 Reenactment

(PL. 1997 ch. 326, § 1) redesignated the paragraphs in subdivision (8).

38-3-5.1. Reproduction of public records — Destruction of original records. — If any department or agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing, state tax returns, report, application, payment, entry, print, representation, or combination thereof, or any act, transaction, occurrence, or event, and, in the regular course of business, has caused any or all of the records to be recorded, copied, or reproduced by a photographic, photostatic, microfilm, micro-card, optical disk, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original, the original may be destroyed in the regular course of business, provided the process meets standards established by the public records administration, and provided all the provisions of § 38-3-6 concerning disposal of public records are fulfilled. The

reproduction, when satisfactorily identified, shall be admissible in evidence as the original in any judicial or administrative proceeding whether or not the original exists or is available and an enlargement or facsimile of the reproduction shall be likewise admissible in evidence if the original is in existence and available for inspection under the direction of the court. The introduction of a reproduced record, enlargement, or facsimile into evidence shall not preclude the admission into evidence of the original. This section shall not be construed to exclude from introduction into evidence any document or copy thereof which is otherwise admissible under the Rhode Island general laws, as amended.

History of Section.

P.L. 1988, ch. 577, § 1.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) substituted "all of the records" for "all of the same" in the first sentence.

38-3-6. Public records custody and disposal. — (a) Each agency shall prepare and submit to the program, in accordance with the rules and regulations of the program, record control schedules for all public records in the custody of the agency.

(b) The offices of the attorney general and the auditor general will advise the program on the legal and fiscal values of records covered by proposed records control schedules.

(c) Those records which are determined by an agency not to be needed in the transaction of current business but which, for legal or fiscal requirements, must be retained for specific time periods beyond administrative needs, shall be sent to the records center. The records will be kept in the center until time for disposition as provided in record control schedules.

(d) Public records possessing permanent value as determined by approved records control schedules shall be transferred to the public records repository when no longer needed by an agency in transaction of current business.

(e) Title to any record placed in the records center shall remain in the agency placing the record in the center.

(f) Title to any record transferred to the public records repository, as authorized in this chapter, shall be vested in the program.

(g) The program shall preserve and administer such public records as shall be transferred to its custody according to approved conservation and security practices, and to permit them to be inspected, examined, and copied at reasonable times and under supervision of the program; provided that any record placed in keeping of the program under special terms or conditions restricting their use shall be made available only in accordance with the terms and conditions.

(h) Provide a public research room where, upon policies established by the program, the records in the public records repository may be studied.

(i) The program may make certified copies under seal of any records transferred to it upon the application of any person, and the

certificates, signed by the administrator or his or her designee, shall have the same force and effect as if made by the agency from which the records were received. The program may charge a reasonable fee for this service.

(j) No public record shall be destroyed or otherwise disposed of by any agency without prior notice to the program.

(k) The program shall adopt reasonable rules and regulations not inconsistent with this chapter relating to the destruction and disposal of records. The rules and regulations shall provide but not be limited to:

(1) Procedures for preparing and submitting record control schedules to the program.

(2) Procedures for the physical destruction or other disposal of records.

(3) Standards for the reproduction of records for security or with a view to the disposal of the original record.

(l) The program shall:

(1) Establish safeguards against unauthorized or unlawful removal or loss of records; and

(2) Initiate appropriate action to recover records removed unlawfully or without authorization.

(m) The program may prepare and publish handbooks, guides, indexes, and other literature directed toward encouraging the management, preservation, and uses of the state's public records resource.

History of Section.

P.L. 1981, ch. 353, § 6.

Reenactments. The 1997 Reenactment

(P.L. 1997, ch. 326, § 1) redesignated the subsections and subdivisions.

38-3-7. Agency responsibilities. — It shall be the duty of each agency to:

(1) Cooperate with the program in complying with the provisions of this chapter.

(2) Establish and maintain an active and continuous program for the economical and efficient management of public records.

History of Section.

P.L. 1981, ch. 353, § 6.

TITLE 38

PUBLIC RECORDS

CHAPTER

2. ACCESS TO PUBLIC RECORDS, §§ 38-2-1 — 38-2-15.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.		SECTION.	
38-2-1.	Purpose.	38-2-7.	Denial of access.
38-2-2.	Definitions.	38-2-8.	Administrative appeals.
38-2-3.	Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for ac- cess.	38-2-9.	Jurisdiction of superior court.
38-2-4.	Cost.	38-2-14.	Information relating to settle- ment of legal claims.
		38-2-15.	Reported violations.

