

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 443

Session of  
2007

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DeWEESE AND REED, MARCH 13, 2007

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 30, 2007

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## 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 Pennsylvania Public Records Office and providing for its  
8 powers and duties; and making a related repeal.

9 Chapter 1. Preliminary Provisions

10 Section 101. Short title.

11 Section 102. Legislative findings.

12 Section 103. Definitions.

13 Section 104. Construction.

14 Chapter 3. Access to Public Records

15 Section 301. Authorization.

16 Section 302. Accessibility.

1 Section 303. Designation of compliance officer.

2 Section 304. Method of request.

3 Section 305. Agency response.

4 Section 306. Creation of a public record not required.

5 Section 307. Records deemed inaccessible.

6 Section 308. Agency discretion.

7 Section 309. Fee limitations.

8 Chapter 5. Public Records Office

9 Section 501. Pennsylvania Public Records Office.

10 Section 502. Administrative appeals from Commonwealth

11 agencies and local agencies.

12 Section 503. Judicial review.

13 Section 504. Penalties, court costs and attorney fees.

14 Section 505. Immunity.

15 Chapter 7. Administration and Enforcement

16 Section 701. Policies and regulations.

17 Section 702. Confidentiality agreements.

18 Section 703. Practice and procedure.

19 Section 704. Access to personal record.

20 ~~Section 705. Prohibition against destruction or damage of~~ <—

21 ~~records.~~

22 ~~Section 706. Replevin of public records unlawfully removed.~~

23 SECTION 705. (RESERVED). <—

24 SECTION 706. (RESERVED).

25 Section 707. Authority not restricted.

26 Section 708. Internet.

27 ~~Section 709. Transcripts prepared by court reporter or other~~ <—

28 ~~transcriber.~~

29 SECTION 709. TRANSCRIPTS OF HEARINGS AND ADMINISTRATIVE <—

30 PROCEEDINGS.

1 Chapter 9. State-Related Institutions

2 Section 901. Reporting.

3 Section 902. Contents of report.

4 Section 903. Copies and posting.

5 Chapter 21. Miscellaneous Provisions

6 Section 2101. Applicability.

7 Section 2102. Repeals.

8 Section 2103. Effective date.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 CHAPTER 1

12 PRELIMINARY PROVISIONS

13 Section 101. Short title.

14 This act shall be known and may be cited as the Open Records  
15 Act.

16 Section 102. Legislative findings.

17 The General Assembly finds and declares as follows:

18 (1) The free flow of information between State  
19 Government and its citizens is essential to the continued  
20 growth and success of the democratic process, and access to  
21 public records enables citizens to be informed about the  
22 official business of public officials and public employees  
23 and the activities of government agencies.

24 (2) Access to public records should be balanced against  
25 the protection of personal privacy rights and ensuring the  
26 public safety and welfare of this Commonwealth and its  
27 citizens, as all are vital to the preservation and  
28 functioning of the democratic process.

29 (3) Access to information on the appropriation,  
30 expenditure and investment of public money is important to

1 encourage public oversight of its government.

2 (4) Access to information about the conduct and  
3 activities of public officials, public employees and  
4 government agencies assists the public in understanding its  
5 government, monitoring its government and making informed  
6 judgments about how to exercise its political power.

7 (5) Government has a duty to preserve the physical  
8 integrity of public records for purposes of public access.

9 (6) Technological advances have resulted in new ways to  
10 create, store and use public records and necessitate rules  
11 regarding access to public records to make information  
12 available to the public and rules to provide guidance to  
13 public officials and public employees charged with the  
14 responsibility of making public records accessible.

15 Section 103. Definitions.

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

19 "Administrative proceeding." A proceeding by an agency the  
20 outcome of which is required to be based on a record or  
21 documentation prescribed by law or in which law or regulation is  
22 particularized in application to individuals. The term includes  
23 an appeal.

