

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

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 27, 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

1 the act of February 14, 2008 (P.L.6, No.3), known as the Right-
2 to-Know Law, are amended and the section is amended by adding
3 definitions to read:

4 Section 102. Definitions.

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

8 * * *

9 "Commercial purpose." As follows:

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

12 (2) The term does not include the use of a record by an: <--

13 (I) THE USE OF A RECORD BY AN educational or
14 noncommercial scientific institution for scholarly or
15 scientific research or the use of a record by the news
16 media, a journalist or an author for news gathering or
17 dissemination in a newspaper, periodical, book, digital
18 publication or radio or television news broadcast-; OR <--

19 (II) A REQUEST FOR RECORDS FROM AN ATTORNEY ON
20 BEHALF OF A CLIENT IF THE RECORDS ARE NOT OBTAINED FOR
21 THE PURPOSE OF SELLING, RESELLING OR SOLICITATION BY THE
22 ATTORNEY OR CLIENT OR USED BY THE CLIENT FOR A PURPOSE
23 UNDER SUBPARAGRAPH (I).

24 * * *

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

29 "Inmate." An individual incarcerated, after having been
30 sentenced by a court of competent jurisdiction, in a Federal,

1 State or county correctional facility or prison.

2 * * *

3 "Local agency." As follows:

4 (1) Any of the following:

5 [(1)] (i) Any political subdivision, intermediate
6 unit, charter school, cyber charter school or public
7 trade or vocational school.

8 [(2)] (ii) Any local, intergovernmental, regional or
9 municipal agency, authority, council, board, commission
10 or similar governmental entity. This subparagraph
11 includes an economic development authority and an
12 industrial development authority.

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

15 (2) The term does not include the following volunteer
16 organizations:

17 (i) A volunteer ambulance service.

18 (ii) A volunteer fire company.

19 (iii) A volunteer rescue company.

20 (iv) A volunteer water rescue company.

21 (v) A volunteer organization that provides hazardous
22 materials response services.

23 (vi) A volunteer organization that provides
24 emergency medical services.

25 * * *

26 "Personal financial information." As follows:

27 (1) An individual's personal credit, charge or debit
28 card information; bank account or other financial institution
29 account information; bank, credit or financial statements;
30 account or PIN numbers; forms required to be filed by a

1 taxpayer with a Federal, State or local taxing authority;
2 employee benefit election information; individual employee
3 contributions to retirement plans and investment options;
4 individual employee contributions to health care benefits and
5 other benefits; individual employee contributions to
6 charitable organizations; and other information relating to
7 an individual's personal finances.

8 (2) The term does not include employer costs or
9 aggregated data of employee costs related to retirement
10 benefits, health care benefits or other benefits or the
11 disclosure of options made available to employees regarding
12 retirement benefits, health care benefits or other benefits.

13 * * *

14 "ROW OFFICE." THE OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT <--
15 OF THE AUDITOR GENERAL OR THE TREASURY DEPARTMENT.

16 * * *

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

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

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

24 (3) The dedicated emergency response organization
25 dispatched.

26 (4) The time the dedicated emergency response
27 organization responded.

28 (5) The time the dedicated emergency response
29 organization arrived on the scene.

30 (6) The time the dedicated emergency response

1 organization became available.

2 (7) The location of the incident by way of the street
3 block identifier, the cross street or the mile marker nearest
4 the scene of the incident.

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

6 * * *

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

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

11 Section 502. Open-records officer.

12 * * *

13 (c) Agency registration.--A Commonwealth agency or local
14 agency shall register the agency's open-records officer with the
15 Office of Open Records in a manner prescribed by the Office of
16 Open Records.

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

18 Section 504. Regulations and policies.

19 * * *

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

23 (1) Contact information for the open-records officer[.],
24 including name, address, telephone number, facsimile number
25 and email address.

26 * * *

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

29 Section 505. Uniform form.

30 * * *

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

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

7 (2) Certification to Commonwealth agencies and local
8 agencies shall be submitted in a manner approved by the
9 Office of Open Records.

10 Section 5. Sections 506(d)(1) and 507 of the act are amended
11 to read:

12 Section 506. Requests.

13 * * *

14 (d) Agency possession.--

15 (1) A public record that is not in the possession of an
16 agency but is in the possession of a party with whom the
17 agency has contracted to perform a governmental function on
18 behalf of the agency, and which directly relates to the
19 governmental function and is not exempt under this act, shall
20 be considered a public record of the agency for purposes of
21 this act. This paragraph shall apply to records of the
22 following volunteer organizations when the organization
23 contracts with a Commonwealth agency or local agency to
24 provide services, INCLUDING, BUT NOT LIMITED TO: <--

25 (i) A volunteer ambulance service.