38-2-1. Purpose. — The public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1998, ch. 378,
§ 1.

38-2-2. Definitions. — As used in this chapter:

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

(2) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

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

(4)(i) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound record-

ings, magnetic or other tapes, elec-
computer stored data (including e-
specifically for any electronic mail r
with or relating to those they repre-
elected officials in their official capa-
less of physical form or characterist-
law or ordinance or in connection
business by any agency. For the
following records shall not be deem-

(A)(I) All records which are ident-
for benefits, client, patient, student,
limited to, personnel, medical treat-
rity, pupil records, all records relat-
ship and to a doctor/patient relation-
information relating to an individua-
tion relating to medical or psycho-
welfare, employment security, stud-
in personnel files maintained to hire
any employee of a public body; pro-
employees, the name, gross salary,
fringe benefits, gross amount receiv-
neration in addition to salary, job
employment and positions held with
location, business telephone numbe-
and date of termination shall be pu-

(II), Notwithstanding the provisio-
provision of the general laws to the
all persons who are either curre-
retirement systems established by
persons who become members of tho-
17, 1991 shall be open for public insp-
in this section shall include all
concerning pension and retirement
members of the retirement systems
title 42, and title 45 and future men-
all records concerning retirement cre-
any member of the retirement system
but excluding all information regard-
person and all information identi-
beneficiary or beneficiaries.

(B) Trade secrets and commerci-
tained from a person, firm, or corpor-
confidential nature.

(C) Child custody and adoption
births, and records of juvenile proce-

(D) All records maintained by law
inal law enforcement and all record-
investigation of crime, including tho-

RECORDS

2-1 — 38-2-15.

ER 2

LIC RECORDS

SECTION.

- 38-2-7. Denial of access.
- 38-2-8. Administrative appeals.
- 38-2-9. Jurisdiction of superior court.
- 38-2-14. Information relating to settlement of legal claims.
- 38-2-15. Reported violations.

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and privacy are both recognized
importance in a free society. The
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pter to protect from disclosure
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l in this chapter:

ll mean any executive, legislative,
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luding, but not limited to, any
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district, or other agency of Rhode
t which exercises governmental
ed in § 42-35-1(b), or any other
partnership, corporation, or busi-
l/or in place of any public agency.
r" means the highest authority of
ection (a) of this section.

matter over which the public body
on, or advisory power.

"records" shall mean all documents,
, photographs, films, sound record-

ings, magnetic or other tapes, electronic data processing records,
computer stored data (including electronic mail messages, except
specifically for any electronic mail messages of or to elected officials
with or relating to those they represent and correspondence of or to
elected officials in their official capacities) or other material regard-
less of physical form or characteristics made or received pursuant to
law or ordinance or in connection with the transaction of official
business by any agency. For the purposes of this chapter, the
following records shall not be deemed public:

(A)(I) All records which are identifiable to an individual applicant
for benefits, client, patient, student, or employee, including, but not
limited to, personnel, medical treatment, welfare, employment secu-
rity, pupil records, all records relating to a client/attorney relation-
ship and to a doctor/patient relationship, and all personal or medical
information relating to an individual in any files, including informa-
tion relating to medical or psychological facts, personal finances,
welfare, employment security, student performance, or information
in personnel files maintained to hire, evaluate, promote, or discipline
any employee of a public body; provided, however, with respect to
employees, the name, gross salary, salary range, total cost of paid
fringe benefits, gross amount received in overtime, and other remun-
eration in addition to salary, job title, job description, dates of
employment and positions held with the state or municipality, work
location, business telephone number, the city or town of residence,
and date of termination shall be public.

(II) Notwithstanding the provisions of this section, or any other
provision of the general laws to the contrary, the pension records of
all persons who are either current or retired members of the
retirement systems established by the general laws as well as all
persons who become members of those retirement systems after June
17, 1991 shall be open for public inspection. "Pension records" as used
in this section shall include all records containing information
concerning pension and retirement benefits of current and retired
members of the retirement systems established in title 8, title 36,
title 42, and title 45 and future members of said systems, including
all records concerning retirement credits purchased and the ability of
any member of the retirement system to purchase retirement credits,
but excluding all information regarding the medical condition of any
person and all information identifying the member's designated
beneficiary or beneficiaries.

