

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2100 Session of
2001

INTRODUCED BY MAHER AND McILHINNEY, OCTOBER 29, 2001

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 28, 2002

AN ACT

1 Amending the act of June 21, 1957 (P.L.390, No.212), entitled
2 "An act requiring certain records of the Commonwealth and its
3 political subdivisions and of certain authorities and other
4 agencies performing essential governmental functions, to be
5 open for examination and inspection by citizens of the
6 Commonwealth of Pennsylvania; authorizing such citizens under
7 certain conditions to make extracts, copies, photographs or
8 photostats of such records; and providing for appeals to the
9 courts of common pleas," further providing for definitions,
10 for examination and inspection and for extracts, copies or
11 photostats; providing for denial of access to public records,
12 for redaction, for response to requests for access and for
13 final agency determinations; further providing for appeal
14 from denial of right; and providing for court costs and
15 attorney fees, for penalty and for immunity.

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

18 Section 1. Sections 1 and 2 of the act of June 21, 1957
19 (P.L.390, No.212), referred to as the Right-to-Know Law, are
20 amended to read:

21 [Section 1. In this act the following terms shall have the
22 following meanings:]

23 Section 1. Definitions.

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

4 [(1)] "Agency." Any office, department, board or commission
5 of the executive branch of the Commonwealth, any political
6 subdivision of the Commonwealth, the Pennsylvania Turnpike
7 Commission, the State System of Higher Education or any State or
8 municipal authority or similar organization created by or
9 pursuant to a statute which declares in substance that such
10 organization performs or has for its purpose the performance of
11 an essential governmental function.

12 [(2)] "Public [Record] record." Any account, voucher or
13 contract dealing with the receipt or disbursement of funds by an
14 agency or its acquisition, use or disposal of services or of
15 supplies, materials, equipment or other property and any minute,
16 order or decision by an agency fixing the personal or property
17 rights, privileges, immunities, duties or obligations of any
18 person or group of persons: Provided, That the term "public
19 records" shall not mean any report, communication or other
20 paper, the publication of which would disclose the institution,
21 progress or result of an investigation undertaken by an agency
22 in the performance of its official duties, except those reports
23 filed by agencies pertaining to safety and health in industrial
24 plants; it shall not include any record, document, material,
25 exhibit, pleading, report, memorandum or other paper, access to
26 or the publication of which is prohibited, restricted or
27 forbidden by statute law or order or decree of court, or which
28 would operate to the prejudice or impairment of a person's
29 reputation or personal security, or which would result in the
30 loss by the Commonwealth or any of its political subdivisions or

1 commissions or State or municipal authorities of Federal funds,
2 excepting therefrom however the record of any conviction for any
3 criminal act.

4 "Requester." ~~Any citizen of this Commonwealth~~ A PERSON who <—
5 ~~requests access to public records.~~ INFORMATION PURSUANT TO THIS <—
6 ACT.

7 "Response." Access to a ~~public~~ record or an agency's written <—
8 notice granting, denying or partially granting and partially
9 ~~denying access to a public record.~~ <—

10 [Section 2. Every public record of an agency shall, at
11 reasonable times, be open for examination and inspection by any
12 citizen of the Commonwealth of Pennsylvania.]

13 Section 2. Access PROCEDURE FOR ACCESS to public records. <—

14 (a) General rule.--Unless otherwise provided by law, a
15 public record shall be accessible for inspection and copying by
16 a requester in accordance with this act. A public record shall
17 be provided to a requester in the medium requested if the public
18 record is maintained EXISTS in that medium; otherwise, it shall <—
19 be provided in the medium in which it is maintained EXISTS. <—
20 Public records shall be available for access during the regular
21 business hours of an agency.

