

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 701 Session of
2001

INTRODUCED BY GREENLEAF, O'PAKE, BOSCOLA, THOMPSON, DENT,
MELLOW, COSTA, EARLL, GERLACH, HELFRICK, KASUNIC, KITCHEN,
KUKOVICH, LAVALLE, MOWERY, SCHWARTZ, STOUT, WAUGH AND
M. WHITE, MARCH 23, 2001

REFERRED TO STATE GOVERNMENT, MARCH 23, 2001

AN ACT

1 Amending Title 65 (Public Officers) of the Pennsylvania
2 Consolidated Statutes, providing for access to public
3 records; establishing the Office of Access to Public Records;
4 imposing penalties; and making a repeal.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Part II of Title 65 of the Pennsylvania
8 Consolidated Statutes is amended by adding a chapter to read:

9 CHAPTER 15

10 PUBLIC RECORDS ACCESS

11 Sec.

12 1501. Short title of chapter.

13 1502. Legislative findings, intent and construction.

14 1503. Definitions.

15 1504. Access to public records.

16 1505. Exemptions.

17 1506. Redaction.

18 1507. Rules governing access to public records.

1 1508. Delay or denial of request.

2 1509. Office of Access to Public Records.

3 1510. Appeals.

4 1511. Penalties, court costs and attorney fees.

5 1512. Immunity.

6 § 1501. Short title of chapter.

7 This chapter shall be known and may be cited as the Access to
8 Public Records Act.

9 § 1502. Legislative findings, intent and construction.

10 (a) Findings.--The General Assembly finds that:

11 (1) Access to public records is vital to the
12 preservation and functioning of the democratic process. The
13 public is entitled to know and be informed fully about the
14 official business of public officials and public employees
15 and the activities of government agencies. Access to
16 information about the conduct and activities of public
17 officials, public employees and government agencies is
18 necessary to assist the public in understanding its
19 government, monitoring its government and making informed
20 judgments about how to exercise its political power.

21 (2) The public has a fundamental right of access to
22 information on the appropriation, expenditure and investment
23 of public money.

24 (3) Government agencies receive and maintain data,
25 information and public records about persons in their
26 commercial and private endeavors. It is important that access
27 to public records be balanced against rights of privacy and
28 confidentiality provided in law regarding personal data
29 gathered by government agencies.

30 (4) Technological advances have resulted in new ways to

1 create, store and use public records. These advances should
2 not hinder or restrict access to public records but should be
3 used to facilitate access to public records.

4 (5) Providing access to public records is an essential
5 function of government agencies and an integral part of the
6 fundamental duties of public officials and public employees.
7 Rules regarding access to public records should be made
8 available to the public and should provide guidance to public
9 officials and public employees charged with the
10 responsibility of making public records accessible.

11 (6) Government agencies have a duty to preserve the
12 physical integrity of public records but must do so in a
13 manner that does not burden the right of the public to access
14 those records.

15 (b) Intent.--It is the intent of the General Assembly to:

16 (1) Ensure and facilitate the right of the public to
17 have access to information about the conduct and activities
18 of its government.

19 (2) Make public records available for access by the
20 public unless there is a specific provision of Federal or
21 State law that makes the records exempt from access.

22 (3) Place the burden of proving that information is not
23 a public record or that a public record is exempt from access
24 on the government agency that denies access.

25 (4) Favor public access when, in the application of this
26 chapter, countervailing interests are of equal weight.

27 (5) Provide guidelines to assist public officials and
28 public employees in responding to requests for access to
29 public records.

30 (6) Establish practices for access to public records.

(c) Construction.--Nothing in this chapter is intended to modify, rescind or supersede any public record retention and disposition schedule established pursuant to law.

§ 1503. Definitions.

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

"Agency." Any of the following:

(1) The legislative branch of the government of this Commonwealth.

(2) The executive branch of the government of this Commonwealth, including its departments, offices, boards, commissions and other subordinate agencies.

(3) Independent agencies of the government of this Commonwealth which are not subject to the policy supervision and control of the Governor and are not part of the legislative or judicial branches of government.

(4) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.

(5) Political subdivisions, intermediate units and public trade or vocational schools, intergovernmental agencies and councils of governments, including their departments, offices, boards, commissions and other subordinate agencies.

