

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2100 Session of
2001

INTRODUCED BY MAHER AND McILHINNEY, OCTOBER 29, 2001

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 29, 2001

AN ACT

1 Amending the act of June 21, 1957 (P.L.390, No.212), entitled
2 "An act requiring certain records of the Commonwealth and its
3 political subdivisions and of certain authorities and other
4 agencies performing essential governmental functions, to be
5 open for examination and inspection by citizens of the
6 Commonwealth of Pennsylvania; authorizing such citizens under
7 certain conditions to make extracts, copies, photographs or
8 photostats of such records; and providing for appeals to the
9 courts of common pleas," further providing for definitions,
10 for examination and inspection and for extracts, copies or
11 photostats; providing for denial of access to public records,
12 for redaction, for response to requests for access and for
13 final agency determinations; further providing for appeal
14 from denial of right; and providing for court costs and
15 attorney fees, for penalty and for immunity.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Sections 1 and 2 of the act of June 21, 1957
19 (P.L.390, No.212), referred to as the Right-to-Know Law, are
20 amended to read:

21 [Section 1. In this act the following terms shall have the
22 following meanings:]

23 Section 1. Definitions.

24 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 [(1)] "Agency." Any office, department, board or commission
4 of the executive branch of the Commonwealth, any political
5 subdivision of the Commonwealth, the Pennsylvania Turnpike
6 Commission, the State System of Higher Education or any State or
7 municipal authority or similar organization created by or
8 pursuant to a statute which declares in substance that such
9 organization performs or has for its purpose the performance of
10 an essential governmental function.

11 [(2)] "Public [Record] record." Any account, voucher or
12 contract dealing with the receipt or disbursement of funds by an
13 agency or its acquisition, use or disposal of services or of
14 supplies, materials, equipment or other property and any minute,
15 order or decision by an agency fixing the personal or property
16 rights, privileges, immunities, duties or obligations of any
17 person or group of persons: Provided, That the term "public
18 records" shall not mean any report, communication or other
19 paper, the publication of which would disclose the institution,
20 progress or result of an investigation undertaken by an agency
21 in the performance of its official duties, except those reports
22 filed by agencies pertaining to safety and health in industrial
23 plants; it shall not include any record, document, material,
24 exhibit, pleading, report, memorandum or other paper, access to
25 or the publication of which is prohibited, restricted or
26 forbidden by statute law or order or decree of court, or which
27 would operate to the prejudice or impairment of a person's
28 reputation or personal security, or which would result in the
29 loss by the Commonwealth or any of its political subdivisions or
30 commissions or State or municipal authorities of Federal funds,

1 excepting therefrom however the record of any conviction for any
2 criminal act.

3 "Requester." Any citizen of this Commonwealth who requests
4 access to public records.

5 "Response." Access to a public record or an agency's written
6 notice granting, denying or partially granting and partially
7 denying access to a public record.

8 [Section 2. Every public record of an agency shall, at
9 reasonable times, be open for examination and inspection by any
10 citizen of the Commonwealth of Pennsylvania.]

11 Section 2. Access to public records.

12 (a) General rule.--Unless otherwise provided by law, a
13 public record shall be accessible for inspection and copying by
14 a requester in accordance with this act. A public record shall
15 be provided to a requester in the medium requested if the public
16 record is maintained in that medium; otherwise, it shall be
17 provided in the medium in which it is maintained. Public records
18 shall be available for access during the regular business hours
19 of an agency.

20 (b) Requests.--An agency may require a request for access to
21 be in writing or by electronic means. An agency shall have
22 available forms, which may be used to make requests for access.

23 (c) Electronic access.--In addition to the requirements of
24 subsection (a), an agency may make its public records available
25 through a publicly accessible World Wide Web site.

26 (d) Creation of a public record.--When responding to a
27 request for access, an agency shall not be required to create a
28 public record which does not currently exist or to compile,
29 maintain, format or organize a public record in a manner in
30 which the agency does not currently compile, maintain, format or

1 organize the public record.

2 (e) Production of a public record.--Notwithstanding
3 subsections (a) and (d), if a public record is only maintained
4 electronically, an agency shall, upon request, make the public
5 record available on paper when responding to a request for
6 access in accordance with this act.

7 Section 2. Section 3 of the act is repealed.

8 Section 3. The act is amended by adding sections to read:

9 Section 3.1. Denial of access to public records.

10 An agency may not deny a requester access to a public record
11 due to the intended use of the public record by the requester.

12 Section 3.2. Redaction.

13 If an agency determines that a public record contains
14 information which is subject to access as well as information
15 which is not subject to access, the agency's response shall
16 grant access to the information which is subject to access and
17 deny access to the information which is not subject to access.
18 If the information which is not subject to access is an integral
19 part of the public record and cannot be separated, the agency
20 shall redact from the public record the information which is not
21 subject to access and the response shall grant access to the
22 information which is subject to access. The agency may not deny
23 access to the public record if the information which is not
24 subject to access is able to be redacted. Information which an
25 agency redacts in accordance with this subsection shall be
26 deemed a denial under section 3.3.

