

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 444 Session of 2013

INTRODUCED BY PILEGGI, SMUCKER, RAFFERTY, WAUGH, FONTANA, FOLMER, TEPLITZ, GREENLEAF, WARD, ALLOWAY, YAW, YUDICHAK, BAKER, FERLO, MENSCH, ERICKSON, VANCE, VULAKOVICH, FARNESE, BROWNE, CORMAN, BLAKE AND BREWSTER, APRIL 26, 2013

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 29, 2014

AN ACT

1 Amending the act of February 14, 2008 (P.L.6, No.3), entitled
2 "An act providing for access to public information, for a
3 designated open-records officer in each Commonwealth agency,
4 local agency, judicial agency and legislative agency, for
5 procedure, for appeal of agency determination, for judicial
6 review and for the Office of Open Records; imposing
7 penalties; providing for reporting by State-related
8 institutions; requiring the posting of certain State contract
9 information on the Internet; and making related repeals,"
10 further providing for definitions; providing for Pennsylvania
11 Interscholastic Athletic Association; further providing for
12 requests; providing for inmate access; further providing for
13 access, for requests, for written requests, for production of
14 certain records, for exceptions for public records, for
15 agency response in general, for filing of appeal, for appeals
16 officers, for specified agencies, for fee limitations, for
17 Office of Open Records, for reporting, for contents of report
18 and for copies and posting; and providing for contracts.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. The definitions of "confidential proprietary
22 information," "independent agency," "local agency," "personal
23 financial information" and "State-affiliated entity" in section
24 102 of the act of February 14, 2008 (P.L.6, No.3), known as the

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

3 Section 102. Definitions.

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

7 \* \* \*

8 "Commercial purpose." The use of a record:

9 (1) for the purpose of selling or reselling any portion  
10 of the record;

11 (2) to obtain names and addresses from the record for  
12 the purpose of solicitation; or

13 (3) in a manner through which the requester can  
14 reasonably expect to make a profit.

15 The term does not include the use of a public record by an  
16 educational or noncommercial scientific institution for  
17 scholarly or scientific research or the use of a public record  
18 by the news media for news gathering or dissemination in a  
19 newspaper, periodical, digital publication or radio or  
20 television news broadcast.

21 \* \* \*

22 "Confidential proprietary information." Commercial or  
23 financial information received or created by an agency:

24 (1) which is privileged or confidential; and

25 (2) the disclosure of which would cause substantial harm  
26 to the competitive position of the person that submitted the  
27 information.

28 \* \* \*

29 "Funding source." The General Fund, a special fund or other  
30 Federal or State funds appropriated by the General Assembly by

1 statute or by executive authorization.

2 \* \* \*

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

7 \* \* \*

8 "Local agency." Any of the following:

9 (1) Any political subdivision, intermediate unit,  
10 charter school, cyber charter school or public trade or  
11 vocational school.

12 (2) Any local, intergovernmental, regional or municipal  
13 agency, authority, council, board, commission or similar  
14 governmental entity. This paragraph includes an economic  
15 development authority and an industrial development  
16 authority.

17 (3) Any campus police department of a State-owned or  
18 State-related college or university.

19 \* \* \*

20 "Personal financial information." An individual's personal  
21 credit, charge or debit card information; bank account or other  
22 financial institution account information; bank, credit or  
23 financial statements; account or PIN numbers; forms required to  
24 be filed by a taxpayer with a Federal or Commonwealth taxing  
25 authority; and other information relating to an individual's  
26 personal finances.

27 \* \* \*

28 "State-affiliated entity." A Commonwealth authority or  
29 Commonwealth entity. The term includes the Pennsylvania Higher  
30 Education Assistance Agency and any entity established thereby,

1 the Pennsylvania Gaming Control Board, the Pennsylvania Game  
2 Commission, the Pennsylvania Fish and Boat Commission, the  
3 Pennsylvania Housing Finance Agency, the Pennsylvania Municipal  
4 Retirement Board, the State System of Higher Education, a  
5 community college, the Pennsylvania Turnpike Commission, the  
6 Pennsylvania Public Utility Commission, the Pennsylvania  
7 Infrastructure Investment Authority, the State Public School  
8 Building Authority[, the Pennsylvania Interscholastic Athletic  
9 Association] and the Pennsylvania Higher Educational Facilities  
10 Authority. The term does not include a State-related  
11 institution.

