

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of 2007

INTRODUCED BY PILEGGI, SCARNATI, MELLOW, ORIE, KASUNIC, MUSTO, RAFFERTY, O'PAKE, TOMLINSON, M. WHITE, ERICKSON, WAUGH, FOLMER, COSTA, EARLL, VANCE, BOSCOLA, CORMAN, WONDERLING, GORDNER, RHOADES, D. WHITE, PIPPY, MADIGAN, ARMSTRONG, BAKER, C. WILLIAMS, BRUBAKER, BROWNE, REGOLA AND DINNIMAN, MARCH 29, 2007

SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED, NOVEMBER 14, 2007

AN ACT

1 Providing for access to public information, for a designated
2 open-records officer in each Commonwealth agency, local
3 agency, judicial agency and legislative agency, for
4 procedure, for appeal of agency determination, for judicial
5 review and for an Open Records Clearinghouse; imposing
6 penalties; providing for reporting by State-related
7 institutions; requiring the posting of certain State contract
8 information on the Internet; and making related repeals.

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22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 CHAPTER 1
25 PRELIMINARY PROVISIONS

26 Section 101. Short title.

27 This act shall be known and may be cited as the Right-to-Know
28 Law.

29 Section 102. Definitions.

30 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 "Agency." A Commonwealth agency, a local agency, a judicial
4 agency or a legislative agency.

5 "Aggregated data." A tabulation of data which relate to
6 broad classes, groups or categories so that it is not possible
7 to distinguish the properties of individuals within those
8 classes, groups or categories.

9 "Appeals officer." As follows:

10 (1) For a Commonwealth agency or a local agency, the
11 appeals officer designated under section 503(a).

12 (2) For a judicial agency, the individual designated
13 under section 503(b).

14 (3) For a legislative agency, the individual designated
15 under section 503(c).

16 "Clearinghouse." The Open Records Clearinghouse established
17 pursuant to the provisions of section 1310.

18 "Commonwealth agency." Any of the following:

19 (1) Any office, department, authority, board, multistate
20 agency or commission of the executive branch; an independent
21 agency; and a State-affiliated entity. The term includes:

22 (i) The Governor's Office.

23 (ii) The Office of Attorney General, the Department
24 of the Auditor General and the Treasury Department.

25 (iii) A statutorily established organization which
26 performs or is intended to perform an essential
27 governmental function.

28 (2) The term does not include a judicial or legislative
29 agency.

30 "Confidential proprietary information." Commercial or

1 financial information received by an agency:

2 (1) which is privileged or confidential; and

3 (2) the disclosure of which would cause substantial harm
4 to the competitive position of the person that submitted the
5 information.

6 "Financial record." Includes:

7 (1) Any account, voucher or contract dealing with:

8 (i) the receipt or disbursement of funds by an
9 agency; or

10 (ii) an agency's acquisition, use or disposal of
11 services, supplies, materials, equipment or property.

12 (2) The salary or other payments or expenses paid to an
13 officer or employee of an agency, including the name and
14 title of the officer or employee.

15 (3) Results of a financial audit.

16 "Homeland security." Governmental actions designed to
17 prevent, detect, respond to and recover from acts of terrorism,
18 major disasters and other emergencies, whether natural or
19 manmade. The term includes activities relating to the following:

20 (1) emergency preparedness and response, including
21 preparedness and response activities by volunteer medical,
22 police, emergency management, hazardous materials and fire
23 personnel;

24 (2) intelligence activities;

25 (3) critical infrastructure protection;

26 (4) border security;

27 (5) ground, aviation and maritime transportation
28 security;

29 (6) biodefense;

30 (7) detection of nuclear and radiological materials; and

1 (8) research on next-generation securities technologies.

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

6 "Judicial agency." A court of the Commonwealth or any other
7 entity or office of the unified judicial system.

8 "Legislative agency." Any of the following:

9 (1) The Senate.

10 (2) The House of Representatives.

11 (3) The Capitol Preservation Committee.

12 (4) The Center for Rural Pennsylvania.

13 (5) The Joint Legislative Air and Water Pollution
14 Control and Conservation Committee.

15 (6) The Joint State Government Commission.

16 (7) The Legislative Budget and Finance Committee.

17 (8) The Legislative Data Processing Committee.

18 (9) The Independent Regulatory Review Commission.

19 (10) The Legislative Reference Bureau.

20 (11) The Local Government Commission.

21 (12) The Pennsylvania Commission on Sentencing.

22 "Legislative record." Includes the following information
23 relating to a legislative agency or standing committee:

24 (1) A financial record.

25 (2) A bill or resolution that has been introduced and
26 amendments offered thereto in committee or in legislative
27 session, including resolutions to adopt or amend the rules of
28 a chamber.

29 (3) Fiscal notes.

30 (4) A cosponsorship memorandum.

- 1 (5) The journal of a chamber.
- 2 (6) The minutes of a public committee meeting.
- 3 (7) The transcript of a public hearing when available.
- 4 (8) The record of attendance of members at a committee
5 meeting.
- 6 (9) The rules of a chamber.
- 7 (10) A record of all recorded votes taken in a committee
8 meeting or legislative session.
- 9 (11) Any administrative staff manuals or written
10 policies.
- 11 (12) An audit prepared pursuant to the act of June 30,
12 1970 (P.L.442, No.151) entitled, "An act implementing the
13 provisions of Article VIII, section 10 of the Constitution of
14 Pennsylvania, by designating the Commonwealth officers who
15 shall be charged with the function of auditing the financial
16 transactions after the occurrence thereof of the Legislative
17 and Judicial branches of the government of the Commonwealth,
18 establishing a Legislative Audit Advisory Commission, and
19 imposing certain powers and duties on such commission."
- 20 (13) Final or annual reports required by law to be
21 submitted to the General Assembly.
- 22 (14) Legislative Budget and Finance Committee reports.
- 23 (15) Marked calendars.
- 24 "Local agency." Any of the following:
 - 25 (1) Any political subdivision, intermediate unit,
26 charter school or public trade or vocational school.
 - 27 (2) Any local, intergovernmental, regional or municipal
28 agency, authority, council, board, commission or similar
29 governmental entity.
- 30 "Personal financial information." An individual's personal

1 credit, charge or debit card information; bank account
2 information; bank, credit or financial statements; account or
3 PIN numbers and other information relating to an individual's
4 personal finances.

5 "Privilege." The attorney-work product doctrine, the
6 attorney-client privilege, the doctor-patient privilege or other
7 privilege recognized by a court interpreting the laws of this
8 Commonwealth.

9 "Public record." A record of a Commonwealth or local agency
10 that:

11 (1) is not exempt under section 708;

12 (2) is not exempt from being disclosed under any other
13 Federal or State law or regulation or judicial order or
14 decree; or

15 (3) is not protected by a privilege.

16 "Record." Information, regardless of physical form or
17 characteristics, that documents a transaction or activity of an
18 agency and that is created, received or retained pursuant to law
19 or in connection with a transaction, business or activity of the
20 agency. The term includes a document, paper, letter, map, book,
21 tape, photograph, film or sound recording, information stored or
22 maintained electronically and a data-processed or image-
23 processed document. The term includes a financial record, a
24 legislative record and a public record.

25 "Requester." A person that is a resident of the United
26 States and requests a record pursuant to this act. The term
27 includes a political subdivision.

