

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2524 Session of 2022

INTRODUCED BY SCHMITT, RIGBY, HENNESSEY, B. MILLER, TOPPER,  
RYAN, ZIMMERMAN, MOUL AND GROVE, APRIL 20, 2022

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 20, 2022

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," in  
 10 preliminary provisions, further providing for definitions; in  
 11 access, further providing for open-records officer, for  
 12 regulations and policies, for uniform form, for requests and  
 13 for retention of records and providing for inmate access; in  
 14 procedure, further providing for written requests, for  
 15 redaction, for production of certain records and for  
 16 exceptions for public records; in agency response, further  
 17 providing for extension of time and providing for relief from  
 18 vexatious requesters; in appeal of agency determination,  
 19 further providing for filing of appeal and for appeals  
 20 officers; in judicial review, further providing for court  
 21 costs and attorney fees, for civil penalty, for fee  
 22 limitations and for Office of Open Records; and, in  
 23 miscellaneous provisions, further providing for relation to  
 24 other laws.

25 The General Assembly of the Commonwealth of Pennsylvania  
 26 hereby enacts as follows:

27 Section 1. The definitions of "independent agency," "local  
 28 agency" and "personal financial information" in section 102 of  
 29 the act of February 14, 2008 (P.L.6, No.3), known as the Right-

1 to-Know Law, are amended and the section is amended by adding  
2 definitions to read:

3 Section 102. Definitions.

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

7 \* \* \*

8 "Commercial purpose." As follows:

9 (1) The use of a record to obtain names and addresses  
10 from the record for the purpose of commercial solicitation.

11 (2) The term does not include the use of a record by an  
12 educational or noncommercial scientific institution for  
13 scholarly or scientific research or the use of a record by  
14 the news media, a journalist or an author for news gathering  
15 or dissemination in a newspaper, periodical, book, digital  
16 publication or radio or television news broadcast.

17 \* \* \*

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

22 "Inmate." An individual incarcerated, after having been  
23 sentenced by a court of competent jurisdiction, in a Federal,  
24 State or county correctional facility or prison.

25 \* \* \*

26 "Local agency." As follows:

27 (1) Any of the following:

28 [(1)] (i) Any political subdivision, intermediate  
29 unit, charter school, cyber charter school or public  
30 trade or vocational school.

1           [(2)] (ii) Any local, intergovernmental, regional or  
2 municipal agency, authority, council, board, commission  
3 or similar governmental entity. This subparagraph  
4 includes an economic development authority and an  
5 industrial development authority.

6           (iii) Any campus police department of a State-owned  
7 or State-related college or university.

8           (2) The term does not include the following volunteer  
9 organizations:

10           (i) A volunteer ambulance service.

11           (ii) A volunteer fire company.

12           (iii) A volunteer rescue company.

13           (iv) A volunteer water rescue company.

14           (v) A volunteer organization that provides hazardous  
15 materials response services.

16           (vi) A volunteer organization that provides  
17 emergency medical services.

18 \* \* \*

19 "Personal financial information." As follows:

20           (1) An individual's personal credit, charge or debit  
21 card information; bank account or other financial institution  
22 account information; bank, credit or financial statements;  
23 account or PIN numbers; forms required to be filed by a  
24 taxpayer with a Federal, State or local taxing authority;  
25 employee benefit election information; individual employee  
26 contributions to retirement plans and investment options;  
27 individual employee contributions to health care benefits and  
28 other benefits; individual employee contributions to  
29 charitable organizations; and other information relating to  
30 an individual's personal finances.

1           (2) The term does not include employer costs or  
2 aggregated data of employee costs related to retirement  
3 benefits, health care benefits or other benefits or the  
4 disclosure of options made available to employees regarding  
5 retirement benefits, health care benefits or other benefits.

6 \* \* \*

7 "Time response log." A log created, received, maintained or  
8 retained by a public safety answering point (PSAP), as defined  
9 in 35 Pa.C.S. § 5302 (relating to definitions), containing the  
10 following information:

11           (1) The time the call was received by the PSAP.

12           (2) The time the PSAP contacted or dispatched the  
13 dedicated emergency response organization for response.

14           (3) The dedicated emergency response organization  
15 dispatched.

16           (4) The time the dedicated emergency response  
17 organization responded.

18           (5) The time the dedicated emergency response  
19 organization arrived on the scene.