12 \* \* \*

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

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

18 (2) The time the PSAP contacted or dispatched the  
19 appropriate agency for response.

20 (3) The time the appropriate agency responded.

21 (4) The time the appropriate agency arrived on the  
22 scene.

23 (5) The time the appropriate agency became available.

24 (6) The address of the incident or the cross street or  
25 mile marker nearest the scene of the incident.

26 \* \* \*

27 Section 2. The act is amended by adding a section to read:

28 Section 307. Pennsylvania Interscholastic Athletic Association.

29 For purposes of this act, the Pennsylvania Interscholastic  
30 Athletic Association is considered to be a Commonwealth agency

1 and shall provide public records in accordance with this act.

2 Section 3. Section 506 of the act is amended to read:

3 Section 506. Requests.

4 (a) Disruptive requests.--

5 (1) An agency may deny a requester access to a record if  
6 the requester has made repeated requests for that same record  
7 and the repeated requests have placed an unreasonable burden  
8 on the agency.

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

11 (b) Disaster or potential damage.--

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

13 (i) when timely access is not possible due to fire,  
14 flood or other disaster; or

15 (ii) to historical, ancient or rare documents,  
16 records, archives and manuscripts when access may, in the  
17 professional judgment of the curator or custodian of  
18 records, cause physical damage or irreparable harm to the  
19 record.

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

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

27 (1) Disclosure of the record is not prohibited or  
28 restricted under any of the following:

29 (i) Federal or State law or regulation.

30 (ii) Judicial order or decree.

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

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

5 (d) Agency possession.--

6 (1) [A public record that is not in the possession of an  
7 agency but is in the possession of a party with whom the  
8 agency has contracted to perform a governmental function on  
9 behalf of the agency, and which directly relates to the  
10 governmental function and is not exempt under this act, shall  
11 be considered a public record of the agency for purposes of  
12 this act.] An agency which is a party to a contract shall  
13 provide a copy of the contract and any public records of the  
14 agency relating to the contract.

15 (2) Nothing in this act shall be construed to require  
16 access to any other record of the party in possession of the  
17 public record.

18 (3) A request for a public record in possession of a  
19 party other than the agency shall be submitted to the open  
20 records officer of the agency. Upon a determination that the  
21 record is subject to access under this act, the open records  
22 officer shall assess the duplication fee established under  
23 section 1307(b) and upon collection shall remit the fee to  
24 the party in possession of the record if the party duplicated  
25 the record.

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

27 Section 508. Inmate access.

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

30 (b) Records.--An agency shall provide an inmate with copies

1 of the following records as they pertain directly to the inmate  
2 if the disclosure of the record will not diminish the safety or  
3 security of any person or correctional facility:

4 (1) Criminal records relating to the criminal commitment  
5 of the inmate.

6 (2) Institutional housing information.

7 (3) The inmate's financial records.

8 (4) The inmate's work records.

9 (5) The inmate's educational records.

10 (6) The inmate's disciplinary records.

11 (7) Disciplinary, housing and other policies adopted by  
12 the correctional institution.

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

15 (9) The inmate's tax records.

16 (10) The inmate's voting records.

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

19 (c) Applicability.--Nothing under this section shall  
20 prohibit an agency from voluntarily permitting an inmate to have  
21 access to records not listed under subsection (b) or prevent an  
22 agency from complying with a lawful subpoena or court order.

23 Section 5. Sections 701, 702, 703 and 707 of the act are  
24 amended to read:

25 Section 701. Access.

26 (a) General rule.--Unless otherwise provided by law, a  
27 public record, legislative record or financial record shall be  
28 accessible for inspection and duplication in accordance with  
29 this act. A record being provided to a requester shall be  
30 provided in the medium, computer file format or other format

1 requested if it exists in that medium, computer file format or  
2 other format; otherwise, it shall be provided in the medium in  
3 which it exists. Public records, legislative records or  
4 financial records shall be available for access during the  
5 regular business hours of an agency.

6 (b) Construction.--Nothing in this act shall be construed to  
7 require access to any computer either of an agency or individual  
8 employee of an agency.

9 Section 702. Requests.

10 Agencies may fulfill verbal[, written or anonymous verbal] or  
11 written requests for access to records under this act. If the  
12 requester wishes to pursue the relief and remedies provided for  
13 in this act, the request for access to records must be a written  
14 request.

