

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 247 Session of 2011

INTRODUCED BY PILEGGI, ERICKSON, YAW, FOLMER, RAFFERTY, PIPPY,
ALLOWAY, M. WHITE, BRUBAKER, WASHINGTON, BREWSTER, COSTA,
MENSCH, GREENLEAF, EARLL, WOZNIAK, BAKER AND FARNESE,
JANUARY 26, 2011

REFERRED TO STATE GOVERNMENT, JANUARY 26, 2011

AN ACT

1 Amending the act of February 14, 2008 (P.L.6, No.3), entitled
2 "An act providing for access to public information, for a
3 designated open-records officer in each Commonwealth agency,
4 local agency, judicial agency and legislative agency, for
5 procedure, for appeal of agency determination, for judicial
6 review and for the Office of Open Records; imposing
7 penalties; providing for reporting by State-related
8 institutions; requiring the posting of certain State contract
9 information on the Internet; and making related repeals,"
10 further providing for definitions; providing for Pennsylvania
11 Interscholastic Athletic Association; and further providing
12 for access, for written requests, for production of certain
13 records, for exceptions for public records, for agency
14 response in general, for extension of time, for filing of
15 appeal, for appeals officers, for fee limitations and for
16 Office of Open Records.

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

19 Section 1. The definitions of "independent agency,"
20 "personal financial information" and "State-affiliated entity"
21 in section 102 of the act of February 14, 2008 (P.L.6, No.3),
22 known as the Right-to-Know Law, are amended to read:

23 Section 102. 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 * * *

4 "Independent agency." Any board, commission, authority or
5 other agency or officer of the Commonwealth, that is not subject
6 to the policy supervision and control of the Governor. The term
7 does not include a legislative or judicial agency.

8 * * *

9 "Personal financial information." An individual's personal
10 credit, charge or debit card information; bank account
11 information; bank, credit or financial statements; account or
12 PIN numbers; forms required to be filed with or by any taxing
13 authority; and other information relating to an individual's
14 personal finances.

15 * * *

16 "State-affiliated entity." A Commonwealth authority or
17 Commonwealth entity. The term includes the Pennsylvania Higher
18 Education Assistance Agency and any entity established thereby,
19 the Pennsylvania Gaming Control Board, the Pennsylvania Game
20 Commission, the Pennsylvania Fish and Boat Commission, the
21 Pennsylvania Housing Finance Agency, the Pennsylvania Municipal
22 Retirement Board, the State System of Higher Education, a
23 community college, the Pennsylvania Turnpike Commission, the
24 Pennsylvania Public Utility Commission, the Pennsylvania
25 Infrastructure Investment Authority, the State Public School
26 Building Authority[, the Pennsylvania Interscholastic Athletic
27 Association] and the Pennsylvania Higher Educational Facilities
28 Authority. The term does not include a State-related
29 institution. The term does not include any court or other
30 officer or agency of the unified judicial system, the General

Assembly and its officers and agencies, any State-related institution, political subdivision or any local, regional or metropolitan transportation authority.

* * *

Section 2. The act is amended by adding a section to read:

Section 307. Pennsylvania Interscholastic Athletic Association.

This act shall apply to the Pennsylvania Interscholastic Athletic Association.

Section 3. Sections 701, 703 and 707(c) of the act are amended to read:

Section 701. Access.

(a) General rule.--Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act. A record being provided to a requester shall be provided in the medium, computer file format or other format requested if it exists in that medium, computer file format or other format; otherwise, it shall be provided in the medium in which it exists. Public records, legislative records or financial records shall be available for access during the regular business hours of an agency.

(a.1) Exception.--Access under subsection (a) may be provided at a reasonable, specific appointment time if the request is voluminous, records must be obtained from a remote location or extensive redaction is required.

(b) Construction.--Nothing in this act shall be construed to require access to any computer either of an agency or individual employee of an agency.

Section 703. Written requests.

A written request for access to records may be submitted in

1 person, by mail, by e-mail, by facsimile or, to the extent
2 provided by agency rules, by any other electronic means. A
3 written request must be addressed to the open-records officer
4 designated pursuant to section 502 or to the head of a
5 Commonwealth agency. Employees of an agency shall be directed to
6 promptly forward requests for records to the agency's open-
7 records officer. A written request should identify or describe
8 the records sought with sufficient specificity to enable the
9 agency to ascertain which records are being requested and shall
10 include the name and address to which the agency should address
11 its response. A written request need not include any explanation
12 of the requester's reason for requesting or intended use of the
13 records unless otherwise required by law.

14 Section 707. Production of certain records.

15 * * *

16 (c) Transcripts.--

17 (1) Prior to an adjudication becoming final, binding and
18 nonappealable, a transcript of an administrative proceeding
19 shall be provided to a requester by the agency stenographer
20 or a court reporter, in accordance with agency procedure or
21 an applicable contract.