(6) An authority or instrumentality created by the Commonwealth or by a political subdivision or political subdivisions.

(7) State-aided colleges and universities, State-owned colleges and universities, State-related universities and community colleges.

1 (8) An entity created pursuant to a statute or pursuant
2 to the action of an agency for the purpose of performing a
3 governmental function.

4 (9) An entity contracted by an agency to perform a
5 governmental function but only insofar as the entity's
6 records regarding the contracted governmental function are
7 concerned. With respect to any and all records unrelated to
8 the entity's performance of the governmental function, the
9 entity shall not be an agency for the purposes of this
10 chapter. The term does not include:

11 (1) An entity to the extent that it holds on a
12 contractual basis the public records of other agencies solely
13 for purposes of storage or safekeeping or solely to provide
14 data processing.

15 (2) A legislative caucus.

16 (3) A court created by or pursuant to the Constitution
17 of Pennsylvania.

18 "Office." The Office of Access to Public Records established
19 under section 1509 (relating to Office of Access to Public
20 Records).

21 "Public record." Information, regardless of the physical
22 form in which the information is recorded or stored, that
23 records a transaction or activity of an agency or which is
24 created, received or retained by or on behalf of an agency
25 pursuant to law or in connection with the duties and
26 responsibilities of the agency.

27 § 1504. Access to public records.

28 A public record shall be made accessible for inspection and
29 copying by any person in accordance with this chapter unless
30 otherwise provided by Federal or State law. The burden shall be

1 on the agency to show that specific information may not be
2 accessed or a public record is exempt from access under section
3 1505 (relating to exemptions).

4 § 1505. Exemptions.

5 (a) Enumerated exemptions.--The following public records
6 shall be exempt from the inspection and copying requirements of
7 section 1504 (relating to access to public records):

8 (1) Medical information that indicates an individual's
9 medical history, including evaluation, diagnosis and
10 treatment.

11 (2) Home street address, home telephone number, Social
12 Security number, insurance information or disability status
13 of an agency employee, and the unlisted home telephone
14 number, Social Security number, insurance information or
15 disability status of an agency official.

16 (3) Test questions, scoring keys and other records used
17 to administer a licensing, employment or academic examination
18 if access would compromise the fairness or objectivity of the
19 examination process.

20 (4) Information regarding discipline, demotion or
21 discharge contained in an agency's personnel files or
22 nominations and recommendations by a member of the General
23 Assembly for public employment or appointment to a
24 governmental position, except that the status of any
25 disciplinary proceeding against a public official or public
26 employee and information relating to the disciplinary action
27 taken, if any, shall be accessible.

28 (5) Information, access to which would jeopardize the
29 physical security of agency employees, officials, property
30 and recordkeeping systems or which would expose agency

1 property or recordkeeping systems to damage, theft or other
2 appropriations or use contrary to law or public policy.

3 (6) Drafts of bills, resolutions or amendments prepared
4 by a public official or public employee acting in a
5 legislative capacity until such drafts have been numbered and
6 filed with the Chief Clerk of the House of Representatives or
7 the Secretary of the Senate or, in the case of a political
8 subdivision, until such time as the drafts have been
9 presented to a number of members of the governing body of the
10 political subdivision equal to or greater than a quorum.

11 (7) (i) Research requests from public officials or
12 public employees to the Legislative Reference Bureau, the
13 Local Government Commission, the Joint State Government
14 Commission, the Legislative Budget and Finance Committee,
15 the Joint Legislative Air and Water Pollution Control and
16 Conservation Committee, the Legislative Office for
17 Research Liaison, the Legislative Data Processing Center
18 or any other designated legislative service agency or the
19 staff of any caucus or committee of the General Assembly
20 and research requests from a member of the General
21 Assembly to that member's legislative office staff.

22 (ii) This paragraph shall not apply to products of
23 research by the Legislative Reference Bureau, the Local
24 Government Commission, the Joint State Government
25 Commission, the Legislative Budget and Finance Committee,
26 the Joint Legislative Air and Water Pollution Control and
27 Conservation Committee, the Legislative Office for
28 Research Liaison, the Legislative Data Processing Center
29 or any other designated legislative service agency. In
30 providing access to those documents, the identity of the

1 person making the request may not be disclosed without
2 that person's consent.