15 Section 703. Written requests.

16 A written request for access to records may be submitted in  
17 person, by mail, by e-mail, by facsimile or, to the extent  
18 provided by agency rules, by any other electronic means. A  
19 written request must be addressed to the open-records officer  
20 designated pursuant to section 502 or to the administrative  
21 office of the agency. [Employees of an] The administrative  
22 office of the agency shall [be directed to] promptly forward  
23 requests for records to the agency's open-records officer. A  
24 written request should identify or describe the records sought  
25 with sufficient specificity to enable the agency to ascertain  
26 which records are being requested and shall include the name and  
27 address to which the agency should address its response. [A]  
28 Except as required under section 707(d), a written request need  
29 not include any explanation of the requester's reason for  
30 requesting or intended use of the records unless otherwise

1 required by law. A written request must include the name and  
2 address of the requester and the name of the agency to which the  
3 request is addressed.

4 Section 707. Production of certain records.

5 (a) General rule.--If, in response to a request, an agency  
6 produces a record that is not a public record, legislative  
7 record or financial record, the agency shall notify any third  
8 party that provided the record to the agency, the person that is  
9 the subject of the record and the requester.

10 (b) Requests for trade secrets.--An agency shall notify a  
11 third party of a request for a record if the third party  
12 provided the record and included a written statement signed by a  
13 representative of the third party that the record contains a  
14 trade secret or confidential proprietary information.  
15 Notification shall be provided within five business days of  
16 receipt of the request for the record. The third party shall  
17 have five business days from receipt of notification from the  
18 agency to provide input on the release of the record. The agency  
19 shall deny the request for the record or release the record  
20 within ten business days of the provision of notice to the third  
21 party and shall notify the third party of the decision.

22 (c) Transcripts.--

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

28 (2) Following an adjudication becoming final, binding  
29 and nonappealable, a transcript of an administrative  
30 proceeding shall be provided to a requester in accordance

1 with the duplication rates established in section 1307(b).

2 (3) Nothing in this subsection shall be construed to  
3 require an agency to transcribe a proceeding solely for  
4 purposes of responding to a request under this act.

5 (d) Commercial requests.--An agency may require a requester  
6 to certify in writing whether the request is for a commercial  
7 purpose. Certification shall be submitted on a form developed by  
8 the Office of Open Records that shall provide a checkoff for the  
9 requester to use to indicate whether the request is for a  
10 commercial purpose. A requester that submits a false written  
11 statement shall be subject to 18 Pa.C.S. § 4904 (relating to  
12 unsworn falsification to authorities).

13 Section 6. Section 708(b)(10)(i) and (ii), (13), (17) and  
14 (18) and (c) of the act are amended and subsection (b) is  
15 amended by adding paragraphs to read:

16 Section 708. Exceptions for public records.

17 \* \* \*

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

21 \* \* \*

22 (5.1) The payment records of a person receiving services  
23 from a public water or sewer authority or other municipal  
24 authority, municipality or cooperative that provides  
25 electricity, water, sewer, storm water, natural gas or  
26 similar service. The authority, municipality or cooperative  
27 shall establish a process to provide a clearance certificate  
28 to a person to certify that all fees and charges owed have  
29 been paid. A reasonable fee for a clearance certificate may  
30 be charged. This paragraph shall not apply to reports of

1 aggregate payments made by a municipality, authority or  
2 cooperative to assist low-income consumers or other consumers  
3 in obtaining services. If funds are owed, the amount of the  
4 delinquency shall appear on the clearance certificate.

5 \* \* \*

6 (6.1) Tax payment records in the possession of a tax  
7 collector or municipality responsible for the collection of  
8 taxes. A tax collector or municipality shall establish a  
9 process to provide a clearance certificate to a person  
10 certifying that all local taxes owed have been paid. If funds  
11 are owed, the amount of the delinquency shall appear on the  
12 clearance certificate. A reasonable fee for a clearance  
13 certificate may be charged. As used in this paragraph, the  
14 term "tax collector" means an elected tax collector or an  
15 employee or contractor of an agency that collects local taxes  
16 pursuant to law.