26 (ii) A volunteer fire company.

27 (iii) A volunteer rescue company.

28 (iv) A volunteer water rescue company.

29 (v) A volunteer organization that provides hazardous
30 materials response services.

1 (vi) A volunteer organization that provides
2 emergency medical services.

3 * * *

4 Section 507. Retention of records.

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

9 (b) Prohibition.--

10 (1) Notwithstanding subsection (a), once a request for
11 records has been submitted under Chapter 7, an agency may not
12 knowingly dispose of any potentially responsive record until
13 the request has been responded to and any related appeals
14 have been exhausted.

15 (2) A court may impose a civil penalty of not more than
16 \$2,500 if an agency or public official, in violation of
17 paragraph (1), disposes of any potentially responsive record
18 in bad faith.

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

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

23 (b) Records.--An agency shall provide an inmate with copies
24 of the following records as they pertain directly to the inmate
25 OR INMATE'S CASE if the disclosure of the record will not <--
26 diminish the safety or security of any person or correctional
27 facility and if there are no other policies or procedures in
28 place for the inmate to obtain the requested information:

29 (1) Criminal records relating to the criminal commitment
30 of the inmate.

- 1 (2) Institutional housing information.
2 (3) The inmate's financial records.
3 (4) The inmate's work records.
4 (5) The inmate's educational records.
5 (6) The inmate's disciplinary records.
6 (7) Disciplinary, housing and other policies adopted by
7 the correctional institution or the Department of
8 Corrections.

9 (8) A record relating to any Federal or State benefit
10 received by the inmate or for which the inmate ~~is~~ MAY BE <--
11 eligible.

12 (9) The inmate's tax records.

13 (10) The inmate's voting records.

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

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

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

22 Section 703. Written requests.

23 (a) General rule.--A written request for access to records
24 may be submitted in person, by mail, by e-mail, by facsimile or,
25 to the extent provided by agency rules, by any other electronic
26 means. A written request must be addressed to the open-records
27 officer designated pursuant to section 502. [Employees of an
28 agency shall be directed to forward requests for records to the
29 open-records officer.] A written request should identify or
30 describe the records sought with sufficient specificity to

1 enable the agency to ascertain which records are being requested
2 and shall include the name and address to which the agency
3 should address its response. [A] Except as required under
4 section 505(d), a written request need not include any
5 explanation of the requester's reason for requesting or intended
6 use of the records unless otherwise required by law.

7 (b) False certification.--A requester that submits a false
8 certification under section 505(d) shall be subject to 18
9 Pa.C.S. § 4904 (relating to unsworn falsification to
10 authorities).

11 Section 706. Redaction.

12 If an agency determines that a [public record, legislative
13 record or financial] record contains information which is
14 subject to access as well as information which is not subject to
15 access, the agency's response shall grant access to the
16 information which is subject to access and deny access to the
17 information which is not subject to access. If the information
18 which is not subject to access is an integral part of the
19 [public record, legislative record or financial] record and
20 cannot be separated, the agency shall redact from the record the
21 information which is not subject to access, and the response
22 shall grant access to the information which is subject to
23 access. The agency may not deny access to the record if the
24 information which is not subject to access is able to be
25 redacted. Information which an agency redacts in accordance with
26 this subsection shall be deemed a denial under Chapter 9.

27 Section 707. Production of certain records.

28 * * *

29 (c) Transcripts.--

30 (1) Prior to an adjudication becoming final, binding and

1 nonappealable, a transcript of an administrative proceeding
2 shall be provided to a requester by the agency stenographer
3 or a court reporter, in accordance with agency procedure or
4 an applicable contract.

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

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

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

15 Section 708. Exceptions for public records.

16 * * *

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

20 * * *

21 (6) (i) The following personal identification
22 information:

23 * * *

24 (B) A spouse's or immediate family member's
25 name, marital status or beneficiary or dependent
26 information, including the number, names and ages of
27 an employee's dependents.

