

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 465 Session of 2017

INTRODUCED BY BLAKE, VULAKOVICH, FONTANA, FOLMER, VOGEL,
STEFANO, KILLION, MENSCH AND COSTA, MARCH 1, 2017

REFERRED TO STATE GOVERNMENT, MARCH 1, 2017

AN ACT

1 Amending the act of February 14, 2008 (P.L.6, No.3), entitled
 2 "An act providing for access to public information, for a
 3 designated open-records officer in each Commonwealth agency,
 4 local agency, judicial agency and legislative agency, for
 5 procedure, for appeal of agency determination, for judicial
 6 review and for the Office of Open Records; imposing
 7 penalties; providing for reporting by State-related
 8 institutions; requiring the posting of certain State contract
 9 information on the Internet; and making related repeals," in
 10 preliminary provisions, further providing for definitions; in
 11 requirements and prohibitions, providing for Pennsylvania
 12 Interscholastic Athletic Association; in access, further
 13 providing for open-records officer, for requests and for
 14 retention of records and providing for inmate access; in
 15 procedure, further providing for access, for requests, for
 16 written requests, for production of certain records and for
 17 exceptions for public records; in agency response, further
 18 providing for general rule and for extension of time; in
 19 appeal of agency determination, further providing for filing
 20 of appeal and for appeals officers; in judicial review,
 21 further providing for Commonwealth agencies, legislative
 22 agencies and judicial agencies, for civil penalty, for fee
 23 limitations and for Office of Open Records; and, in
 24 miscellaneous provisions, further providing for relation to
 25 other laws.

26 The General Assembly of the Commonwealth of Pennsylvania
 27 hereby enacts as follows:

28 Section 1. The definitions of "independent agency," "local
 29 agency," "personal financial information" and "State-affiliated

1 entity" in section 102 of the act of February 14, 2008 (P.L.6,
2 No.3), known as the Right-to-Know Law, are amended and the
3 section is amended by adding definitions to read:

4 Section 102. Definitions.

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

8 * * *

9 "Commercial purpose." As follows:

10 (1) The use of a record:

11 (i) for the purpose of selling or reselling any
12 portion of the record;

13 (ii) to obtain names and addresses from the record
14 for the purpose of commercial solicitation; or

15 (iii) in a manner through which the requester can
16 reasonably expect to generate revenue.

17 (2) The term does not include the use of a public record
18 by an educational or noncommercial scientific institution for
19 scholarly or scientific research or the use of a public
20 record by the news media, a journalist or an author for news
21 gathering or dissemination in a newspaper, periodical, book,
22 digital publication or radio or television news broadcast.

23 * * *

24 "Dedicated emergency response organization." As defined in
25 35 Pa.C.S. § 7332 (relating to definitions).

26 * * *

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

1 "Inmate." An individual currently incarcerated, after having
2 been sentenced by a court of competent jurisdiction, in a
3 Federal, State or county correctional facility or prison.

4 * * *

5 "Local agency." Any of the following:

6 (1) Any political subdivision, intermediate unit,
7 charter school, cyber charter school or public trade or
8 vocational school.

9 (2) Any local, intergovernmental, regional or municipal
10 agency, authority, council, board, commission or similar
11 governmental entity. This paragraph includes an economic
12 development authority and an industrial development
13 authority. This paragraph does not include an office of an
14 elected tax collector.

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

17 * * *

18 "Personal financial information." An individual's personal
19 credit, charge or debit card information; bank account or other
20 financial institution account information; bank, credit or
21 financial statements; account or PIN numbers; forms required to
22 be filed by a taxpayer with a Federal or Commonwealth taxing
23 authority; employee benefit election information; individual
24 employee contributions to retirement plans and investment
25 options; individual employee contributions to health care
26 benefits and other benefits; individual employee contributions
27 to charitable organizations; and other information relating to
28 an individual's personal finances.

29 * * *

30 "State-affiliated entity." A Commonwealth authority or

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

14 * * *

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

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

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

22 (3) The time the dedicated emergency response
23 organization responded.

24 (4) The time the dedicated emergency response
25 organization arrived on the scene.

26 (5) The time the dedicated emergency response
27 organization became available.

28 (6) The address of the incident or the street block
29 identifier, the cross street or the mile marker nearest the
30 scene of the incident.

1 * * *

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

3 Section 307. Pennsylvania Interscholastic Athletic Association.

4 For purposes of this act, the Pennsylvania Interscholastic
5 Athletic Association is considered to be a local agency and
6 shall provide public records in accordance with this act.