17 \* \* \*

18 (10) As follows:

19 (i) A record that reflects, contains or includes:

20 (A) The internal, predecisional deliberations of  
21 an agency, its members, employees or officials or  
22 predecisional deliberations between agency members,  
23 employees or officials and members, employees or  
24 officials of another agency, including predecisional  
25 deliberations relating to a budget recommendation,  
26 legislative proposal, legislative amendment,  
27 contemplated or proposed policy or course of action  
28 or any research, memos or other documents used in the  
29 predecisional deliberations.

30 (B) The strategy to be used to develop or

1           achieve the successful adoption of a budget,  
2           legislative proposal or regulation.

3           (ii) Subparagraph (i) (A) shall apply to agencies  
4           subject to 65 Pa.C.S. Ch. 7 (relating to open meetings)  
5           in a manner consistent with 65 Pa.C.S. Ch. 7. A record  
6           which is not otherwise exempt from access under this act  
7           and which is presented to a quorum for deliberation in  
8           accordance with 65 Pa.C.S. Ch. 7 shall be a public record  
9           regardless of whether a vote occurs at the meeting.

10           \* \* \*

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

20           \* \* \*

21           (17) [A] Except for a safety inspection report made  
22           pursuant to Federal or State law, a record of an agency  
23           relating to a noncriminal investigation, including:

24           (i) Complaints submitted to an agency.

25           (ii) Investigative materials, notes, correspondence  
26           and reports.

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

1 (iv) A record that includes information made  
2 confidential by law.

3 (v) Work papers underlying an audit.

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

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

14 (B) Deprive a person of the right to an  
15 impartial adjudication.

16 (C) Constitute an unwarranted invasion of  
17 privacy.

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

20 (E) Endanger the life or physical safety of an  
21 individual.

22 (18) Emergency dispatches as follows:

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

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

1           (iii) The home address of the individual who  
2           accesses emergency dispatch. The record may include the  
3           nearest cross streets to that address.

4           \* \* \*

5           (31) An agency's bank account numbers, bank routing  
6           numbers, credit card numbers or passwords.

7           (32) A record of any of the following:

8           (i) A volunteer ambulance service.

9           (ii) A volunteer fire company.

10          (iii) A volunteer rescue company.

11          (iv) A volunteer water rescue company.

12          (v) A volunteer organization that provides hazardous  
13          materials response services.

14          (vi) A volunteer organization that provides  
15          emergency medical services.

16          Section 506(d)(1) shall apply to a volunteer organization  
17          under this paragraph that contracts with a local agency to  
18          provide services to the local agency.

19          (c) Financial records.--The exceptions set forth in  
20 subsection (b) shall not apply to financial records, except that  
21 an agency may redact that portion of a financial record  
22 protected under subsection (b)(1), (2), (3), (4), (5), (6),  
23 (11), (13), (16) or (17). An agency shall not disclose the  
24 identity of an individual performing an undercover or covert law  
25 enforcement activity.

26          \* \* \*

27          Section 7. Sections 901 and 1101 of the act are amended to  
28 read:

29          Section 901. General rule.

30          (a) Determination.---Upon receipt of a written request for

1 access to a record, an agency shall make a good faith effort to  
2 determine if the record requested is a public record,  
3 legislative record or financial record and whether the agency  
4 has possession, custody or control of the identified record, and  
5 to respond as promptly as possible under the circumstances  
6 existing at the time of the request. All applicable fees shall  
7 be paid in order to receive access to the record requested.

8 (b) Time for response.---The time for response shall not  
9 exceed:

10 (1) In the case of a request made in person or submitted  
11 by regular mail, e-mail, web form, facsimile or similar  
12 means, five business days from the date the written request  
13 is received by the open-records officer for an agency. If the  
14 agency fails to send the response within five business days  
15 of receipt of the written request for access, the written  
16 request for access shall be deemed denied.

17 (2) (Reserved).

18 Section 1101. Filing of appeal.

19 [(a) Authorization.--

20 (1) If a written request for access to a record is]

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

22 (1) (i) If a written request for access to a record is  
23 denied or deemed denied, the requester may file an appeal  
24 with the Office of Open Records or judicial, legislative  
25 or other appeals officer designated under section 503(d)  
26 within [15] 20 business days of the [mailing] postmark  
27 date of the agency's response or within [15] 20 business  
28 days of a deemed denial, whichever comes first.