28 "Response." Access to a record or an agency's written notice
29 granting, denying or partially granting and partially denying
30 access to a record.

1 "Social services." Cash assistance and other welfare
2 benefits, medical, mental and other health care services, drug
3 and alcohol treatment, adoption services, vocational and
4 occupational training, education ~~and~~ SERVICES, counseling ←
5 services, workers' compensation SERVICES and unemployment ←
6 compensation services, foster care services and services for
7 victims of crimes.

8 "State-affiliated entity." A Commonwealth authority or
9 Commonwealth entity. The term includes the Pennsylvania Higher
10 Education Assistance Agency, the Pennsylvania Housing Finance
11 Agency, the Pennsylvania Municipal Retirement Board, the State
12 System of Higher Education, a community college, the
13 Pennsylvania Turnpike Commission, the Pennsylvania Public
14 Utility Commission, the Pennsylvania Infrastructure Investment
15 Authority, the State Public School Building Authority, the
16 Pennsylvania Interscholastic Athletic Association and the
17 Pennsylvania Educational Facilities Authority. The term does not
18 include a State-related institution.

19 "Terrorist act." A violent or life-threatening act that
20 violates the criminal laws of the United States or any state and
21 appears to be intended to:

- 22 (1) intimidate or coerce a civilian population;
- 23 (2) influence the policy of a government; or
- 24 (3) affect the conduct of a government by mass
25 destruction, assassination or kidnapping.

26 "Trade secret." Information, including a formula, drawing,
27 pattern, compilation, including a customer list, program,
28 device, method, technique or process that:

- 29 (1) derives independent economic value, actual or
30 potential, from not being generally known to and not being

1 readily ascertainable by proper means by other persons who
2 can obtain economic value from its disclosure or use; and

3 (2) is the subject of efforts that are reasonable under
4 the circumstances to maintain its secrecy.

5 The term includes data processing software obtained by an agency
6 under a licensing agreement prohibiting disclosure.

7 CHAPTER 3

8 REQUIREMENTS AND PROHIBITIONS

9 Section 301. Commonwealth agencies.

10 (a) Requirement.--A Commonwealth agency shall provide public
11 records in accordance with this act.

12 (b) Prohibition.--A Commonwealth agency may not deny a
13 requester access to a public record due to the intended use of
14 the public record by the requester.

15 Section 302. Local agencies.

16 (a) Requirement.--A local agency shall provide public
17 records in accordance with this act.

18 (b) Prohibition.--A local agency may not deny a requester
19 access to a public record due to the intended use of the public
20 record by the requester.

21 Section 303. Legislative agencies.

22 (a) Requirement.--A legislative agency shall provide
23 legislative records in accordance with this act.

24 (b) Prohibition.--A legislative agency may not deny a
25 requester access to a legislative record due to the intended use
26 of the legislative record by the requester.

27 Section 304. Judicial agencies.

28 (a) Requirement.--A judicial agency shall provide financial
29 records in accordance with this act.

30 (b) Prohibition.--A judicial agency may not deny a requester

1 access to a financial record due to the intended use of the
2 financial record by the requester.

3 Section 305. Presumption.

4 A record in the possession of a Commonwealth agency or local
5 agency shall be presumed to be a public record ~~unless the record~~ <—
6 ~~is exempt under section 708.~~ UNLESS: <—

7 (1) THE RECORD IS EXEMPT UNDER SECTION 708;

8 (2) THE RECORD IS PROTECTED BY A PRIVILEGE; OR

9 (3) THE RECORD IS EXEMPT FROM DISCLOSURE UNDER ANY OTHER
10 FEDERAL OR STATE LAW OR REGULATION OR JUDICIAL ORDER OR
11 DECREE.

12 Section 306. Nature of document.

13 Nothing in this act shall supersede or modify the public or
14 confidential nature of a record or document established in
15 Federal or State statute or law, REGULATION OR JUDICIAL ORDER OR <—
16 DECREE.

17 CHAPTER 5

18 ACCESS

19 Section 501. Scope of chapter.

20 This chapter applies to all agencies.

21 Section 502. Open-records officer.

22 (a) Establishment.--

23 (1) An agency shall designate an official or employee to
24 act as the open-records officer.

25 (2) For a legislative agency other than the Senate or
26 the House of Representatives, the open-records officer
27 designated by the Legislative Reference Bureau shall serve as
28 the open-records officer.

29 (b) Functions.--

30 (1) The open-records officer shall receive requests

1 submitted to the agency under this act, direct requests to
2 other appropriate persons within the agency, track the
3 agency's progress in responding to requests and issue interim
4 and final responses under this act.

5 (2) Upon receiving a request for a public record,
6 legislative record or financial record, the open-records
7 officer shall do all of the following:

8 (i) ~~Date stamp a~~ NOTE THE DATE OF RECEIPT ON THE ←
9 written request.

10 (ii) Compute the day on which the five-day period
11 under section 901 will expire and make a notation of that
12 date on the written request.

13 (iii) Maintain an electronic or paper copy of a
14 written request, including all documents submitted with
15 the request UNTIL THE REQUEST HAS BEEN FULFILLED. IF THE ←
16 REQUEST IS DENIED, THE WRITTEN REQUEST SHALL BE
17 MAINTAINED FOR 30 DAYS OR, IF AN APPEAL IS FILED, UNTIL A
18 FINAL DETERMINATION IS ISSUED UNDER SECTION 1101(B) OR
19 THE APPEAL IS DEEMED DENIED.

20 (iv) Create a file for the retention of the original
21 request, a copy of the response, a record of ~~verbal or~~ ←
22 written communications with the requester and a copy of
23 other communications.

24 Section 503. Appeals officer.

25 (a) Commonwealth agencies and local agencies.--~~The~~ EXCEPT AS ←
26 PROVIDED IN SUBSECTION (D), THE clearinghouse established under
27 section 1310 shall designate an appeals officer under section
28 1101(a)(2) for all:

29 (1) Commonwealth agencies; and

30 (2) local agencies.

1 (b) Judicial agencies.--A judicial agency shall designate an
2 appeals officer TO HEAR APPEALS UNDER CHAPTER 11. <—

3 (c) Legislative agencies.--

4 (1) Except as set forth in paragraph (2), the
5 Legislative Reference Bureau shall designate an appeals
6 officer to ~~serve~~ HEAR APPEALS UNDER CHAPTER 11 for all <—
7 legislative agencies.

8 (2) Each of the following shall designate an appeals
9 officer TO HEAR APPEALS UNDER CHAPTER 11: <—

10 (i) The Senate.

11 (ii) The House of Representatives.

12 (D) LAW ENFORCEMENT RECORDS AND STATEWIDE OFFICIALS.-- <—

13 (1) THE ATTORNEY GENERAL, STATE TREASURER AND AUDITOR
14 GENERAL SHALL EACH DESIGNATE AN APPEALS OFFICER TO HEAR
15 APPEALS UNDER CHAPTER 11.

16 (2) THE DISTRICT ATTORNEY OF A COUNTY SHALL DESIGNATE AN
17 APPEALS OFFICER TO HEAR APPEALS UNDER CHAPTER 11 RELATING TO
18 ACCESS TO CRIMINAL INVESTIGATIVE RECORDS IN POSSESSION OF A
19 LOCAL AGENCY OF THAT COUNTY. THE APPEALS OFFICER DESIGNATED
20 BY THE DISTRICT ATTORNEY SHALL DETERMINE IF THE RECORD
21 REQUESTED IS A CRIMINAL INVESTIGATIVE RECORD.