7 Section 3. Section 502 of the act is amended by adding a
8 subsection to read:

9 Section 502. Open-records officer.

10 * * *

11 (c) Agency registration.--An agency shall register its open-
12 records officer with the Office of Open Records in a manner
13 prescribed by the Office of Open Records.

14 Section 4. Sections 506(a) and 507 of the act are amended to
15 read:

16 Section 506. Requests.

17 (a) Disruptive requests.--

18 (1) An agency may deny a requester access to a record if
19 the requester has made repeated requests for that same record
20 and the repeated requests have placed an unreasonable burden
21 on the agency.

22 (1.1) An agency may deny a request to a party to
23 litigation when the request:

24 (i) is material to a pending civil action or
25 proceeding to which the agency is a party and the
26 Pennsylvania Rules of Civil Procedure or the Federal
27 Rules of Civil Procedure apply; or

28 (ii) was previously made in litigation discovery.

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

1 * * *

2 Section 507. Retention of records.

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

7 (b) Prohibition.--

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

13 (2) A court may impose a civil penalty of not more than
14 \$10,000 if an agency or public official, in violation of
15 paragraph (1), disposes of any potentially responsive record
16 in bad faith.

17 Section 5. The act is amended by adding a section to read:
18 Section 508. Inmate access.

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

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

27 (1) Criminal records relating to the criminal commitment
28 of the inmate.

29 (2) Institutional housing information.

30 (3) The inmate's financial records.

- 1 (4) The inmate's work records.
2 (5) The inmate's educational records.
3 (6) The inmate's disciplinary records.
4 (7) Disciplinary, housing and other policies adopted by
5 the correctional institution or the Department of
6 Corrections.
7 (8) A record relating to any Federal or State benefit
8 received by the inmate or for which the inmate is eligible.
9 (9) The inmate's tax records.
10 (10) The inmate's voting records.
11 (11) Records relating to any license issued to the
12 inmate by a Commonwealth or local agency.

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

17 Section 6. Sections 701, 702, 703 and 707 of the act are
18 amended to read:

19 Section 701. Access.

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

30 (b) Construction.--Nothing in this act shall be construed to

1 require access to any computer either of an agency or individual
2 employee of an agency.

3 Section 702. Requests.

4 Agencies may fulfill verbal[, written or anonymous verbal] or
5 written requests for access to records under this act. If the
6 requester wishes to pursue the relief and remedies provided for
7 in this act, the request for access to records must be a written
8 request.

9 Section 703. Written requests.

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

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 (c) Transcripts.--

15 (1) Prior to an adjudication becoming final, binding and
16 nonappealable, a transcript of an administrative proceeding
17 shall be provided to a requester by the agency stenographer
18 or a court reporter, in accordance with agency procedure or
19 an applicable contract.

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

24 (3) This subsection shall not be construed to require an
25 agency to transcribe a proceeding solely for purposes of
26 responding to a request under this act.

27 (d) Commercial requests.--An agency may require a requester
28 to certify in writing whether the request is for a commercial
29 purpose. Certification shall be submitted on a form developed by
30 the Office of Open Records. A requester that submits a false

1 written statement shall be subject to 18 Pa.C.S. § 4904
2 (relating to unsworn falsification to authorities).

3 Section 7. Section 708(b)(6), (10)(i) and (ii), (13), (17)
4 and (18) and (c) of the act are amended and subsection (b) is
5 amended by adding paragraphs to read:

6 Section 708. Exceptions for public records.

7 * * *

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

11 * * *

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

14 (A) A record containing all or part of a
15 person's Social Security number, driver's license
16 number, personal financial information, home,
17 cellular or personal telephone numbers, personal e-
18 mail addresses, employee number or other confidential
19 personal identification number.

20 (B) A spouse's name, marital status or
21 beneficiary or dependent information, including the
22 number, names and ages of an employee's dependents.

23 (C) The home address of a law enforcement
24 officer or judge.

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

1 (iii) An agency may redact the name or other
2 identifying information relating to an individual
3 performing an undercover or covert law enforcement
4 activity from a record.

5 (iv) Nothing in this paragraph shall prevent the
6 disclosure of aggregated data of employer or employee
7 costs related to retirement benefits, health care
8 benefits or other benefits or the disclosure of options
9 made available to employees regarding retirement, health
10 care or other benefits plans.