24 "Agency." A Commonwealth agency, a local agency or a  
25 legislative agency.

26 "Commonwealth agency." An executive agency, an independent  
27 agency or a State-affiliated entity. The term includes a  
28 committee created by an executive agency, an independent agency  
29 or a State-affiliated entity which is authorized to render  
30 advice or to take official action on behalf of the executive

1 agency, an independent agency or a State-affiliated entity.

2 "Compliance officer." The person designated by an agency  
3 head to respond to open records requests made pursuant to this  
4 act.

5 "Executive agency." The Governor and the departments,  
6 boards, commissions, authorities and other officers and agencies  
7 of the Commonwealth. The term does not include any court or  
8 other officer or agency of the unified judicial system, the  
9 General Assembly and its officers and agencies or any  
10 independent agency or State-affiliated entity.

11 "Independent agency." Boards, commissions and other agencies  
12 and officers of the Commonwealth which are not subject to the  
13 policy supervision and control of the Governor. The term  
14 includes the Office of Attorney General, the Department of the  
15 Auditor General, and the Treasury Department. The term does not  
16 include any State-affiliated entity, any court or other officer  
17 or agency of the unified judicial system, the General Assembly  
18 and its officers and agencies, any State-related institution,  
19 political subdivision or any local, regional or metropolitan  
20 transportation authority.

21 "Intellectual property." The term includes all of the  
22 following:

23 (1) An idea, invention, process, program, data, formula,  
24 patent, license, copyright, trademark or trade secret as  
25 defined under 12 Pa.C.S. § 5302 (relating to definitions).

26 (2) An application, right or registration relating to  
27 any idea, invention, process, program, data, formula, patent,  
28 license, copyright, trademark or trade secret as defined  
29 under 12 Pa.C.S. § 5302.

30 "Judicial agency." The term includes:

- 1 (1) The Pennsylvania Supreme Court.
- 2 (2) The Superior Court of Pennsylvania.
- 3 (3) The Commonwealth Court of Pennsylvania.
- 4 (4) Each court of common pleas.
- 5 (5) The Administrative Office of the Pennsylvania
- 6 Courts.
- 7 (6) Any office or subordinate unit created by an entity
- 8 in paragraph (1), (2), (3), (4) or (5).
- 9 "Legislative agency." The term includes:
- 10 (1) The Senate of Pennsylvania.
- 11 (2) The ~~Republican and Democratic~~ POLITICAL PARTY <—
- 12 Caucuses of the Senate of Pennsylvania.
- 13 (3) The Pennsylvania House of Representatives.
- 14 (4) The ~~Republican and Democratic~~ POLITICAL PARTY <—
- 15 Caucuses of the Pennsylvania House of Representatives.
- 16 (5) The Capitol Preservation Committee.
- 17 (6) The Center for Rural Pennsylvania.
- 18 (7) The Joint Legislative Air and Water Pollution
- 19 Control and Conservation Committee.
- 20 (8) The Joint State Government Committee.
- 21 (9) The Legislative Budget and Finance Committee.
- 22 (10) The Legislative Data Processing Committee.
- 23 (11) The Independent Regulatory Review Commission.
- 24 (12) The Legislative Reference Bureau.
- 25 (13) The Local Government Commission.
- 26 (14) The Pennsylvania Commission on Sentencing.

27 "Local agency." The term includes:

- 28 (1) A political subdivision, including any intermediate
- 29 unit or public trade or vocational school and any department,
- 30 office, board or other subordinate unit created under and

1 subject to the policy supervision and control of the  
2 political subdivision.

3 (2) Any local, intergovernmental, regional or municipal  
4 agency, authority, council, board, commission or other  
5 governmental entity created by one or more political  
6 subdivisions, whether or not such authority is subject to the  
7 policy supervision and control of the political subdivision  
8 or subdivisions.