3 (8) Information that constitutes a communication between
4 a natural person in his private capacity and an individual
5 elected official in his official capacity regarding a matter
6 of a natural person's health, safety or welfare, or that
7 constitutes the expression of a natural person's personal
8 opinion.

9 (9) Information concerning an agency's labor relations
10 or litigation strategy provided that the labor relations
11 action or the litigation has already commenced or is expected
12 imminently or the agency has a reasonable expectation of
13 litigation by or against an identifiable person or class of
14 persons.

15 (10) Records of the Governor's Office or, in the case of
16 a political subdivision, the chief executive officer or
17 governing body or the member or members of the governing body
18 thereof acting in an executive capacity, including, but not
19 limited to, budget recommendations, legislative proposals and
20 proposed policy statements that, if access were provided,
21 would:

22 (i) in the case of the Governor, reveal the
23 Governor's contemplated policies or courses of action
24 before the Governor has formally proposed those policies
25 or courses of action or made them public; or

26 (ii) in the case of a political subdivision, reveal
27 the contemplated policies or courses of action before the
28 policies or courses of action have been presented to a
29 number of members of the governing body of the political
30 subdivision equal to or greater than a quorum.

1 (11) Computer programs manufactured or marketed by
2 persons under exclusive legal right, owned by an agency or
3 entrusted to it.

4 (12) Trade secrets or proprietary commercial information
5 or nonindividual financial information regarding a business
6 entity, including a sole proprietorship, obtained by an
7 agency if:

8 (i) the agency or a court declares that access to
9 the information could reasonably be expected to result in
10 unfair competitive injury to the business entity
11 submitting the information or would impair the ability of
12 the agency to obtain necessary information in the future;
13 and

14 (ii) the business entity submitting the information
15 provides with the information a written claim that the
16 information contains trade secrets, proprietary
17 commercial information or nonindividual financial
18 information regarding the business entity and a concise
19 statement of the reasons supporting the claim. The claim
20 shall be construed as a public record for purposes of
21 this chapter.

22 (13) Notes that are personally prepared by a public
23 official or public employee when the notes are used solely
24 for that official's or employee's own personal use as an aid
25 to memory.

26 (14) Information, including, but not limited to, the
27 names, gender, gross compensation, job descriptions,
28 telephone numbers, numbers of hours worked per pay period,
29 dates of employment, relevant education and previous
30 employment of undercover law enforcement personnel and under-

1 cover investigative personnel if the agency or a court
2 declares that access could reasonably be expected to impair
3 the effectiveness of investigations or endanger any
4 individual's safety.

5 (15) Information, access to which would violate a
6 statutory fiduciary obligation that an agency or a public
7 official or public employee of an agency has to the members
8 or beneficiaries of a retirement system, pension fund,
9 deferred compensation fund or similar employee or retiree
10 benefit plan.

11 (16) (i) Information which, if accessed, would
12 interfere with procurement procedures authorized by law
13 if the information:

14 (A) would give an unfair competitive advantage
15 to any person proposing to enter into a contract with
16 an agency;

17 (B) is proprietary information submitted to an
18 agency in a proposal to enter into a contract where
19 such information would not otherwise be required by
20 law to be submitted to the agency; or

21 (C) would disclose the internal evaluation
22 process by which an agency proposes to award a
23 contract prior to the execution of the contract.

24 (ii) Nothing in this paragraph shall be construed to
25 prohibit access to all bids submitted to an agency upon
26 the public opening of bids, the proposal submitted to an
27 agency by the recipient of a contract award or a contract
28 awarded by an agency.

29 (17) (i) Information regarding real, personal or
30 intellectual property prepared in contemplation of an

1 acquisition, sale, exchange, lease, rental or other
2 compensated transaction by an agency that, if access were
3 provided before legal or equitable title were acquired or
4 an agreement of sale were entered into, would reveal the
5 identity of the real property or the appraisal or
6 estimated value of the real, personal or intellectual
7 property unless:

8 (A) public interest in obtaining access to the
9 information outweighs the agency's duty to acquire
10 the property on the best terms possible, including
11 the agency's interest in maximizing the financial
12 benefit of the transaction;

13 (B) access to the information has already been
14 provided to persons not employed by or under a duty
15 of confidentiality to the agency;

16 (C) in the case of information that would
17 identify the real property, potential sellers of the
18 described property have already learned of the
19 agency's plans to acquire the property; or

20 (D) in the case of information that would
21 identify the appraisal or estimated value of
22 property, the potential sellers have already learned
23 of the agency's appraisal or estimated value of the
24 property.