11 * * *

12 (10) As follows:

13 (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) Subparagraph (i) (A) shall apply to agencies
28 subject to 65 Pa.C.S. Ch. 7 (relating to open meetings)
29 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
30 which is not otherwise exempt from access under this act

1 and which is presented to a quorum for deliberation in
2 accordance with 65 Pa.C.S. Ch. 7 shall be a public record
3 regardless of whether a vote occurs at the meeting.

4 * * *

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

14 * * *

15 (17) [A] Except for a final safety inspection report
16 made pursuant to law or regulation or a final agency decision
17 in the noncriminal investigation, a record of an agency
18 relating to a noncriminal investigation, including:

19 (i) Complaints submitted to an agency.

20 (ii) Investigative materials, notes, correspondence
21 and reports.

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

26 (iv) A record that includes information made
27 confidential by law.

28 (v) Work papers underlying an audit.

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

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

9 (B) Deprive a person of the right to an
10 impartial adjudication.

11 (C) Constitute an unwarranted invasion of
12 privacy.

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

15 (E) Endanger the life or physical safety of an
16 individual.

17 (18) Emergency dispatches as follows:

18 (i) Records or parts of records, except time
19 response logs, pertaining to audio recordings, telephone
20 or radio transmissions received by emergency dispatch
21 personnel, including 911 recordings.

22 (ii) This paragraph shall not apply to a 911
23 recording, or a transcript of a 911 recording, if the
24 agency or a court determines that the public interest in
25 disclosure outweighs the interest in nondisclosure.

26 * * *

27 (31) An agency's financial institution account numbers,
28 routing numbers, credit card numbers and passwords.

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

30 (i) A volunteer ambulance service.

- 1 (ii) A volunteer fire company.
2 (iii) A volunteer rescue company.
3 (iv) A volunteer water rescue company.
4 (v) A volunteer organization that provides hazardous
5 materials response services.
6 (vi) A volunteer organization that provides
7 emergency medical services.

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

11 (c) Financial records.--The exceptions set forth in
12 subsection (b) shall not apply to financial records, except that
13 an agency may redact that portion of a financial record
14 protected under subsection (b)(1), (2), (3), (4), (5), (6),
15 (11), (13), (16) [or], (17) or (30). An agency shall not
16 disclose the identity of an individual performing an undercover
17 or covert law enforcement activity.

18 * * *

19 Section 8. Sections 901, 902(b)(2) and 1101 of the act are
20 amended to read:

21 Section 901. General rule.

22 (a) Determination.--Upon receipt of a written request for
23 access to a record, an agency shall make a good faith effort to
24 determine if the record requested is a public record,
25 legislative record or financial record and whether the agency
26 has possession, custody or control of the identified record, and
27 to respond as promptly as possible under the circumstances
28 existing at the time of the request. All applicable fees shall
29 be paid in order to receive access to the record requested.

30 (b) Time for response.--The time for response shall not

1 exceed, in the case of a request made in person or submitted by
2 regular mail, e-mail, web form, facsimile or similar means, five
3 business days from the date the written request is received by
4 the open-records officer for an agency. If the agency fails to
5 send the response within five business days of receipt of the
6 written request for access, the written request for access shall
7 be deemed denied.

8 Section 902. Extension of time.

9 * * *

10 (b) Notice.--

11 * * *

12 (2) The notice shall include a statement notifying the
13 requester that the request for access is being reviewed, the
14 reason for the review, a reasonable date that a response is
15 expected to be provided and an estimate of applicable fees
16 owed when the record becomes available. [If the date that a
17 response is expected to be provided is in excess of 30 days,
18 following the five business days allowed for in section 901,
19 the request for access shall be deemed denied unless the
20 requester has agreed in writing to an extension to the date
21 specified in the notice.] The request for access shall be
22 deemed denied if the agency fails to send a response within
23 30 days following the five business days allowed for in
24 section 901, unless the requester has agreed in writing to an
25 additional extension beyond 30 days.

26 * * *

27 Section 1101. Filing of appeal.

28 [(a) Authorization.--

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

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

1 (1) (i) If a written request for access to a record is
2 denied or deemed denied, the requester may file an appeal
3 with the Office of Open Records or judicial, legislative
4 or other appeals officer designated under section 503(d)
5 within [15] 20 business days of the [mailing] postmark or
6 e-mail date of the agency's response or within [15] 20
7 business days of a deemed denial, whichever comes first.