9 (3) An entity of a political subdivision created for the  
10 purpose of performing a governmental function. For purposes  
11 of this paragraph, the term "governmental function" includes  
12 services or functions which are usually, or have previously  
13 been, performed by a political subdivision prior to the  
14 performance of such services or functions by an entity for  
15 the benefit of the public.

16 (4) An entity contracted by a political subdivision to  
17 perform a governmental function, but only insofar as the  
18 entity's records regarding the contracted governmental  
19 function are concerned. With respect to records unrelated to  
20 the entity's performance of the governmental function, the  
21 entity shall not be considered a local agency.

22 (5) Any school board or board of education.

23 (6) Any committee created by an entity under paragraph  
24 (1), (2), (3), (4) or (5), which is authorized to render  
25 advice or to take official action on behalf of the entity.

26 "Privilege." The attorney-work product doctrine, the  
27 attorney-client privilege, the doctor-patient privilege, the  
28 executive privilege or any other like privilege or doctrine  
29 recognized by a Federal or Commonwealth court interpreting the  
30 Constitution or laws of this Commonwealth and the United States.

1 The term includes communication between a legislator and a  
2 constituent and all documents related to that communication.

3 "Public official." An elected or appointed official of a  
4 Commonwealth agency, local agency or legislative agency. The  
5 term does not include an employee of an agency.

6 "Public record." A record that has been determined to be  
7 publicly accessible under section 301.

8 "Public records office." The Pennsylvania Public Records  
9 Office established in section 501.

10 "Record." Information regardless of the physical form,  
11 characteristics or means of storage transmission, which is made,  
12 received or retained by an agency. The term includes documents,  
13 papers and letters, maps, books, tapes, photographs, films and  
14 sound recordings and data processed or image-processed  
15 documents.

16 "Social services." Cash assistance and other welfare  
17 benefits, medical, mental and other health care services, drug  
18 and alcohol treatment, adoption services, vocational and  
19 occupational training, education and counseling, workers'  
20 compensation and unemployment compensation services, foster care  
21 services and services for victims of crimes.

22 "State-affiliated entity." A Commonwealth authority or a  
23 Commonwealth entity. The term includes the Pennsylvania Turnpike  
24 Commission, the Pennsylvania Housing Finance Agency, the  
25 Pennsylvania Higher Education Assistance Agency, the  
26 Pennsylvania Municipal Retirement System, the Pennsylvania  
27 Infrastructure Investment Authority, the State Public School  
28 Building Authority, the Pennsylvania Higher Educational  
29 Facilities Authority and the State System of Higher Education.  
30 The term does not include any court or other officer or agency



1 of the unified judicial system, the General Assembly and its  
2 officers and agencies, any State-related institution, political  
3 subdivision or any local, regional or metropolitan  
4 transportation authority.

5 "State-related institution." The Pennsylvania State  
6 University, the University of Pittsburgh, Lincoln University or  
7 Temple University.

8 Section 104. Construction.

9 Nothing in this act is intended to modify, rescind or  
10 supersede any public record retention and disposition schedule  
11 established pursuant to law.

### 12 CHAPTER 3

#### 13 ACCESS TO PUBLIC RECORDS

14 Section 301. Authorization.

15 (a) General rule.--Except as set forth in subsection (b), a <—  
16 AN AGENCY record shall be presumed to be a public record unless <—  
17 an agency determines that it is not publicly accessible under  
18 this act or if any provision under subsection (b) applies. If a  
19 record is determined to be accessible, it shall be made  
20 available by the agency for inspection and copying, subject to  
21 the provisions of this act.

22 (B) EXPENDITURES.--ALL EXPENDITURES MADE BY THE GENERAL <—  
23 ASSEMBLY FOR THE USE OF THE GENERAL ASSEMBLY SHALL BE CONSIDERED  
24 A PUBLIC RECORD.

