Massachusetts Governor Baker Approves First Major Overhaul of Public Records Law

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Massachusetts has its first significant update of its Public Records Law since the 1970s with promises of swifter responses and real consequences including attorney's fees for failures to comply.

In August 2015, we reported on a proposed bill from a joint House-Senate Committee on State Administration and Regulatory Oversight targeted at revamping the Massachusetts Public Records Law, Chapter 66, Section 10. Less than a year later, a somewhat different bill, Bill. H.4333 (An Act to improve public records) was unanimously approved by the House and Senate and signed by Governor Charlie Baker in June. The bill's provisions become effective January 1, 2017.

Open records advocates have long bemoaned the lack of transparency, high fees, and untimeliness of Massachusetts agencies and municipalities. In November 2015, the Center for Public Integrity again issued Massachusetts an "F" grade for public access to information and ranked it 40th in the nation. But while open government advocates are applauding Bill H.4333 as a step forward in modernizing the state's Public Records Law, critics remain concerned that the bill's provisions are too strict and will be expensive and difficult to implement, particularly at the municipal level.

The bill amends the existing Public Records Law requirements across several categories, including stricter response timeframes, limits on the assessment of fees, and measures for the award of legal fees. Key provisions include:

- A 10-day timeframe for responding to public records with documents, with certain limited provisions for requesting extensions.

- No fees for the first four hours of time spent fulfilling a request.

- Fees for black and white copies capped at 5 cents per page.

- Creation of educational materials, forms, guidelines, and other similar references to assist the public in making public records requests.

- Designation of "records access officers" by state agencies and municipalities to coordinate and handle responses to public records requests.

- Delivery of documents in electronic format, where available.

- Posting of certain categories of public records on agency and municipal websites, including:

    - annual reports,

    - notices of hearings,

    - proposed regulations,

    - open meeting minutes, and

    - awards of government grants.

- A rebuttable presumption in favor of awarding attorney's fees and costs to requesters prevented from obtaining public records. If attorney's fees are not awarded, the court's decision must explain why the award was denied.

- Punitive damages of $1,000-$5,000 may be assessed against agencies and municipalities that unlawfully withhold requested records or fail to timely produce requested records in good faith. Punitive damages are to be paid into a new Public Records Assistance Fund.

While the new amended law addresses some of the concerns of open records advocates as to timing, fees, judicial relief, and streamlining of procedures, Bill H.4333 stops short of removing the existing exemptions that limit the applicability of the Public Records Law to the judicial and legislative branches. Instead, a special legislative commission would be organized to study the accessibility of information on the practices and procedures of the legislative process and the constitutionality and practicality of applying the Public Records Law to the legislature, Governor's Office, and the judicial branch. The special legislative commission is required to prepare a report by December 30, 2017 with recommendations on expanding and reforming the Public Records Law as it relates to the various branches of government. Thus, there may be continued efforts to expand and revamp open access to a broader swathe of government records.

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