8 (ii) The appeal shall [state the grounds upon which
9 the requester asserts that the record is a public record,
10 legislative record or financial record and shall] address
11 any grounds stated by the agency for delaying or denying
12 the request[.] and shall include the following:

13 (A) The text of the original request.

14 (B) The text of the agency denial.

15 (C) Any other information the requester believes
16 to be relevant.

17 (iii) The office shall provide a form on its
18 publicly accessible Internet website, which may be used
19 by the requester to file the appeal.

20 (iv) The office may order a requester who fails to
21 include the information under subparagraph (ii) to
22 provide the required information.

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

27 (b) Determination.--

28 (1) Unless the requester agrees otherwise, the appeals
29 officer shall make a final determination which shall be
30 mailed to the requester and the agency within 30 days of

1 receipt of the appeal filed under subsection (a). The appeals
2 officer may extend this deadline by up to 15 days by
3 providing notice to both parties.

4 (1.1) If a hearing is ordered under section 1102(a)(2),
5 the appeals officer may extend the deadline up to 90
6 additional days.

7 (1.2) If an in-camera review is ordered under section
8 1102(a)(2), the appeals officer may extend the deadline:

9 (i) Up to 45 additional days, if the number of
10 records is ten or fewer.

11 (ii) Up to 90 additional days, if the number of
12 records is greater than ten or the records include audio
13 or video recordings.

14 (1.3) If the issue before the office is substantially
15 the same as an issue currently on appeal to a court of common
16 pleas, the Commonwealth Court or the Supreme Court, the
17 appeals officer may stay the office's opinion until the
18 appeal is decided.

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

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

27 (4) If an appeals officer designated under section 503
28 does not have jurisdiction to hear an appeal but another
29 appeals officer has jurisdiction, the appeals officer shall
30 transfer the appeal to the other appeals officer with

1 jurisdiction over the matter.

2 (c) Direct interest.--

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

11 (2) The appeals officer may grant a request under
12 paragraph (1) if:

13 (i) no hearing has been held;

14 (ii) the appeals officer has not yet issued its
15 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 9. Section 1102(a) of the act is amended and the
21 section is amended by adding a subsection to read:

22 Section 1102. Appeals officers.

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

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

28 (2) Review all information filed relating to the
29 request. The appeals officer may hold a hearing or conduct an
30 in-camera review. A decision to hold or not to hold a hearing

1 is not appealable. A decision to conduct or not conduct an
2 in-camera review is not appealable. The appeals officer may
3 admit into evidence testimony, evidence and documents that
4 the appeals officer believes to be reasonably probative and
5 relevant to an issue in dispute. The appeals officer may
6 limit the nature and extent of evidence found to be
7 cumulative.

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

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

11 * * *

12 (c) Review.--The Office of Open Records may require an
13 agency to submit a record and a privilege or exemption log for
14 the purpose of conducting an in-camera review to determine if
15 the record is a public record.

16 Section 10. Sections 1301 heading and (a) and 1305 of the
17 act are amended to read:

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

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

1 findings of fact and conclusions of law based upon the evidence
2 as a whole. The decision shall clearly and concisely explain the
3 rationale for the decision.

4 * * *

5 Section 1305. Civil penalty.

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

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

15 Section 11. Section 1307 of the act is amended by adding
16 subsections to read:

17 Section 1307. Fee limitations.

18 * * *

19 (g.1) Additional fees.--

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

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

1 (3) A fee may not be charged under paragraph (2) for the
2 first hour of search and retrieval time for all commercial
3 requests from a single requester in a 90-day period.

4 * * *

5 (i) Appeal.--A fee charged under this act shall be
6 appealable to the Office of Open Records.

7 Section 12. Sections 1310 and 3101.1 of the act are amended
8 to read:

9 Section 1310. Office of Open Records.

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

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

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

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

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

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

30 (i) Complete a training course provided by the

1 Office of Open Records prior to acting as an appeals
2 officer.

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

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

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

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

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

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

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

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

30 (d) Staffing.--The executive director shall appoint

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

9 (e) Duties.--

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

13 (2) The Department of Community and Economic Development
14 shall provide payroll, leave and benefits, budget,
15 information technology and administrative support to the
16 office.

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

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

28 Section 3101.1. Relation to other laws.

29 (a) General rule.--If the provisions of this act regarding
30 access to records conflict with any other Federal or State law,

1 the provisions of this act shall not apply.

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

5 Section 13. This act shall take effect July 1, 2017, or
6 immediately, whichever is later.