29 (ii) The appeal shall [state the grounds upon which  
30 the requester asserts that the record is a public record,

1 legislative record or financial record and shall address  
2 any grounds stated by the agency for delaying or denying  
3 the request.] include the following:

4 (A) A copy of the original request.

5 (B) The agency denial.

6 (C) A list of the records that were denied.

7 (iii) The office shall provide a form on its  
8 publicly accessible Internet website which may be used by  
9 the requester to file the appeal.

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

14 (b) Determination.--

15 (1) Unless the requester agrees otherwise, the appeals  
16 officer shall make a final determination which shall be  
17 mailed to the requester and the agency within 30 days of  
18 receipt of the appeal filed under subsection (a). The appeals  
19 officer may extend this deadline by up to 15 days by  
20 providing notice to both parties. If a hearing or in-camera  
21 review is held under section 1102(a)(2), the appeals officer  
22 may extend the deadline up to 90 additional days.

23 (1.1) If the issue before the office is substantially  
24 the same as an issue currently on appeal to Commonwealth  
25 Court, the appeals officer may stay the appeal until  
26 Commonwealth Court issues a decision on the matter.

27 (2) If the office or other appeals officer fails to  
28 issue a final determination within 30 days or as otherwise  
29 provided under paragraph (1), the appeal is deemed denied.

30 (3) Prior to issuing a final determination, a hearing

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

5 (c) Direct interest.--

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

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

16 (i) no hearing has been held;

17 (ii) the appeals officer has not yet issued its  
18 order; and

19 (iii) the appeals officer believes the information  
20 will be probative.

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

23 Section 8. Section 1102(a) of the act is amended and the  
24 section is amended by adding a subsection to read:

25 Section 1102. Appeals officers.

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

28 (1) Set a schedule for the requester and the open-  
29 records officer to submit documents in support of their  
30 positions.

1 (2) Review all information filed relating to the  
2 request. The appeals officer may hold a hearing or conduct an  
3 in-camera review under subsection (c), in which case the  
4 appeals officer may extend the deadline in section 1101(b)(1)  
5 by up to 90 days. A decision to hold or not to hold a hearing  
6 is not appealable. The appeals officer may admit into  
7 evidence testimony, evidence and documents that the appeals  
8 officer believes to be reasonably probative and relevant to  
9 an issue in dispute. The appeals officer may limit the nature  
10 and extent of evidence found to be cumulative.

11 (3) Consult with agency counsel as appropriate.

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

14 \* \* \*

15 (c) Review.--The Office of Open Records may require an  
16 agency to submit a record for the purpose of conducting an in-  
17 camera review to determine if the record is a public record.

18 Section 9. Section 1301 heading and (a) of the act are  
19 amended to read:

20 Section 1301. Commonwealth agencies, legislative agencies  
21 [and], judicial agencies and the Office of Open  
22 Records.

23 (a) General rule.--Within 30 days of the mailing date of the  
24 final determination of the appeals officer relating to a  
25 decision of a Commonwealth agency, a legislative agency [or], a  
26 judicial agency or the Office of Open Records issued under  
27 section 1101(b) or the date a request for access is deemed  
28 denied, a requester or the agency may file a petition for review  
29 or other document as might be required by rule of court with the  
30 Commonwealth Court. The court shall notify the Commonwealth

1 agency, legislative agency, judicial agency or Office of Open  
2 Records of the appeal. The decision of the court shall contain  
3 findings of fact and conclusions of law based upon the evidence  
4 as a whole. The decision shall clearly and concisely explain the  
5 rationale for the decision.

6 \* \* \*

7 Section 10. Section 1307(h) of the act is amended and the  
8 section is amended by adding a subsection to read:

9 Section 1307. Fee limitations.

10 \* \* \*

11 (g.1) Additional fees.--

12 (1) Notwithstanding subsection (e), each agency may  
13 assess fees for responding to commercial requests under this  
14 act. In addition to fees under subsections (a) and (b),  
15 reasonable standard charges may be charged for document  
16 search, review and redaction for documents for commercial  
17 use.

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

23 (h) Prepayment.--Prior to granting a request for access in  
24 accordance with this act, an agency may require a requester to  
25 prepay an estimate of the fees authorized under this section if  
26 the fees required to fulfill the request are expected to exceed  
27 [~~\$100~~] \$50.

