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To: Petrini & Associates, P.C. Clients & Friends

From: Christopher J. Petrini *C. J. P.*

Date: July 18, 2016

**RE: Chapter 121 of the Acts of 2016, *An Act to Improve Public Records*  
Petrini & Associates Client Advisory No. 2016:01**

On June 3, 2016, Governor Baker signed Chapter 121 of the Acts of 2016, *An Act to Improve Public Records*, into law. This legislation is the first major revision of the Public Records Law in Massachusetts since the law was first enacted in 1973, and for the most part takes effect on January 1, 2017, just a few short months away. All public officials should review the new law to develop guidelines and begin implementing its provisions over the coming months to ensure compliance. Additionally, the law requires the Supervisor of Public Records to promulgate various regulations no later than January 1, 2017 to implement the new law, which should provide further clarity and guidance for complying with the new law's requirements.

The major changes to the law include the following:

- The law creates a new position of responsibility for public records access at the municipal level called a Records Access Officer, responsible for assisting the public in seeking public records, assisting custodians in preserving public records, and preparing guidelines required by the new law to facilitate the public's access to public records. Municipal clerks are records access officers by default under the new law. Additional officers can be designated by the clerk or the chief executive officer of the municipality.
- The law provides substantial revisions to the time limit and manner in which records custodians must respond to a public records request, including the need to petition the supervisor of public records for extension of time, new requirements for information which must be set forth in any response, and an emphasis on electronic production of responses. Under the new law, records custodians generally will be expected to provide the record for inspection, not just respond to the request, within 10 business days of



receipt, although with the extensions permitted under the law, it will be possible to get up to 55 business days to provide requested records with approval of the Supervisor of Public Records.

- The law implements significant changes to the types and amounts of fees that may be charged to comply with a public records request. In February 2016, in anticipation of the new law, the Supervisor of Public Records issued an emergency regulation providing that the reproduction costs for black and white copies cannot exceed \$0.05 per page. This remains the operative rate moving forward, and additional limits have been placed on the fees recoverable for search and segregation costs incurred in responding to a request depending upon whether the population of the municipality is more than 20,000, generally requiring larger municipalities to provide the first 2 hours of labor for search costs at no charge to the requester.
- There are significant new remedies for violations of the law by records custodians, including potential awards of attorneys' fees and punitive damages of \$1,000 to \$5,000 per violation.
- The law includes modernized standards for record storage, including off-site storage, electronic record keeping systems, and availability, to the extent feasible, of certain records on municipal websites such as final decisions, annual reports, hearing notices, winning bids for public contracts, minutes of open meeting minutes and municipal budgets.

The upcoming changes to the Public Records Law are extensive and the ramifications for failing to comply with the law could be quite serious. It is important that all public officials who participate in responding to public records should be familiar with these changes. Please contact Petrini & Associates should you have any questions or concerns regarding the new Public Records Law or how to implement it properly in your jurisdiction. Thank you.