25 (C) CONTRACTS.--ANY CONTRACT ENTERED INTO BY THE GENERAL  
26 ASSEMBLY SHALL BE CONSIDERED A PUBLIC RECORD AND SHALL INCLUDE A  
27 LISTING OF THOSE INDIVIDUALS, THEIR NAMES AND ADDRESSES, WHO ARE  
28 EXPRESSLY EXECUTING THE CONTRACT.

29 ~~(b)~~ (D) Exceptions.--Subsection (a) does not apply if the <—  
30 record is:

1 (1) prohibited from being disclosed under any other  
2 Federal or State law or regulation;

3 (2) permitted by Federal or State law but the disclosure  
4 of which would result in the loss of Federal or State  
5 funding;

6 (3) prohibited by judicial decree;

7 (4) protected under the free speech or debate clauses  
8 under section 15 of Article II of the Constitution of  
9 Pennsylvania or section 6 of Article I of the Constitution of  
10 the United States;

11 (5) protected by a privilege;

12 (6) prohibited from being disclosed because it is  
13 covered under one or more provisions under section 307; or

14 (7) e-mail.

15 ~~(e)~~ (E) Burden.--For any request of a record which is <—  
16 determined to be publicly inaccessible, the burden shall be on  
17 the agency to show that subsection (b) applies.

18 Section 302. Accessibility.

19 (A) GENERAL RULE.--Subject to the provisions of section 305, <—  
20 an agency shall make a public record accessible during the  
21 agency's regular business hours. A public record shall be  
22 provided to the person requesting access either in paper or in  
23 an electronic format. If access to a public record is routinely  
24 available only by electronic means, the agency shall provide  
25 access to inspect the public record at an office of the agency.

26 (B) INTERNET ACCESS.--THE DEPARTMENT OF COMMUNITY AND <—  
27 ECONOMIC DEVELOPMENT SHALL POST ON ITS WEBSITE A LIST OF  
28 COMMUNITY REVITALIZATION GRANTS BY LEGISLATIVE AND SENATORIAL  
29 DISTRICTS.

30 Section 303. Designation of compliance officer.

1 (a) Commonwealth agencies and local agencies.--Every  
2 Commonwealth agency and local agency shall designate a  
3 compliance officer to respond to requests for access to public  
4 records pursuant to this act.

5 (b) Legislative agencies.--

6 (1) The Secretary of the Senate is designated as the  
7 compliance officer for the Senate.

8 (2) The Chief Clerk of the House of Representatives is  
9 designated as the compliance officer for the House of  
10 Representatives.

11 (3) Each remaining legislative agency listed under  
12 section 103 shall designate a compliance officer.

13 Section 304. Method of request.

14 ~~(a) Form.~~ <—

15 ~~(1) An agency may fulfill oral requests for access to~~  
16 ~~records, which may be reviewed by the compliance officer~~

17 (A) ORAL REQUESTS.--AN AGENCY MAY FULFILL ORAL REQUESTS FOR <—  
18 ACCESS TO RECORDS, WHICH MAY BE REVIEWED BY THE COMPLIANCE  
19 OFFICER designated by the agency under section 303. If the  
20 person making the request wishes to pursue the relief and  
21 remedies provided under this act, the person must make a written  
22 request.

23 ~~(2) A written request for access to records must be~~ <—  
24 ~~submitted in person, by mail, by facsimile or by any other~~

25 (B) REQUESTS IN WRITING.--A WRITTEN REQUEST FOR ACCESS TO <—  
26 RECORDS MUST BE SUBMITTED IN PERSON, BY MAIL, BY FACSIMILE OR BY  
27 ANY OTHER electronic means as provided by the agency. A written  
28 request must be addressed to the governing body or the chief  
29 executive officer of the agency or to the compliance officer  
30 designated by the agency. A written request must identify or

1 describe the records sought with sufficient specificity to  
2 enable the agency to ascertain which records are being requested  
3 and must include the name and address to which the agency should  
4 address its response. Except as otherwise provided by law, a  
5 request need not include an explanation of the reason the  
6 request is made, nor the intended use of the public record  
7 requested. A REQUEST FOR RECORDS SHALL NOT BE DENIED DUE TO <—  
8 BEING ADDRESSED TO AN INCORRECT OFFICIAL OR EMPLOYEE. AN  
9 INCORRECTLY ADDRESSED REQUEST SHALL BE FORWARDED IMMEDIATELY TO  
10 THE PROPER OFFICIAL OR EMPLOYEE.

