

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 266

Session of
1979

INTRODUCED BY MESSRS. KNEPPER, J. L. WRIGHT, JR., COHEN, FISHER,
MRS. KERNICK, MESSRS. NOYE, REED, D. R. WRIGHT, KOLTER,
ZORD, VROON, HOFFEL, MILLER, BURD, WILT, WAGNER, SCIRICA,
ZWIKL, R. R. FISCHER, MICHLOVIC, MILANOVICH, PETERSON, PRATT,
SIEMINSKI, E. H. SMITH, SPITZ, CIMINI, PERZEL AND CHESS,
FEBRUARY 13, 1979

AS REPORTED FROM COMMITTEE ON URBAN AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 17, 1979

AN ACT

1 Requiring certain records of the Commonwealth, its agencies,
2 political subdivisions, certain authorities and other
3 agencies receiving or dispensing public funds or performing
4 essential governmental functions to be open for examination
5 and inspection by citizens of this Commonwealth; authorizing
6 citizens to make extracts, copies, photographs, ~~tapes~~ or <—
7 photostats of such records; providing for remedial relief
8 ~~from the courts of common pleas~~; and providing penalties. <—

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the "Open Records
13 Act."

14 Section 2. Purpose.

15 ~~The Declaration of Rights of the Constitution of the~~ <—
16 ~~Commonwealth of Pennsylvania declares that "All power is~~
17 ~~inherent in the people and all free governments are founded on~~
18 ~~their authority...". Yet it is impossible for the people to~~

1 ~~exercise this power unless they are permitted access to the~~
2 ~~records of all governmental bodies in Pennsylvania, and all~~
3 ~~agencies of the Commonwealth of Pennsylvania and its political~~
4 ~~subdivisions, without exception, subject only to the limitations~~
5 ~~imposed by this act.~~

6 ~~The General Assembly finds and declares it the policy of the~~
7 ~~Commonwealth that the official records and documents of all~~
8 ~~governmental units, and all agencies of State government and its~~
9 ~~political subdivisions, are open to the general public and the~~
10 ~~press and that sealed records are prohibited, subject only to~~
11 ~~the limitations imposed by this act.~~

12 THE GENERAL ASSEMBLY FINDS AND DECLARES IT TO BE THE PUBLIC <—
13 POLICY OF THE COMMONWEALTH THAT THE OFFICIAL RECORDS OF THE
14 STATE AND ITS POLITICAL SUBDIVISIONS ARE OPEN TO THE GENERAL
15 PUBLIC, SUBJECT ONLY TO THE LIMITATIONS IMPOSED UNDER THIS ACT.
16 Section 3. Definitions.

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

20 "Agency." ~~The body and committees thereof of all the~~ <—
21 ~~following: the General Assembly, including its conference~~
22 ~~committees; the Executive branch, including the Governor's~~
23 ~~Cabinet; any department, board, committee, authority or~~
24 ~~commission of the Commonwealth of Pennsylvania; any political~~
25 ~~subdivision of the Commonwealth; any State, municipal, township~~
26 ~~or school authority, school board, school governing body, or~~
27 ~~school commission; the boards of trustees of all State-aided~~
28 ~~colleges and universities; the boards of trustees of all State-~~
29 ~~owned and State-related colleges and universities; the boards of~~
30 ~~trustees of all community colleges; any district justice; any~~

~~duly elected or appointed public official or person in charge in
an established office of such official; or any similar
organization created by or pursuant to a statute which declares
in substance that the organization performs or has for its
purpose the performance of an essential governmental function.~~

~~"Public record." Any account, voucher or contract dealing
with the receipt or disbursement of funds by an agency; or the
acquisition, use or disposal of services, supplies, materials,
equipment or other property and any minutes, order or decision
by an agency fixing the personal or property rights, privileges,
immunities, duties or obligations of any person or group of
persons; any log, daily register, memorandum, correspondence, or
other document, recording or transcript of a recording referring
to the activities of the agency or any of its employees; an
official record made by a district justice; and an official
record made by a State agency showing the transactions, official
business, or dealings of the agency or any of its employees with
other agencies, individuals or other nonagency institutions or
entities: Provided, however, That the term "public records"
shall not include any record, document, pleading, report or
exhibit, access to or the publication of which is prohibited,
restricted or forbidden by Federal law or the order or decree of
a court of the United States or the Commonwealth of
Pennsylvania. The term "public record" shall extend to and
provide access to any recordings of the agency made on
electronic or other recording devices used in the taking of
official minutes or proceedings.~~