25 (ii) Nothing in this paragraph shall be construed to
26 prohibit access to any such appraisal or estimated value
27 of the real, personal or intellectual property after it
28 is acquired or an agreement of sale is entered into.

29 (18) (i) Information that would result in the
30 disclosure of the name of a donor or a prospective donor

1 to an agency, provided that all of the following apply:

2 (A) the agency either is a public institution of
3 higher education or is primarily engaged in
4 educational, charitable or artistic endeavors;

5 (B) the donor requests anonymity in writing; and

6 (C) the agency has no regulatory or legislative
7 authority over the donor, a member of the donor's
8 immediate family or any entity owned or controlled by
9 the donor or the donor's immediate family.

10 (ii) Information regarding the terms, conditions,
11 restrictions or privileges relating to any such donation
12 shall be construed as a public record and shall be made
13 available for inspection and copying notwithstanding any
14 other provisions of this paragraph.

15 (iii) For the purposes of this paragraph, "immediate
16 family" means a parent, spouse, child, brother, sister or
17 like relative-in-law.

18 (19) Unpublished lecture notes, unpublished manuscripts,
19 creative works in progress and scholarly correspondence, any
20 of which have been developed, discovered or received by or on
21 behalf of faculty, staff, employees or students of a public
22 institution of education.

23 (20) (i) Records created by an agency in the process of
24 investigating a possible violation of statutory or
25 regulatory law if the release of the records would
26 identify a confidential source; disclose information made
27 confidential by law or court order; or disclose an
28 ongoing surveillance or undercover investigation, or
29 other ongoing confidential investigative procedure not
30 routinely employed by law enforcement agencies.

(ii) Subparagraph (i) shall not apply to other criminal records or information, including, but not limited to, the following records or information, which shall be accessible unless the agency can demonstrate that providing access to the person making the request would endanger a person's safety or property:

(A) Initial incident reports, police blotters and similar records that summarize the date, time, place, purpose and cause of services performed by law enforcement agencies or investigative agencies.

(B) The date, time, location and nature of a reported crime.

(C) The name, sex, age and address of a person who is not a juvenile, arrested, cited or otherwise charged with either a criminal or civil violation; the date, time and location of an arrest or citation; the charge or charges brought against the person; and any documents including warrants, informations, indictments, complaints and notices given or required by law to be given to the person charged.

(D) Traffic accident reports and compilations of data derived therefrom.

(21) Information that is confidential or privileged and may not be accessed pursuant to Federal or State law, including information access to which would result in the loss of Federal funds by an agency.

(b) Nondescriptive information.--Notwithstanding the provisions of subsection (a)(1), (2), (3), (14), (18) and (20), access to information that does not identify any particular individual or business entity shall be disclosed.

(c) Agency discretion.--An agency may exercise its discretion to make any public record enumerated under subsection (a) accessible for inspection and copying if:

(1) disclosure of that public record is not expressly prohibited by Federal or State law; or

(2) the governing body, agency head or designee with custody and control of the record determines that there is no individual or agency interest in restricting access to the record, or that the public interest favoring access outweighs the individual or agency interest favoring restriction of access.

§ 1506. Redaction.

(a) General rule.--When a public record contains information that is subject to access as well as information that is exempt from access under section 1505 (relating to exemptions), the agency shall disclose the information that is subject to access and withhold information that is exempt from access. Where the exempt information is an integral part of the public record and cannot be separated in any other reasonable manner, the agency shall redact it in a clearly identifiable manner and provide access to the nonexempt information. The information redacted shall constitute a denial under section 1508(c) (relating to delay or denial of request).

(b) Prohibition.--

(1) An agency may not use the incidental inclusion of information exempt from access as a means to deny access to a public record that is otherwise subject to access.

(2) A violation of this subsection shall constitute an intentional violation of this chapter subject to the penalties under section 1511 (relating to penalties, court

costs and attorney fees).

§ 1507. Rules governing access to public records.

(a) Right to inspect and copy.--

(1) A person has the right to inspect and copy a public record at the agency office or facility where the public record is available.

