

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2524 Session of
2022INTRODUCED BY SCHMITT, RIGBY, HENNESSEY, B. MILLER, TOPPER,
RYAN, ZIMMERMAN, MOUL AND GROVE, APRIL 20, 2022SENATOR ARGALL, STATE GOVERNMENT, IN SENATE, AS AMENDED,
SEPTEMBER 20, 2022

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 access, further providing for open-records officer, for
12 appeals officer, for regulations and policies, for uniform
13 form, for requests and for retention of records and providing
14 for inmate access; in procedure, further providing for
15 written requests, for redaction, for production of certain
16 records and for exceptions for public records; in agency
17 response, further providing for extension of time and
18 providing for relief from vexatious requesters; in appeal of
19 agency determination, further providing for filing of appeal
20 and for appeals officers; in judicial review, further
21 providing for court costs and attorney fees, for civil
22 penalty, for fee limitations and for Office of Open Records;
23 and, in miscellaneous provisions, further providing for
24 relation to other laws.

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

27 Section 1. The definitions of "independent agency," "local
28 agency" and "personal financial information" in section 102 of

1 the act of February 14, 2008 (P.L.6, No.3), known as the Right-
2 to-Know Law, are amended and the section is amended by adding
3 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 to obtain names and addresses
11 from the record for the purpose of commercial solicitation.

12 (2) The direct use of a record for sale or resale.

13 (3) The term does not include :

14 (i) the use of a record by an educational or
15 noncommercial scientific institution for scholarly or
16 scientific research or the use of a record by the news
17 media, a journalist or an author for news gathering or
18 dissemination in a newspaper, periodical, book, digital
19 publication or radio or television news broadcast;

20 (ii) a request for records from an attorney on
21 behalf of a client if the records are not obtained for
22 the purpose of selling, reselling or solicitation by the
23 attorney or client or used by the client for a purpose
24 under subparagraph (i);

25 (iii) a request for records from an entity holding a
26 certificate of authority or license from the Insurance
27 Department, their contractors, vendors, licensees,
28 service providers or affiliates, provided that the
29 records obtained shall only be used for the business of
30 insurance;

1 (iv) a request for real estate-related records used
2 for real estate purposes; or

3 (v) a request for records by an entity for purposes
4 of providing fraud prevention, identity theft <--
5 VERIFICATION, financial transactions, credit CONSUMER <--
6 reporting and public safety services, including law
7 enforcement.

8 * * *

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

13 "Inmate." An individual incarcerated, after having been
14 sentenced by a court of competent jurisdiction, in a Federal,
15 State or county correctional facility or prison.

16 * * *

17 "Local agency." As follows:

18 (1) Any of the following:

19 [(1)] (i) Any political subdivision, intermediate
20 unit, charter school, cyber charter school or public
21 trade or vocational school.

22 [(2)] (ii) Any local, intergovernmental, regional or
23 municipal agency, authority, council, board, commission
24 or similar governmental entity. This subparagraph
25 includes an economic development authority and an <--
26 industrial development authority.

27 (2) The term does not include the following volunteer <--
28 organizations:

29 (i) A volunteer ambulance service.

30 (ii) A volunteer fire company.

1 (iii) A volunteer rescue company.

2 (iv) A volunteer water rescue company.

3 (v) A volunteer organization that provides hazardous
4 materials response services.

5 (vi) A volunteer organization that provides
6 emergency medical services.

7 (VII) AN ECONOMIC DEVELOPMENT ORGANIZATION.

<--

8 * * *

9 "Personal financial information." As follows:

10 (1) An individual's personal credit, charge or debit
11 card information; bank account or other financial institution
12 account information; bank, credit or financial statements;
13 account or PIN numbers; forms required to be filed by a
14 taxpayer with a Federal, State or local taxing authority;
15 employee benefit election information; individual employee
16 contributions to retirement plans and investment options;
17 individual employee contributions to health care benefits and
18 other benefits; individual employee contributions to
19 charitable organizations; and other information relating to
20 an individual's personal finances.

21 (2) The term does not include employer costs or
22 aggregated data of employee costs related to retirement
23 benefits, health care benefits or other benefits or the
24 disclosure of options made available to employees regarding
25 retirement benefits, health care benefits or other benefits.