22 Section 504. Regulations and policies.

23 (a) Authority.--An agency may promulgate regulations, rules
24 or policies necessary for the agency to implement this act. The
25 clearinghouse may promulgate regulations relating to appeals
26 INVOLVING A COMMONWEALTH AGENCY OR LOCAL AGENCY. <—

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

30 (1) Contact information for the open-records officer.

1 (2) Contact information for the clearinghouse or other
2 applicable appeals officer.

3 (3) A form which may be used to file a request.

4 (4) Rules, regulations, policies and procedures of the
5 agency relating to this act.

6 Section 505. Uniform form.

7 (a) Commonwealth agencies.--The clearinghouse shall develop
8 a uniform form which shall be accepted by all Commonwealth and
9 local agencies IN ADDITION TO ANY FORM USED BY THE AGENCY to <—
10 file a request under this act. The UNIFORM form shall be <—
11 published in the Pennsylvania Bulletin and on the
12 clearinghouse's Internet website.

13 (b) Judicial agencies.--A judicial agency may develop a form
14 to request financial records or may use a form developed by the
15 Administrative Office of Pennsylvania Courts or the
16 clearinghouse.

17 (c) Legislative agencies.--A legislative agency may develop
18 a form to request legislative records or may use the form
19 developed by the clearinghouse.

20 Section 506. Requests.

21 (a) Disruptive requests.--

22 (1) An agency may deny a requester access to a record if
23 the requester has made repeated requests for that same record
24 which requests have placed an unreasonable burden on the
25 agency.

26 (2) A denial under this subsection shall not restrict
27 the ability to request a different record.

28 (b) Disaster or potential damage.--

29 (1) An agency may deny a requester access:

30 (i) when timely access is not possible due to fire,

1 flood or other disaster; or
2 (ii) to historical, ancient or rare documents,
3 records, archives and manuscripts when access may, in the
4 professional judgment of the curator or custodian of
5 records, cause physical damage or irreparable harm to the
6 record.

7 (2) To the extent possible, the contents of a record
8 under this subsection shall be made accessible to a requester
9 even when the record is physically unavailable.

10 (c) Agency discretion.--An agency may exercise its
11 discretion to make any otherwise exempt record accessible for
12 inspection and copying under this chapter, if all of the
13 following apply:

14 (1) Disclosure of the record is not prohibited under any
15 of the following:

16 (i) Federal or State law or regulation.

17 (ii) Judicial order or decree.

18 (2) The record is not protected by a privilege.

19 (3) The agency head determines that the public interest
20 favoring access outweighs any individual, agency or public
21 interest that may favor restriction of access.

22 (d) Agency possession.--

23 (1) A PUBLIC record that is not in the possession of an <—
24 agency but is in the possession of a party with whom the
25 agency has contracted to perform a governmental function for
26 the agency, and which directly relates to the governmental
27 function AND IS NOT EXEMPT UNDER SECTION 305, shall be <—
28 considered a public record of the agency for purposes of this
29 act.

30 (2) Nothing in this act shall be construed to require

1 access to any other record of the party in possession of the
2 record.

3 (3) A request for a record in possession of a party
4 other than the agency shall be submitted to the open records
5 officer of the agency. THE OPEN RECORDS OFFICER SHALL ASSESS ←
6 THE DUPLICATION FEE ESTABLISHED UNDER SECTION 1307(B) AND
7 REMIT THE FEE TO THE PARTY IN POSSESSION OF THE RECORD IF THE
8 PARTY DUPLICATED THE RECORD.

9 Section 507. Retention of records.

10 Nothing in this act shall be construed to modify, rescind or
11 supersede any record retention disposition schedule of an agency
12 established pursuant to law, regulation, policy or other
13 directive.

14 CHAPTER 7

15 PROCEDURE

16 Section 701. Access to public records.

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

26 (b) Construction.--Nothing in this act shall be construed to
27 require access to the computer of an agency or individual
28 employee of an agency.

29 Section 702. Requests.

30 Agencies may fulfill informal verbal, written or anonymous

1 verbal or written requests for access to records under this act.
2 In the event that the requester wishes to pursue the relief and
3 remedies provided for in this act, the requester must initiate
4 such relief with a written request.

5 Section 703. Written requests.

6 A written request for access to records may be submitted in
7 person, by mail, by e-mail, by facsimile or, to the extent
8 provided by agency rules, any other electronic means. A written
9 request shall be addressed to the agency head or open-records
10 officer designated in section 502. A written request should
11 identify or describe the records sought with sufficient
12 specificity to enable the agency to ascertain which records are
13 being requested and shall include the name and address to which
14 the agency should address its response. A written request need
15 not include any explanation of the requester's reason for
16 requesting or intended use of the records.

17 Section 704. Electronic access.

18 (a) General rule.--In addition to the requirements of
19 section 701, an agency may make its records available through
20 any publicly accessible electronic means.

21 (b) Response.--

22 (1) In addition to the requirements of section 701, an
23 agency may respond to a request by notifying the requester
24 that the record is available through publicly accessible
25 electronic means or that the agency will provide access to
26 inspect the record electronically.

27 (2) If the requester is unwilling or unable to use the
28 electronic access, the requester may submit a written request
29 to the agency, within 30 days following receipt of the agency
30 notification, to have the record converted to paper. The

1 agency shall provide the record in printed form within five
2 days of the receipt of the written request for conversion to
3 paper.

4 Section 705. Creation of record.

5 When responding to a request for access, an agency shall not
6 be required to create a record which does not currently exist or
7 to compile, maintain, format or organize a record in a manner in
8 which the agency does not currently compile, maintain, format or
9 organize the record.

10 Section 706. Redaction.

11 If an agency determines that a public record, legislative
12 record or financial record contains information which is subject
13 to access as well as information which is not subject to access
14 UNDER SECTION 305 OR 708, the agency's response shall grant ←
15 access to the information which is subject to access and deny
16 access to the information which is not subject to access. If the
17 information which is not subject to access is an integral part
18 of the public record, legislative record or financial record and
19 cannot be separated, the agency shall redact from the record the
20 information which is not subject to access, and the response
21 shall grant access to the information which is subject to
22 access. The agency may not deny access to the record if the
23 information which is not subject to access is able to be
24 redacted. Information which an agency redacts in accordance with
25 this subsection shall be deemed a denial under Chapter 9.

26 Section 707. Production of certain records.

27 (A) GENERAL RULE.--If, in response to a request, an agency ←
28 produces a record that is not a public record, legislative
29 record or financial record, the agency shall notify any third
30 party that provided the record to the agency, the person that is

1 the subject of the record and the requester.

2 (B) REQUESTS FOR TRADE SECRETS.--AN AGENCY SHALL NOTIFY A <—
3 THIRD PARTY OF A REQUEST FOR A RECORD IF THE THIRD PARTY
4 PROVIDED THE RECORD AND INCLUDED A WRITTEN STATEMENT SIGNED BY A
5 REPRESENTATIVE OF THE THIRD PARTY THAT THE RECORD CONTAINS A
6 TRADE SECRET OR CONFIDENTIAL PROPRIETARY INFORMATION.
7 NOTIFICATION SHALL BE PROVIDED WITHIN FIVE BUSINESS DAYS OF
8 RECEIPT OF THE REQUEST FOR THE RECORD. THE THIRD PARTY SHALL
9 HAVE FIVE BUSINESS DAYS FROM RECEIPT OF NOTIFICATION FROM THE
10 AGENCY TO PROVIDE INPUT ON THE RELEASE OF THE RECORD. THE AGENCY
11 SHALL DENY THE REQUEST FOR THE RECORD OR RELEASE THE RECORD
12 WITHIN TEN BUSINESS DAYS OF THE PROVISION OF NOTICE TO THE THIRD
13 PARTY AND SHALL NOTIFY THE THIRD PARTY OF THE DECISION.

