
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2100 Session of
2001

INTRODUCED BY MAHER AND McILHINNEY, OCTOBER 29, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 25, 2002

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.

1 The following words and phrases when used in this act shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

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

12 "COMMONWEALTH AGENCY." AN AGENCY, WHICH IS A COMMONWEALTH ←
13 AGENCY, AS THAT TERM IS DEFINED UNDER 62 PA.C.S. § 103 (RELATING
14 TO DEFINITIONS).

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

1 would operate to the prejudice or impairment of a person's
2 reputation or personal security, or which would result in the
3 loss by the Commonwealth or any of its political subdivisions or
4 commissions or State or municipal authorities of Federal funds,
5 excepting therefrom however the record of any conviction for any
6 criminal act.

7 "RECORD." ANY DOCUMENT MAINTAINED BY AN AGENCY, IN ANY FORM, <—
8 WHETHER PUBLIC OR NOT.

9 "Requester." A person who ~~requests information~~ IS A RESIDENT <—
10 OF, OR DOES BUSINESS IN, THE COMMONWEALTH AND REQUESTS A RECORD
11 pursuant to this act.

12 "Response." Access to a record or an agency's written notice
13 granting, denying or partially granting and partially denying
14 access to a record.

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

18 Section 2. Procedure for access to public records.

19 (a) General rule.--Unless otherwise provided by law, a
20 public record shall be accessible for inspection and copying by
21 a requester in accordance with this act. A public record shall
22 be provided to a requester in the medium requested if the public
23 record exists in that medium; otherwise, it shall be provided in
24 the medium in which it exists. Public records shall be available
25 for access during the regular business hours of an agency.

26 (b) Written requests.--Agencies may fulfill oral requests
27 for records and anonymous requests for records. In the event
28 that the requester wishes to pursue the relief and remedies
29 provided for in this act, the requester must initiate such
30 relief with a written request.

1 (c) Other requests.--A written request for access to records
2 may be submitted in person, by mail, by facsimile or, to the
3 extent provided by agency rules, any other electronic means. A
4 written request shall be addressed to the agency head or other
5 person designated in the rules established by the agency. A
6 written request should identify or describe the records sought
7 with sufficient specificity to enable the agency to ascertain
8 which records are being requested and shall include the name and
9 address to which the agency should address its response. A
10 written request need not include any explanation of the
11 requester's reason for requesting or intended use of the
12 records.

13 (d) Electronic access.--In addition to the requirements of
14 subsection (a), an agency may make its public records available
15 through any publicly accessible electronic means.

16 (e) Creation of a public record.--When responding to a
17 request for access, an agency shall not be required to create a
18 public record which does not currently exist or to compile,
19 maintain, format or organize a public record in a manner in
20 which the agency does not currently compile, maintain, format or
21 organize the public record.

22 (f) Conversion of an electronic record to written form.--
23 Notwithstanding subsections (a) and (e), if a public record is
24 only maintained electronically, an agency shall, upon request,
25 make the public record available on paper when responding to a
26 request for access in accordance with this act.

27 (g) Retention of records.--An agency shall retain public
28 records in accordance with the act of August 14, 1963 (P.L.839, <—
29 No.407), entitled, as amended, "An act creating a county records
30 committee; imposing powers and duties upon it; authorizing the

~~1 Pennsylvania Historical and Museum Commission to assist and
2 cooperate with it; defining county records; and authorizing the
3 disposition of certain county records by county officers in
4 counties of the second to eighth class," with 53 Pa.C.S. Ch. 13
5 Subch. F (relating to records), and with the State Records
6 Management Manual LAW.~~

<—

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. 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 COMMONWEALTH AGENCY'S RESPONSE to written
28 requests for access.

<—

29 (a) General rule.--Upon receipt of a written request for
30 access to a record, an A COMMONWEALTH agency shall make a good

<—

1 faith effort to respond as promptly as possible under the
2 circumstances existing at the time of the request, but shall not
3 exceed ~~five~~ TEN business days from the date the written request <—
4 is received by the COMMONWEALTH agency head or other person <—
5 designated in the rules established by the COMMONWEALTH agency <—
6 for receiving such requests. If the COMMONWEALTH agency fails to <—
7 send the response within ~~five~~ TEN business days of such receipt <—
8 of the written request for access, the written request for
9 access shall be deemed denied.