26 * * *

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

- 1 (1) The time the call was received by the PSAP.
- 2 (2) The time the PSAP contacted or dispatched the
3 dedicated emergency response organization for response.
- 4 (3) The dedicated emergency response organization
5 dispatched.
- 6 (4) The time the dedicated emergency response
7 organization responded.
- 8 (5) The time the dedicated emergency response
9 organization arrived on the scene.
- 10 (6) The time the dedicated emergency response
11 organization became available.
- 12 (7) The location of the incident by way of the street
13 block identifier, the cross street or the mile marker nearest
14 the scene of the incident.
- 15 (8) A description of the reason for the dispatch.

16 * * *

17 ~~"Vexatious requester." A person who, by the person's~~ <--
18 ~~conduct, demonstrates an intent to annoy or harass a local~~
19 ~~agency. An individual may not be found to be a vexatious~~
20 ~~requester solely due to the number of requests they have filed~~
21 ~~or the number of records sought.~~

22 "VEXATIOUS REQUESTER." AN INDIVIDUAL WHOSE REQUESTS ARE <--
23 FILED WITH THE INTENT OR WHICH HAVE THE EFFECT OF:

- 24 (1) HARASSING A LOCAL AGENCY;
- 25 (2) SUBSTANTIALLY DISRUPTING LOCAL AGENCY OPERATIONS OR
26 PLACING AN UNREASONABLE BURDEN ON A LOCAL AGENCY;
- 27 (3) ELICITING A RESPONSE FROM A LOCAL AGENCY ON AN
28 UNRELATED MATTER; OR
- 29 (4) ABUSING THE RIGHTS OR PROCESSES AFFORDED UNDER THIS
30 ACT.

Section 2. Section 502 of the act is amended by adding a subsection to read:

Section 502. Open-records officer.

* * *

(c) Agency registration.--A Commonwealth agency or local agency shall register the agency's open-records officer with the Office of Open Records in a manner prescribed by the Office of Open Records.

Section 2.1. Section 503(d) of the act is amended by adding a paragraph to read:

Section 503. Appeals officer.

* * *

(d) Law enforcement records and Statewide officials.--

* * *

(3) An appeals officer designated by a district attorney under paragraph (2) shall have jurisdiction over an appeal only insofar as it relates to access to criminal investigative records in possession of a local agency. To the extent an appeal involves multiple issues, one of which relates to access to criminal investigative records in possession of a local agency, the Office of Open Records shall have jurisdiction over all other issues in the appeal.

Section 3. Section 504(b) (1) of the act is amended to read:

Section 504. Regulations and policies.

* * *

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

(1) Contact information for the open-records officer[.], including name, address, telephone number, facsimile number,

1 if applicable, and email address.

2 * * *

3 Section 4. Section 505 of the act is amended by adding a
4 subsection to read:

5 Section 505. Uniform form.

6 * * *

7 (d) Commercial requests.--The following shall apply:

8 (1) An agency may require a requester to certify in
9 writing whether the request is for a commercial purpose. A
10 requester that submits a false written statement under this
11 subsection shall be subject to 18 Pa.C.S. § 4904 (relating to
12 unsworn falsification to authorities).

13 (2) Certification to Commonwealth agencies and local
14 agencies shall be submitted in a manner approved by the
15 Office of Open Records.

16 Section 5. Sections 506(d)(1) and 507 of the act are amended
17 to read:

18 Section 506. Requests.

19 * * *

20 (d) Agency possession.--

21 (1) A public record that is not in the possession of an
22 agency but is in the possession of a party with whom the
23 agency has contracted to perform a governmental function on
24 behalf of the agency, and which directly relates to the
25 governmental function and is not exempt under this act, shall
26 be considered a public record of the agency for purposes of
27 this act. This paragraph shall apply to records of the
28 following volunteer organizations when the organization
29 contracts with a Commonwealth agency or local agency to
30 provide services, including, but not limited to:

1 (i) A volunteer ambulance service.

2 (ii) A volunteer fire company.

3 (iii) A volunteer rescue company.

4 (iv) A volunteer water rescue company.

5 (v) A volunteer organization that provides hazardous
6 materials response services.

7 (vi) A volunteer organization that provides
8 emergency medical services.