20           (6) The time the dedicated emergency response  
21 organization became available.

22           (7) The location of the incident by way of the street  
23 block identifier, the cross street or the mile marker nearest  
24 the scene of the incident.

25           (8) A description of the reason for the dispatch.

26 \* \* \*

27 "Vexatious requester." An individual whose sole intention in  
28 filing a request is to annoy or harass a local agency.

29       Section 2. Section 502 of the act is amended by adding a  
30 subsection to read:

1 Section 502. Open-records officer.

2 \* \* \*

3 (c) Agency registration.--A Commonwealth agency or local  
4 agency shall register the agency's open-records officer with the  
5 Office of Open Records in a manner prescribed by the Office of  
6 Open Records.

7 Section 3. Section 504(b) (1) of the act is amended to read:

8 Section 504. Regulations and policies.

9 \* \* \*

10 (b) Posting.--The following information shall be posted at  
11 each agency and, if the agency maintains an Internet website, on  
12 the agency's Internet website:

13 (1) Contact information for the open-records officer[.],  
14 including name, address, telephone number, facsimile number  
15 and email address.

16 \* \* \*

17 Section 4. Section 505 of the act is amended by adding a  
18 subsection to read:

19 Section 505. Uniform form.

20 \* \* \*

21 (d) Commercial requests.--The following shall apply:

22 (1) An agency may require a requester to certify in  
23 writing whether the request is for a commercial purpose. A  
24 requester that submits a false written statement under this  
25 subsection shall be subject to 18 Pa.C.S. § 4904 (relating to  
26 unsworn falsification to authorities).

27 (2) Certification to Commonwealth agencies and local  
28 agencies shall be submitted in a manner approved by the  
29 Office of Open Records.

30 Section 5. Sections 506(d) (1) and 507 of the act are amended

1 to read:

2 Section 506. Requests.

3 \* \* \*

4 (d) Agency possession.--

5 (1) A public record that is not in the possession of an  
6 agency but is in the possession of a party with whom the  
7 agency has contracted to perform a governmental function on  
8 behalf of the agency, and which directly relates to the  
9 governmental function and is not exempt under this act, shall  
10 be considered a public record of the agency for purposes of  
11 this act. This paragraph shall apply to records of the  
12 following volunteer organizations when the organization  
13 contracts with a Commonwealth agency or local agency to  
14 provide services:

15 (i) A volunteer ambulance service.

16 (ii) A volunteer fire company.

17 (iii) A volunteer rescue company.

18 (iv) A volunteer water rescue company.

19 (v) A volunteer organization that provides hazardous  
20 materials response services.

21 (vi) A volunteer organization that provides  
22 emergency medical services.

23 \* \* \*

24 Section 507. Retention of records.

25 (a) Agency schedules.--Nothing in this act shall be  
26 construed to modify, rescind or supersede any record retention  
27 policy or disposition schedule of an agency established pursuant  
28 to law, regulation, policy or other directive.

29 (b) Prohibition.--

30 (1) Notwithstanding subsection (a), once a request for

1 records has been submitted under Chapter 7, an agency may not  
2 knowingly dispose of any potentially responsive record until  
3 the request has been responded to and any related appeals  
4 have been exhausted.

5 (2) A court may impose a civil penalty of not more than  
6 \$2,500 if an agency or public official, in violation of  
7 paragraph (1), disposes of any potentially responsive record  
8 in bad faith.

9 Section 6. The act is amended by adding a section to read:  
10 Section 508. Inmate access.

11 (a) Status.--Except as provided in subsection (b), an inmate  
12 may not be a requester for purposes of this act.

13 (b) Records.--An agency shall provide an inmate with copies  
14 of the following records as they pertain directly to the inmate  
15 if the disclosure of the record will not diminish the safety or  
16 security of any person or correctional facility and if there are  
17 no other policies or procedures in place for the inmate to  
18 obtain the requested information:

19 (1) Criminal records relating to the criminal commitment  
20 of the inmate.

21 (2) Institutional housing information.

22 (3) The inmate's financial records.

23 (4) The inmate's work records.

24 (5) The inmate's educational records.

25 (6) The inmate's disciplinary records.

26 (7) Disciplinary, housing and other policies adopted by  
27 the correctional institution or the Department of  
28 Corrections.

29 (8) A record relating to any Federal or State benefit  
30 received by the inmate or for which the inmate is eligible.