(B) Trade secrets and commercial or financial information ob-
tained from a person, firm, or corporation which is of a privileged or
confidential nature.

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

(D) All records maintained by law enforcement agencies for crim-
inal law enforcement and all records relating to the detection and
investigation of crime, including those maintained on any individual

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

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

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

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

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

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

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

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

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

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

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to

the acquisition of property or construction contracts, until such time as the property is sold, abandoned or all proceedings or transactions are abandoned; provided the law of the state shall not be violated by this provision.

(O) All tax returns.

(P) All investigatory records of law enforcement agencies, pertaining to the use, rule, or regulation other than the rule, or regulation other than provided that all records prior to the date of the rule, or regulation other than noncompliance shall not be deemed public.

(Q) Records of individual testing and licensing examinations; provided, however, that the public body have the right to review the results of the examination.

(R) Requests for advisory opinion by a public body issues its opinion.

(S) Records, reports, opinions, or recommendations required to be kept confidential by law, or rule of court.

(T) Judicial bodies are included in the scope of this chapter provided their administrative function provides for the provisions of chapter 16 of title 42 of this chapter.

(U) Library records which by title or content are not public records, would reveal confidential information, or would be requested, checking out, or using for other purposes.

(V) Printouts from telecommunications records, hearing and speech impaired.

(W) All records received by the Department of Business Regulation from the National Association of Manufacturers through the National Association of Manufacturers those records are accorded confidential status. Nothing contained in this title or chapter shall be construed as prohibiting or preventing any public body from disclosing otherwise confidential information to any other public body or department of this or any other state as the agency or office receiving the information is not confidential in a manner consistent with the provisions of this chapter.

(ii) However, any reasonably segregable portion of a confidential record excluded by this section shall be available to the public upon the deletion of the information which would result in the disclosure of the segregable portion of the confidential record.

(5) "Supervisor of the regulatory agency" means a section having enforcement responsibility for the enforcement of a set of rules and regulations within a regulatory agency.

(6) "Prevailing plaintiff" means a plaintiff or plaintiffs and entities deemed prevailing parties in a lawsuit.

a criminal investigation by any law
 1, however, such records shall not be
 ent that the disclosure of the records or
 ly be expected to interfere with inves-
 or with enforcement proceedings, (b)
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 ity of a confidential source, including a
 or authority, or any private institution
 on a confidential basis, or the inform-
 al source, (e) would disclose techniques
 cement investigations or prosecutions,
 for law enforcement investigations or
 onably be expected to endanger the life
 idual. Records relating to management
 cement agency and records or reports
 of an adult and the charge or charges
 ll be public.
 uld not be available by law or rule of
 a litigation.
 gical secrets and the security plans of
 agencies, the disclosure of which would
 and security.
 close the identity of the contributor of a
 table contribution to the public body
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 ing of public funds, until such time as
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 eting of a public body which are not
 suant to chapter 46 of title 42.
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 provided, however, any documents sub-
 f a public body shall be deemed public.
 g keys, and other examination data used
 amination, examination for employment
 examinations; provided, however, that a
 it to review the results of his or her
 to elected officials with or relating to
 rrespondence of or to elected officials in
 estate appraisals, engineering, or feasi-
 ons made for or by an agency relative to

the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

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

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

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

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

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

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

(V) Printouts from telecommunication devices for the deaf or hearing and speech impaired.

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

(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, disclosure of the segregable portion does not violate the intent of this section.

(5) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

(6) "Prevailing plaintiff" means and shall include those persons and entities deemed prevailing parties pursuant to 42 U.S.C. § 198

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1980, ch. 269, § 1; P.L. 1981, ch. 353, § 5; P.L. 1982, ch. 416, § 1; P.L. 1984, ch. 372, § 2; P.L. 1986, ch. 203, § 1; P.L. 1991, ch. 208, § 1; P.L. 1991, ch. 263, § 1; P.L. 1995, ch. 112, § 1; P.L. 1998, ch. 378, § 1.