9 * * *

10 Section 507. Retention of records.

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

15 (b) Prohibition.--

16 (1) Notwithstanding subsection (a), once a request for
17 records has been submitted under Chapter 7, an agency may not
18 knowingly dispose of any potentially responsive record until
19 the request has been responded to and any related appeals
20 have been exhausted.

21 (2) A court may impose a civil penalty of not more than
22 \$2,500 if an agency or public official, in violation of
23 paragraph (1), disposes of any potentially responsive record
24 in bad faith.

25 Section 6. The act is amended by adding a section to read:
26 Section 508. Inmate access.

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

29 (b) Records.--An agency shall provide an inmate with copies
30 of the following records as they pertain directly to the inmate

1 or inmate's case if the disclosure of the record will not
2 diminish the safety or security of any person or correctional
3 facility and if there are no other policies or procedures in
4 place for the inmate to obtain the requested information:

5 (1) Public records relating to the criminal commitment
6 of the inmate.

7 (2) Institutional housing information.

8 (3) The inmate's financial records.

9 (4) The inmate's work records.

10 (5) The inmate's educational records.

11 (6) The inmate's disciplinary records.

12 (7) Disciplinary, housing and other policies adopted by
13 the correctional institution or the Department of
14 Corrections.

15 (8) A record relating to any Federal or State benefit
16 received by the inmate or for which the inmate may be
17 eligible.

18 (9) The inmate's tax records.

19 (10) The inmate's voting records.

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

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

26 Section 7. Sections 703, 706 and 707(c) of the act are
27 amended to read:

28 Section 703. Written requests.

29 (a) General rule.--A written request for access to records
30 may be submitted in person, by mail, by e-mail, by facsimile or,

1 to the extent provided by agency rules, by any other electronic
2 means. A written request must be addressed to the open-records
3 officer designated pursuant to section 502. [Employees of an
4 agency shall be directed to forward requests for records to the
5 open-records officer.] A written request should identify or
6 describe the records sought with sufficient specificity to
7 enable the agency to ascertain which records are being requested
8 and shall include the name and address to which the agency
9 should address its response. [A] Except as required under
10 section 505(d), a written request need not include any
11 explanation of the requester's reason for requesting or intended
12 use of the records unless otherwise required by law.

13 (b) False certification.--A requester that submits a false
14 certification under section 505(d) shall be subject to 18
15 Pa.C.S. § 4904 (relating to unsworn falsification to
16 authorities).

17 Section 706. Redaction.

18 If an agency determines that a [public record, legislative
19 record or financial] record contains information which is
20 subject to access as well as information which is not subject to
21 access, the agency's response shall grant access to the
22 information which is subject to access and deny access to the
23 information which is not subject to access. If the information
24 which is not subject to access is an integral part of the
25 [public record, legislative record or financial] record and
26 cannot be separated, the agency shall redact from the record the
27 information which is not subject to access, and the response
28 shall grant access to the information which is subject to
29 access. The agency may not deny access to the record if the
30 information which is not subject to access is able to be

redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

Section 707. Production of certain records.

* * *

(c) Transcripts.--

(1) Prior to an adjudication becoming final, binding and nonappealable, a transcript, if it exists, of an administrative proceeding shall be provided to a requester by the agency stenographer or a court reporter, in accordance with agency procedure or an applicable contract. This paragraph does not apply to a transcript that is not part of an adjudicatory proceeding.

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

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

Section 8. Section 708(b)(6)(i)(B), (7) introductory paragraph and (iv), (9), (10), (13), (16), (17) and (18) and (c) of the act are amended and subsection (b) is amended by adding a paragraph to read:

Section 708. Exceptions for public records.

* * *

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

* * *

(6) (i) The following personal identification

1 information:

2 * * *

3 (B) A spouse's or immediate family member's
4 name, marital status or beneficiary or dependent
5 information, including the number, names and ages of
6 an employee's dependents.

7 * * *

8 (7) The following records relating to [an agency
9 employee:] a current, past or prospective applicant for
10 employment or for legislative or gubernatorial appointment:

11 * * *

12 (iv) The [employment] application of an individual
13 who is not hired [by the agency.] or appointed by the
14 agency, General Assembly or Governor.