22 (2) Following an adjudication becoming final, binding
23 and nonappealable, a transcript of an administrative
24 proceeding shall be provided to a requester in accordance
25 with the duplication rates established in section 1307(b).

26 (3) Nothing in this subsection shall be construed to
27 require an agency to transcribe a proceeding solely for
28 purposes of responding to a request under this act.

29 Section 4. Section 708(c) of the act is amended and
30 subsection (b) is amended by adding a paragraph to read:

1 Section 708. Exceptions for public records.

2 * * *

3 (b) Exceptions.--Except as provided in subsections (c) and
4 (d), the following are exempt from access by a requester under
5 this act:

6 * * *

7 (31) An agency's bank account numbers, bank routing
8 numbers, credit card numbers or passwords.

9 (c) Financial records.--The exceptions set forth in
10 subsection (b) shall not apply to financial records, except that
11 an agency may redact that portion of a financial record
12 protected under subsection (b) (1), (2), (3), (4), (5), (6),
13 (11), (13), (16) or (17). An agency shall not disclose the
14 identity of an individual performing an undercover or covert law
15 enforcement activity.

16 * * *

17 Section 5. Sections 901, 902(b), 1101, 1102(a), 1307(h) and
18 1310 of the act are amended to read:

19 Section 901. General rule.

20 (a) Determination.--Upon receipt of a written request for
21 access to a record, an agency shall make a good faith effort to
22 determine if the record requested is a public record,
23 legislative record or financial record and whether the agency
24 has possession, custody or control of the identified record, and
25 to respond as promptly as possible under the circumstances
26 existing at the time of the request. All applicable fees shall
27 be paid in order to receive access to the record requested.

28 (b) Time for response.--The time for response shall not
29 exceed:

30 (1) In the case of a request submitted by e-mail, web

1 form, facsimile or similar means, five business days from the
2 date the written request is received by the open-records
3 officer for an agency. If the agency fails to send the
4 response within five business days of receipt of the written
5 request for access, the written request for access shall be
6 deemed denied.

7 (2) In the case of a request submitted by first class
8 mail or similar means, ten business days from the postmark
9 date. If the agency fails to send the response within ten
10 business days from the postmark date, the written request for
11 access shall be deemed denied.

12 (3) In the case of a request submitted by certified mail
13 or similar means requiring signature as proof of delivery,
14 five business days from the date the written request is
15 received by the open-records officer for an agency. If the
16 agency fails to send the response within five business days
17 of receipt of the written request for access, the written
18 request for access shall be deemed denied.

19 Section 902. Extension of time.

20 * * *

21 (b) Notice.--

22 (1) Upon a determination that one of the factors listed
23 in subsection (a) applies, the open-records officer shall
24 send written notice to the requester within five business
25 days of receipt of the request for access under subsection
26 (a).

27 (2) The notice shall include a statement notifying the
28 requester that the request for access is being reviewed, the
29 reason for the review, a reasonable date that a response is
30 expected to be provided and an estimate of applicable fees

1 owed when the record becomes available. If the date that a
2 response is expected to be provided is in excess of 30
3 business days, following the five business days allowed for
4 in section 901, the request for access shall be deemed denied
5 unless the requester has agreed in writing to an extension to
6 the date specified in the notice.

7 (3) If the requester agrees to the extension, the
8 request shall be deemed denied on the day following the date
9 specified in the notice if the agency has not provided a
10 response by that date.

11 Section 1101. Filing of appeal.

12 (a) Authorization.--

13 (1) If a written request for access to a record is
14 denied or deemed denied, the requester may file an appeal
15 with the Office of Open Records or judicial, legislative or
16 other appeals officer designated under section 503(d) within
17 [15] 20 business days of the [mailing] postmark date of the
18 agency's response or within [15] 20 business days of a deemed
19 denial, whichever date comes first. If a denial is issued via
20 e-mail, the requester may file an appeal under this paragraph
21 within 20 business days of the agency's response. The appeal
22 shall [state the grounds upon which the requester asserts
23 that the record is a public record, legislative record or
24 financial record and shall address any grounds stated by the
25 agency for delaying or denying the request.] identify the
26 records to which the requester has been denied access that
27 are the subject of the appeal.

28 (2) Except as provided in section 503(d), in the case of
29 an appeal of a decision by a Commonwealth agency or local
30 agency, the Office of Open Records shall assign an appeals

1 officer to review the denial.

2 (b) Determination.--

3 (1) [Unless the requester agrees otherwise, the] The
4 appeals officer shall make a final determination which shall
5 be mailed to the requester and the agency within 30 days of
6 receipt of the appeal filed under subsection (a). The appeals
7 officer may extend this deadline by up to 15 days by
8 providing notice to both parties. If a hearing is held under
9 section 1102(a)(2), the appeals officer may extend the
10 deadline up to 15 additional days.