1           (9) The inmate's tax records.

2           (10) The inmate's voting records.

3           (11) Records relating to any license issued to the  
4           inmate by a Commonwealth or local agency.

5           (c) Applicability.--This section shall not prohibit an  
6           agency from voluntarily permitting an inmate to have access to  
7           records not listed under subsection (b) or prevent an agency  
8           from complying with a lawful subpoena or court order.

9           Section 7. Sections 703, 706 and 707(c) of the act are  
10          amended to read:

11          Section 703. Written requests.

12           (a) General rule.--A written request for access to records  
13          may be submitted in person, by mail, by e-mail, by facsimile or,  
14          to the extent provided by agency rules, by any other electronic  
15          means. A written request must be addressed to the open-records  
16          officer designated pursuant to section 502. [Employees of an  
17          agency shall be directed to forward requests for records to the  
18          open-records officer.] A written request should identify or  
19          describe the records sought with sufficient specificity to  
20          enable the agency to ascertain which records are being requested  
21          and shall include the name and address to which the agency  
22          should address its response. [A] Except as required under  
23          section 505(d), a written request need not include any  
24          explanation of the requester's reason for requesting or intended  
25          use of the records unless otherwise required by law.

26           (b) False certification.--A requester that submits a false  
27          certification under section 505(d) shall be subject to 18  
28          Pa.C.S. § 4904 (relating to unsworn falsification to  
29          authorities).

30          Section 706. Redaction.

1        If an agency determines that a [public record, legislative  
2 record or financial] record contains information which is  
3 subject to access as well as information which is not subject to  
4 access, the agency's response shall grant access to the  
5 information which is subject to access and deny access to the  
6 information which is not subject to access. If the information  
7 which is not subject to access is an integral part of the  
8 [public record, legislative record or financial] record and  
9 cannot be separated, the agency shall redact from the record the  
10 information which is not subject to access, and the response  
11 shall grant access to the information which is subject to  
12 access. The agency may not deny access to the record if the  
13 information which is not subject to access is able to be  
14 redacted. Information which an agency redacts in accordance with  
15 this subsection shall be deemed a denial under Chapter 9.  
16 Section 707. Production of certain records.

17        \* \* \*

18        (c) Transcripts.--

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

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

28            (3) This subsection may not be construed to require an  
29 agency to transcribe a proceeding solely for purposes of  
30 responding to a request under this act.

1 Section 8. Section 708(b)(6)(i)(B), (9), (10), (13), (16),  
2 (17) and (18) and (c) of the act are amended and subsection (b)  
3 is amended by adding a paragraph to read:

4 Section 708. Exceptions for public records.

5 \* \* \*

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

9 \* \* \*

10 (6) (i) The following personal identification  
11 information:

12 \* \* \*

13 (B) A spouse's or immediate family member's  
14 name, marital status or beneficiary or dependent  
15 information, including the number, names and ages of  
16 an employee's dependents.

17 \* \* \*

18 (9) The draft of a bill, resolution, regulation,  
19 statement of policy, management directive, ordinance or  
20 amendment thereto prepared by or for an agency. This  
21 paragraph shall not apply to a draft that is presented to a  
22 quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7  
23 (relating to open meetings) at a public meeting, regardless  
24 of whether a vote occurs or is scheduled to occur at the  
25 meeting.

26 (10) As follows:

27 (i) A record that reflects:

28 (A) The internal, predecisional deliberations of  
29 an agency, its members, employees or officials or  
30 predecisional deliberations between agency members,

1 employees or officials and members, employees or  
2 officials of another agency, including predecisional  
3 deliberations relating to a budget recommendation,  
4 legislative proposal, legislative amendment,  
5 contemplated or proposed policy or course of action  
6 or any research, memos or other documents used in the  
7 predecisional deliberations.

8 (B) The strategy to be used to develop or  
9 achieve the successful adoption of a budget,  
10 legislative proposal or regulation.

11 (ii) Subparagraph (i) (A) shall apply to agencies  
12 subject to 65 Pa.C.S. Ch. 7 [(relating to open meetings)]  
13 in a manner consistent with 65 Pa.C.S. Ch. 7. A record  
14 which is not otherwise exempt from access under this act  
15 and which is presented to a quorum for deliberation in  
16 accordance with 65 Pa.C.S. Ch. 7 shall be a public record  
17 regardless of whether a vote occurs, or is scheduled to  
18 occur at the meeting.