(2) Public records shall be available during the regular business hours of the agency.

(3) Public records, unless exempt from access under section 1505 (relating to exemptions) or subject to delay or denial under section 1508 (relating to delay or denial of request), shall be made available for inspection and copying within 24 hours of when the request is received or the following business day, whichever is later.

(4) An agency may not deny a request to inspect or copy public records for the purpose of preventing a person from interposing an objection or registering a comment regarding a matter of proposed official action.

(b) Rules governing access.--An agency shall establish rules that are reasonable and necessary to govern the inspection and copying of public records. The rules shall be in writing and shall be conspicuously posted at the agency. Public notice of the rules shall be given as provided for under subsection (e).

(c) Contents.--

(1) The rules shall include, but are not limited to, the following:

(i) A list of applicable fees.

(ii) The duration of a person's access to the requested public records if the agency has insufficient resources to simultaneously serve all persons requesting

1 access to the record or record series.

2 (iii) Requirements governing access to and conduct
3 in the area in which records are stored or made available
4 and for the handling of the records.

5 (2) The rules may not include the following:

6 (i) A requirement that a request for public records
7 must be made in writing and in person.

8 (ii) Subject to paragraph (1)(ii), limitations
9 governing the number of public records that may be
10 requested or made available for inspection or copying.

11 (iii) A requirement to disclose the purpose or
12 motive for the request to inspect or copy a public
13 record.

14 (3) Nothing in paragraph (2) shall be construed to
15 prohibit an agency from providing a uniform application form
16 or assisting a person with that person's request by asking
17 questions for the purpose of further defining or narrowing
18 the request as long as the questions do not impede the right
19 to access public records established by this chapter.

20 (d) Fees.--

21 (1) An agency may impose fees for copying public records
22 under this chapter provided that the fees are reasonable and
23 based on prevailing fees for comparable photocopying services
24 provided by local business entities. No fee structure shall
25 be established with the intent or effect of excluding persons
26 from access to public records or copies thereof or of
27 creating profit for the agency.

28 (2) An agency may impose fees for official certification
29 of copies if the certification is for the purpose of legally
30 verifying the accuracy and completeness of the record.

1 (3) An agency may impose research fees for retrieval of
2 records maintained on an archival basis or at a location
3 other than the agency office or for satisfaction of record
4 requests for which the requester is unable to provide
5 sufficient information for the agency to retrieve the record.

6 (4) An agency may impose fees for the postage and
7 handling of copies of records when the request is not placed
8 in person by the requester.

9 (5) Subject to subsection (h), an agency may not impose
10 fees for the inspection of public records at the location at
11 which the request is made.

12 (e) Public notice.--

13 (1) An agency shall give public notice of the rules it
14 establishes in compliance with subsection (b) governing the
15 inspection and copying of public records. The public notice
16 shall include as part of the rules the list of fees
17 established under subsection (d).

18 (2) An agency that is part of State government shall
19 publish the public notice in the Pennsylvania Bulletin. A
20 local agency shall publish notice in a newspaper of general
21 circulation, as defined by 45 Pa.C.S. § 101 (relating to
22 definitions), which is circulated in the political
23 subdivision where the agency has an office or facility.

24 (3) Publication of the rules and list of fees may be in
25 summary form, indicating the place and regular business hours
26 at which the full document containing the rules and list of
27 fees is available.

28 (4) Copies of the rules and list of fees shall be
29 furnished free of charge to any person requesting them.

30 (5) The agency shall give the public notice required by

1 this subsection in January of each year and 30 days before
2 any substantive change in the rules, including any change in
3 the list of fees, takes effect. In the case of the required
4 January notice, if there has been no change in the rules
5 since the last published notice, the requirement to publish
6 the rules or a summary thereof shall not apply, and the
7 January published notice shall instead reference the date and
8 place of the last published notice, state that there has been
9 no change in the rules and list of fees since that notice and
10 indicate the place and regular business hours at which the
11 full document containing the rules and list of fees is
12 available.

13 (f) Certified copies.--Upon request, an agency shall provide
14 a person with a certified copy of a public record if the person
15 identifies the public record with reasonable specificity and the
16 person pays the lawful fees.