11 (2) If the appeals officer fails to issue a final
12 determination within 30 days, the appeal is deemed denied.

13 (3) Prior to issuing a final determination, a hearing
14 may be conducted. The determination by the appeals officer
15 shall be a final order. The appeals officer shall provide a
16 written explanation of the reason for the decision to the
17 requester and the agency.

18 (c) Direct interest.--

19 (1) A person other than the agency or requester with a
20 direct interest in the record subject to an appeal under this
21 section may, within 15 days following receipt of actual
22 knowledge of the appeal but no later than the date the
23 appeals officer issues an order, file a written request to
24 provide information or to appear before the appeals officer
25 or to file information in support of the requester's or
26 agency's position.

27 (2) The appeals officer may grant a request under
28 paragraph (1) if:

29 (i) no hearing has been held;

30 (ii) the appeals officer has not yet issued its

order; and

(iii) the appeals officer believes the information will be probative.

(3) Copies of the written request shall be sent to the agency and the requester.

Section 1102. Appeals officers.

(a) Duties.--An appeals officer designated under section 503 shall do all of the following:

(1) Set a schedule for the requester and the open-records officer to submit documents in support of their positions.

(2) Review all information filed relating to the request. The appeals officer may hold a hearing, in which case the appeals officer may extend the deadline in section 1101(b)(1) by up to 15 days. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.

(3) Consult with agency counsel as appropriate.

(4) Issue a final determination on behalf of the Office of Open Records or other agency.

* * *

Section 1307. Fee limitations.

* * *

(h) Prepayment.--Prior to granting a request for access in accordance with this act, an agency may require a requester to prepay an estimate of the fees authorized under this section if

1 the fees required to fulfill the request are expected to exceed
2 [\$100] \$50.

3 Section 1310. Office of Open Records.

4 (a) Establishment.--There is established in the Department
5 of Community and Economic Development an Office of Open Records.
6 The office shall do all of the following:

7 (1) Provide information relating to the implementation
8 and enforcement of this act.

9 (2) Issue advisory opinions to agencies and requesters.

10 (3) Provide annual training courses to agencies, public
11 officials and public employees on this act and 65 Pa.C.S. Ch.
12 7 (relating to open meetings).

13 (4) Provide annual, regional training courses to local
14 agencies, public officials and public employees.

15 (5) Assign appeals officers to review appeals of
16 decisions by Commonwealth agencies or local agencies, except
17 as provided in section 503(d), filed under section 1101 and
18 issue orders and opinions. The office shall employ or
19 contract with attorneys to serve as appeals officers to
20 review appeals and, if necessary, to hold hearings on a
21 regional basis under this act. Each appeals officer must
22 comply with all of the following:

23 (i) Complete a training course provided by the
24 Office of Open Records prior to acting as an appeals
25 officer.

26 (ii) If a hearing is necessary, hold hearings
27 regionally as necessary to ensure access to the remedies
28 provided by this act.

29 (iii) Comply with the procedures under section
30 1102(b).

1 (6) Establish an informal mediation program to resolve
2 disputes under this act.

3 (7) Establish an Internet website with information
4 relating to this act, including information on fees, advisory
5 opinions and decisions and the name and address of all open
6 records officers in this Commonwealth.

7 (8) Conduct a biannual review of fees charged under this
8 act.

9 (9) Annually report on its activities and findings to
10 the Governor and the General Assembly. The report shall be
11 posted and maintained on the Internet website established
12 under paragraph (7).

13 (b) Executive director.--Within 90 days of the effective
14 date of this section, the Governor shall appoint an executive
15 director of the office who shall serve for a term of six years.
16 Compensation shall be set by the Executive Board established
17 under section 204 of the act of April 9, 1929 (P.L.177, No.175),
18 known as The Administrative Code of 1929. The executive director
19 may serve no more than two terms.

20 (c) Limitation.--The executive director shall not seek
21 election nor accept appointment to any political office during
22 his tenure as executive director and for one year thereafter.

23 (d) Staffing.--The executive director shall appoint
24 attorneys to act as appeals officers and additional clerical,
25 technical and professional staff as may be appropriate and may
26 contract for additional services as necessary for the
27 performance of the executive director's duties. The compensation
28 of attorneys and other staff shall be set by the Executive
29 Board. The appointment of attorneys shall not be subject to the
30 act of October 15, 1980 (P.L.950, No.164), known as the

1 Commonwealth Attorneys Act.

2 (e) Duties.--The executive director shall ensure that the
3 duties of the Office of Open Records are carried out and shall
4 monitor cases appealed to the Office of Open Records.

5 (f) Appropriation.--The appropriation for the office shall
6 be in a separate line item and shall be under the jurisdiction
7 of the executive director.

8 (g) Standing.--The Office of Open Records shall have
9 standing and may participate as a party in an appeal of a
10 decision of the office.

11 Section 6. This act shall take effect in 60 days.