19 (iii) This paragraph shall not apply to a written or  
20 Internet application or other document that has been  
21 submitted to request Commonwealth funds.

22 (iv) This paragraph shall not apply to the results  
23 of public opinion surveys, polls, focus groups, marketing  
24 research or similar effort designed to measure public  
25 opinion.

26 \* \* \*

27 (13) Records that would disclose the identity of, or  
28 personal financial information relating to, an individual who  
29 lawfully makes a donation to or for the benefit of an agency  
30 unless the donation is intended for or restricted to

1 providing remuneration or personal tangible benefit to a  
2 named public official or employee of the agency, including  
3 lists of potential donors compiled by an agency to pursue  
4 donations, donor profile information or personal identifying  
5 information relating to a donor.

6 \* \* \*

7 (16) A record of an agency relating to or resulting in a  
8 criminal investigation, including:

9 (i) Complaints of potential criminal conduct other  
10 than a private criminal complaint.

11 (ii) Investigative materials, notes, correspondence,  
12 videos and reports.

13 (iii) A record that includes the identity of a  
14 confidential source or the identity of a suspect who has  
15 not been charged with an offense to whom confidentiality  
16 has been promised.

17 (iv) A record that includes information made  
18 confidential by law or court order.

19 (v) Victim information, including any information  
20 that would jeopardize the safety of the victim.

21 (vi) A record that, if disclosed, would do any of  
22 the following:

23 (A) Reveal the institution, progress or result  
24 of a criminal investigation, except the filing of  
25 criminal charges.

26 (B) Deprive a person of the right to a fair  
27 trial or an impartial adjudication.

28 (C) Impair the ability to locate a defendant or  
29 codefendant.

30 (D) Hinder an agency's ability to secure an

1           arrest, prosecution or conviction.

2           (E) Endanger the life or physical safety of an  
3           individual.

4           (vii) This paragraph shall not apply to records  
5           created more than 50 years prior to the request, unless  
6           the agency can demonstrate actual harm to an ongoing  
7           investigation if the records are released.

8           This paragraph shall not apply to information contained in a  
9           police blotter as defined in 18 Pa.C.S. § 9102 (relating to  
10          definitions) and utilized or maintained by the Pennsylvania  
11          State Police, local, campus, transit or port authority police  
12          department or other law enforcement agency or in a traffic  
13          report except as provided under 75 Pa.C.S. § 3754(b)  
14          (relating to accident prevention investigations). Police  
15          blotter information, in whatever form it exists, is public  
16          and includes, but is not limited to, the name and address of  
17          an individual charged, the alleged offenses, the date of the  
18          offenses and the date of the charges.

19          (17) A record of an agency relating to a noncriminal  
20          investigation, including:

21               (i) Complaints submitted to an agency.

22               (ii) Investigative materials, notes, correspondence  
23               and reports.

24               (iii) A record that includes the identity of a  
25               confidential source, including individuals subject to the  
26               act of December 12, 1986 (P.L.1559, No.169), known as the  
27               Whistleblower Law.

28               (iv) A record that includes information made  
29               confidential by law.

30               (v) Work papers underlying an audit.

1 (vi) A record that, if disclosed, would do any of  
2 the following:

3 (A) Reveal the institution, progress or result  
4 of an agency investigation, except the imposition of  
5 a fine or civil penalty, the suspension, modification  
6 or revocation of a license, permit, registration,  
7 certification or similar authorization issued by an  
8 agency or an executed settlement agreement unless the  
9 agreement is determined to be confidential by a  
10 court.

11 (B) Deprive a person of the right to an  
12 impartial adjudication.

13 (C) Constitute an unwarranted invasion of  
14 privacy.

15 (D) Hinder an agency's ability to secure an  
16 administrative or civil sanction.

17 (E) Endanger the life or physical safety of an  
18 individual.

19 (vii) This paragraph shall not apply to records  
20 created more than 25 years prior to the request, unless  
21 the agency can demonstrate actual harm to an ongoing  
22 investigation if the records are released.

23 (18) Emergency dispatches as follows:

24 (i) Records or parts of records, except time  
25 response logs, pertaining to audio recordings, telephone  
26 or radio transmissions received by emergency dispatch  
27 personnel, including 911 recordings.