28 * * *

29 (9) The draft of a bill, resolution, regulation,
30 statement of policy, management directive, ordinance or

1 amendment thereto prepared by or for an agency. This
2 paragraph shall not apply to a draft that is presented to a
3 quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7
4 (relating to open meetings) at a public meeting, regardless
5 of whether a vote occurs or is scheduled to occur at the
6 meeting.

7 (10) As follows:

8 (i) A record that reflects:

9 (A) The internal, predecisional deliberations of
10 an agency, its members, employees or officials or
11 predecisional deliberations between agency members,
12 employees or officials and members, employees or
13 officials of another agency, including predecisional
14 deliberations relating to a budget recommendation,
15 legislative proposal, legislative amendment,
16 contemplated or proposed policy or course of action
17 or any research, memos or other documents used in the
18 predecisional deliberations.

19 (B) The strategy to be used to develop or
20 achieve the successful adoption of a budget,
21 legislative proposal or regulation.

22 (ii) Subparagraph (i) (A) shall apply to agencies
23 subject to 65 Pa.C.S. Ch. 7 [(relating to open meetings)]
24 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
25 which is not otherwise exempt from access under this act
26 and which is presented to a quorum for deliberation in
27 accordance with 65 Pa.C.S. Ch. 7 shall be a public record
28 regardless of whether a vote occurs, or is scheduled to
29 occur at the meeting.

30 (iii) This paragraph shall not apply to a written or

1 Internet application or other document that has been
2 submitted to request Commonwealth funds.

3 (iv) This paragraph shall not apply to the results
4 of public opinion surveys, polls, focus groups, marketing
5 research or similar effort designed to measure public
6 opinion.

7 * * *

8 (13) Records that would disclose the identity of, or
9 personal financial information relating to, an individual who
10 lawfully makes a donation to or for the benefit of an agency
11 unless the donation is intended for or restricted to
12 providing remuneration or personal tangible benefit to a
13 named public official or employee of the agency, including
14 lists of potential donors compiled by an agency to pursue
15 donations, donor profile information or personal identifying
16 information relating to a donor.

17 * * *

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

20 (i) Complaints of potential criminal conduct other
21 than a private criminal complaint.

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

24 (iii) A record that includes the identity of a
25 confidential source or the identity of a suspect who has
26 not been charged with an offense to whom confidentiality
27 has been promised.

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

30 (v) Victim information, including any information

1 that would jeopardize the safety of the victim.

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

4 (A) Reveal the institution, progress or result
5 of a criminal investigation, except the filing of
6 criminal charges.

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

9 (C) Impair the ability to locate a defendant or
10 codefendant.

11 (D) Hinder an agency's ability to secure an
12 arrest, prosecution or conviction.

13 (E) Endanger the life or physical safety of an
14 individual.

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

19 This paragraph shall not apply to information contained in a
20 police blotter as defined in 18 Pa.C.S. § 9102 (relating to
21 definitions) and utilized or maintained by the Pennsylvania
22 State Police, local, campus, transit or port authority police
23 department or other law enforcement agency or in a traffic
24 report except as provided under 75 Pa.C.S. § 3754(b)
25 (relating to accident prevention investigations). Police
26 blotter information, in whatever form it exists, is public
27 and includes, but is not limited to, the name and address of
28 an individual charged, the alleged offenses, the date of the
29 offenses and the date of the charges.

30 (17) A record of an agency relating to a noncriminal

1 investigation, including:

2 (i) Complaints submitted to an agency.

3 (ii) Investigative materials, notes, correspondence
4 and reports.

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

9 (iv) A record that includes information made
10 confidential by law.

11 (v) Work papers underlying an audit.

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

14 (A) Reveal the institution, progress or result
15 of an agency investigation, except the imposition of
16 a fine or civil penalty, the suspension, modification
17 or revocation of a license, permit, registration,
18 certification or similar authorization issued by an
19 agency or an executed settlement agreement unless the
20 agreement is determined to be confidential by a
21 court.

22 (B) Deprive a person of the right to an
23 impartial adjudication.

24 (C) Constitute an unwarranted invasion of
25 privacy.

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

28 (E) Endanger the life or physical safety of an
29 individual.

30 (vii) This paragraph shall not apply to records

1 created more than 25 years prior to the request, unless
2 the agency can demonstrate actual harm to an ongoing
3 investigation if the records are released.

4 (18) Emergency dispatches as follows:

5 (i) Records or parts of records, except time
6 response logs, pertaining to audio recordings, telephone
7 or radio transmissions received by emergency dispatch
8 personnel, including 911 recordings.