Compiler's Notes. In 1998, the compiler inserted "or" preceding "administrative" and inserted a comma following "functions" in

paragraph (1), substituted "client" for "clients" and the fifth comma for a semicolon, deleted a dash after "any files" and inserted "with" before "respect" in subparagraph (4)(i)(A)(I), substituted "those retirement" for "that retirement" in subparagraph (4)(i)(A)(II), deleted a comma following "submitted" in subparagraph (4)(i)(K), and inserted a comma following "agencies" in subparagraph (4)(i)(P).

NOTES TO DECISIONS**ANALYSIS**

- 1.5. Financial information.
7. Police records.

1.5. Financial Information.

Depositors' bank records are not public records under this chapter. *Pontbriand v. Sundlun*, 699 A.2d 856 (R.I. 1997).

7. Police Records.

In response to a request by a community-action group for police department records pertaining to civilian complaints of police misconduct, a city was required to provide access to redacted copies of police civilian complaint forms, reports by police depart-

ment hearing officers regarding their decisions from the findings of investigations, and reports on all disciplinary actions taken as the result of recommendations made by hearing officers. *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998).

In response to a request by a community-action group for police department records pertaining to civilian complaints of police misconduct, a city was under no obligation to provide access to a listing of all findings from internal affairs investigations since it would require the compilation of data that was not maintained in the form requested. *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998).

38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. —

(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

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

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

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

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

(f) Nothing in this section shall require a public body to reorganize, consolidate, or otherwise restructure the public body in the form required to inspect the public records was in the form in which the records are in an electronic form or shall require a public body to be unduly burdened in providing such records.

(g) Nothing in this section shall require a public body to disclose the status of information merely because it is requested.

(h) No public records shall be withheld from a person to which the records are sought.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1984, ch. 372, § 2; P.L. 1997, ch. 326, § 168; P.L. 1998, ch. 378, § 1.

38-2-4. Cost. — (a) Subject to the provisions of this section, a public body must allow copies to be made of its records. The cost per copied page of written records shall not exceed fifteen cents (\$0.15) on common business or legal size paper, plus more than the reasonable actual cost of copying.

(b) A reasonable charge may be made for documents. Hourly costs for a search or retrieval of documents shall not exceed fifteen dollars (\$15.00) per hour for the first hour of a search or retrieval.

(c) Copies of documents shall be made available upon request. A public body shall provide copies of documents prior to the request for documents prior to the request.

(d) Upon request, the public body shall provide a statement of the costs charged for search or retrieval.

(e) A court may reduce or waive the cost of search or retrieval if it determines that the search or retrieval is in the public interest because it is in the public understanding of the operation of the public body and is not primarily in the interest of the individual.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1986, ch. 416, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

38-2-7. Denial of access. — (a) A public body may deny access to or copy records provided for under this chapter to a person or entity requesting the records if the person or entity has custody or control of the records and has specific reasons for the denial of access to the records and indicating the person or entity requesting the records.

paragraph (1), substituted "client" for "clients" and the fifth comma for a semicolon, deleted a dash after "any files" and inserted "with" before "respect" in subparagraph (4)(i)(A)(I), substituted "those retirement" for "that retirement" in subparagraph (4)(i)(A)(II), deleted a comma following "submitted" in subparagraph (4)(i)(K), and inserted a comma following "agencies" in subparagraph (4)(i)(P).

FO DECISIONS

ment hearing officers regarding their decisions from the findings of investigations, and reports on all disciplinary actions taken as the result of recommendations made by hearing officers. Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998).

In response to a request by a community-action group for police department records pertaining to civilian complaints of police misconduct, a city was under no obligation to provide access to a listing of all findings from internal affairs investigations since it would require the compilation of data that was not maintained in the form requested. Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998).

and copy records — Duty to maintain — Procedures for access. — 38-2-2(4), all records maintained or kept whether or not those records are required by regulation, shall be public records and the public body shall have the right to inspect and/or copy the records at any reasonable time as may be determined by the public body.

make, keep, and maintain written or electronic records. To establish procedures regarding access to records, a public body shall require written requests for public records to R.I.G.L. § 42-35-2 or for other records not readily available to the public. If a record is in active use or in storage and, therefore, not readily available, upon request access, the custodian shall make an appointment for the citizen to inspect the records as they may be made available.

requesting copies of public records may be made in all media in which the public agency maintains its records. Any public body which maintains its records in a system shall provide any data properly requested in a reasonable format, as requested.

