
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 443 Session of
2007

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PYLE, R. STEVENSON, M. SMITH AND SWANGER, MARCH 13, 2007

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 13, 2007

AN ACT

1 Requiring certain records of the Commonwealth and its political
2 subdivisions, authorities and agencies and other public
3 bodies to be open for examination, inspection and copying for
4 denial or refusal of access under certain circumstances, for
5 final agency determinations, for appeals, for court costs and
6 attorney fees, for penalties and for immunity; establishing
7 the Office of Access to Public Records and providing for its
8 powers and duties; and making a related repeal.

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29 The General Assembly of the Commonwealth of Pennsylvania

30 hereby enacts as follows:

1 CHAPTER 1

2 PRELIMINARY PROVISIONS

3 Section 101. Short title.

4 This act shall be known and may be cited as the Open Access
5 Law.

6 Section 102. Declaration of policy.

7 (a) Findings.--The General Assembly finds and declares as
8 follows:

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

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

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

28 (4) Technological advances have resulted in new ways to
29 create, store and use public records. These advances should
30 not hinder or restrict access to public records but should be

1 used to facilitate access to public records.

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

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

13 (7) The free and unfettered flow of information between
14 the government and the governed is essential to the continued
15 growth and success of the democratic process.

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

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

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

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

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

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

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

2 Section 103. Definitions.

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

6 "Agency." Any of the following:

7 (1) The legislative branch of the government of this
8 Commonwealth, including the Senate and the House of
9 Representatives.

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

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

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

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

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

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

30 (8) An entity created pursuant to a statute or pursuant

1 to the action of an agency for the purpose of performing a
2 governmental function. For the purposes of this paragraph,
3 "governmental function" shall be broadly defined to include
4 any services or functions previously performed by any
5 governmental entity or which are for the benefit of the
6 public as a whole or some segment of the public.

7 (9) An entity contracted by an agency to perform a
8 governmental function but only insofar as the entity's
9 records regarding the contracted governmental function are
10 concerned. With respect to records unrelated to the entity's
11 performance of the governmental function, the entity shall
12 not be an agency for the purposes of this chapter. For the
13 purposes of this paragraph, "governmental function" shall be
14 broadly defined to include any services or functions
15 previously performed by any governmental entity or which are
16 for the benefit of the public as a whole or some segment of
17 the public.

18 (10) Any entity or organization, board or body that
19 derives at least 25% of its funds from State or local public
20 money.

21 (11) Any committee of or created by any entity under
22 paragraph (1), (2), (3), (4), (5), (6), (7), (8) or (9),
23 which is authorized to render advice to or take official
24 action on behalf of any agency.

25 (12) Every State or local court or judicial agency,
26 including quasi-judicial boards and agencies.

27 (13) Every school board and board of education.

28 (14) Any body created by State or local authority in any
29 branch of government.

30 (15) Every State or local government officer.

1 "Commonwealth agency." An agency which is a Commonwealth
2 agency as that term is defined under 62 Pa.C.S. § 103 (relating
3 to definitions).

4 "Custodian." The official custodian or any authorized person
5 having personal custody and control of the public records.

6 "Mechanical processing." Any operation or other procedure
7 which is transacted on a machine or by some mechanical means.

8 "Media." The physical material in or on which records are
9 stored.

10 "Non-Commonwealth agency." An agency which is not a
11 Commonwealth agency.

12 "OATR." The Commonwealth Office of Access to Public Records.

13 "Office." The Office of Access to Public Records established
14 in section 501.

15 "Official custodian." The chief administrative officer or
16 any other officer or employee of a public agency who is
17 responsible for the maintenance, care and keeping of public
18 records, regardless of whether the records are in the officer's
19 actual custody and control.

20 "Public record." All documents, papers, letters, maps,
21 books, tapes, photographs, films, sound recordings, data
22 processing software, database, data or other material,
23 regardless of the physical form, characteristics or means of
24 storage or transmission, made or received in connection with or
25 relating to the work of an agency, except those documents exempt
26 or prohibited from disclosure under Federal or State law. The
27 term does not include those items that are clearly personal in
28 nature and unrelated to the spending of public funds or the
29 duties imposed upon the agency.

30 "Requester." A person who requests a record pursuant to this

1 act. The term includes a natural person, Commonwealth agency,
2 non-Commonwealth agency, corporation, unincorporated
3 association, partnership, limited liability company, business
4 trust and any other enterprise.

5 "Response." Access to a record or an agency's written notice
6 granting, denying or partially granting and partially denying
7 access to a record.

8 "Software." The program code which makes a computer system
9 function with the exception of passwords, access codes, user
10 identification, those records specifically exempt from
11 inspection or any other mechanism for controlling the security
12 or restricting access to public records in the agency's computer
13 system. The term includes the operating system, application
14 programs, procedures, routines and subroutines such as
15 translators and utility programs. The term does not include that
16 material which is prohibited from disclosure or copying by a
17 license agreement between a public agency and an outside entity
18 which supplied the material to the agency.