14 Section 708. Exceptions for public records.

15 (a) Burden of proof.--The burden of proving that a public
16 record is exempt from public access shall be on the Commonwealth
17 or local agency receiving a request by a preponderance of the
18 evidence.

19 (b) Exceptions.--In the case of a public record, unless
20 disclosure is otherwise required by law, the following are
21 exempt from access by a requester under this act:

22 (1) A record the disclosure of which:

23 (i) would result in the loss of Federal or State
24 funds by an agency or the Commonwealth; or

25 (ii) would be reasonably likely to result in a
26 substantial and demonstrable risk of physical harm to an
27 individual.

28 (2) A record maintained by an agency in connection with
29 the military, homeland security, national defense, law
30 enforcement or other public safety activity that if disclosed

1 would be reasonably likely to jeopardize or threaten public
2 safety or preparedness or public protection activity or a
3 record that is designated classified by an appropriate
4 Federal or State military authority.

5 (3) A record, the disclosure of which creates a
6 reasonable likelihood of endangering the life, safety or the
7 physical security of a building, public utility, resource,
8 infrastructure, facility or information storage system, which
9 may include:

10 (i) documents or data relating to computer hardware,
11 source files, software and system networks that could
12 jeopardize computer security by exposing a vulnerability
13 in preventing, protecting against, mitigating or
14 responding to a terrorist act;

15 (ii) lists of infrastructure, resources and
16 significant special events, including those defined by
17 the Federal Government in the National Infrastructure
18 Protections, which are deemed critical due to their
19 nature and which result from risk analysis; threat
20 assessments; consequences assessments; antiterrorism
21 protective measures and plans; counterterrorism measures
22 and plans; and security and response needs assessments;
23 and

24 (iii) building plans or infrastructure records that
25 expose or create vulnerability through disclosure of the
26 location, configuration or security of critical systems,
27 including public utility systems, structural elements,
28 technology, communication, electrical, fire suppression,
29 ventilation, water, wastewater, sewage and gas systems.

30 (4) A record regarding computer hardware, software and

1 networks, including administrative or technical records,
2 which, if disclosed, would be reasonably likely to jeopardize
3 computer security.

4 (5) A record of an individual's medical, psychiatric or
5 psychological history or disability status, including
6 evaluation, consultation, a prescription, diagnosis or
7 treatment; results of tests, including drug tests; enrollment
8 in a health care program or program designed for
9 participation by persons with disabilities, including
10 vocation rehabilitation, workers' compensation and
11 unemployment compensation; or related information that would
12 disclose individually identifiable health information.

13 (6) (i) The following personal identification
14 information:

15 (A) A record containing all or part of an
16 individual's Social Security number; driver's license
17 number; personal financial information of an
18 individual; home, cellular or personal telephone
19 number; personal e-mail address; employee number;
20 other personal identification number; ~~or other~~ ←
21 ~~personal information.~~

22 (B) A spouse's name; marital status, beneficiary
23 or dependent information.

24 (ii) Nothing in this paragraph shall preclude the
25 release of the name, position, salary, actual
26 compensation or other payments or expenses, employment
27 contract, ~~employment related contract~~ or agreement and ←
28 length of service of a public official or an agency
29 employee.

30 (iii) An agency may redact the name or other

1 identifying information relating to an individual
2 performing an undercover or covert law enforcement
3 activity from a record.

4 (7) The following records relating to an agency
5 employee:

6 (i) A letter of reference or recommendation
7 pertaining to the character or qualifications of an
8 identifiable individual, unless it was prepared in
9 relation to the appointment of an individual to fill a
10 vacancy in an elected office or an appointed office
11 requiring Senate confirmation.

12 (ii) A performance rating or review.

13 (iii) The result of a civil service or similar test
14 administered by a Commonwealth agency, legislative agency
15 or judicial agency. The result of a civil service or
16 similar test administered by a local agency shall not be
17 disclosed if restricted by a collective bargaining
18 agreement. Only test scores of individuals who obtained a
19 passing score on a test administered by a local agency
20 may be disclosed.

21 (IV) THE EMPLOYMENT APPLICATION OF AN INDIVIDUAL WHO <—
22 IS NOT HIRED BY THE AGENCY.

23 ~~(iv)~~ (V) Workplace support services program <—
24 information.

25 ~~(v)~~ (VI) Written criticisms of an employee. <—

26 ~~(vi)~~ (VII) Grievance material, including documents <—
27 related to discrimination or sexual harassment.

28 ~~(vii)~~ (VIII) (A) Information regarding discipline, <—
29 demotion or discharge contained in a personnel file.

30 (B) This subparagraph shall not apply to the

1 ~~results of a disciplinary proceeding or action that~~ <—
2 ~~results in suspension,~~ FINAL ACTION OF AN AGENCY THAT <—
3 RESULTS IN demotion or discharge.

4 (8) (i) A record pertaining to strategy or negotiations
5 relating to labor relations or collective bargaining or
6 arbitration award.

7 (ii) This paragraph does not apply to any final or
8 executed contract or agreement or arbitration award
9 between the parties.

10 (9) The draft of a bill, resolution, regulation,
11 statement of policy, management directive, ORDINANCE or <—
12 amendment thereto prepared by or for an agency.

13 (10) (i) A record that reflects:

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

24 (B) The strategy to be used to develop or
25 achieve the successful adoption of a budget,
26 legislative proposal or regulation.

27 (ii) This paragraph applies to:

28 (A) The Governor's Office, the head of a
29 Commonwealth agency and the staff of the Governor or
30 agency.

1 (B) The chief executive officer or governing
2 body of a local agency, or a member or staff of the
3 local agency prior to the presentation of the
4 decision, policy, proposal or course of action to a
5 quorum of the governing body.

6 (iii) This paragraph does not apply to a written
7 application or other document used to request
8 Commonwealth funds.

9 (11) A record that constitutes or reveals a trade secret
10 or confidential proprietary information.

11 (12) Notes and working papers prepared by or for a
12 public official or agency employee used solely for that
13 official's or employee's own personal use, including
14 telephone message slips, routing slips and other materials
15 that do not have an official purpose.

16 (13) Records that would disclose the identity of an
17 individual who lawfully makes a donation to an agency unless
18 the donation is intended for or restricted to providing
19 remuneration or personal tangible benefit to a named public
20 official or employee of the agency, including lists of
21 potential donors compiled by an agency to pursue donations,
22 donor profile information or personal identifying information
23 relating to a donor.

24 (14) Unpublished lecture notes, unpublished manuscripts,
25 unpublished articles, creative works in progress, research-
26 related material and scholarly correspondence of a community
27 college or an institution of the State System of Higher
28 Education or a faculty member, staff employee, guest speaker
29 or student thereof.

30 (15) Examination questions, scoring keys or answers to

1 an examination.