15 * * *

16 (9) The draft of a bill, resolution, regulation,
17 statement of policy, management directive, ordinance or
18 amendment thereto prepared by or for an agency. This
19 paragraph shall not apply to a draft that is presented to a
20 quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7
21 (relating to open meetings) at a public meeting, regardless
22 of whether a vote occurs or is scheduled to occur at the
23 meeting.

24 (10) As follows:

25 (i) A record that reflects:

26 (A) The internal, predecisional deliberations of
27 an agency, its members, employees [or], officials, or
28 contractors or subcontractors or predecisional
29 deliberations between agency members, employees [or], or
30 officials, contractors or subcontractors and members,

1 employees [or], officials, contractors or
2 subcontractors of another agency, including
3 predecisional deliberations relating to a budget
4 recommendation, legislative proposal, legislative
5 amendment, contemplated or proposed policy or course
6 of action or any research, memos or other documents
7 used in the predecisional deliberations.

8 (B) The strategy to be used to develop or
9 achieve the successful adoption of a budget,
10 legislative proposal or regulation.

11 (ii) Subparagraph (i) (A) shall apply to agencies
12 subject to 65 Pa.C.S. Ch. 7 [(relating to open meetings)]
13 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
14 which is not otherwise exempt from access under this act
15 and which is presented to a quorum for deliberation in
16 accordance with 65 Pa.C.S. Ch. 7 shall be a public record
17 regardless of whether a vote occurs, or is scheduled to
18 occur at the meeting.

19 (iii) This paragraph shall not apply to a written or
20 Internet application or other document that has been
21 submitted to request Commonwealth funds.

22 (iv) This paragraph shall not apply to the results
23 of public opinion surveys, polls, focus groups, marketing
24 research or similar effort designed to measure public
25 opinion.

26 * * *

27 (13) Records that would disclose the identity of [an
28 individual], or personal financial information relating to, a
29 person who lawfully makes a donation to or for the benefit of
30 an agency unless the donation is intended for or restricted

1 to providing remuneration or personal tangible benefit to a
2 named public official or employee of the agency, including
3 lists of potential donors compiled by an agency to pursue
4 donations, donor profile information or personal identifying
5 information relating to a donor.

6 * * *

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

9 (i) Complaints of potential criminal conduct other
10 than a private criminal complaint.

11 (ii) Investigative materials, notes, correspondence,
12 videos and reports.

13 (iii) A record that includes the identity of a
14 confidential source or the identity of a suspect who has
15 not been charged with an offense to whom confidentiality
16 has been promised.

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

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

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

23 (A) Reveal the institution, progress or result
24 of a criminal investigation, except the filing of
25 criminal charges.

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

28 (C) Impair the ability to locate a defendant or
29 codefendant.

30 (D) Hinder an agency's ability to secure an

1 arrest, prosecution or conviction.

2 (E) Endanger the life or physical safety of an
3 individual.

4 (vii) This paragraph shall not:

5 (A) Apply to records created more than 50 years
6 prior to the request, unless the agency can
7 demonstrate actual harm to an ongoing investigation
8 if the records are released.

9 (B) Establish any requirement that an agency
10 retain a record for any period of time not otherwise
11 required for retention by law.

12 This paragraph shall not apply to information contained in a
13 police blotter as defined in 18 Pa.C.S. § 9102 (relating to
14 definitions) and utilized or maintained by the Pennsylvania
15 State Police, local, campus, transit or port authority police
16 department or other law enforcement agency or in a traffic
17 report except as provided under 75 Pa.C.S. § 3754(b)
18 (relating to accident prevention investigations). Police
19 blotter information, in whatever form it exists, is public.

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

22 (i) Complaints submitted to an agency.

23 (ii) Investigative materials, notes, correspondence
24 and reports.

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

29 (iv) A record that includes information made
30 confidential by law.

1 (v) Work papers underlying an audit.

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

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

12 (B) Deprive a person of the right to an
13 impartial adjudication.

14 (C) Constitute an unwarranted invasion of
15 privacy.

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

18 (E) Endanger the life or physical safety of an
19 individual.

20 (vii) This paragraph shall not:

21 (A) Apply to records created more than 25 years
22 prior to the request, unless the agency can
23 demonstrate actual harm to an ongoing investigation
24 if the records are released.