11 ~~(3) An agency shall not be required to comply with a~~ <—  
12 ~~request which:~~

13 ~~(i) lacks significant specificity and is, thus,~~  
14 ~~overly broad or burdensome; or~~

15 ~~(ii) is adjudged by the compliance officer or by the~~  
16 ~~governing body or the chief executive officer of the~~  
17 ~~agency to be an attempt by the person making the request~~  
18 ~~to harass the agency.~~

19 ~~(b) (Reserved).~~

20 Section 305. Agency response.

21 (a) Action.--

22 (1) Upon receipt of a written request for access to a  
23 record, the agency shall make a good faith effort to  
24 determine if the record requested is one to which public  
25 access is permitted, and the compliance officer shall respond  
26 within ten business days from the date the request. If the  
27 agency fails to respond to the person making the request  
28 within ten business days from the date of the request, the  
29 request for access shall be deemed denied.

30 (2) The agency shall notify the person that:

1 (i) the record is determined to be publicly  
2 accessible and full access will be granted to the public  
3 record;

4 (ii) the record is determined to be publicly  
5 accessible in part and limited access will be granted to  
6 the public record; or

7 (iii) the record is determined to be inaccessible  
8 and access will be denied.

9 (b) Full access.--

10 (1) Except as set forth in paragraph (2), if the agency  
11 determines that the record is accessible in full, the agency  
12 shall provide access to the public record for the person  
13 making the request within 20 business days from the date of  
14 the determination.

15 (2) If the agency determines that compliance with the  
16 request is likely to take longer than ten business days, the  
17 compliance officer shall notify the person making the request  
18 of the expected delay in providing access. If the public  
19 record or records requested are not provided within 20  
20 business days from the date of notice, the request shall be  
21 deemed denied unless the person making the request otherwise  
22 agrees to allow the agency additional time for compliance.

23 (c) Limited access.--

24 (1) Except as set forth in this subsection, if the  
25 agency determines that the record is publicly accessible in  
26 part, the agency shall provide limited access to the record  
27 by the person making the request within 20 business days of  
28 making the determination.

29 (2) The agency may not deny access to the record if the  
30 information which is not subject to access is able to be

1 redacted.

2 (3) If the information which is not subject to access is  
3 an integral part of the record and cannot be separated, the  
4 agency shall redact from the record the information which is  
5 not subject to access and shall grant access to the  
6 information which is subject to access.

7 (4) A request subject to redaction under this subsection  
8 shall be deemed denied only with respect to the information  
9 redacted.

10 (5) If the agency determines that compliance with the  
11 request is likely to take longer than 20 business days, the  
12 compliance officer shall notify the person making the request  
13 of the expected delay due to one of the following reasons:

14 (i) The request requires significant redaction.

15 (ii) Retrieval of a public record stored in a remote  
16 location is required.

17 (iii) Timely response to the request for access  
18 cannot otherwise be accomplished due to good faith and  
19 specified staffing limitations.

20 (iv) Legal review is necessary to determine whether  
21 the record is a public record subject to access.

22 (v) The person making a request refuses to pay the  
23 applicable fee or fees associated with the request.

24 (vi) Exigent or unique circumstances as provided in  
25 section 308(1) or (2) effectively prevent the request  
26 from being granted in a timely fashion.