19 "Terrorist act." A criminal act intended to intimidate or
20 coerce an agency or all or part of the civilian population, to
21 disrupt a public system of any kind or to cause massive
22 destruction.

23 Section 104. Construction.

24 Nothing in this act is intended to modify, rescind or
25 supersede any public record retention and disposition schedule
26 established pursuant to law.

27 CHAPTER 3

28 ACCESS TO PUBLIC RECORDS

29 Section 301. Procedure for access to public records.

30 (a) General rule.--Unless otherwise provided by law, a

1 public record shall be accessible for inspection and duplication
2 by a requester in accordance with this act. A public record
3 shall be provided to a requester in the medium requested if the
4 public record exists in that medium, otherwise it shall be
5 provided in the medium in which it exists. Public records shall
6 be available for access during the regular business hours of an
7 agency. The following apply:

8 (1) For Commonwealth agencies a written request may be
9 made directly to the office.

10 (2) For non-Commonwealth agencies a written request may
11 be made directly to the non-Commonwealth agency. A denial of
12 the request may be appealed as provided in section 502.

13 (b) Requests.--An agency may fulfill verbal requests for
14 access to records and anonymous requests for access to records.
15 In the event that the requester wishes to pursue the relief and
16 remedies provided for in this act, the requester must initiate
17 the relief with a written request.

18 (c) Written requests.--A written request for access to
19 records may be submitted in person, by mail, by facsimile or, to
20 the extent provided by agency rules, by any other electronic
21 means. A written request shall be addressed to the agency head
22 or other person designated in the rules established by the
23 agency. A written request should identify or describe the
24 records sought with sufficient specificity to enable the agency
25 to ascertain which records are being requested and shall include
26 the name and address to which the agency should address its
27 response. A written request need not include any explanation of
28 the requester's reason for requesting or intended use of the
29 records except as provided by this act. The written request must
30 be specific enough so as not to be overly broad or burdensome or

1 to be clearly harassing or of no legitimate purpose.

2 (d) Electronic access.--In addition to the requirements of
3 subsection (a), an agency may make its public records available
4 through any publicly accessible electronic means. If access to a
5 public record is routinely available by an agency only by
6 electronic means, the agency shall provide access to inspect the
7 public record at an office of the agency.

8 (e) Creation of a public record.--When responding to a
9 request for access, an agency shall not be required to create a
10 public record which does not currently exist or to compile,
11 maintain, format or organize a public record in a manner in
12 which the agency does not currently compile, maintain, format or
13 organize the public record. This provision does not apply to
14 public records stored electronically that can be compiled,
15 maintained, formatted or organized in a manner requested by a
16 requester without placing an unreasonable burden upon an agency.

17 (f) Conversion of an electronic record to paper.--If a
18 public record is only maintained electronically or in other
19 nonpaper media, an agency shall, upon request, duplicate the
20 public record on paper when responding to a request for access
21 in accordance with this act.

22 Section 302. Access generally.

23 A public record shall be made accessible for inspection and
24 copying by any person in accordance with this act unless
25 otherwise provided by Federal or State law. The burden shall be
26 on the agency to show that specific information may not be
27 accessed or that a public record is exempt from access by law.

28 Section 303. Exceptions.

29 (a) Enumerated exemptions.--A public record does not include
30 any of the following:

1 (1) Any record the disclosure of which is prohibited by
2 Federal or State statute, including records the access to
3 which would result in the loss of Federal funds by an agency.

4 (2) Records that reflect an individual's medical history
5 or disability status, including evaluation, diagnosis or
6 treatment. This paragraph does not relate to autopsy records
7 or other official records of the coroner.

8 (3) That part of a record that lists an individual's
9 Social Security number, driver's license number or financial
10 account number.

11 (4) That part of a record that lists a nonelected public
12 employee's home telephone number or home address, unless the
13 public interest in disclosure outweighs the individual's
14 privacy interest in the information.

15 (5) Information regarding discipline, demotion or
16 discharge contained in an agency's personnel files, except
17 that the status of any disciplinary proceeding against a
18 public official or public employee and the disciplinary
19 action taken, if any, shall be accessible.

20 (6) (i) Records that, if disclosed, would endanger the
21 life or safety of any person or the disclosure of which
22 would create a substantial likelihood of endangering
23 public safety or the physical security of any building,
24 infrastructure facility or information storage system.

25 (ii) Notwithstanding the provisions of subparagraph

26 (i):

27 (A) Simple floor plans showing spatial
28 arrangements of buildings are public records.