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

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

(h) No public records shall be withheld based on the purpose for which the records are sought.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1984, ch. 372, § 2; P.L. 1997, ch. 326, § 168; P.L. 1998, ch. 378, § 1.

38-2-4. Cost. — (a) Subject to the provisions of § 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copied on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after request. A public body shall provide an estimate of the costs of request for documents prior to providing copies.

(d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

(e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1986, ch. 416, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person or entity requesting the right by the public body official who has custody or control of the public record in writing giving specific reasons for the denial within ten (10) business days of request and indicating the procedures for appealing the denial.

Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

38-2-8. Administrative appeals. — (a) Any person or entity denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of § 42-46-8(a), if applicable.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1981, ch. 279, § 2; P.L. 1998, ch. 378, § 1.

38-2-9. Jurisdiction of superior court. — (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

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

(d) The court shall impose a civil fine not exceeding one thousand dollars (\$1,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and shall

award reasonable attorney fees and costs. The court shall further order a public body to provide access to public records and, if denied access to public records and, if provided, further, that in the event the court finds further grounds in fact or in existing law for extension, modification, or reversal of the denial, award attorneys fees and costs to the applicant.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1988, ch. 87, § 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378, § 1.

Compiler's Notes. In 1998, the compiler substituted "further" for "futher" in two places in subsection (d).

38-2-14. Information relating to claims. — Settlement agreements with a governmental entity shall be deemed to be public records.

History of Section.

P.L. 1991, ch. 263, § 2; P.L. 1998, ch. 378, § 1.

Compiler's Notes. In 1998, the compiler

38-2-15. Reported violations. — The attorney general shall prepare a report summarizing violations pursuant to this chapter, which shall include information found to be meritorious and the response to those complaints.

History of Section.

P.L. 1998, ch. 378, § 2.

any reason not specifically set forth in
divided by the public body.

a request to inspect or copy the public
business day period shall be deemed to be
cause, this limit may be extended for a
1) business days.

263,

Appeals. — (a) Any person or entity
record of a public body by the custodian
the chief administrative officer of that
the determinations made by his or her
administrative officer shall make a final
to allow public inspection within ten
submission of the review petition.
ive officer determines that the record is
on, the person or entity seeking disclo-
th the attorney general. The attorney
complaint and if the attorney general
ations of the complaint are meritorious,
ceedings for injunctive or declaratory
nant in the superior court of the county
ed. Nothing within this section shall
tity from retaining private counsel for
ceedings for injunctive or declaratory
of the county where the record is

shall consider all complaints filed under
en filed pursuant to the provisions of

279,

Superior court. — (a) Jurisdiction to
ons brought under this chapter is hereby

any record which is the subject of a suit
her the record or any part thereof may
ection under the terms of this chapter.
this chapter may be advanced on the
party, or sua sponte by the court made
of civil procedure of the superior court.
a civil fine not exceeding one thousand
public body or official found to have
illful violation of this chapter, and shall

award reasonable attorney fees and costs to the prevailing plaintiff.
The court shall further order a public body found to have wrongfully
denied access to public records at no cost to the prevailing party
provided, further, that in the event that the court, having found
favor of the defendant, finds further that the plaintiff's case lacked
grounding in fact or in existing law or in good faith argument for the
extension, modification, or reversal of existing law, the court may
award attorneys fees and costs to the prevailing defendant.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1988, ch. 87,
§ 1; P.L. 1991, ch. 263, § 1; P.L. 1998, ch. 378,
§ 1.

Compiler's Notes. In 1998, the compiler
substituted "further" for "futher" in two
places in subsection (d).

The first clause of the second sentence
subsection (d) is set out as it appears in P
1998, ch. 378, § 1.

**38-2-14. Information relating to settlement of legal
claims.** — Settlement agreements of any legal claims against
governmental entity shall be deemed public records.

History of Section.

P.L. 1991, ch. 263, § 2; P.L. 1998, ch. 378,
§ 1.

Compiler's Notes. In 1998, the compiler

deleted " " legal claims against a gove-
mental e
from the

38-2-15. Reported violations. — Ev-
eral shall prepare a report summarizing
pursuant to this chapter, which shall be s
and which shall include information as to
found to be meritorious and the action tal
in response to those complaints.

History of Section.

P.L. 1998, ch. 378, § 2.