9 (ii) This paragraph shall not apply to a 911
10 recording, or a transcript of a 911 recording, if the
11 agency or a court determines that the public interest in
12 disclosure outweighs the interest in nondisclosure.

13 * * *

14 (31) An agency's financial institution account numbers,
15 routing numbers, credit card numbers, PIN numbers and
16 passwords.

17 (c) Financial records.--The exceptions set forth in
18 subsection (b) shall not apply to financial records, except that
19 an agency may redact that portion of a financial record
20 protected under subsection (b) (1), (2), (3), (4), (5), (6),
21 (13), (16) [or], (17), (28), (30) or (31). An agency shall not
22 disclose the identity of an individual performing an undercover
23 or covert law enforcement activity.

24 * * *

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

27 * * *

28 (b) Notice.--

29 * * *

30 (2) The notice shall include a statement notifying the

1 requester that the request for access is being reviewed, the
2 reason for the review, a reasonable date that a response is
3 expected to be provided and an estimate of applicable fees
4 owed when the record becomes available. [If the date that a
5 response is expected to be provided is in excess of 30 days,
6 following the five business days allowed for in section 901,
7 the request for access shall be deemed denied unless the
8 requester has agreed in writing to an extension to the date
9 specified in the notice.] The request for access shall be
10 deemed denied if the agency fails to send a response within
11 30 days following the five business days allowed under
12 section 901, unless the requester has agreed in writing to an
13 additional extension beyond 30 days.

14 * * *

15 Section 10. The act is amended by adding a section to read:
16 Section 906. Relief from vexatious requesters.

17 (a) General rule.--In order to merit relief under this
18 section, a local agency shall be required to demonstrate clear
19 and convincing evidence that a requester's sole intentions are
20 to annoy or harass the local agency. A local agency may petition
21 the Office of Open Records for relief from an individual that
22 the local agency alleges is a vexatious requester. The petition
23 shall:

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

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

28 (3) Detail the conduct by the individual which the local
29 agency alleges demonstrates vexatiousness, including, as
30 appropriate:

1 (i) The number of requests filed.

2 (ii) The total number of pending requests.

3 (iii) The scope of the requests.

4 (iv) The nature, content, language or subject matter
5 of the requests.

6 (v) The nature, content, language or subject matter
7 of other oral and written communications to the local
8 agency.

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

11 (vii) Conduct that the local agency alleges is
12 intended to harass the local agency.

13 (viii) Any other relevant information.

14 (b) Exception.--A local agency may not petition the Office
15 of Open Records for relief under subsection (a) from an
16 individual employed by or connected with a newspaper or magazine
17 of general circulation, weekly publication, press association or
18 radio or television station who submits a request for the
19 purpose of news gathering or dissemination in a newspaper,
20 periodical, book, digital publication or radio or television
21 broadcast.

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

27 ~~(d) Processing requests. Upon receipt of a petition under~~ <--
28 ~~subsection (a), the executive director of the Office of Open~~
29 ~~Records or the executive director's designee shall, within three~~
30 ~~business days, notify the requester alleged to be a vexatious~~

1 ~~requester that the requester may, within five business days,~~
2 ~~file a preliminary response to the petition.~~

3 (D) PROCESSING REQUESTS.--UPON RECEIPT OF A PETITION UNDER <--
4 SUBSECTION (A), THE EXECUTIVE DIRECTOR OF THE OFFICE OF OPEN
5 RECORDS OR A DESIGNEE SHALL:

6 (1) WITHIN FIVE BUSINESS DAYS, NOTIFY THE REQUESTER
7 ALLEGED TO BE A VEXATIOUS REQUESTER THAT THE REQUESTER MAY,
8 WITHIN 10 BUSINESS DAYS, FILE A PRELIMINARY RESPONSE TO THE
9 PETITION.

10 (2) WITHIN 15 BUSINESS DAYS, INFORM THE AGENCY WHETHER
11 PENDING REQUESTS AND NEW REQUESTS FROM THE REQUESTER ALLEGED
12 TO BE A VEXATIOUS REQUESTER SHOULD CONTINUE TO BE PROCESSED
13 OR SHOULD BE STAYED PENDING RESOLUTION OF THE PROCEEDINGS
14 UNDER THIS SECTION. A DECISION UNDER THIS PARAGRAPH IS NOT
15 APPEALABLE.