29 (B) Information relating to the general adoption
30 of security plans and arrangements and budgetary

1 information concerning the authorization of public
2 funds to implement public security plans and
3 arrangements, or for the construction, renovation or
4 repair of public buildings and infrastructure
5 facilities are public records.

6 (C) If an agency denies a record under this
7 paragraph, it must provide a general description of
8 the record being withheld and how disclosure of the
9 record would endanger the life or safety of any
10 person or create a substantial likelihood of
11 endangering public safety or the physical security of
12 a building, infrastructure facility or information
13 storage system.

14 (7) Drafts of bills, resolutions or amendments prepared
15 by a public official or public employee acting in a
16 legislative capacity until the drafts have been numbered and
17 filed with the Secretary of the Senate or the Chief Clerk of
18 the House of Representatives or, in the case of a political
19 subdivision, until the drafts have been presented to a number
20 of members of the governing body of the political subdivision
21 equal to or greater than a quorum.

22 (8) (i) Research requests from public officials or
23 public employees to the Legislative Reference Bureau, the
24 Local 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 or the
30 staff of any caucus or committee of the General Assembly

1 and research requests from a member of the General
2 Assembly to that member's legislative office staff.

3 (ii) This paragraph shall not apply to products of
4 research by the Legislative Reference Bureau, the Local
5 Government Commission, the Joint State Government
6 Commission, the Legislative Budget and Finance Committee,
7 the Joint Legislative Air and Water Pollution Control and
8 Conservation Committee, the Legislative Office for
9 Research Liaison, the Legislative Data Processing Center
10 or any other designated legislative service agency. In
11 providing access to those documents, the identity of the
12 person making the request may not be disclosed without
13 that person's consent.

14 (9) Records pertaining to strategy and negotiations with
15 respect to pending claims, threatened litigation or pending
16 litigation to which the agency is a party and which are not
17 records of any court until the litigation or claim has been
18 fully adjudicated or otherwise settled.

19 (10) Records pertaining to strategy and negotiations
20 with respect to labor relations or collective bargaining,
21 except that any contract or agreement between the parties
22 shall be public.

23 (11) Records of the Office of the Governor or, in the
24 case of a political subdivision, the chief executive officer
25 or governing body or the member or members of the governing
26 body thereof acting in an executive capacity, including, but
27 not limited to, budget recommendations, legislative proposals
28 and proposed policy statements that, if access were provided,
29 would:

30 (i) In the case of the Governor, reveal the

1 Governor's contemplated policies or courses of action
2 before the Governor has formally proposed those policies
3 or courses of action or made them public.

4 (ii) In the case of a political subdivision, reveal
5 the contemplated policies or courses of action before the
6 policies or courses of action have been presented to a
7 number of members of the governing body of the political
8 subdivision equal to or greater than a quorum.

9 (12) Records that are trade secrets, as that term is
10 defined in 12 Pa.C.S. § 5302 (relating to definitions),
11 submitted to an agency by a commercial enterprise and which,
12 if disclosed, would cause substantial injury to the
13 competitive position of the subject enterprise. The
14 commercial enterprise submitting the information must provide
15 a written claim that the information contains trade secrets
16 regarding the enterprise and a concise statement of the
17 reasons supporting the claim. The claim shall be construed as
18 a public record for purposes of this act.

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

23 (14) (i) Information that would result in the
24 disclosure of the name of a donor or a prospective donor
25 to an agency, provided that all of the following apply:

26 (A) The agency either is a public institution of
27 higher education or is primarily engaged in
28 educational, charitable or artistic endeavors.

29 (B) The donor requests anonymity in writing.

30 (C) The agency has no regulatory or legislative

1 authority over the donor, a member of the donor's
2 immediate family or any entity owned or controlled by
3 the donor or the donor's immediate family.

4 (ii) Information regarding the terms, conditions,
5 restrictions or privileges relating to the donation shall
6 be construed as a public record and shall be made
7 available for inspection and copying notwithstanding any
8 other provision of this paragraph.

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

12 (15) Unpublished lecture notes, unpublished manuscripts,
13 creative works in progress and scholarly correspondence, any
14 of which have been developed, discovered or received by or on
15 behalf of faculty, staff, employees or students of a public
16 institution of education.

17 (16) (i) Records created by an agency in the process of
18 investigating a possible violation of statutory or
19 regulatory law if the release of the records would
20 identify a confidential source, disclose information made
21 confidential by law or court order or disclose an ongoing
22 criminal investigation by law enforcement.