~~Section 4. Records available.~~

~~(a) Every public record of any agency shall be promptly
transcribed, stored in a public building and kept available for~~

~~inspection at reasonable hours and such other hours as posted
and shall without delay be open for prompt examination and
inspection by any citizen of this Commonwealth.~~

~~(b) The record shall be prepared in a chronological order in
a standard format prescribed by the agency.~~

~~(c) The public building shall be the officially designated
public meeting place or office of the agency.~~

~~Section 5. Extracts and copies.~~

~~(a) Any citizen of this Commonwealth shall have the right to
take extracts or make copies of public records and to make
photographs or photostats of the same while such records are in
the possession, custody and control of the lawful custodian
thereof or an authorized deputy. Any citizen shall have the
right to listen to and tape any tape recording or other
electronic recording when such recording constitutes or
incorporates the official minutes, records or proceedings of the
agency.~~

~~(b) The lawful custodian of such records shall have the
right to adopt and enforce reasonable rules and regulations
governing the making of extracts, copies, photographs,
photostats or tapes of official records. The custodian may make
nominal cost related charges for such reproduction as may be
furnished. No charge shall be levied when a citizen personally
examines and transcribes such records. Any charge is
unreasonable and shall not be upheld when the charge serves as a
barrier to citizen access to records.~~

~~(c) A request for any record will be deemed denied if no
response is forthcoming within ten business days after the
request is received. Whenever any request is denied, the
provisions of section 5 shall be available to the offended~~

1 ~~citizen.~~

2 ~~Section 6. Remedial actions.~~

3 ~~(a) The courts of common pleas shall have original~~
4 ~~jurisdiction over any action brought by a citizen to enforce the~~
5 ~~provisions of this act.~~

6 ~~(b) The court shall have the power to enforce sections 4 and~~
7 ~~5 by use of injunctions, declaratory judgments or any other~~
8 ~~method deemed appropriate by the court which would require an~~
9 ~~agency that withholds any requests record to produce the same or~~
10 ~~be guilty of contempt.~~

11 ~~(c) Any actions under the provisions of this act shall be~~
12 ~~brought in:~~

13 ~~(1) the judicial district where the complainant resides~~
14 ~~or has a principal place of business;~~

15 ~~(2) where the agency whose action is challenged is~~
16 ~~located; or~~

17 ~~(3) where the alleged infraction occurred.~~

18 ~~Section 6. Penalties.~~

19 ~~Any person who denies any citizen of this Commonwealth the~~
20 ~~right to examine, inspect or make a copy of any record covered~~
21 ~~by the provisions of this act shall be guilty of a misdemeanor~~
22 ~~and, upon conviction thereof, be sentenced to pay a fine not~~
23 ~~exceeding \$1,000 or undergo imprisonment for not more than six~~
24 ~~months, or both.~~

25 "AGENCY." ANY BRANCH, DEPARTMENT, BOARD, AGENCY, AUTHORITY <—
26 OR COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA INCLUDING THE
27 OFFICE OF THE GOVERNOR, THE JUDICIARY, THE GENERAL ASSEMBLY AND
28 ANY COMMITTEE THEREOF, ANY POLITICAL SUBDIVISION OF THE
29 COMMONWEALTH AND ANY AGENCY, BOARD, AUTHORITY OR COMMISSION
30 THEREOF, ANY DULY ELECTED OR APPOINTED PUBLIC OFFICIAL OR PERSON

1 IN CHARGE OF THE ESTABLISHED OFFICE OF SUCH OFFICIAL, ANY
2 DISTRICT JUSTICE, ANY STATE-OWNED, STATE-RELATED OR STATE-AIDED
3 COLLEGE, COMMUNITY COLLEGE OR UNIVERSITY OR ANY SIMILAR
4 ORGANIZATION CREATED BY OR PURSUANT TO A STATUTE WHICH DECLARES
5 IN SUBSTANCE THAT THE ORGANIZATION PERFORMS OR HAS FOR ITS
6 PURPOSE THE PERFORMANCE OF AN ESSENTIAL GOVERNMENT FUNCTION.