25 (B) Establish any requirement that an agency
26 retain a record for any period of time not otherwise
27 required for retention by law.

28 (18) Emergency dispatches as follows:

29 (i) Records or parts of records, except time
30 response logs, pertaining to audio recordings, telephone

1 or radio transmissions received by emergency dispatch
2 personnel, including 911 recordings.

3 (ii) This paragraph shall not apply to a 911
4 recording, or a transcript of a 911 recording, if the
5 agency or a court determines that the public interest in
6 disclosure outweighs the interest in nondisclosure.

7 * * *

8 (31) An agency's financial institution account numbers,
9 routing numbers, credit card numbers, PIN numbers and
10 passwords.

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), (28), (30) or (31). An agency shall <--
16 not disclose the identity of an individual performing an
17 undercover or covert law enforcement activity.

18 * * *

19 Section 9. Section 902(b) (2) of the act is amended to read:
20 Section 902. Extension of time.

21 * * *

22 (b) Notice.--

23 * * *

24 (2) The notice shall include a statement notifying the
25 requester that the request for access is being reviewed, the
26 reason for the review, a reasonable date that a response is
27 expected to be provided and an estimate of applicable fees
28 owed when the record becomes available. [If the date that a
29 response is expected to be provided is in excess of 30 days,
30 following the five business days allowed for in section 901,

1 the request for access shall be deemed denied unless the
2 requester has agreed in writing to an extension to the date
3 specified in the notice.] The request for access shall be
4 deemed denied if the agency fails to send a response within
5 30 days following the five business days allowed under
6 section 901, unless the requester has agreed in writing to an
7 additional extension beyond 30 days.

8 * * *

9 Section 10. The act is amended by adding a section to read:

10 Section 906. Relief from vexatious requesters.

11 (a) General rule.--In order to merit relief under this
12 section, a local agency shall be required to demonstrate clear <--
13 and convincing evidence that a requester, by the requester's
14 conduct, has demonstrated an intent to annoy or harass the local
15 agency by filing a request or requests. MUST DEMONSTRATE, BY A <--
16 PREPONDERANCE OF EVIDENCE, THAT A REQUESTER IS A VEXATIOUS
17 REQUESTER UNDER THIS SECTION. A local agency may petition the
18 Office of Open Records for relief from an individual that the
19 local agency alleges is a vexatious requester. The petition
20 shall:

21 (1) Be submitted under penalty of 18 Pa.C.S. § 4904
22 (relating to unsworn falsification to authorities).

23 (2) Be provided to the Office of Open Records and the
24 requester alleged to be a vexatious requester.

25 (3) Detail the conduct by the individual which the local
26 agency alleges demonstrates vexatiousness, including, as
27 appropriate:

28 (i) The number of requests filed.

29 (ii) The total number of pending requests.

30 (iii) The scope of the requests.

1 (iv) The nature, content, language or subject matter
2 of the requests.

3 (v) The nature, content, language or subject matter
4 of other oral and written communications to the local
5 agency.

6 (vi) Conduct that the local agency alleges is
7 placing an unreasonable burden on the local agency.

8 (vii) Conduct that the local agency alleges is
9 intended to harass the local agency.

10 (viii) Any other relevant information, including
11 relief sought or granted to other agencies against the
12 same individual.

13 (b) Exception.--A local agency may not petition the Office
14 of Open Records for relief under subsection (a) from an
15 individual employed by or who contracts with a newspaper or
16 magazine of general circulation, weekly publication, press
17 association or radio or television station who submits a request
18 for the purpose of news gathering or dissemination in a
19 newspaper, periodical, book, digital publication or radio or
20 television broadcast.

21 (c) Timing.--Upon the filing of a petition for relief from a
22 vexatious requester, all other proceedings and deadlines under
23 this act shall be stayed pending a resolution of the petition by
24 the Office of Open Records. The stay shall apply to any pending
25 or new requests by the alleged vexatious requester.

26 (d) Processing requests.--Upon receipt of a petition under
27 subsection (a), the executive director of the Office of Open
28 Records or a designee shall, within five business days, notify
29 the requester alleged to be a vexatious requester that the
30 requester may, within 10 business days, file a preliminary

1 response to the petition.