23 (ii) Subparagraph (i) shall not apply to the
24 following records or information, which shall be
25 accessible except where prohibited by law or where the
26 agency can demonstrate that providing access to the
27 person making the request would endanger another person's
28 safety, deprive a person of a right to a fair and
29 impartial trial or hinder the agency's ability to secure
30 an arrest, prosecution or civil or criminal sanction:

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

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

7 (C) The name, sex, age and address of a person
8 arrested, cited or otherwise charged with either a
9 criminal or civil violation; the date, time and
10 location of an arrest or citation; the charge or
11 charges brought against the person; and any documents
12 including warrants, informations, indictments,
13 complaints and notices given or required by law to be
14 given to the person charged.

15 (D) The name, sex, age and place of residence of
16 the victim of a crime or regulatory violation.

17 (E) Traffic accident reports and compilations of
18 data derived therefrom.

19 (F) Audio tapes or transcripts of telephone
20 calls or radio transmissions received by emergency
21 dispatch personnel.

22 (17) Records that reflect internal, predecisional
23 deliberations by or between agency members, but this
24 exception does not include:

25 (i) Statistical or factual tabulations or data.

26 (ii) Instructions to staff that affect the public.

27 (iii) Final agency policy or determinations.

28 (iv) Completed audits.

29 (v) Documents that are closely connected to or form

30 the basis for the agency decision once the decision has

1 been made. For the purposes of this subparagraph, an
2 agency's decision to take no action on a matter shall
3 constitute a decision.

4 (18) Documents that are examination questions, scoring
5 keys or answers which are requested prior to the final
6 administration of the examination.

7 (19) Minutes of executive sessions and any record of
8 discussions held in executive session, except where
9 authorized and released by the agency or the release of which
10 is ordered by a court.

11 (20) The contents of real estate appraisals or
12 engineering or feasibility estimates and evaluations made for
13 or by a State or local agency relative to the acquisition of
14 property, or to prospective public supply and construction
15 contracts, until the property has been acquired or until a
16 contract or option obtained, or until all proceedings or
17 transactions have been terminated or abandoned. The law of
18 eminent domain shall not be affected by this provision.

19 (21) Test questions, scoring keys and other examination
20 data used to administer licensing examinations, examinations
21 for employment or academic examination before the exam is
22 given or if it is to be given again.

23 (22) All public records or information the disclosure of
24 which is prohibited by Federal or State law or regulation or
25 which is prohibited or restricted or otherwise made
26 confidential by enactment of the General Assembly.

27 (23) Public records the disclosure of which would have a
28 reasonable likelihood of threatening the public safety by
29 exposing a vulnerability in preventing, protecting against,
30 mitigating or responding to a terrorist act and includes a

1 criticality list resulting from consequence and vulnerability
2 assessment; antiterrorism measures and plans, counter-
3 terrorism measures and plans; security and response needs
4 assessment and infrastructure records that expose
5 vulnerability.

6 (24) Electronic mail, provided that the electronic mail
7 does not contain discussion of the spending of public money
8 or the duties and powers of the office, officeholder or
9 agency.

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

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

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

19 (2) the governing body, agency head or designee with
20 custody and control of the record determines that the public
21 interest favoring access outweighs the individual or agency
22 interest favoring restriction of access.

23 (d) Strict construction of exceptions.--The General Assembly
24 finds and declares that the basic policy is that free and open
25 examination of public records is in the public interest and the
26 exceptions provided for by this act or otherwise provided by law
27 shall be strictly construed, even though the examination may
28 cause inconvenience or embarrassment to public officials or
29 others.

30 (e) Exception limitation.--Any record that is determined to

1 be excepted from disclosure shall only be excepted as to the
2 contents of the record and not as to any spending of public
3 funds related to the record; for example, telephone bills may be
4 exempt as to who was called and how long but shall not be exempt
5 as to the cost of the call.

6 Section 304. Denial based on intended use prohibited.

7 An agency may not deny a requester access to a public record
8 due to the intended use of the public record by the requester.

9 Section 305. Redaction.

10 If an agency determines that a public record contains
11 information which is subject to access as well as information
12 which is not subject to access, the agency's response shall
13 grant access to the information which is subject to access and
14 deny access to the information which is not subject to access.
15 If the information which is not subject to access is an integral
16 part of the public record and cannot be separated, the agency
17 shall redact from the public record the information which is not
18 subject to access, and the response shall grant access to the
19 information which is subject to access. The agency may not deny
20 access to the public record if the information which is not
21 subject to access is able to be redacted. Information which an
22 agency redacts in accordance with this section shall be deemed a
23 denial.

24 Section 306. Commonwealth Office of Access to Public Records.

25 (a) General rule.--Upon receipt of a written request for
26 access to a record, the OATR shall make a good faith effort to
27 determine if the record requested is a public record and to
28 respond as promptly as possible under the circumstances existing
29 at the time of the request but, except as set forth in
30 subsection (b), not more than 20 business days from the date the

1 written request is received by the OATR head or other person
2 designated by the OATR for receiving requests. If the OATR fails
3 to send a response within 20 business days of receipt of the
4 written request for access, the written request for access shall
5 be deemed denied.