16 (e) Initial finding.--The executive director or the
17 executive director's designee shall, within 30 calendar days
18 after receiving a petition under subsection (a), review the
19 petition and determine whether further proceedings are
20 warranted. The following shall apply:

21 (1) If the executive director or the executive
22 director's designee determines that further proceedings are
23 not warranted, the executive director or the executive
24 director's designee shall deny the petition. The denial shall
25 be in writing and include an explanation of the reasons for
26 the denial.

27 (2) If the executive director or the executive
28 director's designee determines that further proceedings are
29 warranted, the executive director or the executive director's
30 designee shall establish a briefing schedule to provide a

1 fair opportunity for the requester to respond to the local
2 agency's petition. The executive director or the executive
3 director's designee may admit into evidence testimony,
4 evidence and documents that the executive director or the
5 executive director's designee believes to be reasonably
6 probative and relevant. The executive director or the
7 executive director's designee may limit the nature and extent
8 of evidence found to be cumulative.

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

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

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

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

1 Section 1101. Filing of appeal.

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

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

11 (ii) The appeal shall [state the grounds upon which
12 the requester asserts that the record is a public record,
13 legislative record or financial record and shall address
14 any grounds stated by the agency for delaying or denying
15 the request.] provide a succinct statement of the grounds
16 upon which the appeal is based and include all of the
17 following:

18 (A) The text of the original request.

19 (B) The text of the agency denial.

20 (C) Any other information the requester believes
21 to be relevant.

22 (iii) The Office of Open Records shall provide a
23 form on its publicly accessible Internet website that may
24 be used by the requester to file the appeal. The form
25 under this subparagraph may also be used to file an
26 appeal with a legislative agency or judicial agency.

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

30 (2) Except as provided in section 503(d), in the case of

1 an appeal of a decision by a Commonwealth agency or local
2 agency, the Office of Open Records shall assign an appeals
3 officer to review the denial.

4 (b) Determination.--

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

11 (1.1) If a hearing is ordered under section 1102(a)(2),
12 the appeals officer may extend the deadline up to 90
13 additional days.

14 (1.2) If an in-camera review is ordered under section
15 1102(a)(2), the appeals officer may extend the deadline up to
16 120 additional days.

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

21 (3) Prior to issuing a final determination, a hearing
22 may be conducted. The determination by the appeals officer
23 shall be a final order. The appeals officer shall provide a
24 written explanation of the reason for the decision to the
25 requester and the agency.

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

29 (5) An appeals officer designated by a district attorney
30 under section 503(d)(2) shall have jurisdiction over an

1 appeal only insofar as it relates to access to criminal
2 investigative records in possession of a local agency. To the
3 extent an appeal involves multiple issues, one of which
4 relates to access to criminal investigative records in
5 possession of a local agency, the Office of Open Records
6 shall have jurisdiction over all other issues in the appeal.

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

17 (c) Direct interest.--

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

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

28 (i) no hearing has been held;

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

30 order; and

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

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

5 Section 1102. Appeals officers.

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

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

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

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

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

24 (5) For a Commonwealth agency OTHER THAN A ROW OFFICE or <--
25 local agency, provide to the Office of Open Records, in a
26 manner and form prescribed by the Office of Open Records, a
27 copy of all final determinations issued within seven days of
28 issuance.

29 (b) Procedures.--The Office of Open Records, a judicial
30 agency, a legislative agency, the Attorney General, Auditor

1 General, State Treasurer or district attorney may adopt
2 procedures relating to appeals under this chapter.

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

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

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

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

19 (c) Review.--The Office of Open Records may request that a
20 Commonwealth agency OTHER THAN A ROW OFFICE or local agency <--
21 submit a record and a privilege or exemption log for the purpose
22 of conducting an in-camera review to determine if the record is
23 a public record.

24 Section 1304. Court costs and attorney fees.

25 (a) Reversal of agency determination.--[If a court reverses
26 the final determination of the appeals officer or grants access
27 to a record after a request for access was deemed denied, the]
28 The court may award reasonable attorney fees and costs of
29 litigation or an appropriate portion thereof to a requester if
30 the court finds either of the following:

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

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

8 * * *

9 Section 1305. Civil penalty.

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

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

19 Section 12. Section 1307 of the act is amended by adding a ~~sub~~ <--
20 ~~subsection~~ SUBSECTIONS to read: <--

21 Section 1307. Fee limitations.

22 * * *

23 (g.1) Additional fees.--

24 (1) Notwithstanding subsection (e), each agency may
25 assess fees for responding to commercial requests under this
26 act. In addition to fees under subsections (a) and (b),
27 reasonable standard charges may be charged for document
28 search, retrieval, review and redaction for documents for
29 commercial use.