10 (b) Exception.--Upon receipt of a written request for
11 access, if an A COMMONWEALTH agency determines that one of the <—
12 following applies:

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

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

17 (3) a timely response to the request for access cannot
18 be accomplished due to bona fide and specified staffing
19 limitations;

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

22 (5) the requester has not complied with the COMMONWEALTH <—
23 agency's policies regarding access to public records; or

24 (6) the requester refuses to pay applicable fees
25 authorized by section 7 of this act,

26 the COMMONWEALTH agency shall send written notice to the <—

27 requester within ~~five~~ TEN business days of the COMMONWEALTH <—

28 agency's receipt of the request for access. The notice shall

29 include a statement notifying the requester that the request for

30 access is being reviewed, the reason for the review and a

1 reasonable date that a response is expected to be provided. If
2 the date that a response is expected to be provided is in excess
3 of 30 days, FOLLOWING THE TEN BUSINESS DAYS ALLOWED FOR IN <—
4 SUBSECTION (A), the request for access shall be deemed denied.

5 (c) Denial.--If an A COMMONWEALTH agency's response is a <—
6 denial of a written request for access, whether in whole or in
7 part, a written response shall be issued and include:

8 (1) A description of the record requested.

9 (2) ~~The specific reasons for the denial,~~ A DETERMINATION <—
10 THAT THE RECORD REQUESTED IS NOT A PUBLIC RECORD AND THE
11 SPECIFIC REASONS FOR THE AGENCY'S DETERMINATION THAT THE
12 RECORD IS NOT A PUBLIC RECORD, including a citation of
13 supporting legal authority.

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

18 (4) Date of the response.

19 (5) The procedure to appeal the denial of access under
20 this act.

21 (d) Certified copies.--If an A COMMONWEALTH agency's <—
22 response grants a request for access, the COMMONWEALTH agency <—
23 shall, upon request, provide the requester with a certified copy
24 of a public record if the requester pays the applicable fees
25 pursuant to section 7.

26 SECTION 3.4. NON-COMMONWEALTH AGENCY'S RESPONSE TO WRITTEN <—
27 REQUESTS FOR ACCESS.

28 (A) GENERAL RULE.--UPON RECEIPT OF A WRITTEN REQUEST FOR
29 ACCESS TO A RECORD, A NON-COMMONWEALTH AGENCY SHALL MAKE A GOOD
30 FAITH EFFORT TO RESPOND AS PROMPTLY AS POSSIBLE UNDER THE

1 CIRCUMSTANCES EXISTING AT THE TIME OF THE REQUEST, BUT SHALL NOT
2 EXCEED FIVE BUSINESS DAYS FROM THE DATE THE WRITTEN REQUEST IS
3 RECEIVE BY THE NON-COMMONWEALTH AGENCY HEAD OR OTHER PERSON
4 DESIGNATED IN THE RULES ESTABLISHED BY THE NON-COMMONWEALTH
5 AGENCY FOR RECEIVING SUCH REQUESTS. IF THE NON-COMMONWEALTH
6 AGENCY FAILS TO SEND THE RESPONSE WITHIN FIVE BUSINESS DAYS OF
7 SUCH RECEIPT OF THE WRITTEN REQUEST FOR ACCESS, THE WRITTEN
8 REQUEST FOR ACCESS SHALL BE DEEMED DENIED.

9 (B) EXCEPTION.--UPON RECEIPT OF A WRITTEN REQUEST FOR
10 ACCESS, IF A NON-COMMONWEALTH AGENCY DETERMINES THAT ONE OF THE
11 FOLLOWING APPLIES:

12 (1) THE REQUEST FOR ACCESS REQUIRES REDACTION OF A
13 PUBLIC RECORD IN ACCORDANCE WITH SECTION 3.2;

14 (2) THE REQUEST FOR ACCESS REQUIRES THE RETRIEVAL OF A
15 PUBLIC RECORD STORED IN A REMOTE LOCATION;

16 (3) A TIMELY RESPONSE TO THE REQUEST FOR ACCESS CANNOT
17 BE ACCOMPANIED DUE TO BONA FIDE AND SPECIFIED STAFFING
18 LIMITATIONS;

19 (4) A LEGAL REVIEW IS NECESSARY TO DETERMINE WHETHER THE
20 PUBLIC RECORD IS SUBJECT TO ACCESS UNDER THIS ACT;