28 Section 11. Sections 1310, 1502, 1503 and 1504 of the act  
29 are amended to read:

30 Section 1310. Office of Open Records.

1 (a) Establishment.--There is established [in the Department  
2 of Community and Economic Development an] the Office of Open  
3 Records, as an independent agency. The office shall do all of  
4 the following:

5 (1) Provide information relating to the implementation  
6 and enforcement of this act.

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

8 (3) Provide annual training courses to agencies, public  
9 officials and public employees on this act and 65 Pa.C.S. Ch.  
10 7 (relating to open meetings).

11 (4) Provide annual, regional training courses to local  
12 agencies, public officials and public employees.

13 (5) Assign appeals officers to review appeals of  
14 decisions by Commonwealth agencies or local agencies, except  
15 as provided in section 503(d), filed under section 1101 and  
16 issue orders and opinions. The office shall employ or  
17 contract with attorneys to serve as appeals officers to  
18 review appeals and, if necessary, to hold hearings on a  
19 regional basis under this act. Each appeals officer must  
20 comply with all of the following:

21 (i) Complete a training course provided by the  
22 Office of Open Records prior to acting as an appeals  
23 officer.

24 (ii) If a hearing is necessary, hold hearings  
25 regionally as necessary to ensure access to the remedies  
26 provided by this act.

27 (iii) Comply with the procedures under section  
28 1102(b).

29 (6) Establish an informal mediation program to resolve  
30 disputes under this act.

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

5           (8) Conduct a biannual review of fees charged under this  
6 act.

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

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

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

21       (d) Staffing.--The executive director shall appoint  
22 attorneys to act as appeals officers and additional clerical,  
23 technical and professional staff as may be appropriate and may  
24 contract for additional services as necessary for the  
25 performance of the executive director's duties. The compensation  
26 of attorneys and other staff shall be set by the Executive  
27 Board. The appointment of attorneys shall not be subject to the  
28 act of October 15, 1980 (P.L.950, No.164), known as the  
29 Commonwealth Attorneys Act.

30       (e) Duties.--

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

4           (2) The Department of Community and Economic Development  
5 shall provide payroll and administrative support to the  
6 office.

7           (e.1) Public comment.--The office shall abstain from public  
8 comment about a pending proceeding before the office. This  
9 subsection shall not prohibit employees of the office from  
10 making public statements in the course of official duties, from  
11 issuing written advisory opinions, from making general comments  
12 on this act that are not related to a specific pending case or  
13 from explaining the procedures of the office.

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

17           (g) Participation.--The office may participate as amicus  
18 curiae in an appeal from a decision of the office and may, upon  
19 approval of an appellate court, participate in oral argument.

20 Section 1502. Reporting.

21           No later than May 30 of each year, unless otherwise provided  
22 under this chapter, a State-related institution shall file [with  
23 the Governor's Office, the General Assembly, the Auditor General  
24 and the State Library] the information set forth in section 1503  
25 under the requirements of section 1504.

26 Section 1503. Contents of report.

27           (a) Information included.--The report required under section  
28 1502 shall include the following:

29           (1) Except as provided in paragraph (4), all information  
30 required by Form 990 or an equivalent form of the United

1 States Department of the Treasury, Internal Revenue Service,  
2 entitled the Return of Organization Exempt From Income Tax,  
3 regardless of whether the State-related institution is  
4 required to file the form by the Federal Government.

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

7 (3) [The] For a State-related institution with fewer  
8 than 2,500 employees, the highest 25 salaries paid to  
9 employees of the institution that are not included under  
10 paragraph (2). For a State-related institution with 2,500  
11 employees or more, the highest 200 salaries paid to employees  
12 of the institution that are not included under paragraph (2).

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

15 (5) Revenue and expenditure budgets of the State-related  
16 institution's academic and administrative support units for  
17 the current fiscal year.

18 (6) The actual revenue and expenditures for the prior  
19 year.

20 (7) For any defined project or program which is the  
21 subject of a specific line item appropriation from the  
22 General Fund, the State-related institution shall disclose  
23 the following:

24 (i) Revenue and expenditure budgets of the defined  
25 program or project for the current fiscal year.

26 (ii) The actual revenue and expenditures of the  
27 defined program or project for the prior year.

28 (8) The revenue and expenditures of any auxiliary  
29 enterprise which is directly funded in whole or in part by  
30 tuition or a State appropriation for the current fiscal year.