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

4 (i) Complaints of potential criminal conduct other
5 than a private criminal complaint.

6 (ii) Investigative materials, notes, correspondence
7 and reports.

8 (iii) A record that includes the identity of a
9 confidential source or the identity of a suspect who has
10 not been charged with an offense to whom confidentiality
11 has been promised.

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

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

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

18 (A) Reveal the institution, progress or result
19 of a criminal investigation, except the filing of
20 criminal charges.

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

23 (C) Impair the ability to locate a defendant or
24 codefendant.

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

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

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

- 1 (i) Complaints submitted to an agency.
- 2 (ii) Investigative materials, notes, correspondence
- 3 and reports.
- 4 (iii) A record that includes the identity of a
- 5 confidential source, including individuals subject to the
- 6 act of December 12, 1986 (P.L.1559, No.169), known as the
- 7 Whistleblower Law.
- 8 (iv) A record that includes information made
- 9 confidential by law or court order.
- 10 (v) Work papers underlying an audit.
- 11 (vi) A record that, if disclosed, would do any of
- 12 the following:
 - 13 (A) Reveal the institution, progress or result
 - 14 of an agency investigation, except the imposition of
 - 15 a fine or civil penalty or the suspension,
 - 16 modification or revocation of a license, permit,
 - 17 registration, certification or similar authorization
 - 18 issued by an agency.
 - 19 (B) Deprive a person of the right to an
 - 20 impartial adjudication.
 - 21 (C) Constitute an unwarranted invasion of
 - 22 privacy.
 - 23 (D) Hinder an agency's ability to secure an
 - 24 administrative or civil sanction.
 - 25 (E) Endanger the life or physical safety of an
 - 26 individual.

27 (18) 911 recordings.

28 (19) DNA records.

29 (20) ~~Any part of an autopsy record or other official~~ <—

30 ~~record~~ AN AUTOPSY RECORD of a coroner or medical examiner <—

1 ~~that is an~~ AND ANY audiotape of a postmortem examination or ←
2 autopsy, or a copy, reproduction or facsimile of a
3 photograph, negative or print, including a photograph or
4 videotape of the body or any portion of the body of a
5 deceased person ~~taken by or for the coroner or medical~~ ←
6 ~~examiner~~ at the scene of death or in the course of a
7 postmortem examination or autopsy TAKEN OR made by or caused ←
8 to be TAKEN OR made by the coroner or medical examiner. THIS ←
9 EXCEPTION SHALL NOT LIMIT THE REPORTING OF THE NAME OF THE
10 DECEASED INDIVIDUAL, THE CAUSE OF DEATH AND WHETHER THE DEATH
11 WAS CAUSED BY CRIMINAL ACTIVITY OR CRIMINAL NEGLIGENCE IN
12 ACCORDANCE WITH SECTION 1251 OF THE ACT OF AUGUST 9, 1955
13 (P.L.323, NO.130), KNOWN AS THE COUNTY CODE.

14 (21) Minutes of an executive session and any record of
15 discussions held in executive session.

16 (22) (i) The contents of real estate appraisals,
17 engineering or feasibility estimates, environmental
18 reviews, audits or evaluations made for or by an agency
19 relative to the following:

20 (A) The leasing, acquiring or disposing of real
21 property.

22 (B) The purchase of public supplies or equipment
23 included in the real estate transaction.

24 (C) Construction projects.

25 (ii) This paragraph does not apply once the decision
26 is made to proceed with the lease, acquisition or
27 disposal of real property or the purchase of public
28 supply or construction project.

29 (23) Library and archive circulation and order records
30 of an identifiable individual or groups of individuals.

1 (24) Library archived and museum materials, or valuable
2 or rare book collections or documents contributed by gift,
3 grant, bequest or devise, to the extent of any limitations
4 imposed by the donor as a condition of the contribution.

5 (25) A record identifying the location of an
6 archeological site or an endangered or threatened plant or
7 animal species if not already known to the general public.

8 (26) A proposal pertaining to agency procurement or
9 disposal of supplies, services or construction prior to the
10 award of the contract or prior to the opening and rejection
11 of all bids; financial information of a bidder or offeror
12 requested in an invitation for bid or request for proposals
13 to demonstrate the bidder's or offeror's economic capability;
14 or the identity of members, notes and other records of agency
15 proposal evaluation committees established under 62 Pa.C.S. §
16 513 (relating to competitive sealed proposals).

17 (27) A record or information relating to a communication
18 between an agency and its insurance carrier, administrative
19 service organization or risk management office. This
20 paragraph does not apply to a contract with an insurance
21 carrier, administrative service organization or risk
22 management office or to financial records relating to the
23 provision of insurance.

24 (28) A record or information:

25 (i) identifying an individual who applies for or
26 receives social services; or

27 (ii) relating to the following:

28 (A) the type of social services received by an
29 individual;

30 (B) an individual's application to receive

1 social services, including a record or information
2 related to an agency decision to grant, deny, reduce
3 or restrict benefits, including a quasi-judicial
4 decision of the agency and the identity of a
5 caregiver or others who provide services to the
6 individual; or

7 (C) eligibility to receive social benefits,
8 including the individual's income, assets, physical
9 or mental health, age, disability, family
10 circumstances or record of abuse.

11 (c) Financial records.--The exceptions set forth in
12 subsection (b) shall not apply to financial records, except for
13 financial records protected under subsection (b)(1), (2), (3) or
14 (4), personal financial information or individual medical
15 information under subsection (b)(5). An agency may redact that
16 portion of a financial record which would disclose information
17 protected by subsection (b)(6) or disclose the identity of a
18 crime victim, confidential source or an individual performing an
19 undercover or covert law enforcement activity under subsection
20 (b)(16) or (17).

21 (d) Aggregated data.--The exceptions set forth in subsection
22 (b) shall not apply to aggregated data, maintained or received
23 by an agency, except for data protected under subsection (b)(1),
24 (2), (3) or (4).

25 CHAPTER 9

26 AGENCY RESPONSE

27 Section 901. General rule.

28 Upon receipt of a written request for access to a record, an
29 agency shall make a good faith effort to determine if the record
30 requested is a public record, legislative record or financial

1 record and whether the agency has possession, custody or control
2 of the identified record, and to respond as promptly as possible
3 under the circumstances existing at the time of the request. The
4 time for response shall not exceed five business days from the
5 date the written request is received by the agency head or open-
6 records officer for an agency. If the agency fails to send the
7 response within five business days of receipt of the written
8 request for access, the written request for access shall be
9 deemed denied.

10 Section 902. Extension of time.

11 (a) Determination.--Upon receipt of a written request for
12 access, the open-records officer for an agency shall determine
13 if one of the following applies:

14 (1) the request for access requires redaction of a
15 record in accordance with section 706;

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

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

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

23 (5) the requester has not complied with the Commonwealth
24 agency's policies regarding access to records;

25 (6) the requester refuses to pay applicable fees
26 authorized by this act; or

27 (7) the extent or nature of the request precludes a
28 response within the required time period.

29 (b) Notice.--

30 (1) Upon a determination that one of the factors listed

1 in subsection (a) applies, the open-records officer shall
2 send written notice to the requester within five business
3 days of receipt of the request for access under subsection
4 (a).

5 (2) The notice shall include a statement notifying the
6 requester that the request for access is being reviewed, the
7 reason for the review and a reasonable date that a response
8 is expected to be provided. If the date that a response is
9 expected to be provided is in excess of 30 days, following
10 the five business days allowed for in section 901, the
11 request for access shall be deemed denied unless the
12 requester has agreed in writing for an extension to the date
13 specified in the notice.