22 ~~(b) Requests. An agency may require a request for access to~~ <—
23 ~~be in writing or by electronic means. An agency shall have~~
24 ~~available forms, which may be used to make requests for access.~~

25 (B) WRITTEN REQUESTS.--AGENCIES MAY FULFILL ORAL REQUESTS <—
26 FOR RECORDS AND ANONYMOUS REQUESTS FOR RECORDS. IN THE EVENT
27 THAT THE REQUESTER WISHES TO PURSUE THE RELIEF AND REMEDIES
28 PROVIDED FOR IN THIS ACT, THE REQUESTER MUST INITIATE SUCH
29 RELIEF WITH A WRITTEN REQUEST.

30 (C) OTHER REQUESTS.--A WRITTEN REQUEST FOR ACCESS TO RECORDS

1 MAY BE SUBMITTED IN PERSON, BY MAIL, BY FACSIMILE OR, TO THE
2 EXTENT PROVIDED BY AGENCY RULES, ANY OTHER ELECTRONIC MEANS. A
3 WRITTEN REQUEST SHALL BE ADDRESSED TO THE AGENCY HEAD OR OTHER
4 PERSON DESIGNATED IN THE RULES ESTABLISHED BY THE AGENCY. A
5 WRITTEN REQUEST SHOULD IDENTIFY OR DESCRIBE THE RECORDS SOUGHT
6 WITH SUFFICIENT SPECIFICITY TO ENABLE THE AGENCY TO ASCERTAIN
7 WHICH RECORDS ARE BEING REQUESTED AND SHALL INCLUDE THE NAME AND
8 ADDRESS TO WHICH THE AGENCY SHOULD ADDRESS ITS RESPONSE. A
9 WRITTEN REQUEST NEED NOT INCLUDE ANY EXPLANATION OF THE
10 REQUESTER'S REASON FOR REQUESTING OR INTENDED USE OF THE
11 RECORDS.

12 ~~(c)~~ (D) Electronic access.--In addition to the requirements <—
13 of subsection (a), an agency may make its public records
14 available through a publicly accessible World Wide Web site ANY <—
15 PUBLICLY ACCESSIBLE ELECTRONIC MEANS.

16 ~~(d)~~ (E) Creation of a public record.--When responding to a <—
17 request for access, an agency shall not be required to create a
18 public record which does not currently exist or to compile,
19 maintain, format or organize a public record in a manner in
20 which the agency does not currently compile, maintain, format or
21 organize the public record.

22 ~~(c)~~ Production of a public record (F) CONVERSION OF AN <—
23 ELECTRONIC RECORD TO WRITTEN FORM.--Notwithstanding subsections
24 (a) and ~~(d)~~ (E), if a public record is only maintained <—
25 electronically, an agency shall, upon request, make the public
26 record available on paper when responding to a request for
27 access in accordance with this act.

28 (G) RETENTION OF RECORDS.--AN AGENCY SHALL RETAIN PUBLIC <—
29 RECORDS IN ACCORDANCE WITH THE ACT OF AUGUST 14, 1963 (P.L.839,
30 NO.407), ENTITLED, AS AMENDED, "AN ACT CREATING A COUNTY RECORDS

1 COMMITTEE; IMPOSING POWERS AND DUTIES UPON IT; AUTHORIZING THE
2 PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION TO ASSIST AND
3 COOPERATE WITH IT; DEFINING COUNTY RECORDS; AND AUTHORIZING THE
4 DISPOSITION OF CERTAIN COUNTY RECORDS BY COUNTY OFFICERS IN
5 COUNTIES OF THE SECOND TO EIGHTH CLASS," WITH 53 PA.C.S. CH. 13
6 SUBCH. F (RELATING TO RECORDS), AND WITH THE STATE RECORDS
7 MANAGEMENT MANUAL.

8 Section 2. Section 3 of the act is repealed.

9 Section 3. The act is amended by adding sections to read:

10 Section 3.1. ~~Denial of access~~ ACCESS to public records. <—

11 An agency may not deny a requester access to a public record
12 due to the intended use of the public record by the requester.