17 (g) Large requests.--If a person requests copies of more
18 than 50 pages of public records from an agency, the agency may
19 permit the person making the request to use the agency's
20 facilities for copying the requested records and may allow the
21 person to provide that person's own copying facilities and
22 personnel to make the copies at the agency's office.

23 (h) Special access fees.--An agency may provide special
24 electronic access to public records maintained on an electronic
25 data processing system, including access by offsite electronic
26 data processing systems. The agency may establish a fee or fees
27 specifically for the provision of such access. The fees shall be
28 uniform and reasonable when compared to fees for similar
29 services provided by business entities. The fees may be a flat
30 rate, a yearly subscription, a per-transaction fee, a fee based

1 on the cumulative time of system access or any combination
2 thereof. The fees may not be established with the intent or
3 effect of excluding persons from access to public records or
4 copies thereof or of creating profit for the agency.

5 (i) Access by electronic means.--

6 (1) If access to the public record is made available by
7 an agency only by electronic means, the agency shall provide
8 ready access to the records at the agency office and may not
9 impose a fee to inspect the information.

10 (2) An agency may charge a fee for a duplicate of a
11 computer tape, computer disk, microfilm or similar recording
12 medium containing information or may charge its standard fee
13 for duplicating the same information on paper, whichever is
14 less.

15 (3) Copies of the records shall be provided in the most
16 economical means available at the agency office where the
17 records are maintained and acceptable to the person making
18 the request.

19 (j) Waiver of fees.--An agency may waive the fees for
20 copying a public record, including, but not limited to, when:

21 (1) the person makes his own copies of the public
22 record;

23 (2) the person is the subject of the record unless
24 otherwise specified by statute;

25 (3) the agency deems it is in the public interest to do
26 so; or

27 (4) the legal rights of the person are directly
28 implicated by the information in the record and the person is
29 unable to afford the cost of copying the record.

30 (k) Storage of public records.--

1 (1) An agency may not use the physical form, electronic
2 or otherwise, in which a public record is stored to deny or
3 hinder the rights of a person to inspect and copy a public
4 record.

5 (2) To the extent that a public record is fragile,
6 inaccessible due to physical or health limitations,
7 including, but not limited to, fire and flood damage or
8 chemical or biological contamination, or is of substantial
9 historical significance, the agency may place reasonable
10 restrictions on access which balance the rights of the person
11 requesting access with the agency's responsibility to
12 preserve the record and to ensure the health and safety of
13 its employees and the public.

14 (3) If the restrictions make the public record or a
15 facsimile of the public record inaccessible, the restrictions
16 shall be considered a denial under section 1508 (relating to
17 delay or denial of request).

18 (1) Format or medium.--Upon request, an agency shall provide
19 public records in the requested format or copies of the public
20 records in the requested medium if:

21 (1) The agency has the public records stored in the
22 requested format or has the equipment necessary to copy the
23 public records in the requested medium, except that an agency
24 shall not be required to convert a record maintained in a
25 nonelectronic format or medium to an electronic format or
26 medium to satisfy a request for access.

27 (2) In the case of a request for copies, the person
28 making the request pays the agency the applicable fee
29 provided for in this chapter.

30 (m) Creation of a public record.--An agency shall not be

1 required to create or compile a public record that does not
2 exist in order to respond to a request.

3 § 1508. Delay or denial of request.

4 (a) Delay of request.--

5 (1) An agency may delay fulfilling a person's request
6 for access to a public record only in one or more of the
7 following circumstances:

8 (i) Another agency is using the public record, in
9 which case the originating agency shall immediately
10 request that the agency currently in possession of the
11 public record return it or, if the agency cannot
12 immediately return the original public record, provide a
13 complete copy of it.

14 (ii) The request for access requires the agency to
15 copy a voluminous quantity of public records or research
16 a large volume of public records to locate the requested
17 information.

18 (iii) The agency is currently processing a large
19 number of public record requests.

20 (iv) The agency has reason to believe that the
21 person is making repeated requests or access to agency
22 records with the intent to disrupt or delay other
23 essential functions of the agency.

24 (v) For the purpose of segregating by redaction or
25 computer programming information that the requester is
26 entitled to inspect from information that the requester
27 is not entitled to inspect.

28 (vi) The agency does not have the necessary staff to
29 respond to the request within three business days.