27 (6) If the access to information is not timely granted  
28 due to a delay under paragraph (5), the request shall be  
29 deemed denied, unless the person making the request otherwise  
30 agrees to allow the agency additional time for compliance.

1 (d) Denials.--

2 (1) If the agency determines that the record is not  
3 accessible, the compliance officer shall timely notify the  
4 person making the request in writing, which notice shall  
5 include:

6 (i) A description of the record requested.

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

13 (iii) The typed or printed name, title, business  
14 address and business telephone number of the compliance  
15 officer.

16 (iv) The date of the response.

17 (v) A description of the procedure under this act to  
18 challenge the denial, including the address of the public  
19 records office and the deadline for appealing the denial.

20 (2) An agency may not deny access to a public record due  
21 to the intended use of the public record by the person making  
22 the request unless otherwise provided by law.

23 (3) AN AGENCY MAY DENY ACCESS TO A PUBLIC RECORD DUE TO <—  
24 THE FAILURE OF THE PERSON MAKING THE REQUEST FOR THE PUBLIC  
25 RECORD TO PAY ANY FEES ASSOCIATED WITH THE REQUEST, WHICH ARE  
26 ASSESSED BY THE AGENCY UNDER SECTION 309.

27 (4) AN AGENCY MAY DENY ACCESS TO A PUBLIC RECORD DUE TO  
28 THE FAILURE OF THE PERSON MAKING THE REQUEST FOR THE PUBLIC  
29 RECORD TO PAY ANY FEES ASSESSED UNDER SECTION 309, WHICH ARE  
30 ASSOCIATED WITH PREVIOUS REQUESTS FOR PUBLIC RECORDS MADE TO

1 THE SAME AGENCY.

2 (e) Expedited requests.--Notwithstanding the maximum times  
3 for compliance specified under this section, if a public record  
4 is requested pursuant to an upcoming meeting subject to 65  
5 Pa.C.S. Ch. 7 (relating to open meetings), the agency shall  
6 establish an expedited process for making the public record  
7 available to the person making the request prior to the open  
8 meeting, EXCEPT THAT THE EXPEDITED PROCESS SHALL NOT REQUIRE AN <—  
9 AGENCY TO PROVIDE ACCESS TO A RECORD PRIOR TO AN OPEN MEETING IF  
10 IT IS NOT PRACTICABLE FOR THE AGENCY TO DO SO. The agency may  
11 require the person making the request to demonstrate the  
12 immediate need for an expedited request.

13 (f) Administrative challenge.--A denial for access to  
14 information made under this chapter by the Commonwealth or local  
15 agency may be appealed by the person making the request to the  
16 public records office in accordance with Chapter 5.

17 (G) TIME LIMITATION.--WHEN AN AGENCY RESPONDS TO AN OPEN <—  
18 RECORDS REQUEST AND THE PERSON MAKING THE REQUEST DOES NOT  
19 RETURN TO THE AGENCY WITHIN 60 DAYS, THE AGENCY SHALL SEND A  
20 WRITTEN NOTICE TO THE PERSON SPECIFYING THAT THE REQUESTED  
21 COPIES WILL BE HELD FOR AN ADDITIONAL 30 DAYS, WITHIN WHICH TIME  
22 THE PERSON MAY RETURN TO THE AGENCY TO PICK UP THE RECORD.  
23 THEREAFTER, THE AGENCY MAY DISPOSE OF ANY COPIES WHICH HAVE NOT  
24 BEEN PICKED UP, AND RETAIN ANY FEES PAID TO DATE.