28 (ii) This paragraph shall not apply to a 911  
29 recording, or a transcript of a 911 recording, if the  
30 agency or a court determines that the public interest in

1 disclosure outweighs the interest in nondisclosure.

2 \* \* \*

3 (31) An agency's financial institution account numbers,  
4 routing numbers, credit card numbers, PIN numbers and  
5 passwords.

6 (c) Financial records.--The exceptions set forth in  
7 subsection (b) shall not apply to financial records, except that  
8 an agency may redact that portion of a financial record  
9 protected under subsection (b) (1), (2), (3), (4), (5), (6),  
10 (13), (16) [or], (17), (28), (30) or (31). An agency shall not  
11 disclose the identity of an individual performing an undercover  
12 or covert law enforcement activity.

13 \* \* \*

14 Section 9. Section 902(b) (2) of the act is amended to read:  
15 Section 902. Extension of time.

16 \* \* \*

17 (b) Notice.--

18 \* \* \*

19 (2) The notice shall include a statement notifying the  
20 requester that the request for access is being reviewed, the  
21 reason for the review, a reasonable date that a response is  
22 expected to be provided and an estimate of applicable fees  
23 owed when the record becomes available. [If the date that a  
24 response is expected to be provided is in excess of 30 days,  
25 following the five business days allowed for in section 901,  
26 the request for access shall be deemed denied unless the  
27 requester has agreed in writing to an extension to the date  
28 specified in the notice.] The request for access shall be  
29 deemed denied if the agency fails to send a response within  
30 30 days following the five business days allowed under

1 section 901, unless the requester has agreed in writing to an  
2 additional extension beyond 30 days.

3 \* \* \*

4 Section 10. The act is amended by adding a section to read:

5 Section 906. Relief from vexatious requesters.

6 (a) General rule.--In order to merit relief under this  
7 section, a local agency shall be required to demonstrate clear  
8 and convincing evidence that a requester's sole intentions are  
9 to annoy or harass the local agency. A local agency may petition  
10 the Office of Open Records for relief from an individual that  
11 the local agency alleges is a vexatious requester. The petition  
12 shall:

13 (1) Be submitted under penalty of 18 Pa.C.S. § 4904  
14 (relating to unsworn falsification to authorities).

15 (2) Be provided to the Office of Open Records and the  
16 requester alleged to be a vexatious requester.

17 (3) Detail the conduct by the individual which the local  
18 agency alleges demonstrates vexatiousness, including, as  
19 appropriate:

20 (i) The number of requests filed.

21 (ii) The total number of pending requests.

22 (iii) The scope of the requests.

23 (iv) The nature, content, language or subject matter  
24 of the requests.

25 (v) The nature, content, language or subject matter  
26 of other oral and written communications to the local  
27 agency.

28 (vi) Conduct that the local agency alleges is  
29 placing an unreasonable burden on the local agency.

30 (vii) Conduct that the local agency alleges is

1 intended to harass the local agency.

2 (viii) Any other relevant information.

3 (b) Exception.--A local agency may not petition the Office  
4 of Open Records for relief under subsection (a) from an  
5 individual employed by or connected with a newspaper or magazine  
6 of general circulation, weekly publication, press association or  
7 radio or television station who submits a request for the  
8 purpose of news gathering or dissemination in a newspaper,  
9 periodical, book, digital publication or radio or television  
10 broadcast.

11 (c) Timing.--Upon the filing of a petition for relief from a  
12 vexatious requester, all other proceedings and deadlines under  
13 this act shall be stayed pending a resolution of the petition by  
14 the Office of Open Records. The stay shall apply to any pending  
15 or new requests by the alleged vexatious requester.

16 (d) Processing requests.--Upon receipt of a petition under  
17 subsection (a), the executive director of the Office of Open  
18 Records or the executive director's designee shall, within three  
19 business days, notify the requester alleged to be a vexatious  
20 requester that the requester may, within five business days,  
21 file a preliminary response to the petition.

22 (e) Initial finding.--The executive director or the  
23 executive director's designee shall, within 30 calendar days  
24 after receiving a petition under subsection (a), review the  
25 petition and determine whether further proceedings are  
26 warranted. The following shall apply:

27 (1) If the executive director or the executive  
28 director's designee determines that further proceedings are  
29 not warranted, the executive director or the executive  
30 director's designee shall deny the petition. The denial shall

1 be in writing and include an explanation of the reasons for  
2 the denial.