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

18 Section 903. Denial.

19 If an agency's response is a denial of a written request for
20 access, whether in whole or in part, a written response shall be
21 issued and include:

22 (1) A description of the record requested.

23 (2) The specific reasons for the denial, including a
24 citation of supporting legal authority.

25 (3) The typed or printed name, title, business address,
26 business telephone number and signature of the agency head or
27 open-records officer on whose authority the denial is issued.

28 (4) Date of the response.

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

1 Section 904. Certified copies.

2 If an agency's response grants a request for access, the
3 agency shall, upon request, provide the requester with a
4 certified copy of the record if the requester pays the
5 applicable fees pursuant to section 1307.

6 CHAPTER 11
7 APPEAL OF AGENCY DETERMINATION

8 Section 1101. Filing of appeal.

9 (a) Authorization.--

10 (1) If a written request for access is denied or deemed
11 denied, the requester may file an appeal with the
12 clearinghouse or other appropriate appeals officer within 15
13 business days of the mailing date of the agency's response or
14 within 15 business days of a deemed denial. The appeal shall
15 state the grounds upon which the requester asserts that the
16 record is a public record, legislative record or financial
17 record and shall address any grounds stated by the agency for
18 delaying or denying the request.

19 (2) In the case of an appeal of a decision by a
20 Commonwealth agency or local agency, the clearinghouse shall
21 assign an appeals officer to review the denial.

22 (b) Determination.--

23 (1) Unless the requester agrees otherwise, the appeals
24 officer shall make a final determination which shall be
25 mailed to the requester and the agency within 30 days of
26 receipt of the appeal filed under subsection (a).

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

29 (3) Prior to issuing a final determination, a hearing
30 may be conducted. The determination by the appeals officer

1 shall be a final order. The appeals officer shall provide a
2 written explanation of the reason for the decision to the
3 requester and the agency.

4 (c) Direct interest.--

5 (1) A person other than the agency or requester with a
6 direct interest in the record subject to an appeal under this
7 section may, within 15 calendar days following receipt of
8 actual knowledge of the appeal but no later than the date the
9 appeals officer issues an order, file a written request to
10 provide information or appear before the appeals officer or
11 to file information in support of the requester's or agency's
12 position.

13 (2) The appeals officer may grant the request if:

14 (i) no hearing has been held;

15 (ii) the office has not yet issued its order; and

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

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

20 Section 1102. Appeals officers.

21 (a) Scope.--This section applies to all agencies.

22 (b) Duties.--The appeals officer shall do all of the
23 following:

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

27 (2) Review all information filed relating to the
28 request. The appeals officer may hold a hearing. A decision
29 to hold or not to hold a hearing is not appealable. The
30 appeals officer may admit into evidence testimony, evidence

1 and documents that the appeals officer believes to be
2 reasonably probative and relevant to an issue in dispute. The
3 appeals officer may limit the nature and extent of evidence
4 found to be cumulative.

5 (3) Consult with agency counsel as appropriate.

6 (4) Issue a final determination on behalf of the agency.

7 (c) Procedures.--The clearinghouse, a judicial agency or a
8 legislative agency may adopt procedures relating to appeals
9 under this chapter.

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

15 (2) If a hearing is held, 1 Pa. Code Pt. II shall apply
16 unless the clearinghouse, the judicial agency or the
17 legislative agency has adopted regulations or rules to the
18 contrary.

19 (3) In the absence of a regulation or rule governing
20 appeals under this chapter, the appeals officer shall rule on
21 procedural matters on the basis of justice, fairness and the
22 expeditious resolution of the dispute.

23 CHAPTER 13

24 JUDICIAL REVIEW

25 Section 1301. Commonwealth agencies, legislative agencies and
26 judicial agencies.

27 (a) General rule.--Within 30 days of the mailing date of the
28 final determination of the appeals officer relating to a
29 decision of a Commonwealth agency, a legislative agency or a
30 judicial agency issued under section 1103 or the date a request

1 for access is deemed denied, a requester or the agency may file
2 a petition for review or other document as might be required by
3 rule of court with the Commonwealth Court. The decision of the
4 court shall contain findings of fact and conclusions of law
5 based upon the evidence as a whole. The decision shall clearly
6 and concisely explain the rationale for the decision.

7 ~~(b) Stay. A Commonwealth agency, legislative agency or~~ <—
8 ~~judicial agency may request a stay of the release of records~~
9 ~~from a court pending appeal.~~

10 (B) STAY.--AN APPEAL UNDER THIS SECTION SHALL STAY THE <—
11 RELEASE OF DOCUMENTS UNTIL A DECISION UNDER SUBSECTION (A) IS
12 ISSUED.

13 Section 1302. Local agencies.

14 (a) General rule.--Within 30 days of the mailing date of the
15 final determination of the appeals officer relating to a
16 decision of a local agency issued under section 1103 or of the
17 date a request for access is deemed denied, a requester or local
18 agency may file a petition for review or other document as
19 required by rule of court with the court of common pleas for the
20 county where the local agency is located. The decision of the
21 court shall contain findings of fact and conclusions of law
22 based upon the evidence as a whole. The decision shall clearly
23 and concisely explain the rationale for the decision.

24 ~~(b) Stay. A local agency may request a stay of the release~~ <—
25 ~~of records from a court pending appeal.~~

26 (B) STAY.--AN APPEAL UNDER THIS SECTION SHALL STAY THE <—
27 RELEASE OF DOCUMENTS UNTIL A DECISION UNDER SUBSECTION (A) IS
28 ISSUED.

29 Section 1303. Notice and records.

30 (a) Notice.--An agency, the requester and the appeals

1 officer shall be served notice of actions commenced in
2 accordance with section 1301 or 1302 and shall have an
3 opportunity to respond in accordance with applicable court
4 rules.

5 (b) Record on appeal.--The record before a court shall
6 consist of the request, the agency's response, the appeal filed
7 under section 1101, the hearing transcript, if any, and the
8 final written determination of the appeals officer.

9 Section 1304. Court costs and attorney fees.

10 (a) Reversal of agency determination.--If a court reverses
11 the final determination of the appeals officer or grants access
12 after a request for access was deemed denied, the court may
13 award reasonable attorney fees and costs of litigation or an
14 appropriate portion thereof to a requester if the court finds
15 either of the following:

16 (1) the agency receiving the original request willfully
17 or with wanton disregard deprived the requester of access to
18 a public record subject to access OR OTHERWISE ACTED IN BAD FAITH <—
19 FAITH under the provisions of this act; or

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

23 (b) Sanctions for frivolous requests or appeals.--The court
24 may award reasonable attorney fees and costs of litigation or an
25 appropriate portion thereof to an agency or the requester if the
26 court finds that the legal challenge under this chapter was
27 frivolous.

28 (c) Other sanctions.--Nothing in this act shall prohibit a
29 court from imposing penalties and costs in accordance with
30 applicable rules of court.