13 Section 3.2. Redaction.

14 If an agency determines that a public record contains
15 information which is subject to access as well as information
16 which is not subject to access, the agency's response shall
17 grant access to the information which is subject to access and
18 deny access to the information which is not subject to access.
19 If the information which is not subject to access is an integral
20 part of the public record and cannot be separated, the agency
21 shall redact from the public record the information which is not
22 subject to access and the response shall grant access to the
23 information which is subject to access. The agency may not deny
24 access to the public record if the information which is not
25 subject to access is able to be redacted. Information which an
26 agency redacts in accordance with this subsection shall be
27 deemed a denial under section 3.3.

28 Section 3.3. Response to WRITTEN requests for access. <—

29 (a) General rule.--Upon receipt of a written request for
30 access to a public record, an agency shall make a good faith <—

1 effort to respond as promptly as possible under the
2 circumstances existing at the time of the request, but shall not
3 exceed ~~ten~~ FIVE business days from the date the agency receives <—
4 the request for access. Except as provided in subsection (b), if
5 the THE WRITTEN REQUEST IS RECEIVED BY THE AGENCY HEAD OR OTHER <—
6 PERSON DESIGNATED IN THE RULES ESTABLISHED BY THE AGENCY FOR
7 RECEIVING SUCH REQUESTS. IF THE agency fails to ~~provide~~ SEND the <—
8 response within ~~ten~~ FIVE business days of the agency's SUCH <—
9 receipt of the WRITTEN request for access, the WRITTEN request <—
10 for access shall be deemed denied.

11 (b) Exception.--Upon receipt of a written request for access
12 to a public record, if an agency determines that one of the <—
13 following applies:

14 (1) the request for access requires redaction of a
15 public record in accordance with section 3.2;

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

18 (3) a timely response to the request for access cannot
19 be accomplished due to illness, vacation or emergency BONA <—
20 FIDE AND SPECIFIED STAFFING LIMITATIONS;

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

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

25 (6) the requester has not paid the applicable fees or <—
26 ~~costs~~ REFUSES TO PAY APPLICABLE FEES authorized by SECTION 7 <—
27 OF this act,

28 the agency shall ~~provide~~ SEND written notice to the requester <—
29 within ~~ten~~ FIVE business days of the agency's receipt of the <—
30 request for access. The notice shall include a statement

1 notifying the requester that the request for access is being
2 reviewed, the reason for the review and a reasonable date that a
3 response is expected to be provided. If the date that a response
4 is expected to be provided is in excess of 60 30 days, the <—
5 request for access shall be deemed denied.

6 (c) Denial.--If an agency's response is a denial of a
7 WRITTEN request for access, whether in whole or in part, the <—
8 response shall include: A WRITTEN RESPONSE SHALL BE ISSUED AND <—
9 INCLUDE:

10 (1) A description of the public record requested. <—

11 (2) The specific reasons for the denial, INCLUDING A <—
12 CITATION OF SUPPORTING LEGAL AUTHORITY.

13 (3) The typed or printed name, title, business address,
14 business telephone number and signature of the public
15 official or public employee on whose authority the denial is
16 issued.

17 (4) DATE OF THE RESPONSE. <—

18 ~~(4)~~ (5) The procedure to appeal the denial of access <—
19 under section 3.4 THIS ACT. <—

20 (d) Certified copies.--If an agency's response grants a
21 request for access, the agency shall, upon request, provide the
22 requester with a certified copy of a public record if the
23 requester pays the applicable fees PURSUANT TO SECTION 7. <—
24 Section 3.4. Final agency determination.

25 (a) Filing of exceptions.--If a WRITTEN request for access <—
26 is denied, the requester may file exceptions with the head of
27 the agency denying the request for access within 15 business
28 days of the mailing date of the agency's response. The exception
29 shall state all grounds upon which the requester asserts that <—
30 the public record is an accessible RECORD IS A public record and <—

1 shall ~~rebut~~ ADDRESS any grounds stated by the agency for
2 delaying or denying the request.

<—

3 (b) Determination.--The agency head or his designee shall
4 make a final determination regarding the exceptions within 30
5 days of the mailing date of the exceptions. Prior to issuing the
6 final determination regarding the exceptions, the agency head or
7 his designee may conduct a hearing. The determination shall be
8 the final order of the agency. If the agency head or his
9 designee determines that the agency correctly denied the request
10 for access, the agency head or his designee shall provide a
11 written explanation to the requester of the reason for the
12 denial.