6 (b) Extensions.--

7 (1) Upon receipt of a written request for access, the
8 time period under subsection (a) may be extended if the OATR
9 determines that one of the following applies:

10 (i) The request for access requires redaction of a
11 public record in accordance with this act.

12 (ii) The request for access requires the retrieval
13 of a record stored in a remote location.

14 (iii) A timely response to the request for access
15 cannot be accomplished due to bona fide and specified
16 staffing limitations.

17 (iv) A legal review is necessary to determine
18 whether the record is a public record subject to access
19 under this act.

20 (v) The requester has not complied with the OATR's
21 policies regarding access to public records.

22 (vi) The requester refuses to pay applicable fees
23 authorized by this act.

24 (2) The OATR shall send written notice to the requester
25 within 20 business days of the OATR's receipt of the request
26 for access. The notice shall include a statement notifying
27 the requester that the request for access is being reviewed,
28 the reason for the review and a reasonable date that a
29 response is expected to be provided. If the date that a
30 response is expected to be provided is in excess of 30 days,

1 following the 20 business days allowed for in subsection (a),
2 the request for access shall be deemed denied.

3 (c) Denial.--If the OATR's response is a denial of a written
4 request for access, whether in whole or in part, a written
5 response shall be issued and include:

6 (1) A description of the record requested.

7 (2) The specific reasons for the denial, including a
8 citation of supporting legal authority. If the denial is the
9 result of a determination that the record requested is not a
10 public record, the specific reasons for the OATR's
11 determination that the record is not a public record shall be
12 included.

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

17 (4) Date of the response.

18 (5) The procedure to appeal the denial of access under
19 this act.

20 (d) Certified copies.--All Commonwealth agencies shall
21 respond to all requests for information or documents from the
22 OATR within ten business days from the date the requests are
23 received and registered. All shall establish a procedure, if one
24 does not currently exist, for recording the date and time the
25 request from OATR is received. This procedure shall include, at
26 a minimum, a procedure for marking the date and time of receipt
27 on the face of the request and for filing and maintaining each
28 request for a period of not less than five years.

29 Section 307. Non-Commonwealth agency's response to written
30 requests for access.

1 (a) General rule.--Upon receipt of a written request for
2 access to a record, a non-Commonwealth agency shall make a good
3 faith effort to determine if the record requested is a public
4 record and to respond as promptly as possible under the
5 circumstances existing at the time of the request but, except as
6 provided under subsection (b), not more than ten business days
7 from the date the written request is received by the non-
8 Commonwealth agency head or other person designated in the rules
9 established by the non-Commonwealth agency for receiving
10 requests. If the non-Commonwealth agency fails to send the
11 response within ten business days of receipt of the written
12 request for access, the written request for access shall be
13 deemed denied.

14 (b) Extensions.--

15 (1) Upon receipt of a written request for access, the
16 time period under subsection (a) may be extended if a non-
17 Commonwealth agency determines that one of the following
18 applies:

19 (i) The request for access requires redaction of a
20 public record in accordance with this act.

21 (ii) The request for access requires the retrieval
22 of a record stored in a remote location.

23 (iii) A timely response to the request for access
24 cannot be accomplished due to bona fide and specified
25 staffing limitations.

26 (iv) A legal review is necessary to determine
27 whether the record is a public record subject to access
28 under this act.

29 (v) The requester has not complied with the non-
30 Commonwealth agency's policies regarding access to public

1 records.

2 (vi) The requester refuses to pay applicable fees
3 authorized by this act.

4 (2) The non-Commonwealth agency shall send written
5 notice to the requester within five business days of the non-
6 Commonwealth agency's receipt of the request notifying the
7 requester that the request for access is being reviewed, the
8 reason for the review and a reasonable date that a response
9 is expected to be provided. If the date that a response is
10 expected to be provided is in excess of 30 days following the
11 ten business days allowed in subsection (a), the request for
12 access shall be deemed denied.

13 (c) Denial.--If a non-Commonwealth agency's response is a
14 denial of a written request for access, whether in whole or in
15 part, a written response shall be issued and include:

16 (1) A description of the record requested.

17 (2) The specific reasons for the denial, including a
18 citation of supporting legal authority. If the denial is the
19 result of a determination that the record requested is not a
20 public record, the specific reasons for the agency's
21 determination that the record is not a public record shall be
22 included.

23 (3) The typed or printed name, title, business address,
24 business telephone number and signature of the public
25 official or public employee on whose authority the denial is
26 issued.

27 (4) Date of the response.

28 (5) The procedure to appeal the denial of access under
29 this act.

30 (d) Certified copies.--If a non-Commonwealth agency's

1 response grants a request for access, the non-Commonwealth
2 agency shall, upon request, provide the requester with a
3 certified copy of the public record if the requester pays the
4 applicable fees pursuant to this act.