30 (2) Fees under paragraph (1) must be calculated at no

1 more than the hourly wage of the lowest-paid public employee
2 of the agency who is capable of searching, retrieving,
3 reviewing and providing for redaction of the information
4 necessary to comply with the request.

5 * * *

6 (I) RECORDS TO BE USED FOR A COMMERCIAL PURPOSE.--THE <--
7 FOLLOWING APPLY:

8 (1) IN RESPONDING TO A REQUEST FOR RECORDS THAT WILL BE
9 USED FOR A COMMERCIAL PURPOSE, AN AGENCY MAY CHARGE A
10 REQUESTER ADDITIONAL STANDARD FEES FOR THE SEARCH, RETRIEVAL,
11 REVIEW, REDACTION AND DUPLICATION OF THE RECORDS. THE FEES
12 SHALL BE CALCULATED AT NO MORE THAN THE HOURLY WAGE OF THE
13 LOWEST-PAID PUBLIC EMPLOYEE OF THE AGENCY WHO IS CAPABLE OF
14 SEARCHING, RETRIEVING, REVIEWING, REDACTING OR DUPLICATING
15 THE INFORMATION NECESSARY TO COMPLY WITH THE REQUEST.

16 (2) PRIOR TO GRANTING A COMMERCIAL REQUEST, THE AGENCY,
17 UPON REQUEST, SHALL PROVIDE THE REQUESTER WITH AN ESTIMATE OF
18 THE FEES TO BE INCURRED BY THE AGENCY IN FULFILLING THE
19 REQUEST.

20 (3) PARAGRAPH (1) SHALL NOT APPLY TO THE FOLLOWING:

21 (I) A REQUEST FOR RECORDS SUBJECT TO THE FEES UNDER
22 SUBSECTION (B) (4).

23 (II) A REQUEST FOR RECORDS SUBJECT TO FEES
24 ESTABLISHED IN LAWS OR REGULATIONS OF THIS COMMONWEALTH
25 NOT SUBJECT TO THIS ACT.

26 (III) A REQUEST FOR RECORDS FROM AN ATTORNEY ON
27 BEHALF OF A CLIENT IF RECORDS ARE NOT OBTAINED FOR THE
28 PURPOSE OF SELLING, RESELLING OR SOLICITATION BY THE
29 ATTORNEY OR THE CLIENT OR USED BY THE CLIENT FOR A
30 COMMERCIAL PURPOSE.

1 (J) ALTERNATIVE FEE ARRANGEMENT.--AN AGENCY AND A REQUESTER
2 MAY ENTER INTO A CONTRACT, MEMORANDUM OF UNDERSTANDING OR OTHER
3 AGREEMENT THAT PROVIDES AN ALTERNATIVE FEE ARRANGEMENT TO THE
4 FEEES AUTHORIZED UNDER THIS SECTION. AN AGREEMENT UNDER THIS
5 SUBSECTION SHALL BE PUBLIC.

6 (K) APPEALS.--A FEE CHARGED UNDER THIS SECTION MAY BE
7 APPEALED TO THE OFFICE OF OPEN RECORDS.

8 Section 13. Sections 1310 and 3101.1 of the act are amended
9 to read:

10 Section 1310. Office of Open Records.

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

14 (1) Provide information relating to the implementation
15 and enforcement of this act.

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

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

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

23 (5) Assign appeals officers to review appeals of
24 decisions by Commonwealth agencies or local agencies, except
25 as provided in section 503(d), filed under section 1101 and
26 issue orders and opinions. The office shall employ or
27 contract with attorneys to serve as appeals officers to
28 review appeals and, if necessary, to hold hearings on a
29 regional basis under this act. Each appeals officer must
30 comply with all of the following:

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

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

7 (iii) Comply with the procedures under section
8 1102(b).

9 (6) Establish an informal mediation program to resolve
10 disputes under this act.

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

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

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

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

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

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

10 (e) Duties.--

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

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

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

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

1 Section 3101.1. Relation to other laws.

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

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

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