21 (5) THE REQUESTER HAS NOT COMPLIED WITH THE NON-
22 COMMONWEALTH AGENCY'S POLICIES REGARDING ACCESS TO PUBLIC
23 RECORDS; OR

24 (6) THE REQUESTER REFUSES TO PAY APPLICABLE FEES
25 AUTHORIZED BY SECTION 7, THE NON-COMMONWEALTH AGENCY SHALL
26 SEND WRITTEN NOTICE TO THE REQUESTER WITHIN FIVE BUSINESS
27 DAYS OF THE NON-COMMONWEALTH AGENCY'S RECEIPT OF THE REQUEST
28 NOTIFYING THE REQUESTER THAT THE REQUEST FOR ACCESS IS BEING
29 REVIEWED, THE REASON FOR THE REVIEW AND A REASONABLE DATE
30 THAT A RESPONSE IS EXPECTED TO BE PROVIDED. IF THE DATE THAT

1 A RESPONSE IS EXPECTED TO BE PROVIDED IS IN EXCESS OF 30
2 DAYS, FOLLOWING THE FIVE BUSINESS DAYS ALLOWED IN SUBSECTION
3 (A), THE REQUEST FOR ACCESS SHALL BE DEEMED DENIED.

4 (C) DENIAL.--IF A NON-COMMONWEALTH AGENCY'S RESPONSE IS A
5 DENIAL OF A WRITTEN REQUEST FOR ACCESS, WHETHER IN WHOLE OR IN
6 PART, A WRITTEN RESPONSE SHALL BE ISSUED AND INCLUDE:

7 (1) A DESCRIPTION OF THE RECORD REQUESTED.

8 (2) A DETERMINATION THAT THE RECORD REQUESTED IS NOT A
9 PUBLIC RECORD AND THE SPECIFIC REASONS FOR THE AGENCY'S
10 DETERMINATION THAT THE RECORD IS NOT A PUBLIC RECORD,
11 INCLUDING A CITATION OF SUPPORTING LEGAL AUTHORITY.

12 (3) THE TYPED OR PRINTED NAME, TITLE, BUSINESS ADDRESS,
13 BUSINESS TELEPHONE NUMBER AND SIGNATURE OF THE PUBLIC
14 OFFICIAL OR PUBLIC EMPLOYEE ON WHOSE AUTHORITY THE DENIAL IS
15 ISSUED.

16 (4) DATE OF THE RESPONSE.

17 (5) THE PROCEDURE TO APPEAL THE DENIAL OF ACCESS UNDER
18 THIS ACT.

19 (D) CERTIFIED COPIES.--IF A NON-COMMONWEALTH AGENCY'S
20 RESPONSE GRANTS A REQUEST FOR ACCESS, THE NON-COMMONWEALTH
21 AGENCY SHALL, UPON REQUEST, PROVIDE THE REQUESTER WITH A
22 CERTIFIED COPY OF A PUBLIC RECORD IF THE REQUESTER PAYS THE
23 APPLICABLE FEES PURSUANT TO SECTION 7.

24 Section ~~3.4~~ 3.5. Final agency determination. <—

25 (a) Filing of exceptions.--If a written request for access
26 is denied OR DEEMED DENIED, the requester may file exceptions <—
27 with the head of the agency denying the request for access
28 within 15 business days of the mailing date of the agency's
29 response. The exception shall state grounds upon which the
30 requester asserts that the record is a public record and shall

1 address any grounds stated by the agency for delaying or denying
2 the request.

3 (b) Determination.--The agency head or his designee shall
4 make a final determination regarding the exceptions within 30
5 days of the mailing date of the exceptions. Prior to issuing the
6 final determination regarding the exceptions, the agency head or
7 his designee may conduct a hearing. The determination shall be
8 the final order of the agency. If the agency head or his
9 designee determines that the agency correctly denied the request
10 for access, the agency head or his designee shall provide a
11 written explanation to the requester of the reason for the
12 denial.

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

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

20 Section 4. Judicial appeal.

21 (a) Commonwealth agency.--Within 30 days of the mailing date
22 of a final determination of a Commonwealth agency affirming the
23 denial of access, a requester may file a petition for review or
24 other document as might be required by rule of court with the
25 Commonwealth Court.