5 CHAPTER 5

6 OFFICE OF ACCESS TO PUBLIC RECORDS

7 Section 501. Office of Access to Public Records.

8 (a) Establishment.--The Office of Access to Public Records
9 is hereby established as an independent administrative agency.
10 The Governor shall, subject to the advice and consent of the
11 Senate and House of Representatives, appoint an executive
12 director of the office who shall hire other staff as necessary
13 to operate the office.

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

16 (1) To receive and respond to requests for information
17 from Commonwealth agencies pursuant to this act from the
18 public and from other agencies.

19 (2) To request information from Commonwealth agencies
20 and non-Commonwealth agencies.

21 (3) To guide and oversee the compliance with this act by
22 all Commonwealth and non-Commonwealth agencies.

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

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

26 (6) To conduct training for public officials, public
27 employees and third parties relating to this Commonwealth's
28 access laws.

29 (7) To annually report on its activities and findings
30 regarding this act, including recommendations for changes in

1 the law, to the Governor and the General Assembly.

2 (c) Fees.--

3 (1) The office may impose a reasonable filing fee for an
4 appeal made under section 502, and any fees collected under
5 this subsection shall be deposited in a restricted account in
6 the General Fund which is hereby established for the office.
7 The money from this account shall be appropriated as
8 necessary for the operation of the office.

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

12 Section 502. Appeals.

13 (a) Administrative appeal to office.--

14 (1) A party aggrieved by an agency's denial or deemed
15 denial may, within 30 days after a request is denied or
16 deemed denied, appeal to the office by forwarding to the
17 office a copy of the request and the written explanation for
18 the denial, if any, provided by the agency.

19 (2) (i) Within 20 days after receipt of the appeal, the
20 office shall rule either that the agency's denial or
21 deemed denial of access to the record is upheld or that
22 the agency's decision to deny access to the record is
23 overturned, and the agency must provide access to the
24 record. The office may hold a hearing and may review the
25 record in camera.

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

1 (3) If the office upholds the agency's decision to deny
2 access to the public record, the office shall fully explain
3 in writing to the person requesting the public record the
4 reason for the denial. If the office rules that the agency
5 shall provide access to the public record, the office shall
6 fully explain in writing to the agency the reason access must
7 be provided.

8 (b) Judicial appeal.--

9 (1) A party aggrieved by the decision of the office may,
10 within 30 days after formally being served notice of the
11 office's ruling, appeal to a court of appropriate
12 jurisdiction.

13 (2) Within 30 days of the mailing date of the decision
14 of the office, an aggrieved party seeking information and
15 access from a Commonwealth agency may file a petition for
16 review or other document as might be required by rule of
17 court with the Commonwealth Court.

18 (3) Within 30 days of the mailing date of the decision
19 of the office, an aggrieved party may file a petition for
20 review or other document as might be required by rule of
21 court with the court of common pleas for the county where the
22 non-Commonwealth agency's office or facility is located.

23 (c) Notice.--All parties shall be served notice of actions
24 commenced in accordance with subsection (a) or (b) and shall
25 have an opportunity to respond in accordance with applicable
26 court rules.

27 (d) Record on appeal.--The record before a court shall
28 consist of the request, the agency's response, the record before
29 the office, including the hearing transcript, if any, and the
30 decision of the office. A court may take additional testimony

1 and accept additional evidence as appropriate.

2 CHAPTER 7

3 ADMINISTRATION AND ENFORCEMENT

4 Section 701. Penalties, court costs and fees.

5 (a) Grounds.--

6 (1) If a court finds that an agency intentionally
7 violated any provision of this act, acted in bad faith or
8 relied upon an unreasonable interpretation of the law in not
9 providing access to a public record:

10 (i) The court may order the agency to pay a civil
11 penalty of not more than \$1,000 to be paid into a
12 restricted account established in the General Fund under
13 section 501(c).

14 (ii) The court shall award the prevailing party
15 reasonable attorney fees and costs of litigation or an
16 appropriate portion of the fees and costs.

17 (iii) Any other sanction the court deems appropriate
18 under the circumstances of the case.

19 (2) If the court finds that the legal challenge was of a
20 frivolous nature or was brought with no substantial
21 justification, the court shall award the prevailing party
22 reasonable attorney fees and costs of litigation or an
23 appropriate portion of the fees and costs and a civil penalty
24 of not less than \$1,000 and not more than \$10,000 to be paid
25 into the restricted account established in the General Fund.

26 (3) If the court finds that the appeal of the requester
27 was frivolous or that the request violated this act, was made
28 in bad faith or was made only to harass or annoy the agency,
29 then the court shall impose a civil penalty of not less than
30 \$100 nor more than \$1,000 to be paid into the restricted

1 account established in the General Fund.

