

TESTIMONY OF MARY CONNAUGHTON, PIONEER INSTITUTE'S DIRECTOR OF GOVERNMENT TRANSPARENCY BEFORE THE JOINT COMMITTEE ON STATE ADMINISTRATION AND REGULATORY OVERSIGHT REGARDING GOVERNMENT TRANSPARENCY ON BILLS H2755, H2804, S1700, H2732, H2758, H2772, H2822, H2717, S1633, S1641, S1676, S1638, H2802 (All of which advance government transparency)

MAY 26, 2015

Thank you Committee Members. My name is Mary Connaughton and one of my key roles at Pioneer Institute is Director of Government Transparency. Pioneer is very soon launching a new book, *Agenda For Leadership*, and many of the policy positions in the book relate to the bills before you today regarding transparency. Therefore, I wanted to highlight a few areas that are relevant to today's discussion.

No one said it better than Justice Louis Brandeis. "Sunshine is said to be the best of disinfectants, electric light the most efficient policeman." Massachusetts taxpayers deserve a thorough account of how tax dollars are spent and how decisions are made. Citizens ought to have access to what government is doing – and ample information so that they can form their own opinions. Transparency is key to an accountable public sector and a diligent electorate. In turn, an engaged citizenry is essential to a healthy democracy.

1. The Massachusetts public records laws should promote more electronic disclosure and greater compliance.

Electronic disclosure of records should be the default option.

Current law should also be amended to require more prompt disclosure with strong, enforceable (and enforced) penalties for lack of compliance. Disclosure requests under current law are frequently met with bureaucratic muddying. Requests for clarification on the part of the petitioned agency or demands for high processing fees act to deter public inquiry. At Pioneer, we have encountered these obstacles on numerous occasions with public records requests, the majority of which are documented on the website MuckRock.com.

2. All agencies and departments should be required to establish a transparency officer as a single point of contact for all public records requests.

If established, transparency officers would log all public records requests, along with the dates and times requests were received, acted on, and responded to. In the absence of a transparency manager, a public records request is usually an unwanted burden for an agency, "yet another thing" it has to deal with. This translates into a low or slow fulfillment rate, ignorant or overzealous redactions, and the imposition of excessive fees. Muckrock.com, a close partner with Pioneer Institute, estimates the average amount of days for various agencies to comply with requests. For example, the MBTA

takes 47 days, MassDOT 51 days, the Massachusetts State Lottery takes 115 days and the Mass State Police 130 days.

3. Penalties should be strengthened for agencies delinquent in responding to public records requests and promote legislation for a more effective appeal system.

The Massachusetts Supervisor of Public Records, part of the Secretary of State's Office, has not been effective in holding agencies responsible for non-compliance with public records law. As it now stands, though it processes appeals, the office has no enforcement powers. Should the Secretary of State decide to do so, cases can be sent to the Attorney General for enforcement.

Pioneer requested the correspondence between the Secretary of State's Office and the Attorney General office going back several years regarding public records enforcement requests made by the Secretary of State. After reviewing the correspondence, it's quite clear that the two offices have long-standing turf disputes regarding which office have final say in determining what is a public record. This correspondence is also available on the MuckRock website. Legislation should be crystal with respect to decision-making and enforcement powers.

Currently, citizens who go to court seeking judicial relief on a public records matter cannot retrieve attorneys' fees if they prevail. The public deserves an appeal system whose costs do not serve as a barrier to pursuit.

4. All filings, judgments and advisories by state entities, including State Ethics Commission Statement of Financial Interest filings should be made available online in easily searchable and downloadable formats.

Massachusetts is in the minority of states that do not post Statements of Financial Interests online. Under the current process, all requests for such statements go through the State Ethics Commission and the Commission then provides the name of the requester to the public figure being scrutinized. Thus, there is no anonymity for the requester – as exists in many states – which discourages public inspection in Massachusetts and leaves citizens skeptical of the government's motivations. Pioneer has written on this problem several times in the past.

5. It should be a priority for state agencies to engage citizens in transparency efforts.

To engage citizens in transparency efforts means asking them what government data they want. It means surveying people electronically in formats they find easy to use. Such a customer-focused effort would help shrink the gulf between the information government discloses and what constituents actually want to know.

Quite often, agencies receive the same public records requests month after month and year after year. Why not simply require agencies to post those records online and save time and frustration all around?

Finally, while no current bills touch these matters, I have a two comments for future consideration:

6. Under Massachusetts law, the legislature enjoys exemptions from open meeting and public records laws. These exemptions should be eliminated. The Supreme Judicial Court has twice upheld them, but did so narrowly, interpreting the statutory provisions of the law at face value without addressing the broader question of the law's constitutionality. Article V of our state's Declaration of Rights requires that the branches of government "at all times" be accountable to the people. Restricting the public's access to documents and meetings fundamentally undermines that basic right because a public kept in the dark about critical policy decisions cannot hold its elected representatives accountable. Our state's Constitution goes so far as to vest the commonwealth's citizens with the right to "give instructions to their representatives." The legislative exemptions negate the public's ability to exercise this right because access is required to reasonably determine what instructions should be given.

Along the same lines, the law should be amended to reject the notion that the executive office and the administrative functions of the judiciary are exempt from public records law.

Thank you for the opportunity to testify.

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<sup>i</sup> Westinghouse Broad, Co. Inc. v Sergeant-At-Arms of General Court of Massachusetts (1978) and Lambert v. Executive Director of Judicial Nominating Council (1997)