1       (9) The most recent audited financial statement for the  
2 State-related institution.

3       (10) The following information for the prior fiscal year  
4 for each academic or administrative support unit, for each  
5 defined project or program and for an auxiliary enterprise:

6           (i) The number of employees by academic rank.

7           (ii) The number of administrators, staff, clerical  
8 and technical service employees, by classification.

9           (iii) Median and mean salary by academic rank.

10          (iv) Median and mean salaries of administrators,  
11 staff, clerical and technical service employees, by  
12 classification.

13          (v) Nonsalary compensation as a percentage of  
14 salary. Nonsalary compensation shall include:

15           (A) Medical benefits.

16           (B) Life insurance benefits.

17           (C) Pension benefits.

18           (D) Leave benefits.

19           (E) Employer Social Security payments.

20           (F) Workers' compensation benefits.

21          (vi) A statement of the State-related institution's  
22 retirement policies.

23          (vii) A policy statement relating to a reduction of  
24 tuition for employees' family members.

25          (viii) A list by academic or administrative support  
26 unit in the aggregate of the expenses of travel,  
27 subsistence and lodging, whether provided or reimbursed.

28       (b) Providing information.--Each State-related institution  
29 shall provide full, complete and accurate information as may be  
30 required by the Department of Education or the chairman or the

1 minority chairman of the Appropriations Committee of the Senate  
2 or the chairman or the minority chairman of the Appropriations  
3 Committee of the House of Representatives.

4 (c) Financial statements.--Each State-related institution  
5 shall present and report its financial statements required under  
6 the provisions of this act in accordance with:

7 (1) The generally accepted accounting principles as  
8 prescribed by the National Association of College and  
9 University Business Officers, the American Institute of  
10 Certified Public Accountants or by another recognized  
11 authoritative body.

12 (2) The "Commonwealth of Pennsylvania Budget  
13 Instructions for the State System of Higher Education, State-  
14 Related Universities and Non-State-Related Colleges and  
15 Universities."

16 (3) The financial reporting policies and standards  
17 promulgated by the Commonwealth of Pennsylvania and by the  
18 Federal Government that apply to the State-related  
19 institutions.

20 (d) Nonpreferred appropriations.--

21 (1) In a year a State-related institution receives a  
22 nonpreferred appropriation, a report shall be submitted prior  
23 to September 1 and must cover the 12-month period beginning  
24 with the summer term of the preceding year. The report shall  
25 include:

26 (i) The following counts and distributions for each  
27 term during the period:

28 (A) The definition and number of:

29 (I) Faculty members employed full time.

30 (II) Faculty members employed part time.

1                   (III) Full-time students enrolled in a  
2 graduate course.

3                   (IV) Full-time students enrolled in an  
4 undergraduate course.

5                   (V) Part-time students enrolled in a  
6 graduate course.

7                   (VI) Part-time students enrolled in an  
8 undergraduate course.

9                   (B) The total number of:

10                   (I) Undergraduate student credit hours,  
11 divided into lower division and upper division  
12 course levels.

13                   (II) Graduate student credit hours, divided  
14 into three course levels: master's, first  
15 professional and doctoral.

16                   (C) The number of different courses scheduled by  
17 level of instruction and the number of sections of  
18 individual instruction scheduled by level of  
19 instruction, each further subdivided by two-digit  
20 Classification of Instructional Program (CIP)  
21 categories of instructional programs of higher  
22 education as defined by the National Center for  
23 Education Statistics, United States Department of  
24 Education.

25                   (D) The number of terms scheduled and the dates  
26 of the terms.

27                   (ii) For the summer term and the following academic  
28 year in total and for each two-digit CIP program  
29 category:

30                   (A) A classification of faculty members or other

1 professional employees by title, including:

2 (I) Professor.

3 (II) Associate professor.

4 (III) Assistant professor.

5 (IV) Instructor.

6 (V) Lecturer.

7 (VI) Research associate.

8 (VII) Librarian and academic administrator.

9 (B) Faculty members or other professional  
10 employees under each title to be subdivided into  
11 teaching and nonteaching.

12 (C) Each set of faculty members or other  
13 professional employees to be further subdivided by  
14 full-time or part-time employment.