13 Section 4. Section 4 of the act is amended to read:

14 [Section 4. Any citizen of the Commonwealth of Pennsylvania
15 denied any right granted to him by section 2 or section 3 of
16 this act, may appeal from such denial. If such court determines
17 that such denial was not for just and proper cause under the
18 terms of this act, it may enter such order for disclosure as it
19 may deem proper.]

20 Section 4. ~~Appeal~~ JUDICIAL APPEAL.

<—

21 (a) ~~Petition~~ COMMONWEALTH AGENCY.--Within 30 days of the
22 mailing date of a final determination of a Commonwealth agency
23 affirming the denial of access, a requester may file a petition
24 for review or other document as might be required by rule of
25 court with the Commonwealth Court. Within 30 days of the mailing
26 date of a COMMONWEALTH COURT.

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27 (B) OTHER AGENCY.--WITHIN 30 DAYS OF A DENIAL BY THE AGENCY
28 UNDER SECTION 3.3(C) OR OF THE MAILING DATE OF A final
29 determination of any other agency affirming the denial of
30 access, a requester may file a petition for review or other

document as might be required by rule of court with the court of
common pleas for the county where the agency's office or
facility is located OR BRING AN ACTION IN THE LOCAL MAGISTERIAL <—
DISTRICT. A REQUESTER IS ENTITLED TO A REASONED DECISION
CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW BASED UPON
THE EVIDENCE AS A WHOLE WHICH CLEARLY AND CONCISELY STATES AND
EXPLAINS THE RATIONALE FOR THE DECISIONS SO THAT ALL CAN
DETERMINE WHY AND HOW A PARTICULAR RESULT WAS REACHED.

~~(b) Record~~ (C) RECORD ON APPEAL.--The record before a court <—
shall consist of the request; the agency's response; the
requester's exceptions, IF APPLICABLE; the hearing transcript, <—
if any; and the agency's final determination, IF APPLICABLE. <—

Section 5. The act is amended by adding sections to read:
Section 4.1. Court costs and attorney fees.

(a) ~~General rule~~ REVERSAL OF AGENCY DETERMINATION.--If a <—
court reverses an agency's final determination, the court may
award reasonable attorney fees and costs of litigation, or an
appropriate portion thereof, to a requester if the court finds
either of the following:

(1) the agency willfully or with wanton disregard
deprived the requester of access to public records subject to
access under the provisions of this act; or

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

(b) Sanctions for frivolous requests or appeals.--If a court
affirms an agency's final determination, the court may award
reasonable attorney fees and costs of litigation, or an
appropriate portion thereof, to the agency if the court finds
that the legal challenge to the agency's final determination was

~~frivolous or brought without substantial justification. The
court in its discretion also may enter an order barring the
requester from making future requests or filing future appeals
under this act if the requester has repeatedly made frivolous
requests or filed frivolous appeals under this act and it finds
that an award of attorney fees and costs is likely to be
insufficient to deter future frivolous requests or appeals.~~

Section 5. Penalty PENALTIES.

~~An individual of an agency~~

(A) SUMMARY OFFENSE.--AN AGENCY, PUBLIC OFFICIAL OR PUBLIC
EMPLOYEE who violates this act with the intent and purpose of
violating this act commits a summary offense and shall, upon
conviction, be sentenced to pay a fine of not more than \$100
plus costs of prosecution.

(B) CIVIL PENALTY.--AN AGENCY, PUBLIC OFFICIAL OR PUBLIC
EMPLOYEE WHO DOES NOT PROMPTLY COMPLY WITH A COURT ORDER UNDER
THIS ACT IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$100 PER
DAY UNTIL THE PUBLIC RECORDS ARE PROVIDED.

Section 6. Immunity.

(A) GENERAL RULE.--Except as provided in sections 4.1 and 5,
no agency, public official or public employee shall be liable
for civil or criminal damages or penalties resulting from the
release or failure to release information in accordance with
this act or for failure to comply with this act.