2 (e) Initial finding.--The executive director or the
3 executive director's designee shall, within 30 calendar days
4 after receiving a petition under subsection (a), review the
5 petition and determine whether further proceedings are
6 warranted. The following shall apply:

7 (1) If the executive director or the executive
8 director's designee determines that further proceedings are
9 not warranted, the executive director or the executive
10 director's designee shall deny the petition. The denial shall
11 be in writing and include an explanation of the reasons for
12 the denial.

13 (2) If the executive director or the executive
14 director's designee determines that further proceedings are
15 warranted, the executive director or the executive director's
16 designee shall establish a briefing schedule to provide a
17 fair opportunity for the requester to respond to the local
18 agency's petition. The executive director or the executive
19 director's designee may admit into evidence testimony,
20 evidence and documents that the executive director or the
21 executive director's designee believes to be reasonably
22 probative and relevant. The executive director or the
23 executive director's designee may limit the nature and extent
24 of evidence found to be cumulative.

25 (f) Mediation.--At any time during proceedings under this
26 section, the executive director or the executive director's
27 designee may recommend that both parties participate in
28 mediation conducted by the Office of Open Records. If both
29 parties agree, the mediation shall last for a period of up to 30
30 calendar days. During the mediation, any other proceedings under

1 this section shall be stayed.

2 (g) Final opinion.--The executive director or the executive
3 director's designee shall issue a final opinion either granting
4 or denying the petition within 90 calendar days of its filing.
5 Upon a grant of the petition, the executive director or the
6 executive director's designee may provide appropriate relief
7 commensurate with the vexatious conduct, including an order that
8 the local agency need not comply with future requests from the
9 vexatious requester for a specified period of time, but not to
10 exceed one year in the first instance an individual is
11 determined to be a vexatious requester. The executive director
12 may also request that the Commonwealth Court impose a civil
13 penalty commensurate with the burden placed on the local agency
14 due to the vexatious conduct.

15 (h) Appeal to Commonwealth Court.--Any party aggrieved by a
16 decision made under this section may appeal the decision to the
17 Commonwealth Court within 15 calendar days. ~~If a local agency~~ <--
18 ~~files a petition for relief under this section and the petition~~
19 ~~is denied, the local agency may not file another petition under~~
20 ~~this section for a period of twelve months.~~

21 Section 11. Sections 1101, 1102, 1304(a) and 1305 of the act
22 are amended to read:

23 Section 1101. Filing of appeal.

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

25 (1) (i) If a written request for access to a record is
26 denied or deemed denied, the requester may file an appeal
27 with the Office of Open Records or judicial, legislative
28 or other appeals officer designated under section 503(d)
29 within [15 business] 30 days of the [mailing] postmark or
30 e-mail date of the agency's response or within [15

business] 30 days of a deemed denial, whichever comes first.

(ii) The appeal shall [state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.] provide a succinct statement of the grounds upon which the appeal is based and include all of the following:

(A) The text of the original request.

(B) The text of the agency denial.

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

(iii) The Office of Open Records shall provide a form on its publicly accessible Internet website that may be used by the requester to file the appeal. The form under this subparagraph may also be used to file an appeal with a legislative agency or judicial agency.

(iv) The Office of Open Records may order a requester who fails to include the information under subparagraph (ii) to provide the required information.

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

(b) Determination.--

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

1 officer may extend this deadline by up to 15 days by
2 providing notice to both parties.

3 (1.1) If a hearing is ordered under section 1102(a)(2),
4 the appeals officer may extend the deadline up to 90
5 additional days.

6 (1.2) If an in-camera review is ordered under section
7 1102(a)(2), the appeals officer may extend the deadline up to
8 120 additional days.

9 (2) If the Office of Open Records or other appeals
10 officer fails to issue a final determination within 30 days
11 or as otherwise provided under paragraph (1), (1.1) or (1.2),
12 the appeal is deemed denied.

13 (3) Prior to issuing a final determination, a hearing
14 may be conducted. The determination by the appeals officer
15 shall be a final order. The appeals officer shall provide a
16 written explanation of the reason for the decision to the
17 requester and the agency.