1 Section 1305. Penalties CIVIL PENALTY. <—

2 ~~(a) Summary offense. An agency or public official who~~ <—
3 ~~intentionally or knowingly violates this act commits a summary~~
4 ~~offense subject to prosecution by the Attorney General or the~~
5 ~~appropriate district attorney and shall, upon conviction for an~~
6 ~~initial offense, be sentenced to pay a fine of not more than~~
7 ~~\$1,000 plus costs of prosecution and upon conviction for a~~
8 ~~subsequent offense, be sentenced to pay a fine of not more than~~
9 ~~\$2,000 plus cost of prosecution.~~

10 ~~(b) Civil penalty.—~~

11 ~~(1) A court may impose a civil penalty of not more than~~

12 (A) DENIAL OF ACCESS.--A COURT MAY IMPOSE A CIVIL PENALTY OF <—
13 NOT MORE THAN \$1,000 if an agency denied access to a public
14 record in bad faith.

15 ~~(2) An agency or public official who does not promptly~~ <—

16 (B) FAILURE TO COMPLY WITH COURT ORDER.--AN AGENCY OR PUBLIC <—
17 OFFICIAL WHO DOES NOT PROMPTLY comply with a court order under
18 this act is subject to a civil penalty of not more than \$500 per
19 day until the public records are provided.

20 Section 1306. Immunity.

21 (a) General rule.--Except as provided in sections 1304 and
22 1305 and other statutes governing the release of records, no
23 agency, public official or public employee shall be liable for
24 civil or criminal damages or penalties resulting from compliance
25 or failure to comply with this act.

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

30 Section 1307. Fee limitations.

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

3 (b) Duplication.--

4 (1) Fees for duplication by photocopying, printing from
5 electronic media or microfilm, copying onto electronic media,
6 transmission by facsimile or other electronic means and other
7 means of duplication shall be established:

8 (i) by the clearinghouse, for Commonwealth agencies
9 and local agencies;

10 (ii) by each judicial agency; and

11 (iii) by each legislative agency.

12 (2) The fees must be reasonable and based on prevailing
13 fees for comparable duplication services provided by local
14 ~~copying services.~~ BUSINESS ENTITIES. ←

15 (3) FEES FOR LOCAL AGENCIES MAY REFLECT REGIONAL PRICE
16 DIFFERENCES.

17 (c) Certification.--An agency may impose reasonable fees for
18 official certification of copies if the certification is at the
19 behest of the requester and for the purpose of legally verifying
20 the public record.

21 (d) Conversion to paper.--If a record is only maintained
22 electronically or in other nonpaper media, duplication fees
23 shall be limited to the lesser of the fee for duplication on
24 paper or the fee for duplication in the original media as
25 provided by subsection (b) unless the requester specifically
26 requests for the record to be duplicated in the more expensive
27 medium.

28 (e) Enhanced electronic access.--If an agency offers
29 enhanced electronic access to records in addition to making the
30 records accessible for inspection and duplication by a requester

1 as required by this act, the agency may establish user fees
2 specifically for the provision of the enhanced electronic
3 access, but only to the extent that the enhanced electronic
4 access is in addition to making the records accessible for
5 inspection and duplication by a requester as required by this
6 act. The user fees for enhanced electronic access may be a flat
7 rate, a subscription fee for a period of time, a per-transaction
8 fee, a fee based on the cumulative time of system access or any
9 other reasonable method and any combination thereof. The user
10 fees for enhanced electronic access must be reasonable, must be
11 approved by the clearinghouse and may not be established with
12 the intent or effect of excluding persons from access to records
13 or duplicates thereof or of creating profit for the agency.

14 (f) Waiver of fees.--An agency may waive the fees for
15 duplication of a record, including, but not limited to, when:

- 16 (1) the requester duplicates the record; or
17 (2) the agency deems it is in the public interest to do
18 so.

19 (g) Limitations.--Except as otherwise provided by statute,
20 no other fees may be imposed unless the agency necessarily
21 incurs costs for complying with the request, and such fees must
22 be reasonable. No fee may be imposed for an agency's review of a
23 record to determine whether the record is a public record,
24 legislative record or financial record subject to access in
25 accordance with this act.

26 (h) Prepayment.--Prior to granting a request for access in
27 accordance with this act, an agency may require a requester to
28 prepay an estimate of the fees authorized under this section if
29 the fees required to fulfill the request are expected to exceed
30 \$100.

1 Section 1308. Prohibition.

2 A policy, rule or regulation adopted under this act may not
3 include any of the following:

4 (1) A limitation on the number of records which may be
5 requested or made available for inspection or duplication.

6 (2) A requirement to disclose the purpose or motive in
7 requesting access to records.

8 Section 1309. Practice and procedure.

9 The provisions of 2 Pa.C.S. (relating to administrative law
10 and procedure) shall not apply to this act unless specifically
11 adopted by rule or regulation.

12 Section 1310. Clearinghouse.

13 ~~The Department of Community and Economic Development shall~~ <—
14 ~~establish an Open Records Clearinghouse within the department.~~

15 ~~The clearinghouse shall do all of the following:~~

16 (A) ESTABLISHMENT.--THERE IS HEREBY ESTABLISHED IN THE <—
17 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT AN OPEN RECORDS
18 CLEARINGHOUSE. THE CLEARINGHOUSE SHALL DO ALL OF THE FOLLOWING:

19 (1) Provide information relating to the implementation
20 and enforcement of this act.

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

22 (3) Provide annual training courses to agencies ON THIS <—
23 ACT AND 65 PA.C.S. CH. 7 (RELATING TO OPEN MEETINGS).

24 (4) Provide annual, regional training courses to local
25 agencies.

26 (5) Review appeals of decisions by Commonwealth agencies
27 or local agencies EXCEPT AS PROVIDED IN SECTION 503(D) filed <—
28 under section 1101 and issue orders and opinions. The

29 clearinghouse shall employ or contract with attorneys ~~or~~ <—
30 ~~other individuals~~ to serve as appeals officers to review

1 appeals and, if necessary, to hold hearings on a regional
2 basis under this act. Each appeals officer must comply with
3 all of the following:

4 (i) Complete a training course provided by the
5 clearinghouse prior to acting as an appeals 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 advisory opinions and
15 decisions and the name and address of all open records
16 officers in this Commonwealth.

17 (8) CONDUCT A BIENNIAL REVIEW OF FEES CHARGED UNDER THIS <—
18 ACT.

19 ~~(8)~~ (9) Annually report on its activities and findings <—
20 to 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.--THE GOVERNOR SHALL APPOINT AN <—
24 EXECUTIVE DIRECTOR OF THE CLEARINGHOUSE WHO SHALL SERVE FOR A
25 TERM OF SIX YEARS. COMPENSATION SHALL BE SET BY THE EXECUTIVE
26 BOARD ESTABLISHED UNDER SECTION 204 OF THE ACT OF APRIL 9, 1929
27 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929. THE
28 EXECUTIVE DIRECTOR MAY SERVE NO MORE THAN TWO TERMS.

29 (C) LIMITATION.--THE EXECUTIVE DIRECTOR SHALL NOT SEEK
30 ELECTION NOR ACCEPT APPOINTMENT TO ANY POLITICAL OFFICE DURING

1 HIS TENURE AS EXECUTIVE DIRECTOR AND FOR ONE YEAR THEREAFTER.

2 (D) STAFFING.--THE EXECUTIVE DIRECTOR SHALL APPOINT
3 ATTORNEYS TO ACT AS APPEALS OFFICERS AND ADDITIONAL CLERICAL,
4 TECHNICAL AND PROFESSIONAL STAFF AS MAY BE APPROPRIATE AND MAY
5 CONTRACT FOR ADDITIONAL SERVICES AS NECESSARY FOR THE
6 PERFORMANCE OF THE EXECUTIVE DIRECTOR'S FUNCTION. THE
7 COMPENSATION OF ATTORNEYS AND OTHER STAFF SHALL BE SET BY THE
8 EXECUTIVE BOARD.