26 (b) Other agency.--Within 30 days of a denial by the agency <—
27 AN AGENCY OTHER THAN A COMMONWEALTH AGENCY under section 3.3(e) <—
28 3.4(C) or of the mailing date of a final determination of any <—
29 other SUCH agency affirming the denial of access, a requester <—
30 may file a petition for review or other document as might be

1 required by rule of court with the court of common pleas for the
2 county where the agency's office or facility is located or bring
3 an action in the local magisterial district. A requester is
4 entitled to a reasoned decision containing findings of fact and
5 conclusions of law based upon the evidence as a whole which
6 clearly and concisely states and explains the rationale for the
7 decisions so that all can determine why and how a particular
8 result was reached.

9 (c) Record on appeal.--The record before a court shall
10 consist of the request; the agency's response; the requester's
11 exceptions, if applicable; the hearing transcript, if any; and
12 the agency's final determination, if applicable.

13 Section 5. The act is amended by adding sections to read:
14 Section 4.1. Court costs and attorney fees.

15 (a) Reversal of agency determination.--If a court reverses
16 an agency's final determination, the court may award reasonable
17 attorney fees and costs of litigation, or an appropriate portion
18 thereof, to a requester if the court finds either of the
19 following:

20 (1) the agency willfully or with wanton disregard
21 deprived the requester of access to public records subject to
22 access under the provisions of this act; or

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

26 (b) Sanctions for frivolous requests or appeals.--If a court
27 affirms an agency's final determination, the court may award
28 reasonable attorney fees and costs of litigation, or an
29 appropriate portion thereof, to the agency if the court finds
30 that the legal challenge to the agency's final determination was

1 ~~frivolous or brought without substantial justification.~~ <—

2 Section 5. Penalties.

3 (a) Summary offense.--An agency, public official or public
4 employee who violates this act with the intent and purpose of
5 violating this act commits a summary offense and shall, upon
6 conviction, be sentenced to pay a fine of not more than \$100
7 plus costs of prosecution.

8 (b) Civil penalty.--An agency, public official or public
9 employee who does not promptly comply with a court order under
10 this act is subject to a civil penalty of not more than \$100 per
11 day until the public records are provided.

12 Section 6. Immunity.

13 (a) General rule.--Except as provided in sections 4.1 and 5,
14 no agency, public official or public employee shall be liable
15 for civil or criminal damages or penalties resulting from the <—
16 release of a public record in accordance with this act

17 COMPLIANCE OR FAILURE TO COMPLY WITH THIS ACT. <—

18 (b) Schedules.--No agency, public official or public
19 employee shall be liable for civil or criminal damages or
20 penalties under this act for complying with any written public
21 record retention and disposition schedule.

22 Section 7. Fee limitations.

23 (a) Postage.--Fees for postage may not exceed the actual
24 cost of mailing.

25 (b) Photocopying.--Fees for photocopying must be reasonable
26 and based on prevailing fees for comparable photocopying
27 services provided by local business entities.

28 (c) Limitations.--No other fees may be imposed unless the
29 agency necessarily incurs costs for complying with the request,
30 and such fees must be reasonable.

1 (d) Prepayment.--Prior to granting a request for access in
2 accordance with this act, an agency may require a requester to
3 prepay an estimate of the fees authorized under this section if
4 the fees required to fulfill the request are expected to exceed
5 \$100.

6 Section 8. Implementation.

7 (a) Requirement.--An agency shall establish written policies
8 and may promulgate regulations necessary to implement this act.

9 (b) Content.--The written policies shall include the name of
10 the office to which requests for access shall be addressed and a
11 list of applicable fees.

12 (c) Prohibition.--A policy or regulation may not include any
13 of the following:

14 (1) A limitation on the number of public records which
15 may be requested or made available under section 2.

16 (2) A requirement to disclose the purpose or motive for
17 the request for access.

18 (d) Access.--The policies shall be conspicuously posted at
19 the agency and may be made available by electronic means.

20 Section 9. Practice and procedure.

21 The provisions of 2 Pa.C.S. (relating to administrative law
22 and procedure) shall not apply to this act.

23 Section 6. If an agency receives a request for a public
24 record that is subject to a confidentiality agreement executed
25 before the effective date of this act, the law in effect at the
26 time the agreement was executed, including judicial
27 interpretation of the law, shall govern access to the public
28 record unless all parties to the confidentiality agreement agree
29 in writing to be governed by this act.

30 Section 7. This act shall take effect in 180 days.