2 (b) Civil penalty.--An agency or public official that does
3 not promptly comply with a court order under this act is subject
4 to a civil penalty of not more than \$300 per day until the
5 public records are provided, to be paid into the restricted
6 account established in the General Fund under section 501(c).

7 (c) Training.--Any court may order agency officials and
8 employees to attend mandatory training sessions conducted by the
9 office, which shall include testing on compliance with the law.

10 (d) Other appeals.--Costs or attorney fees shall not be
11 awarded under this section for administrative appeal to the
12 office under section 502.

13 Section 702. Immunity.

14 (a) General rule.--Except as provided in this act and other
15 statutes governing the release of records, no agency, public
16 official or public employee shall be liable for civil or
17 criminal damages or penalties resulting from compliance or
18 failure to comply with this act.

19 (b) Schedules.--No agency, public official or public
20 employee shall be liable for civil or criminal damages or
21 penalties under this act for complying with any written public
22 record retention and disposition schedule.

23 Section 703. Fee limitations.

24 (a) Postage.--Fees for postage may not exceed the actual
25 cost of mailing.

26 (b) Duplication.--Fees for duplication by photocopying,
27 printing from electronic media or microfilm, copying onto
28 electronic media, transmission by facsimile or other electronic
29 means and other means of duplication must be reasonable and
30 based on prevailing fees for comparable duplication services

1 provided by local copying services.

2 (c) Certification.--An agency may impose reasonable fees for
3 official certification of copies if the certification is at the
4 behest of the requester and for the purpose of legally verifying
5 the public record.

6 (d) Conversion to paper.--If a public record is only
7 maintained electronically or in other nonpaper media,
8 duplication fees shall be limited to the lesser of the fee for
9 duplication on paper or the fee for duplication in the native
10 media as provided by subsection (b) unless the requester
11 specifically requests for the public record to be duplicated in
12 the more expensive medium.

13 (e) Enhanced electronic access.--If an agency offers
14 enhanced electronic access to public records in addition to
15 making the public records accessible for inspection and
16 duplication by a requester as required by this act, the agency
17 may establish user fees specifically for the provision of the
18 enhanced electronic access, but only to the extent that the
19 enhanced electronic access is in addition to making the public
20 records accessible for inspection and duplication by a requester
21 as required by this act. The user fees for enhanced electronic
22 access may be a flat rate, a subscription fee for a period of
23 time, a per-transaction fee, a fee based on the cumulative time
24 of system access or any other reasonable method and any
25 combination thereof. The user fees for enhanced electronic
26 access must be reasonable and may not be established with the
27 intent or effect of excluding persons from access to public
28 records or duplicates thereof or of creating profit for the
29 agency.

30 (f) Waiver of fees.--An agency may waive the fees for

1 duplication of a public record, including, but not limited to,
2 when:

3 (1) the requester duplicates the public record; or

4 (2) the agency deems it is in the public interest to do
5 so.

6 (g) Limitations.--Except as otherwise provided by statute,
7 no other fee may be imposed unless the agency necessarily incurs
8 costs for complying with the request, and the fee must be
9 reasonable. No fee may be imposed for an agency's review of a
10 record to determine whether the record is a public record
11 subject to access in accordance with this act. No fee relating
12 to any search for records may be imposed unless the required
13 search places an unreasonable burden upon agency employees and
14 the agency can establish and itemize its costs for complying
15 with the request, and the fee must be reasonable.

16 (h) Prepayment.--Prior to granting a request for access in
17 accordance with this act, an agency may require a requester to
18 prepay an estimate of the fees authorized under this section if
19 the fees required to fulfill the request are expected to exceed
20 \$100.

21 Section 704. Implementation.

22 (a) Requirement.--An agency shall establish written policies
23 and may promulgate regulations necessary to implement this act.

24 (b) Content.--The written policies shall include the name of
25 the office to which requests for access shall be addressed and a
26 list of applicable fees.

27 (c) Prohibition.--A policy or regulation may not include any
28 of the following:

29 (1) A limitation on the number of public records which
30 may be requested or made available for inspection or

1 duplication.

2 (2) A requirement to disclose the purpose or motive in
3 requesting access to records which are public records.

4 (d) Posting.--The policies shall be conspicuously posted at
5 the agency and may be made available by electronic means.

6 Section 705. Practice and procedure.

7 The provisions of 2 Pa.C.S. (relating to administrative law
8 and procedure) shall not apply to this act.

9 Section 706. Commercial purposes.

10 It shall be unlawful for a person to obtain a copy of any
11 part of a public record for a:

12 (1) Commercial purpose, without stating the commercial
13 purpose, if a certified statement from the requester was
14 required by the public agency.