18 (4) Except as provided in section 503(d), the Office of
19 Open Records shall have exclusive jurisdiction over all
20 appeals filed against Commonwealth and local agencies.

21 (5) If an appeals officer does not have jurisdiction to
22 hear an appeal or part of an appeal but another appeals
23 officer designated under section 503 has jurisdiction, the
24 appeals officer without jurisdiction shall transfer the
25 appeal or part of the appeal, as appropriate, to the appeals
26 officer with jurisdiction. If the appeal was timely filed
27 with the original appeals officer, it shall be considered
28 timely filed upon the transfer, but response times or
29 deadlines under this act shall be considered from the date of
30 the transfer to the appeals officer with jurisdiction.

1 (c) Direct interest.--

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

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

12 (i) no hearing has been held;

13 (ii) the appeals officer has not yet issued its
14 order; and

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

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

19 Section 1102. Appeals officers.

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

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

25 (2) Review all information filed relating to the
26 request. The appeals officer may hold a hearing or conduct an
27 in-camera review. A decision to hold or not to hold a hearing
28 is not appealable. A decision to conduct or not to conduct an
29 in-camera review is not appealable. The appeals officer may
30 admit into evidence testimony, evidence and documents that

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

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

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

8 (5) For a local agency or an agency for which the Office
9 of Open Records designates an appeals officer under section
10 503(a), provide to the Office of Open Records, in a manner
11 and form prescribed by the Office of Open Records, a copy of
12 all final determinations issued within seven days of
13 issuance.

14 (b) Procedures.--The Office of Open Records, a judicial
15 agency, a legislative agency, the Attorney General, Auditor
16 General, State Treasurer or district attorney may adopt
17 procedures relating to appeals under this chapter.

18 (1) If an appeal is resolved without a hearing, 1 Pa.
19 Code Pt. II (relating to general rules of administrative
20 practice and procedure) does not apply except to the extent
21 that the agency has adopted these chapters in its regulations
22 or rules under this subsection.

23 (2) If a hearing is held, 1 Pa. Code Pt. II shall apply
24 unless the agency has adopted regulations, policies or
25 procedures to the contrary under this subsection.

26 (3) In the absence of a regulation, policy or procedure
27 governing appeals under this chapter, the appeals officer
28 shall rule on procedural matters on the basis of justice,
29 fairness and the expeditious resolution of the dispute.

30 (4) If a procedural defect would otherwise cause an

1 appeal to be dismissed, the appeals officer may, with the
2 agreement of the agency and the requester, waive the defect
3 and proceed to consider the case on its merits.

4 (c) Review.--The Office of Open Records may request that a
5 local agency or an agency for which the Office of Open Records
6 designates an appeals officer under section 503(a) submit a
7 record and a privilege or exemption log for the purpose of
8 conducting an in-camera review to determine if the record is a
9 public record.

10 Section 1304. Court costs and attorney fees.

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

18 (1) the agency receiving the original request willfully
19 or with wanton disregard deprived the requester of access to
20 a public record subject to access or otherwise acted in bad
21 faith under the provisions of this act; or

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

25 * * *

26 Section 1305. Civil penalty.

27 (a) Denial of access.--A court may impose a civil penalty of
28 not more than [\$1,500] \$2,500 if an agency [denied] denies
29 access to a public record in bad faith.

30 (b) Failure to comply with [court] order.--[An] A court may

1 impose a civil penalty of not more than \$500 per day if an
2 agency or public official [who does not promptly] fails to
3 comply with [a court] an order under this act [is subject to a
4 civil penalty of not more than \$500 per day until the public
5 records are provided].

6 (c) Destruction of records.--A court may impose a civil
7 penalty of not more than \$2,500 if an agency or public official,
8 in violation of subsection (a), disposes of any potentially
9 responsive record in bad faith.

10 Section 12. Section 1307 of the act is amended by adding
11 subsections to read:

12 Section 1307. Fee limitations.

13 * * *

14 (i) Records to be used for a commercial purpose.--The
15 following apply:

16 (1) In responding to a request for records that will be
17 used for a commercial purpose, an agency may charge a
18 requester additional standard fees for the search, retrieval,
19 review, redaction and duplication of the records. The fees
20 shall be calculated at no more than the hourly wage of the
21 lowest-paid public employee of the agency who is capable of
22 searching, retrieving, reviewing, redacting or duplicating
23 the information necessary to comply with the request.