27 Section 3.3. Response to requests for access.

28 (a) General rule.--Upon receipt of a written request for
29 access to a public record, an agency shall make a good faith
30 effort to respond as promptly as possible under the

1 circumstances existing at the time of the request, but shall not
2 exceed ten business days from the date the agency receives the
3 request for access. Except as provided in subsection (b), if the
4 agency fails to provide the response within ten business days of
5 the agency's receipt of the request for access, the request for
6 access shall be deemed denied.

7 (b) Exception.--Upon receipt of a written request for access
8 to a public record, if an agency determines that one of the
9 following applies:

10 (1) the request for access requires redaction of a
11 public record in accordance with section 3.2;

12 (2) the request for access requires the retrieval of a
13 public record stored in a remote location;

14 (3) a timely response to the request for access cannot
15 be accomplished due to illness, vacation or emergency;

16 (4) a legal review is necessary to determine whether the
17 public record is subject to access under this act;

18 (5) the requester has not complied with the agency's
19 policies regarding access to public records; or

20 (6) the requester has not paid the applicable fees or
21 costs authorized by this act,

22 the agency shall provide written notice to the requester within
23 ten business days of the agency's receipt of the request for
24 access. The notice shall include a statement notifying the
25 requester that the request for access is being reviewed, the
26 reason for the review and a reasonable date that a response is
27 expected to be provided. If the date that a response is expected
28 to be provided is in excess of 60 days, the request for access
29 shall be deemed denied.

30 (c) Denial.--If an agency's response is a denial of a

request for access, whether in whole or in part, the response shall include:

(1) A description of the public record requested.

(2) The specific reasons for the denial.

(3) The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on whose authority the denial is issued.

(4) The procedure to appeal the denial of access under section 3.4.

(d) Certified copies.--If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of a public record if the requester pays the applicable fees.

Section 3.4. Final agency determination.

(a) Filing of exceptions.--If a request for access is denied, the requester may file exceptions with the head of the agency denying the request for access within 15 business days of the mailing date of the agency's response. The exception shall state all grounds upon which the requester asserts that the public record is an accessible public record and shall rebut any grounds stated by the agency for delaying or denying the request.

(b) Determination.--The agency head or his designee shall make a final determination regarding the exceptions within 30 days of the mailing date of the exceptions. Prior to issuing the final determination regarding the exceptions, the agency head or his designee may conduct a hearing. The determination shall be the final order of the agency. If the agency head or his designee determines that the agency correctly denied the request

1 for access, the agency head or his designee shall provide a
2 written explanation to the requester of the reason for the
3 denial.

4 Section 4. Section 4 of the act is amended to read:

5 [Section 4. Any citizen of the Commonwealth of Pennsylvania
6 denied any right granted to him by section 2 or section 3 of
7 this act, may appeal from such denial. If such court determines
8 that such denial was not for just and proper cause under the
9 terms of this act, it may enter such order for disclosure as it
10 may deem proper.]

11 Section 4. Appeal.

12 (a) Petition.--Within 30 days of the mailing date of a final
13 determination of a Commonwealth agency affirming the denial of
14 access, a requester may file a petition for review or other
15 document as might be required by rule of court with the
16 Commonwealth Court. Within 30 days of the mailing date of a
17 final determination of any other agency affirming the denial of
18 access, a requester may file a petition for review or other
19 document as might be required by rule of court with the court of
20 common pleas for the county where the agency's office or
21 facility is located.

22 (b) Record.--The record before a court shall consist of the
23 request; the agency's response; the requester's exceptions; the
24 hearing transcript, if any; and the agency's final
25 determination.

26 Section 5. The act is amended by adding sections to read:

27 Section 4.1. Court costs and attorney fees.

28 (a) General rule.--If a court reverses an agency's final
29 determination, the court may award reasonable attorney fees and
30 costs of litigation, or an appropriate portion thereof, to a

1 requester if the court finds either of the following:

2 (1) the agency willfully or with wanton disregard
3 deprived the requester of access to public records subject to
4 access under the provisions of this act; or

5 (2) the exemptions, exclusions or defenses asserted by
6 the agency in its final determination were not based on a
7 reasonable interpretation of law.

8 (b) Sanctions for frivolous requests or appeals.--If a court
9 affirms an agency's final determination, the court may award
10 reasonable attorney fees and costs of litigation, or an
11 appropriate portion thereof, to the agency if the court finds
12 that the legal challenge to the agency's final determination was
13 frivolous or brought without substantial justification. The
14 court in its discretion also may enter an order barring the
15 requester from making future requests or filing future appeals
16 under this act if the requester has repeatedly made frivolous
17 requests or filed frivolous appeals under this act and it finds
18 that an award of attorney fees and costs is likely to be
19 insufficient to deter future frivolous requests or appeals.

20 Section 5. Penalty.

21 An individual of an agency who violates this act with the
22 intent and purpose of violating this act commits a summary
23 offense and shall, upon conviction, be sentenced to pay a fine
24 of not more than \$100 plus costs of prosecution.

25 Section 6. Immunity.

26 Except as provided in sections 4.1 and 5, no agency, public
27 official or public employee shall be liable for civil or
28 criminal damages or penalties resulting from the release or
29 failure to release information in accordance with this act or
30 for failure to comply with this act.

1 Section 6. This act shall apply to requests for access to
2 public records received by agencies after the effective date of
3 this act.

4 Section 7. This act shall take effect in 60 days.