30 (vii) An agency whose primary function is law

1 enforcement may delay disclosure until the information
2 may be reviewed to address limitations for disclosure
3 under section 1505(a)(20)(i) (relating to exemptions).

4 (2) If an agency determines that a delay in fulfilling a
5 request for access to the public record is authorized under
6 this section and is necessary, it shall furnish the person
7 requesting access with written notice of the causes and
8 duration of the delay within 24 hours of when the request is
9 received or the next business day, whichever is later. The
10 delay shall be for the minimum amount of time the agency
11 needs to fulfill the request, but in no case shall the delay
12 exceed ten days from the date the request for access is
13 submitted to the agency. However, if the delay is based on
14 paragraph (1)(vi), the delay may not exceed three business
15 days.

16 (3) At the end of the delay period, the agency shall
17 either provide the public record for inspection or copying or
18 follow the denial process under subsection (d).

19 (b) Offsite facility.--If an agency utilizes an offsite
20 facility to store public records, the agency shall either:

21 (1) retrieve the requested public record from the
22 offsite facility and provide the public record from its
23 office within two business days of receiving the request; or

24 (2) if the person requesting access agrees, the agency
25 may authorize the person to go to the offsite facility to
26 inspect and copy the record.

27 (c) Failure to respond.--If an agency fails to respond to a
28 request for access to a public record by either providing access
29 or following the delay procedure authorized in subsection (a),
30 the request for access shall be deemed denied notwithstanding

1 the agency's failure to comply with the requirements of
2 subsection (d).

3 (d) Denial.--If an agency denies a request for inspection or
4 copying, in whole or in part, the agency shall provide the
5 person making the request with written notice of the denial on
6 the same day the request is received or on the next business
7 day. The form shall include:

8 (1) A description of the public record requested.

9 (2) The reason for the denial citing the supporting
10 legal authority, including, but not limited to, a provision
11 of this chapter.

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

15 (4) Specific directions on the procedure to appeal the
16 denial of access under section 1510(a) (relating to appeals).

17 § 1509. Office of Access to Public Records.

18 (a) Establishment.--The Office of Access to Public Records
19 is hereby established as an independent administrative agency.
20 The Governor shall, subject to the advice and consent of the
21 Senate, appoint an executive director of the office who shall
22 hire such other staff as necessary to operate the office.

23 (b) Powers and duties.--The office shall have the following
24 powers and duties:

25 (1) To hear appeals under section 1510(b) (relating to
26 appeals), except insofar as the agency being appealed from is
27 the General Assembly.

28 (2) To furnish to an agency advisory guidelines,
29 opinions or other appropriate information regarding this
30 chapter.

1 (3) To furnish to a person advisory opinions or other
2 appropriate information regarding this chapter.

3 (4) To provide a list of Federal and State laws that
4 exempt certain types of records from disclosure.

5 (5) To make its written decisions available for review.

6 (6) To annually report on its activities and findings
7 regarding this chapter, including recommendations for changes
8 in the law, to the Governor and the General Assembly.

9 (c) Fees.--

10 (1) The office may impose a filing fee for an appeal
11 made under section 1510(b), and any fees collected under this
12 subsection shall be deposited in a restricted account in the
13 General Fund which is hereby established for the office. The
14 money from this account shall be appropriated as necessary
15 for the operation of the office.

16 (2) The agency may waive the filing fee if the person
17 requesting access to the public record is unable to afford
18 the fee based on guidelines established by the office.

19 § 1510. Appeals.

20 (a) Administrative appeal.--

21 (1) A person denied access to a public record may,
22 within 30 days after being formally provided notice of the
23 denial or the expiration of the delay period under section
24 1508(c) (relating to delay or denial of request), appeal in
25 writing by forwarding the denial form provided for under
26 section 1508(d), or an affidavit that the delay period has
27 expired, to the chief executive officer or governing body of
28 the agency or a person so designated by the chief executive
29 officer or governing body.

30 (2) Within ten days of receiving the appeal, the chief

1 executive officer, governing body or designated person shall
2 provide access to the requested record or explain fully in
3 writing to the person requesting the record the reason for
4 further denial.

5 (b) Appeal to the office.--

6 (1) A party aggrieved by an agency's decision under
7 subsection (a) may, within 30 days after being formally
8 provided notice of the denial, appeal to the office by
9 forwarding to the office the written explanation for the
10 denial provided by the agency under subsection (a) or may
11 waive the appeal to the office and proceed with a direct
12 judicial appeal under subsection (c).