15 (D) The following aggregates for each  
16 subdivided classification:

17 (I) The number of faculty and other  
18 professional employees and the full-time  
19 equivalence in instructional and non-  
20 instructional functions.

21 (II) The sum of credits assigned to  
22 undergraduate classroom courses and the sum of  
23 credits assigned to graduate classroom courses  
24 taught divided into lower division, upper  
25 division, master's, first professional and  
26 doctoral course levels.

27 (III) The sum of credits assigned to  
28 undergraduate individual instruction courses and  
29 the sum of credits assigned to graduate  
30 individual instruction courses taught divided

1 into lower division, upper division, master's,  
2 first professional and doctoral course levels.

3 (IV) The sum of undergraduate classroom  
4 student credit hours and the sum of graduate  
5 classroom student credit hours generated, divided  
6 into lower division, upper division, masters,  
7 first professional and doctoral course levels.

8 (V) The sum of undergraduate individual  
9 instruction student credit hours and the sum of  
10 graduate individual instruction student credit  
11 hours generated, divided into lower division,  
12 upper division, master's, first professional and  
13 doctoral course levels.

14 (VI) The total salary paid for instructional  
15 functions and for noninstructional functions and  
16 the amount of salary paid for each of these  
17 functions from State-related institution funds,  
18 Federal funds and other funds.

19 (iii) For each term of the period covered for each  
20 faculty member employed full time identified by two-digit  
21 CIP program category and title, the report shall contain  
22 an analysis of the average hours per week spent:

23 (A) In State-related institution-related  
24 activities, stating specifically hours spent in  
25 undergraduate classroom contact and graduate  
26 classroom contact hours spent in preparation.

27 (B) In research.

28 (C) In public service.

29 (2) The report covering the 12-month period shall  
30 include for each program of the State-related institution:

1           (i) Minimum number of credits required for a  
2           baccalaureate degree and for a master's degree.

3           (ii) Number of bachelor's degrees, master's degrees,  
4           first professional degrees and doctoral degrees awarded  
5           for the previous five years and those estimates for that  
6           year.

7           (e) Minutes.--Each State-related institution shall make a  
8           copy of the minutes of each public meeting of the institution's  
9           board of trustees available for public inspection in the  
10           institution's library in print format and online at the  
11           institution's publicly accessible Internet website. The minutes  
12           shall be maintained in print and online for no fewer than 20  
13           years.

14           (f) Data systems report.--Each State-related university  
15           shall make a copy of the institution's integrated postsecondary  
16           education data systems report available for public inspection in  
17           the institution's library in print format and online at the  
18           institution's publicly accessible Internet website.

19           Section 1504. [Copies and posting] Requirements for information  
20           in reports.

21           [A State-related institution shall maintain, for at least  
22           seven years, a copy of the report in the institution's library  
23           and shall provide free access to the report on the institution's  
24           Internet website.] A State-related institution shall make the  
25           information required by section 1502 accessible to the public in  
26           accordance with the following:

27           (1) The information shall be posted online at the  
28           institution's publicly accessible Internet website in a  
29           searchable, sortable and downloadable database format that is  
30           freely accessible by the public. To the extent possible, a

1 State-related institution shall post the information online  
2 in a similar manner in order to facilitate easy public  
3 review. The information of prior years shall be maintained  
4 for no fewer than ten years.

5 (2) The information shall be maintained in print format  
6 in the institution's library for no fewer than ten years.

7 (3) The information shall be provided in electronic  
8 format to the Department of Education and the Joint State  
9 Government Commission.

10 (4) The information shall be provided in print format to  
11 the General Assembly and to each of the State regional  
12 library resource centers.

13 Section 12. The act is amended by adding a section to read:  
14 Section 1505. Contracts.

15 (a) Posting online.--Whenever a State-related institution  
16 shall enter into any contract involving any property, real,  
17 personal or mixed of any kind or description or a contract for  
18 personal services where the consideration involved in the  
19 contract is \$5,000 or more, the State-related institution and  
20 the Treasury Department shall comply with the requirements of  
21 Chapter 17.

22 (b) Categories.--A contract posted in accordance with  
23 subsection (a) shall disclose the category of service,  
24 including:

25 (1) Legal.

26 (2) Instructional.

27 (3) Management.

28 (4) Accounting.

29 (5) Architecture.

30 (6) Public Relations.