3 (2) If the executive director or the executive  
4 director's designee determines that further proceedings are  
5 warranted, the executive director or the executive director's  
6 designee shall establish a briefing schedule to provide a  
7 fair opportunity for the requester to respond to the local  
8 agency's petition. The executive director or the executive  
9 director's designee may admit into evidence testimony,  
10 evidence and documents that the executive director or the  
11 executive director's designee believes to be reasonably  
12 probative and relevant. The executive director or the  
13 executive director's designee may limit the nature and extent  
14 of evidence found to be cumulative.

15 (f) Mediation.--At any time during proceedings under this  
16 section, the executive director or the executive director's  
17 designee may recommend that both parties participate in  
18 mediation conducted by the Office of Open Records. If both  
19 parties agree, the mediation shall last for a period of up to 30  
20 calendar days. During the mediation, any other proceedings under  
21 this section shall be stayed.

22 (g) Final opinion.--The executive director or the executive  
23 director's designee shall issue a final opinion either granting  
24 or denying the petition within 90 calendar days of its filing.  
25 Upon a grant of the petition, the executive director or the  
26 executive director's designee may provide appropriate relief  
27 commensurate with the vexatious conduct, including an order that  
28 the local agency need not comply with future requests from the  
29 vexatious requester for a specified period of time, but not to  
30 exceed one year. The final opinion shall be posted on the Office

1 of Open Record's publicly accessible Internet website.

2 (h) Appeal to Commonwealth Court.--Any party aggrieved by a  
3 decision made under this section may appeal the decision to the  
4 Commonwealth Court within 15 calendar days.

5 Section 11. Sections 1101, 1102, 1304(a) and 1305 of the act  
6 are amended to read:

7 Section 1101. Filing of appeal.

8 (a) Authorization.--The following shall apply:

9 (1) (i) If a written request for access to a record is  
10 denied or deemed denied, the requester may file an appeal  
11 with the Office of Open Records or judicial, legislative  
12 or other appeals officer designated under section 503(d)  
13 within [15 business] 30 days of the [mailing] postmark or  
14 e-mail date of the agency's response or within [15  
15 business] 30 days of a deemed denial, whichever comes  
16 first.

17 (ii) The appeal shall [state the grounds upon which  
18 the requester asserts that the record is a public record,  
19 legislative record or financial record and shall address  
20 any grounds stated by the agency for delaying or denying  
21 the request.] provide a succinct statement of the grounds  
22 upon which the appeal is based and include all of the  
23 following:

24 (A) The text of the original request.

25 (B) The text of the agency denial.

26 (C) Any other information the requester believes  
27 to be relevant.

28 (iii) The Office of Open Records shall provide a  
29 form on its publicly accessible Internet website that may  
30 be used by the requester to file the appeal. The form

1 under this subparagraph may also be used to file an  
2 appeal with a legislative agency or judicial agency.

3 (iv) The Office of Open Records may order a  
4 requester who fails to include the information under  
5 subparagraph (ii) to provide the required information.

6 (2) Except as provided in section 503(d), in the case of  
7 an appeal of a decision by a Commonwealth agency or local  
8 agency, the Office of Open Records shall assign an appeals  
9 officer to review the denial.

10 (b) Determination.--

11 (1) Unless the requester agrees otherwise, the appeals  
12 officer shall make a final determination which shall be  
13 mailed to the requester and the agency within 30 days of  
14 receipt of the appeal filed under subsection (a). The appeals  
15 officer may extend this deadline by up to 15 days by  
16 providing notice to both parties.

17 (1.1) If a hearing is ordered under section 1102(a)(2),  
18 the appeals officer may extend the deadline up to 90  
19 additional days.

20 (1.2) If an in-camera review is ordered under section  
21 1102(a)(2), the appeals officer may extend the deadline up to  
22 120 additional days.

23 (2) If the Office of Open Records or other appeals  
24 officer fails to issue a final determination within 30 days  
25 or as otherwise provided under paragraph (1), (1.1) or (1.2),  
26 the appeal is deemed denied.

27 (3) Prior to issuing a final determination, a hearing  
28 may be conducted. The determination by the appeals officer  
29 shall be a final order. The appeals officer shall provide a  
30 written explanation of the reason for the decision to the

1 requester and the agency.

2 (4) Except as provided in section 503(d), the Office of  
3 Open Records shall have exclusive jurisdiction over all  
4 appeals filed against Commonwealth and local agencies.