13 (2) (i) Within 20 days after receipt of the appeal, the
14 office shall rule either that the agency's decision to
15 deny access to the record is upheld or that the agency's
16 decision to deny access to the record is overturned and
17 the agency must provide access to the record. The office
18 may hold a hearing and may review the record in camera.

19 (ii) The 20-day period may be extended by agreement
20 of the parties. If the parties do not agree to an
21 extension or the office does not issue a ruling within 20
22 days after the date of the appeal, the agency's denial
23 shall be deemed affirmed.

24 (3) If the office upholds the agency's decision to deny
25 access to the public record, the office shall fully explain
26 in writing to the person requesting the public record the
27 reason for the denial. If the office rules that the agency
28 shall provide access to the public record, the office shall
29 fully explain in writing to the agency the reason access must
30 be provided.

1 (c) Judicial appeal.--

2 (1) A party aggrieved by the decision of the office may,
3 within 30 days after formally being served notice of the
4 denial, appeal to the court having jurisdiction. In the case
5 of an aggrieved party that waives the appeal to the office in
6 favor of a direct judicial appeal, the appeal shall be made
7 within 30 days after being formally provided notice of the
8 denial under subsection (a).

9 (2) If the denial under section 1508 is by a local
10 agency, the court of common pleas for the county in which the
11 agency's office or facility is located shall have
12 jurisdiction. If the denial under section 1508 is by a State
13 agency, the Commonwealth Court shall have jurisdiction.

14 § 1511. Penalties, court costs and attorney fees.

15 (a) Grounds.--Upon an appeal under section 1510(c) (relating
16 to appeals):

17 (1) If a court finds that an agency intentionally
18 violated any provision of this chapter by not providing
19 access to a public record:

20 (i) The court may order the agency to pay a civil
21 penalty of not more than \$1,000, to be paid into the
22 restricted account established in the General Fund under
23 section 1509(c) (relating to the Office of Access to
24 Public Records).

25 (ii) In addition to any other penalties that may be
26 provided by law, the court may impose a civil penalty for
27 noncompliance not exceeding \$1,000 per day until the
28 agency complies with the court's order to provide access
29 to the records.

30 (iii) The court shall award the prevailing party

1 reasonable attorney fees and costs of litigation or an
2 appropriate portion of the fees and costs.

3 (2) If the court finds that the legal challenge was of a
4 frivolous nature or was brought with no substantial
5 justification, the court shall award the prevailing party
6 reasonable attorney fees and costs of litigation or an
7 appropriate portion of the fees and costs.

8 (b) Other appeals.--Costs or attorney fees shall not be
9 awarded under this section for an administrative appeal under
10 section 1510(a) or an appeal to the office under section
11 1510(b).

12 § 1512. Immunity.

13 (a) False pretenses.--Neither an agency nor a public
14 official or public employee of an agency shall be liable for
15 damages or penalties resulting from the release of a record when
16 a person obtains a record under false pretenses.

17 (b) Exempt records.--No agency shall be liable for damages
18 or penalties for the disclosure by a public official or public
19 employee of the agency, whether intentional or unintentional, of
20 a record exempt from access under this chapter.

21 (c) Whistleblower Law.--No public official or public
22 employee of an agency shall be liable for damages or penalties
23 for the disclosure of a record exempt from access under this
24 chapter if the disclosure of the record is pursuant to the act
25 of December 12, 1986 (P.L.1559, No.169), known as the
26 Whistleblower Law.

27 (d) Retention and disposition of records.--No public
28 official or public employee of an agency shall be liable for
29 damages or penalties under this chapter for complying with any
30 public record retention and disposition schedule established

1 pursuant to law.

2 Section 2. If an agency receives a request for a public
3 record that is subject to a confidentiality agreement executed
4 before the effective date of this act, the law in effect at the
5 time the agreement was executed, including judicial
6 interpretation of the law, shall govern access to the record
7 unless all parties to the confidentiality agreement agree in
8 writing to be governed by this act.

9 Section 3. The act of June 21, 1957 (P.L.390, No.212),
10 referred to as the Right-to-Know Law, is repealed.

11 Section 4. This act shall take effect in 120 days.