
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 854 Session of
2005

INTRODUCED BY RUBLEY, NICKOL, ARGALL, BELARDI, CALTAGIRONE,
CLYMER, CRAHALLA, FRANKEL, GEIST, GEORGE, GOODMAN, HENNESSEY,
HERSHEY, M. KELLER, MANN, R. MILLER, MUSTIO, NAILOR, ROSS,
SCHRODER, E. Z. TAYLOR, TIGUE, TRUE, WALKO, WANSACZ, WATSON,
BOYD, HABAY, KILLION, YOUNGBLOOD, MILLARD, HARPER, BROWNE AND
THOMAS, MARCH 14, 2005

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
OCTOBER 23, 2006

AN ACT

1 Relating to confidential security information of public
2 utilities; and imposing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Public
7 Utility Confidential Security Information Disclosure Protection
8 Act.

9 Section 2. Definitions.

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

13 "Agency." Any office, department, board or commission of the
14 executive departments of the Commonwealth, any political
15 subdivision of the Commonwealth, the Pennsylvania Turnpike

1 Commission, the State System of Higher Education or any State or
2 municipal authority or similar organization created by or
3 pursuant to a statute which declares in substance that such
4 organization performs or has for its purpose the performance of
5 an essential governmental function.

6 "Confidential security information." Information contained
7 within a record maintained by an agency in any form, the
8 disclosure of which would compromise security against sabotage
9 or criminal or terrorist acts and the nondisclosure of which is
10 necessary for the protection of life, safety, public property or
11 public utility facilities, including, but not limited to, all of
12 the following:

13 (1) A vulnerability assessment which is submitted to the
14 Environmental Protection Agency or any other Federal, State
15 or local agency.

16 (2) Portions of emergency response plans that are
17 submitted to the Department of Environmental Protection, the
18 Pennsylvania Public Utility Commission or any other Federal,
19 State or local agency dealing with response procedures or
20 plans prepared to prevent or respond to emergency situations,
21 except those portions intended for public disclosure, the
22 disclosure of which would reveal vulnerability assessments,
23 specific tactics, specific emergency procedures or specific
24 security procedures. Nothing in this term shall be construed
25 to relieve a public utility from its public notification
26 obligations under other applicable Federal and State laws.

27 (3) A plan, map or other drawing or data which shows the
28 location or reveals location data on community drinking water
29 wells and surface water intakes.

30 (4) A security plan, security procedure or risk

1 assessment prepared specifically for the purpose of
2 preventing or for protection against sabotage or criminal or
3 terrorist acts.

4 (5) (i) Specific information, including portions of
5 financial statements, about security devices or
6 personnel, designed to protect against sabotage or
7 criminal or terrorist acts.

8 (ii) Nothing in this definition shall be construed
9 to prevent the disclosure of monetary amounts.

10 "Dangerous to human life or property." A violent act or an
11 act which is intended to or likely to cause death, serious
12 bodily injury or mass destruction.

13 "Facilities." All the plant and equipment of a public
14 utility, including all tangible and intangible real and personal
15 property without limitation, and any and all means and
16 instrumentalities in any manner owned, operated, leased,
17 licensed, used, controlled, furnished or supplied for, by or in
18 connection with the business of any public utility. For the
19 purposes of this act, the term shall also include electric power
20 ~~generation and a water and wastewater system owned by a~~ <—
21 ~~municipality or municipal authority~~ GENERATION. <—

22 "Mass destruction." An act which is intended to or likely to
23 destroy or cause serious damage to facilities, public or private
24 buildings, places of public accommodation or public works under
25 circumstances evincing depraved indifference to human life or
26 property.

27 "Public utility." Any person, CORPORATION, MUNICIPALITY OR <—
28 MUNICIPAL AUTHORITY or corporation now or hereafter owning or
29 operating in this Commonwealth equipment or facilities for:

30 (i) Producing, generating, transmitting,

1 distributing or furnishing natural or artificial gas,
2 electricity or steam for the production of light, heat or
3 power to the public for compensation. For the purposes of
4 this act, the term shall also include electric power
5 generation. ~~and a water and wastewater system owned by a~~ <—
6 ~~municipality or municipal authority.~~

7 (ii) Diverting, developing, pumping, impounding,
8 distributing or furnishing water to or for the public for
9 compensation.

10 (iii) Using a canal, turnpike, tunnel, bridge, wharf
11 and the like for the public for compensation.

12 (iv) Transporting or conveying natural or artificial
13 gas, crude oil, gasoline or petroleum products, materials
14 for refrigeration or oxygen or nitrogen or other fluid
15 substance, by pipeline or conduit, for the public for
16 compensation.

17 (v) Conveying or transmitting messages or
18 communications by telephone or telegraph or domestic
19 public land mobile radio service, including, but not
20 limited to, point-to-point microwave radio service for
21 the public for compensation.

22 (vi) Collecting, treating or disposing sewage for
23 the public for compensation.

24 (vii) Transporting passengers or property as a
25 common carrier.

26 "Terrorist act." Any act or acts constituting a violent
27 offense intended to:

28 (i) intimidate or coerce a civilian population;
29 (ii) influence the policy of a government by
30 intimidation or coercion; or

1 (iii) affect the conduct of a government.

2 "Violent offense." An offense under 18 Pa.C.S. Pt. II
3 (relating to definition of specific offenses), including an
4 attempt, conspiracy or solicitation to commit any such offense,
5 which is punishable by imprisonment of more than one year and
6 involves an act dangerous to human life or property.

7 Section 3. Procedures for submitting, challenging and
8 protecting confidential security information.

9 (a) General rule.--The public utility is responsible for
10 determining whether a record or ~~portions~~ PORTION thereof <—
11 contains confidential security information. When a public
12 utility identifies a record as containing confidential security
13 information, it must clearly state in its transmittal letter,
14 upon submission to an agency, that the record contains
15 confidential security information and explain why the
16 information should be treated as such.