25 Section 306. Creation of a public record not required.

26 ~~(1) An agency shall make every effort to accommodate a~~ <—  
27 ~~request in the media requested.~~

28 ~~(2) Except as set forth in paragraph (3), when~~  
29 ~~responding to a request for access, an agency shall not be~~  
30 ~~required to:~~



~~(i) create a public record which does not currently exist; or~~

~~(ii) compile, maintain, format or organize a public record in a manner in which the agency does not currently compile, maintain, format or organize the public record.~~

~~(3) Paragraph (2) does not apply to a public record which:~~

~~(i) is stored electronically; and~~

~~(ii) can be compiled, maintained, formatted or organized in a manner requested by a person making the request without placing an unreasonable burden upon an agency.~~

(A) MANNER OF REQUEST.--AN AGENCY SHALL MAKE EVERY EFFORT TO <—  
ACCOMMODATE A REQUEST IN THE MEDIA REQUESTED.

(B) NONEXISTENT DOCUMENTATION.--EXCEPT AS SET FORTH IN  
SUBSECTION (C), WHEN RESPONDING TO A REQUEST FOR ACCESS, AN  
AGENCY SHALL NOT BE REQUIRED TO:

(1) CREATE A PUBLIC RECORD WHICH DOES NOT CURRENTLY  
EXIST; OR

(2) COMPILE, MAINTAIN, FORMAT OR ORGANIZE A PUBLIC  
RECORD IN A MANNER IN WHICH THE AGENCY DOES NOT CURRENTLY  
COMPILE, MAINTAIN, FORMAT OR ORGANIZE THE PUBLIC RECORD.

(C) ELECTRONIC DOCUMENTATION.--SUBSECTION (B) DOES NOT APPLY  
TO A PUBLIC RECORD WHICH:

(1) IS STORED ELECTRONICALLY; AND

(2) CAN BE COMPILED, MAINTAINED, FORMATTED OR ORGANIZED  
IN A MANNER REQUESTED BY A PERSON MAKING THE REQUEST WITHOUT  
PLACING AN UNREASONABLE BURDEN UPON AN AGENCY.

Section 307. Records deemed inaccessible.

(a) Personal and institutional security.--Except to the

1 extent disclosure is otherwise required by law or by this  
2 section, the following records or parts of records pertaining to  
3 personal and institutional security shall be deemed not to be  
4 public records and are exempt from the access requirements of  
5 this chapter:

6 (1) A record the disclosure of which would be reasonably  
7 likely to result in a substantial and demonstrable risk of  
8 physical harm to an individual or endangering the life of an  
9 individual.

10 (2) Any part of a record setting forth all or a portion  
11 of an individual's Social Security number, birth date,  
12 driver's license number, home address, home telephone number,  
13 personal e-mail address, employee number, financial  
14 information other than wage or salary information of an  
15 agency employee, other personal identification number or  
16 other personal information which, if disclosed, would be  
17 reasonably likely to expose the individual to the risk of  
18 identity theft. The exemption under this paragraph relating  
19 to the disclosure of an individual's home address shall not  
20 apply to a public official OR TO ANY FORMER ADDRESS OF A <—  
21 DECEASED PERSON. THE EXEMPTION UNDER THIS PARAGRAPH RELATING  
22 TO THE DISCLOSURE OF AN INDIVIDUAL'S BIRTH DATE SHALL NOT  
23 APPLY TO THE BIRTH DATE OF A DECEASED PERSON.

24 (3) Any part of a record reflecting an individual's  
25 medical, psychiatric or psychological history or disability  
26 status, including evaluation, consultation, diagnosis or  
27 treatment; results of drug tests; enrollment in a health care  
28 program or program designed for participation by persons with  
29 disabilities, including vocational rehabilitation, workers'  
30 compensation and unemployment compensation; or related

1 information which would disclose individually identifiable  
2 health information.