9 (E) DUTIES.--THE EXECUTIVE DIRECTOR SHALL ENSURE THAT THE
10 DUTIES OF THE CLEARINGHOUSE ARE CARRIED OUT AND SHALL MONITOR
11 CASES APPEALED TO THE CLEARINGHOUSE.

12 (F) APPROPRIATION.--THE APPROPRIATION FOR THE CLEARINGHOUSE
13 SHALL BE IN A SEPARATE LINE ITEM AND SHALL BE UNDER THE
14 JURISDICTION OF THE EXECUTIVE DIRECTOR.

15 CHAPTER 15

16 STATE-RELATED INSTITUTIONS

17 Section 1501. Definition.

18 As used in this chapter, "State-related institution" means
19 any of the following:

- 20 (1) Temple University.
- 21 (2) The University of Pittsburgh.
- 22 (3) The Pennsylvania State University.
- 23 (4) Lincoln University.

24 Section 1502. Reporting.

25 No later than May 30 of each year, a State-related
26 institution shall file with the Governor's Office, the General
27 Assembly, the Auditor General and the State Library the
28 information set forth in section 1503.

29 Section 1503. Contents of report.

30 The report required under section 1502 shall include the

1 following:

2 (1) Except as provided in paragraph (4), all information
3 required by Form 990 or an equivalent form, of the United
4 States Department of the Treasury, Internal Revenue Service,
5 entitled the Return of Organization Exempt From Income Tax,
6 regardless of whether the State-related institution is
7 required to file the form by the Federal Government.

8 (2) The salaries of all officers and directors of the
9 State-related institution.

10 (3) The highest 25 salaries paid to employees of the
11 institution that are not included under paragraph (2).

12 (4) The report shall not include information relating to
13 individual donors.

14 Section 1504. Copies and posting.

15 A State-related institution shall maintain, for at least
16 seven years, a copy of the report in the institution's library
17 and shall provide free access to the report on the institution's
18 Internet website.

19 CHAPTER 17

20 STATE CONTRACT INFORMATION

21 Section 1701. Submission and retention of contracts.

22 (a) General rule.--Whenever any Commonwealth agency,
23 legislative agency or judicial agency shall enter into any
24 contract involving any property, real, personal or mixed of any
25 kind or description or any contract for personal services where
26 the consideration involved in the contract is \$5,000 or more, a
27 copy of the contract shall be furnished to the Treasury
28 Department within ten days after the contract is executed on
29 behalf of the Commonwealth agency, legislative agency or
30 judicial agency or otherwise becomes an obligation of the

1 Commonwealth agency, legislative agency or judicial agency. THE <—
2 PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO CONTRACTS FOR
3 SERVICES PROTECTED BY A PRIVILEGE. THE FOLLOWING SHALL APPLY:

4 (1) Each Commonwealth agency, legislative agency and
5 judicial agency shall submit contracts in a form and
6 structure mutually agreed upon by the Commonwealth agency,
7 legislative agency or judicial agency and the State
8 Treasurer.

9 (2) The Treasury Department may require each
10 Commonwealth agency, legislative agency or judicial agency to
11 provide a summary with each contract, which shall include the
12 following:

- 13 (i) Date of execution.
- 14 (ii) Amount of the contract.
- 15 (iii) ~~Length~~ BEGINNING DATE of the contract. <—
- 16 (IV) END DATE OF THE CONTRACT, IF APPLICABLE. <—
- 17 ~~(iv)~~ (V) Name of the agency entering into the <—
18 contract.
- 19 ~~(v)~~ (VI) All parties ~~involved in~~ TO the contract. <—
- 20 ~~(vi)~~ (VII) Subject matter of the contract. <—

21 EACH AGENCY SHALL CREATE AND MAINTAIN THE DATA UNDER THIS <—
22 PARAGRAPH IN AN ASCII-DELIMITED TEXT FORMAT, SPREADSHEET
23 FORMAT OR OTHER FORMAT PROVIDED BY REGULATION.

24 (b) Retention.--Every contract filed pursuant to subsection
25 (a) shall remain on file with the Treasury Department for a
26 period of not less than four years after ~~all disbursements have~~ <—
27 ~~been made on the contracts.~~ THE END DATE OF THE CONTRACT. <—

28 (c) Accuracy.--Each Commonwealth agency, legislative agency
29 and judicial agency is responsible for verifying the accuracy
30 and completeness of the information that it submits to the State

1 Treasurer.

2 Section 1702. Public availability of contracts.

3 (a) General rule.--The Treasury Department shall make each
4 contract filed pursuant to section 1701 available for public
5 inspection either by posting a ~~complete~~ copy of the contract on <—
6 the Treasury Department's publicly accessible Internet website
7 or by posting a contract summary on the department's publicly
8 accessible Internet website.

9 (b) Posting.--The Treasury Department shall post the
10 information received pursuant to this chapter in a way that
11 allows the public to search contracts or contract summaries by
12 the categories enumerated in section 1701(a)(2).

13 (c) Request to review or receive copy of contract.--The
14 Treasury Department shall maintain a page on its publicly
15 accessible Internet website with instructions on how to request
16 to review a contract and how to request a copy of a contract.
17 Requests to review or receive a copy of a contract shall be
18 allowed by letter, facsimile or e-mail. Additionally, both
19 requests shall be honored within five days of the submission of
20 the request and in the case of a request for a copy of a
21 contract it shall be provided to the individual at cost. The
22 Treasury Department may offer to provide a copy of the requested
23 contract electronically to the requester at no cost.

24 ~~Section 1703. Commercial use of data prohibited.~~ <—

25 ~~It shall be unlawful for any person to use the contents of~~
26 ~~the posting of information under this chapter for any commercial~~
27 ~~purpose whatsoever.~~

28

CHAPTER 31

29

MISCELLANEOUS PROVISIONS

30 Section 3101. Applicability.

1 This act applies as follows:

2 (1) This act shall apply to requests filed after the
3 effective date of this section.

4 (2) Chapter 15 shall apply to fiscal years beginning
5 after June 30, 2008.

6 (3) CHAPTER 17 SHALL APPLY TO CONTRACTS ENTERED INTO OR <—
7 RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION.

8 ~~(3)~~ (4) Section 3102(1)(ii)(B) shall apply to bids <—
9 submitted on or after the effective date of this section.

10 Section 3102. Repeals.

11 Repeals are as follows:

12 (1) (i) General Assembly declares that the repeals
13 under subparagraph (ii) are necessary to effectuate this
14 act.

15 (ii) The following acts and parts of acts are
16 repealed:

17 (A) The act of June 21, 1957 (P.L.390, No.212),
18 referred to as the Right-to-Know Law.

19 (B) 62 Pa.C.S. § 106.

20 (2) (i) The General Assembly declares that the repeal
21 under subparagraph (ii) is necessary to effectuate
22 Chapter 17.

23 (ii) Section 1104 of the act of April 9, 1929
24 (P.L.177, No.175), known as The Administrative Code of
25 1929, is repealed.

26 Section 3103. Effective date.

27 This act shall take effect in 180 days.