15 (2) Commercial purpose, if the person uses or knowingly
16 allows the use of the public record for a different
17 commercial purpose.

18 (3) Noncommercial purpose, if the person uses or
19 knowingly allows the use of the public record for a
20 commercial purpose. A newspaper, periodical, radio or
21 television station shall not be held to have used or
22 knowingly allowed the use of the public record for a
23 commercial purpose merely because of its publication or
24 broadcast.

25 Section 707. Damages recoverable by public agency for person's
26 misuse of public records.

27 A person who misuses a public record shall be liable to the
28 agency from which the public records were obtained for damages
29 in the amount of all of the following:

30 (1) Three times the amount that would have been charged

1 for the public record if the actual commercial purpose for
2 which it was obtained or used has been stated.

3 (2) Costs and reasonable attorney fees.

4 (3) Any other penalty established by law.

5 Section 708. Agency to adopt rules and regulations.

6 (a) General rule.--Each agency shall adopt rules and
7 regulations in conformity with the provisions of this act to
8 provide full access to public records, to protect public records
9 from damage and disorganization, to prevent excessive disruption
10 of its essential functions, to provide assistance and
11 information upon request and to ensure efficient and timely
12 action in response to application for inspection. The rules and
13 regulations shall include, but shall not be limited to:

14 (1) The principal office of the agency and its regular
15 office hours.

16 (2) The title and address of the official custodian of
17 the agency's records.

18 (3) The fees, to the extent authorized by this act or
19 other statute, charged for copies.

20 (4) The procedures to be followed in requesting public
21 records.

22 (b) Display.--Each agency shall display a copy of its rules
23 and regulations pertaining to public records in a prominent
24 location accessible to the public.

25 (c) Uniformity.--The OATR may promulgate uniform rules and
26 regulations in accordance with this act for all Commonwealth and
27 non-Commonwealth agencies and all other persons and entities
28 subject to this act.

29 Section 709. Access to personal record.

30 Any person shall have access to any public record relating to

1 the person, or in which the person is mentioned by name, upon
2 presentation of appropriate identification, subject to the
3 provisions of this act.

4 Section 710. Prohibition against destruction or damage of
5 records.

6 (a) Prohibition.--All records are the property of the agency
7 concerned and shall not be removed, destroyed, mutilated,
8 transferred or otherwise damaged or disposed of, in whole or in
9 part, except as provided by law or under the rules adopted by
10 the office. Records shall be delivered by outgoing officials and
11 employees to their successors and shall not be otherwise
12 removed, transferred or destroyed unlawfully.

13 (b) Civil action.--Any person who is aggrieved by the
14 removal, destruction, mutilation, or transfer of or by other
15 damage to or disposition of a record in violation of subsection
16 (a), or by threat of removal, destruction, mutilation, transfer
17 or other damage to or disposition of a record may commence either
18 or both of the following in the court of common pleas of the
19 county in which subsection (a) allegedly was violated or is
20 threatened to be violated:

21 (1) A civil action for injunctive relief to compel
22 compliance with subsection (a) and to obtain an award of the
23 reasonable attorney fees incurred by the person in the civil
24 action.

25 (2) A civil action to recover a forfeiture in the amount
26 of \$1,000 for each violation and to obtain an award of the
27 reasonable attorney fees incurred by the person in the civil
28 action.

29 Section 711. Laws prohibiting the destruction of records.

30 If any law prohibits the destruction of a record, then an

1 agency shall not order its destruction or other disposition. If
2 any law provides that a record shall be kept for a specified
3 period of time, then an agency shall not order its destruction
4 or other disposition prior to the expiration of that period.

5 Section 712. Replevin of public records unlawfully removed.

6 Any public record which has been unlawfully transferred or
7 removed in violation of this act or otherwise transferred or
8 removed unlawfully is subject to replevin by the Attorney
9 General upon request of the office. The record shall be returned
10 to the agency of origin and safeguards shall be established to
11 prevent further recurrence of unlawful transfer or removal.

12 Section 713. Authority not restricted.

13 The provisions of this act shall not impair or restrict the
14 authority given by other statutes over the creation of records,
15 systems, forms, procedures or the control over purchases of
16 equipment by agencies.

17 Section 714. Internet.

18 All agencies shall make all budgets, expense accounts, grants
19 and other records related to the expenditure of public funds
20 available on the Internet without a fee or charge.

21 CHAPTER 21

22 MISCELLANEOUS PROVISIONS

23 Section 2101. Repeals.

24 (a) Intent.--The General Assembly declares that the repeal
25 under subsection (b) is necessary to effectuate the provisions
26 of this act.

27 (b) Provision.--The act of June 21, 1957 (P.L.390, No.212),
28 referred to as the Right-to-Know Law, is repealed.

29 Section 2102. Effective date.

30 This act shall take effect in 60 days.