7 "PUBLIC RECORD." ANY TAPED, WRITTEN OR COMPUTERIZED
8 MEMORIAL, EVIDENCE OR ACCOUNT OF ANY ACT, TRANSACTION OR
9 PROCEEDING OF AN AGENCY AND SHALL MEAN ANY PAPER, DOCUMENT OR
10 INSTRUMENT PREPARED OR DRAWN UP, UNDER AUTHORITY OF LAW, BY A
11 PROPER OFFICER OR EMPLOYEE OF AN AGENCY WHICH IS DESIGNED TO
12 SERVE AS A MEMORIAL OR PERMANENT EVIDENCE OF THE MATTER TO WHICH
13 IT RELATES. THE TERM PUBLIC RECORD SHALL NOT INCLUDE:

14 (1) ANY RECORD ACCESS TO WHICH IS PROHIBITED, RESTRICTED
15 OR FORBIDDEN BY STATUTE, BY ORDER OR DECREE OF COURT OR BY
16 FEDERAL LAW.

17 (2) PERSONNEL AND MEDICAL FILES AND SIMILAR FILES THE
18 DISCLOSURE OF WHICH WOULD CONSTITUTE A CLEARLY UNWARRANTED
19 INVASION OF PRIVACY.

20 (3) TRADE SECRETS AND COMMERCIAL AND FINANCIAL
21 INFORMATION OBTAINED FROM A PERSON OR LEGAL ENTITY WHICH IS
22 PRIVILEGED AND CONFIDENTIAL.

23 (4) INTERAGENCY OR INTRAAGENCY MEMORANDA OR LETTERS
24 WHICH REFLECT PREDECISIONAL DELIBERATIVE OR POLICY MAKING
25 PROCESSES OR FALL WITHIN THE ATTORNEY WORK PRODUCT PRIVILEGE.

26 (5) (I) INVESTIGATORY RECORDS COMPILED FOR LAW
27 ENFORCEMENT PURPOSES, BUT ONLY TO THE EXTENT THAT THE
28 PRODUCTION OF SUCH RECORDS WOULD:

29 (A) INTERFERE WITH ENFORCEMENT PROCEEDINGS;

30 (B) DEPRIVE A PERSON OF A RIGHT TO A FAIR TRIAL

1 OR AN IMPARTIAL ADJUDICATION;

2 (C) DISCLOSE THE IDENTITY OF A CONFIDENTIAL
3 SOURCE;

4 (D) DISCLOSE INVESTIGATIVE TECHNIQUES AND
5 PROCEDURES; OR

6 (E) ENDANGER THE LIFE OR PHYSICAL SAFETY OF LAW
7 ENFORCEMENT PERSONNEL.

8 (II) NOTWITHSTANDING THE OTHER PROVISIONS OF THIS
9 EXCEPTION, RECORDS OF ARREST, BILLS OF INDICTMENT OR
10 INFORMATION AND RECORDS OF THE DISPOSITION OF ANY
11 CRIMINAL PROCEEDING, INCLUDING RECORDS OR CONVICTION,
12 SHALL BE CONSIDERED PUBLIC RECORDS.

13 NOTHING HEREIN SHALL BE CONSTRUED AS AUTHORITY TO WITHHOLD
14 INFORMATION FROM EITHER BRANCH OF THE GENERAL ASSEMBLY OR ANY
15 COMMITTEE THEREOF. ANY REASONABLY SEGREGABLE PORTION OF A RECORD
16 SHALL BE PROVIDED TO ANY PERSON REQUESTING SUCH RECORDS AFTER
17 DELETION OF THE PORTIONS WHICH ARE EXEMPT.