17 (b) Submission of confidential security information.--An
18 agency shall develop filing protocols and procedures for public
19 utilities to follow when submitting records, including protocols
20 and procedures for submitting records containing confidential
21 security information. Such protocols and procedures shall
22 instruct public utilities who submit records to an agency to
23 separate their information into at least two categories:

24 (1) Public.--Records or portions thereof subject to the
25 provisions of the act of June 21, 1957 (P.L.390, No.212),
26 referred to as the Right-to-Know Law.

27 (2) Confidential.--Records or portions thereof requested
28 to be treated as containing confidential security information
29 and not subject to the Right-to-Know Law.

30 (c) Challenges to the designation of confidential security

1 information.--Challenges to a public utility's designation or
2 request to examine records containing confidential security
3 information by a member of the public shall be made in writing
4 to the agency in which the record or portions thereof were
5 originally submitted. The agency shall develop protocols and
6 procedures to address challenges to the designations or requests
7 to examine records containing confidential security information.
8 Such protocols and procedures shall include:

9 (1) Written notification to the public utility by the
10 agency of the request to examine records containing
11 confidential security information or challenge of its
12 designation.

13 (2) An opportunity for agency review of the public
14 utility's designation.

15 (3) During the review or any appeal of the agency's
16 decision, the agency shall continue to honor the confidential
17 security information designation by the public utility.

18 (4) Agency review of the public utility's designation or
19 request to examine records containing confidential security
20 information shall be based on consistency with the definition
21 of confidential security information contained in this act or
22 when there are reasonable grounds to believe disclosure may
23 result in a safety risk, including the risk of harm to any
24 person, or mass destruction.

25 (5) Written notification of the agency's decision on
26 confidentiality to the public utility and member of the
27 public that requested to examine the records containing
28 confidential security information or challenged the
29 designation made by the public utility shall occur within 60
30 days. In the same writing, the agency shall affirmatively

1 state whether the disclosure would compromise the public
2 utility's security against sabotage or criminal or terrorist
3 acts.

4 (6) Following written notification by the agency of its
5 decision on confidentiality, the public utility and member of
6 the public shall be given 30 days to file an appeal in
7 Commonwealth Court where the court may review the records
8 containing confidential security information in camera to
9 determine if they are protected from disclosure under this
10 act. During pendency of the in camera review, the records
11 subject to the in camera review shall not be made part of the
12 public court filing.

13 (d) Protecting confidential security information.--An agency
14 shall develop such protocols as may be necessary to protect
15 public utility records or portions thereof that contain
16 confidential security information from prohibited disclosure
17 under section 5. Such protocols shall ensure that:

18 (1) Each copy of a record or portion thereof containing
19 confidential security information is clearly marked as
20 confidential and not subject to the provisions of the Right-
21 to-Know Law.

22 (2) Each copy of a record or portion thereof containing
23 confidential security information is kept on site in a secure
24 location, separate from the general records relating to the
25 public utility, where it is available for inspection by
26 authorized individuals.

27 (3) Only authorized individuals, as designated by the
28 agency, may have access to records or copies thereof
29 containing confidential security information.

30 (4) Authorized individuals, as designated by the agency,

1 shall undergo training and sign an access agreement which
2 summarizes responsibilities and personal liabilities if
3 confidential security information is knowingly or recklessly
4 released, published or otherwise disclosed.

5 (5) A document tracking system is established to allow
6 for records or copies thereof containing confidential
7 security information to be traceable at all times to a single
8 person.

9 (e) Redaction of confidential security information.--If an
10 agency determines that a record or portions thereof contains
11 confidential security information and information that is
12 public, the agency shall redact the portions of the record
13 containing confidential security information before disclosure.

14 Section 4. Applicability to other law.

15 Public utility records or portions thereof which contain
16 confidential security information, in accordance with the
17 provisions of this act, shall not be subject to the provisions
18 of the act of June 21, 1957 (P.L.390, No.212), referred to as
19 the Right-to-Know Law.

20 Section 5. Prohibition.

21 (a) General rule.--An agency shall not release, publish or
22 otherwise disclose a public utility record or portion thereof
23 which contains confidential security information, in accordance
24 with the provisions of this act.

25 (b) Exception.--Notwithstanding subsection (a), an agency
26 may, after notification and consultation with the public
27 utility, disclose a public utility record or portion thereof
28 which contains confidential security information, in accordance
29 with the provisions of this act, that is necessary for
30 construction, renovation or remodeling work on any public

1 building or project. Release or disclosure of such records or
2 portions thereof for these purposes does not constitute
3 prohibited disclosure under subsection (a) and does not result
4 in such records or portions thereof becoming public records
5 subject to the provisions of the act of June 21, 1957 (P.L.390,
6 No.212), referred to as the Right-to-Know Law.

7 Section 6. Penalties.

8 A public official or public employee who acquires a public
9 utility record or portions thereof which contain confidential
10 security information or any reproduction of a public utility
11 record or portion thereof which contains confidential security
12 information and who knowingly or recklessly releases, publishes
13 or otherwise discloses a public utility record or portion
14 thereof which contains confidential security information or any
15 reproduction of a public utility record or portion thereof which
16 contains confidential security information commits a misdemeanor
17 of the second degree subject to prosecution by the Attorney
18 General and shall, upon conviction, be sentenced to pay a fine
19 of not more than \$5,000 plus costs of prosecution or to a term
20 of imprisonment not to exceed one year, or both, and shall be
21 removed from office or agency employment.

22 Section 7. Effective date.

23 This act shall take effect in 180 days.