5 (5) An appeals officer designated by a district attorney  
6 under section 503(d)(2) shall have jurisdiction over an  
7 appeal only insofar as it relates to access to criminal  
8 investigative records in possession of a local agency. To the  
9 extent an appeal involves multiple issues, one of which  
10 relates to access to criminal investigative records in  
11 possession of a local agency, the Office of Open Records  
12 shall have jurisdiction over all other issues in the appeal.

13 (6) If an appeals officer does not have jurisdiction to  
14 hear an appeal or part of an appeal but another appeals  
15 officer designated under section 503 has jurisdiction, the  
16 appeals officer without jurisdiction shall transfer the  
17 appeal or part of the appeal, as appropriate, to the appeals  
18 officer with jurisdiction. If the appeal was timely filed  
19 with the original appeals officer, it shall be considered  
20 timely filed upon the transfer, but response times or  
21 deadlines under this act shall be considered from the date of  
22 the transfer to the appeals officer with jurisdiction.

23 (c) Direct interest.--

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

1 agency's position.

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

4 (i) no hearing has been held;

5 (ii) the appeals officer has not yet issued its  
6 order; and

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

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

11 Section 1102. Appeals officers.

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

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

17 (2) Review all information filed relating to the  
18 request. The appeals officer may hold a hearing or conduct an  
19 in-camera review. A decision to hold or not to hold a hearing  
20 is not appealable. A decision to conduct or not to conduct an  
21 in-camera review is not appealable. The appeals officer may  
22 admit into evidence testimony, evidence and documents that  
23 the appeals officer believes to be reasonably probative and  
24 relevant to an issue in dispute. The appeals officer may  
25 limit the nature and extent of evidence found to be  
26 cumulative.

27 [(3) Consult with agency counsel as appropriate.]

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

30 (5) For a Commonwealth agency or local agency, provide

1 to the Office of Open Records, in a manner and form  
2 prescribed by the Office of Open Records, a copy of all final  
3 determinations issued within seven days of issuance.

4 (b) Procedures.--The Office of Open Records, a judicial  
5 agency, a legislative agency, the Attorney General, Auditor  
6 General, State Treasurer or district attorney may adopt  
7 procedures relating to appeals under this chapter.

8 (1) If an appeal is resolved without a hearing, 1 Pa.  
9 Code Pt. II (relating to general rules of administrative  
10 practice and procedure) does not apply except to the extent  
11 that the agency has adopted these chapters in its regulations  
12 or rules under this subsection.

13 (2) If a hearing is held, 1 Pa. Code Pt. II shall apply  
14 unless the agency has adopted regulations, policies or  
15 procedures to the contrary under this subsection.

16 (3) In the absence of a regulation, policy or procedure  
17 governing appeals under this chapter, the appeals officer  
18 shall rule on procedural matters on the basis of justice,  
19 fairness and the expeditious resolution of the dispute.

20 (4) If a procedural defect would otherwise cause an  
21 appeal to be dismissed, the appeals officer may, with the  
22 agreement of the agency and the requester, waive the defect  
23 and proceed to consider the case on its merits.

24 (c) Review.--The Office of Open Records may request that a  
25 Commonwealth agency or local agency submit a record and a  
26 privilege or exemption log for the purpose of conducting an in-  
27 camera review to determine if the record is a public record.

28 Section 1304. Court costs and attorney fees.

29 (a) Reversal of agency determination.--[If a court reverses  
30 the final determination of the appeals officer or grants access

1 to a record after a request for access was deemed denied, the]  
2 The court may award reasonable attorney fees and costs of  
3 litigation or an appropriate portion thereof to a requester if  
4 the court finds either of the following:

5 (1) the agency receiving the original request willfully  
6 or with wanton disregard deprived the requester of access to  
7 a public record subject to access or otherwise acted in bad  
8 faith under the provisions of this act; or

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

12 \* \* \*

13 Section 1305. Civil penalty.

14 (a) Denial of access.--A court may impose a civil penalty of  
15 not more than [~~\$1,500~~] \$2,500 if an agency [~~denied~~] denies  
16 access to a public record in bad faith.

17 (b) Failure to comply with [~~court~~] order.--[~~An~~] A court may  
18 impose a civil penalty of not more than \$500 per day if an  
19 agency or public official [who does not promptly] fails to  
20 comply with [a court] an order under this act [is subject to a  
21 civil penalty of not more than \$500 per day until the public  
22 records are provided].