24 (2) Prior to granting a commercial request, the agency,
25 upon request, shall provide the requester with an estimate of
26 the fees to be incurred by the agency in fulfilling the
27 request.

28 (3) Paragraph (1) shall not apply to the following:

29 (i) A request for records subject to the fees under
30 subsection (b) (4).

1 (ii) A request for records subject to fees
2 established in laws or regulations of this Commonwealth
3 not subject to this act.

4 (iii) A request for records from an attorney on
5 behalf of a client if records are not obtained for the
6 purpose of selling, reselling or solicitation by the
7 attorney or the client or used by the client for a
8 commercial purpose.

9 (j) Alternative fee arrangement.--An agency and a requester
10 may enter into a contract, memorandum of understanding or other
11 agreement that provides an alternative fee arrangement to the
12 fees authorized under this section. An agreement under this
13 subsection shall be public.

14 (k) Appeals.--A fee charged under this section by a local
15 agency or an agency for which the Office of Open Records
16 designates an appeals officer under section 503(a) may be
17 appealed to the Office of Open Records.

18 Section 13. Sections 1310 and 3101.1 of the act are amended
19 to read:

20 Section 1310. Office of Open Records.

21 (a) Establishment.--There is established in the Department
22 of Community and Economic Development an Office of Open Records.
23 The office shall do all of the following:

24 (1) Provide information relating to the implementation
25 and enforcement of this act.

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

27 (3) Provide an annual training [**courses**] course to
28 agencies, public officials and public employees on this act
29 and 65 Pa.C.S. Ch. 7 (relating to open meetings).

30 (4) Provide [**annual,**] regional and online training

1 courses throughout the year to local agencies, public
2 officials and public employees.

3 (5) Assign appeals officers to review appeals of
4 decisions by Commonwealth agencies or local agencies, except
5 as provided in section 503(d), filed under section 1101 and
6 issue orders and opinions. The office shall employ or
7 contract with attorneys to serve as appeals officers to
8 review appeals and, if necessary, to hold hearings on a
9 regional basis under this act. Each appeals officer must
10 comply with all of the following:

11 (i) Complete a training course provided by the
12 Office of Open Records prior to acting as an appeals
13 officer.

14 (ii) If a hearing is necessary, hold hearings
15 regionally as necessary to ensure access to the remedies
16 provided by this act.

17 (iii) Comply with the procedures under section
18 1102(b).

19 (6) Establish an informal mediation program to resolve
20 disputes under this act.

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

25 (8) Conduct a biannual review of fees charged under this
26 act.

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

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

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

11 (d) Staffing.--The executive director shall appoint
12 attorneys to act as appeals officers and additional clerical,
13 technical and professional staff as may be appropriate and may
14 contract for additional services as necessary for the
15 performance of the executive director's duties. The compensation
16 of attorneys and other staff shall be set by the Executive
17 [Board] Director. The appointment of attorneys shall not be
18 subject to the act of October 15, 1980 (P.L.950, No.164), known
19 as the Commonwealth Attorneys Act.

20 (e) Duties.--

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

24 (2) The Department of Community and Economic Development
25 shall provide payroll, leave and benefits, budget,
26 information technology and administrative support, and any
27 other support which may be necessary for the operation of the
28 Office of Open Records, to the Office of Open Records.

29 (e.1) Public comment.--The Office of Open Records shall
30 abstain from public comment about a pending proceeding before

1 the Office of Open Records. This subsection shall not prohibit
2 employees of the Office of Open Records from making public
3 statements in the course of official duties, from issuing
4 written advisory opinions, from making general comments on this
5 act that are not related to a specific pending proceeding before
6 the Office of Open Records or from explaining the procedures of
7 the Office of Open Records.

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

11 Section 3101.1. Relation to other laws.

12 (a) General rule.--If the provisions of this act regarding
13 access to records conflict with any other Federal or State law,
14 the provisions of this act shall not apply.

15 (b) Records made public under other laws.--If records are
16 expressly made public under any Federal law, the exceptions set
17 forth in section 708(b) shall not apply.

18 Section 14. This act shall take effect in ~~30~~ 90 days.

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