18 SECTION 4. EXAMINATION, INSPECTION; EXTRACTS, COPIES.

19 (A) EVERY PUBLIC RECORD OF AN AGENCY SHALL, AT REASONABLE
20 TIMES, BE OPEN FOR EXAMINATION AND INSPECTION BY ANY CITIZEN OF
21 THIS COMMONWEALTH.

22 (B) ANY CITIZEN OF THIS COMMONWEALTH SHALL HAVE THE RIGHT TO
23 TAKE EXTRACTS OR MAKE COPIES OF PUBLIC RECORDS AND TO MAKE
24 PHOTOGRAPHS OR PHOTOSTATS OF SAME WHILE SUCH RECORDS ARE IN THE
25 POSSESSION, CUSTODY AND CONTROL OF THE LAWFUL CUSTODIAN THEREOF
26 OR HIS AUTHORIZED DEPUTY. THE LAWFUL CUSTODIAN OF SUCH RECORDS
27 SHALL HAVE THE RIGHT TO ADOPT AND ENFORCE REASONABLE RULES
28 GOVERNING THE MAKING OF SUCH EXTRACTS, COPIES, PHOTOGRAPHS OR
29 PHOTOSTATS, INCLUDING THE ASSESSMENT OF NOMINAL COST-RELATED
30 CHARGES FOR SUCH REPRODUCTIONS AS MAY BE FURNISHED.

1 SECTION 5. ADMINISTRATIVE REVIEW.

2 (A) UPON RECEIPT OF ANY WRITTEN REQUEST FOR RECORDS MADE
3 PURSUANT TO THIS ACT, THE AGENCY SHALL DETERMINE WITHIN TEN
4 WORKING DAYS THEREAFTER WHETHER TO COMPLY AND SHALL IMMEDIATELY
5 NOTIFY THE PERSON MAKING THE REQUEST, IN WRITING, OF SUCH
6 DETERMINATION, THE REASONS THEREFOR AND OF THE RIGHT TO APPEAL
7 AN ADVERSE DETERMINATION TO THE HEAD OF THE AGENCY. IF THE
8 AGENCY DENIES THE REQUEST, IN WHOLE OR IN PART, OR FAILS TO MAKE
9 A DETERMINATION OR PROVIDE NOTIFICATION THEREOF, WITHIN THE
10 PRESCRIBED TIME, THE PERSON MAKING THE REQUEST MAY APPEAL TO THE
11 HEAD OF THE AGENCY. THE AGENCY HEAD SHALL MAKE A DETERMINATION
12 WITHIN 20 WORKING DAYS FOLLOWING RECEIPT OF SUCH AN APPEAL AND
13 SHALL NOTIFY THE PERSON MAKING THE REQUEST OF SAME WITHIN FIVE
14 DAYS THEREAFTER. IF THE AGENCY HEAD DENIES THE REQUEST, IN WHOLE
15 OR IN PART, OR FAILS TO MAKE A DETERMINATION OR PROVIDE
16 NOTIFICATION WITHIN THE PRESCRIBED TIME, THE PERSON MAKING THE
17 REQUEST SHALL HAVE A RIGHT OF JUDICIAL REVIEW IN ACCORDANCE WITH
18 THE PROVISIONS OF SECTION 6. ANY NOTIFICATION OF DENIAL OF ANY
19 REQUEST FOR RECORDS UNDER THIS SECTION SHALL SET FORTH THE
20 NAMES, TITLES AND POSITIONS OF EACH PERSON RESPONSIBLE FOR THE
21 DENIAL OF SUCH REQUEST.

22 (B) IN UNUSUAL CIRCUMSTANCES, THE TIME LIMITS PRESCRIBED IN
23 SUBSECTION (A) MAY BE EXTENDED BY WRITTEN NOTICE TO THE PERSON
24 MAKING THE REQUEST SETTING FORTH THE REASONS FOR SUCH EXTENSION
25 AND THE DATE ON WHICH A DETERMINATION IS EXPECTED TO BE MADE. NO
26 SUCH NOTICE SHALL SPECIFY A DATE THAT WOULD RESULT IN AN
27 EXTENSION OF MORE THAN TEN WORKING DAYS. UNUSUAL CIRCUMSTANCES
28 MEANS, BUT ONLY TO THE EXTENT NECESSARY TO THE PROPER PROCESSING
29 OF THE REQUEST:

30 (1) THE NEED TO SEARCH FOR AND COLLECT THE REQUESTED

1 RECORDS FROM FIELD FACILITIES OR OTHER ESTABLISHMENTS THAT
2 ARE SEPARATE FROM THE OFFICE PROCESSING THE REQUEST;

3 (2) THE NEED TO SEARCH FOR, COLLECT AND EXAMINE A
4 VOLUMINOUS AMOUNT OF SEPARATE AND DISTINCT RECORDS WHICH ARE
5 DEMANDED IN A SINGLE REQUEST; OR

6 (3) THE NEED FOR CONSULTATION, WHICH SHALL BE CONDUCTED
7 WITH ALL PRACTICABLE SPEED, WITH ANOTHER AGENCY HAVING A
8 SUBSTANTIAL INTEREST IN THE DETERMINATION OR AMONG TWO OR
9 WITH MORE COMPONENTS OF THE SAME AGENCY.

10 SECTION 6. JUDICIAL REVIEW.

11 ANY CITIZEN OF THE COMMONWEALTH DENIED ANY RIGHT GRANTED HIM
12 UNDER THIS ACT MAY APPEAL FROM SUCH DENIAL TO THE COMMONWEALTH
13 COURT IN THE CASE OF COMMONWEALTH AGENCIES AND TO THE COURT OF
14 COMMON PLEAS OF THE APPROPRIATE JUDICIAL DISTRICT IN THE CASE OF
15 OTHER AGENCIES. IF THE COURT DETERMINES THAT SUCH DENIAL WAS NOT
16 FOR JUST AND PROPER CAUSE UNDER THE TERMS OF THIS ACT, IT MAY
17 ENTER SUCH ORDER FOR DISCLOSURE AS IT MAY DEEM PROPER. IN SUCH
18 CASE, THE COURT SHALL DETERMINE THE MATTER DE NOVO, AND MAY
19 EXAMINE THE CONTENTS OF SUCH AGENCY RECORDS IN CAMERA TO
20 DETERMINE WHETHER SUCH RECORDS OR ANY PART THEREOF SHALL BE
21 WITHHELD UNDER ANY OF THE EXEMPTIONS SET FORTH IN THIS ACT. THE
22 BURDEN SHALL BE UPON THE AGENCY TO SUSTAIN ITS ACTION. EXCEPT AS
23 TO CASES THE COURT CONSIDERS OF GREATER IMPORTANCE, ACTIONS
24 BROUGHT UNDER THIS ACT SHALL TAKE PRECEDENCE ON THE DOCKET OVER
25 ALL CASES AND SHALL BE ASSIGNED FOR HEARING AND TRIAL OR FOR
26 ARGUMENT AT THE EARLIEST POSSIBLE DATE AND SHALL BE EXPEDITED IN
27 EVERY WAY.

28 SECTION 7. PENALTIES.

29 (A) THE COURT SHALL ASSESS AGAINST THE AGENCY REASONABLE
30 ATTORNEY FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED IN

1 ANY CASE UNDER THIS ACT IN WHICH THE COMPLAINANT HAS
2 SUBSTANTIALLY PREVAILED.

3 (B) ANY PERSON WHO WILLFULLY OR CAPRICIOUSLY DENIES ANY
4 CITIZEN THE RIGHT TO EXAMINE, INSPECT OR MAKE A COPY OF ANY
5 PUBLIC RECORD SHALL BE GUILTY OF A SUMMARY OFFENSE.

6 Section 7 8. Repealer.

<—

7 The act of June 21, 1957 (P.L.390, No.212), entitled "An act
8 requiring certain records of the Commonwealth and its political
9 subdivisions and of certain authorities and other agencies
10 performing essential governmental functions, to be open for
11 examination and inspection by citizens of the Commonwealth of
12 Pennsylvania; authorizing such citizens under certain conditions
13 to make extracts, copies, photographs or photostats of such
14 records; and providing for appeals to the courts of common
15 pleas," is repealed.

16 Section 8 9. Effective date.

<—

17 This act shall take effect in 60 days.