23 Section 12. Section 1307 of the act is amended by adding a  
24 subsection to read:

25 Section 1307. Fee limitations.

26 \* \* \*

27 (g.1) Additional fees.--

28 (1) Notwithstanding subsection (e), each agency may  
29 assess fees for responding to commercial requests under this  
30 act. In addition to fees under subsections (a) and (b),

1 reasonable standard charges may be charged for document  
2 search, retrieval, review and redaction for documents for  
3 commercial use.

4 (2) Fees under paragraph (1) must be calculated at no  
5 more than the hourly wage of the lowest-paid public employee  
6 of the agency who is capable of searching, retrieving,  
7 reviewing and providing for redaction of the information  
8 necessary to comply with the request.

9 \* \* \*

10 Section 13. Sections 1310 and 3101.1 of the act are amended  
11 to read:

12 Section 1310. Office of Open Records.

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

16 (1) Provide information relating to the implementation  
17 and enforcement of this act.

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

19 (3) Provide an annual training [courses] course to  
20 agencies, public officials and public employees on this act  
21 and 65 Pa.C.S. Ch. 7 (relating to open meetings).

22 (4) Provide [annual,] regional and online training  
23 courses throughout the year to local agencies, public  
24 officials and public employees.

25 (5) Assign appeals officers to review appeals of  
26 decisions by Commonwealth agencies or local agencies, except  
27 as provided in section 503(d), filed under section 1101 and  
28 issue orders and opinions. The office shall employ or  
29 contract with attorneys to serve as appeals officers to  
30 review appeals and, if necessary, to hold hearings on a

1 regional basis under this act. Each appeals officer must  
2 comply with all of the following:

3 (i) Complete a training course provided by the  
4 Office of Open Records prior to acting as an appeals  
5 officer.

6 (ii) If a hearing is necessary, hold hearings  
7 regionally as necessary to ensure access to the remedies  
8 provided by this act.

9 (iii) Comply with the procedures under section  
10 1102(b).

11 (6) Establish an informal mediation program to resolve  
12 disputes under this act.

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

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

19 (9) Annually report on its activities and findings to  
20 the Governor and the General Assembly. The report shall be  
21 posted and maintained on the Internet website established  
22 under paragraph (7).

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

30 (c) Limitation.--The executive director shall not seek

1 election nor accept appointment to any political office during  
2 his tenure as executive director and for one year thereafter.

3 (d) Staffing.--The executive director shall appoint  
4 attorneys to act as appeals officers and additional clerical,  
5 technical and professional staff as may be appropriate and may  
6 contract for additional services as necessary for the  
7 performance of the executive director's duties. The compensation  
8 of attorneys and other staff shall be set by the Executive  
9 [Board] Director. The appointment of attorneys shall not be  
10 subject to the act of October 15, 1980 (P.L.950, No.164), known  
11 as the Commonwealth Attorneys Act.

12 (e) Duties.--

13 (1) The executive director shall ensure that the duties  
14 of the Office of Open Records are carried out and shall  
15 monitor cases appealed to the Office of Open Records.

16 (2) The Department of Community and Economic Development  
17 shall provide payroll, leave and benefits, budget,  
18 information technology and administrative support, and any  
19 other support which may be necessary for the operation of the  
20 Office of Open Records, to the Office of Open Records.

21 (e.1) Public comment.--The Office of Open Records shall  
22 abstain from public comment about a pending proceeding before  
23 the Office of Open Records. This subsection shall not prohibit  
24 employees of the Office of Open Records from making public  
25 statements in the course of official duties, from issuing  
26 written advisory opinions, from making general comments on this  
27 act that are not related to a specific pending proceeding before  
28 the Office of Open Records or from explaining the procedures of  
29 the Office of Open Records.

30 (f) Appropriation.--The appropriation for the office shall

1 be in a separate line item and shall be under the jurisdiction  
2 of the executive director.

3 Section 3101.1. Relation to other laws.

4 (a) General rule.--If the provisions of this act regarding  
5 access to records conflict with any other Federal or State law,  
6 the provisions of this act shall not apply.

7 (b) Records made public under other laws.--If records are  
8 expressly made public under any other Federal or State law, the  
9 exceptions set forth in section 708(b) shall not apply.

10 Section 14. This act shall take effect in 30 days.