~~Section 6. This act shall apply to requests for access to
public records received by agencies after the effective date of
this act.~~

~~Section 7. This act shall take effect in 60 days.~~
OF A PUBLIC RECORD IN ACCORDANCE WITH THIS ACT.

(B) SCHEDULES.--NO AGENCY, PUBLIC OFFICIAL OR PUBLIC

EMPLOYEE SHALL BE LIABLE FOR CIVIL OR CRIMINAL DAMAGES OR
PENALTIES UNDER THIS ACT FOR COMPLYING WITH ANY WRITTEN PUBLIC
RECORD RETENTION AND DISPOSITION SCHEDULE.

SECTION 7. FEE LIMITATIONS.

(A) POSTAGE.--FEES FOR POSTAGE MAY NOT EXCEED THE ACTUAL
COST OF MAILING.

(B) PHOTOCOPYING.--FEES FOR PHOTOCOPYING MUST BE REASONABLE
AND BASED ON PREVAILING FEES FOR COMPARABLE PHOTOCOPYING
SERVICES PROVIDED BY LOCAL BUSINESS ENTITIES.

(C) LIMITATIONS.--NO OTHER FEES MAY BE IMPOSED UNLESS THE
AGENCY NECESSARILY INCURS COSTS FOR COMPLYING WITH THE REQUEST,
AND SUCH FEES MUST BE REASONABLE.

(D) PREPAYMENT.--PRIOR TO GRANTING A REQUEST FOR ACCESS IN
ACCORDANCE WITH THIS ACT, AN AGENCY MAY REQUIRE A REQUESTER TO
PREPAY AN ESTIMATE OF THE FEES AUTHORIZED UNDER THIS SECTION IF
THE FEES REQUIRED TO FULFILL THE REQUEST ARE EXPECTED TO EXCEED
\$100.

SECTION 8. IMPLEMENTATION.

(A) REQUIREMENT.--AN AGENCY SHALL ESTABLISH WRITTEN POLICIES
AND MAY PROMULGATE REGULATIONS NECESSARY TO IMPLEMENT THIS ACT.

(B) CONTENT.--THE WRITTEN POLICIES SHALL INCLUDE THE NAME OF
THE OFFICE TO WHICH REQUESTS FOR ACCESS SHALL BE ADDRESSED AND A
LIST OF APPLICABLE FEES.

(C) PROHIBITION.--A POLICY OR REGULATION MAY NOT INCLUDE ANY
OF THE FOLLOWING:

(1) A LIMITATION ON THE NUMBER OF PUBLIC RECORDS WHICH
MAY BE REQUESTED OR MADE AVAILABLE UNDER SECTION 2.

(2) A REQUIREMENT TO DISCLOSE THE PURPOSE OR MOTIVE FOR
THE REQUEST FOR ACCESS.

(D) ACCESS.--THE POLICIES SHALL BE CONSPICUOUSLY POSTED AT

1 THE AGENCY AND MAY BE MADE AVAILABLE BY ELECTRONIC MEANS.

2 SECTION 9. PRACTICE AND PROCEDURE.

3 THE PROVISIONS OF 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW
4 AND PROCEDURE) SHALL NOT APPLY TO THIS ACT.

5 SECTION 6. IF AN AGENCY RECEIVES A REQUEST FOR A PUBLIC
6 RECORD THAT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT EXECUTED
7 BEFORE THE EFFECTIVE DATE OF THIS ACT, THE LAW IN EFFECT AT THE
8 TIME THE AGREEMENT WAS EXECUTED, INCLUDING JUDICIAL
9 INTERPRETATION OF THE LAW, SHALL GOVERN ACCESS TO THE PUBLIC
10 RECORD UNLESS ALL PARTIES TO THE CONFIDENTIALITY AGREEMENT AGREE
11 IN WRITING TO BE GOVERNED BY THIS ACT.

12 SECTION 7. THIS ACT SHALL TAKE EFFECT IN 180 DAYS.