

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2100

Session of  
2001

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INTRODUCED BY MAHER AND McILHINNEY, OCTOBER 29, 2001

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

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## 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.

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

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

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

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

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

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Section 2. Section 3 of the act is repealed.

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

Section 3.1. Access to public records.

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

Section 3.2. Redaction.

If an agency determines that a public record contains  
information which is subject to access as well as information  
which is not subject to access, the agency's response shall  
grant access to the information which is subject to access and  
deny access to the information which is not subject to access.  
If the information which is not subject to access is an integral  
part of the public record and cannot be separated, the agency  
shall redact from the public record the information which is not  
subject to access and the response shall grant access to the  
information which is subject to access. The agency may not deny  
access to the public record if the information which is not  
subject to access is able to be redacted. Information which an  
agency redacts in accordance with this subsection shall be  
deemed a denial under section 3.3.

Section 3.3. ~~Response~~ COMMONWEALTH AGENCY'S RESPONSE to written  
requests for access.

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

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

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

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

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

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

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

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

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

the COMMONWEALTH agency shall send written notice to the <—  
requester within ~~five~~ TEN business days of the COMMONWEALTH <—  
agency's receipt of the request for access. The notice shall  
include a statement notifying the requester that the request for  
access is being reviewed, the reason for the review and a

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

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

(1) A description of the record requested.

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

(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) Date of the response.

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

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

SECTION 3.4. NON-COMMONWEALTH AGENCY'S RESPONSE TO WRITTEN  
REQUESTS FOR ACCESS.

(A) GENERAL RULE.--UPON RECEIPT OF A WRITTEN REQUEST FOR  
ACCESS TO A RECORD, A NON-COMMONWEALTH AGENCY SHALL MAKE A GOOD  
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 RECEIVED 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



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

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

(1) A DESCRIPTION OF THE RECORD REQUESTED.

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

(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) DATE OF THE RESPONSE.

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

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

Section ~~3.4~~ 3.5. Final agency determination.

(a) Filing of exceptions.--If a written request for access is denied OR DEEMED 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 grounds upon which the requester asserts that the record is a public record and shall

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

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

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

Section 4. Judicial appeal.

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

(b) Other agency.--Within 30 days of a denial by the agency <—  
AN AGENCY OTHER THAN A COMMONWEALTH AGENCY under section 3.3(e) <—  
3.4(C) or of the mailing date of a final determination of any <—  
other SUCH agency affirming the denial of access, a requester <—  
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.~~

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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

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17 COMPLIANCE OR FAILURE TO COMPLY WITH THIS ACT.

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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.