3 (4) With respect to an agency employee and the  
4 employee's personnel file, including:

5 (i) leave requests for reasons of illness, family  
6 illness, civic service, vacation or personal time  
7 requested or granted;

8 (ii) a letter of reference or recommendation  
9 pertaining to the character or qualifications of an  
10 identifiable individual, unless it relates to the  
11 appointment of a person to fill a vacancy in an elected  
12 office or a vacancy in an appointed office requiring  
13 Senate confirmation;

14 (iii) a performance rating or review;

15 (iv) individually identifiable records relating to  
16 an employee other than the name, position, salary, actual  
17 compensation, employment contract, ~~employment related~~ <—  
18 ~~contract or agreement~~ and length of service of an agency  
19 employee;

20 (v) workplace support services program information;

21 (vi) written criticisms of the employee of which the  
22 employee is not aware;

23 (vii) grievance materials, including documents  
24 related to discrimination or sexual harassment; and

25 ~~(viii) information regarding discipline, demotion or~~ <—  
26 ~~discharge, except that a final result of a disciplinary~~  
27 ~~proceeding shall be a public record.~~

28 (VIII) INFORMATION REGARDING THE DETAILS OF AN <—  
29 INVESTIGATION OF OR REASONS FOR DISCIPLINE, DEMOTION OR  
30 DISCHARGE, EXCEPT THAT WHERE ACTION MUST BE TAKEN BY THE

1 AGENCY AT AN OPEN MEETING TO EFFECTUATE DISCIPLINE,  
2 DEMOTION OR DISCHARGE, THE NAME OF THE EMPLOYEE AND THE  
3 FINAL ACTION TAKEN SHALL BE A PUBLIC RECORD.

4 (5) A record or information:

5 (i) identifying an individual who applies for or  
6 receives social services; or

7 (ii) describing or relating to:

8 (A) the type of social services received by an  
9 individual;

10 (B) an application to receive social services,  
11 including a record or information related to an  
12 agency decision to grant, deny, reduce or restrict  
13 benefits, including a quasi-judicial decision of the  
14 agency and the identity of caregivers or others who  
15 provide services to the individual; or

16 (C) eligibility to receive social benefits,  
17 including an individual's income, assets, physical or  
18 mental health, age, disability, family circumstances  
19 and any sort of abuse.

20 (6) A record maintained by an agency in connection with  
21 homeland security, national defense, the military, law  
22 enforcement or another public safety activity based on a  
23 finding by the agency head or designated deputy that  
24 disclosure would be reasonably likely to jeopardize public  
25 safety or preparedness. This paragraph includes public  
26 records the disclosure of which would have a reasonable  
27 likelihood of threatening the public safety by exposing a  
28 vulnerability in preventing, protecting against, mitigating  
29 or responding to a terrorist act; a criticality list  
30 resulting from consequence and vulnerability assessment;

1 antiterrorism measures and plans; counterterrorism measures  
2 and plans; security and response needs assessment; and  
3 infrastructure records that expose vulnerability.

4 (7) Military records maintained by the Pennsylvania  
5 National Guard or Pennsylvania Guard that have been  
6 designated as classified by the appropriate Federal or State  
7 military authority.

8 (8) Any part of a record the disclosure of which creates  
9 a reasonable likelihood of threatening public safety or the  
10 physical security of a building, resource, infrastructure  
11 facility or information storage system. The following shall  
12 apply:

13 (i) Except as set forth under subparagraph (ii),  
14 this paragraph includes:

15 (A) documents, records or data relating to  
16 computer hardware, source files, software and system  
17 networks that could jeopardize computer security  
18 including, but not limited to, exposing a  
19 vulnerability in preventing, protecting against,  
20 mitigating or responding to a terrorist act;

21 (B) lists of infrastructure, key resources and  
22 significant special events, including those defined  
23 by the Federal Government in the National  
24 Infrastructure Protection Plan, which are deemed  
25 critical due to their nature and which result from  
26 risk analysis, threat assessments, consequences  
27 assessments, vulnerability assessments, antiterrorism  
28 protective measures and plans, counter-terrorism  
29 measures and plans and security and response needs  
30 assessments; and

1 (C) building plans or infrastructure public  
2 records that expose or create vulnerability through  
3 disclosure of the location, configuration or security  
4 of critical systems, including public utility  
5 critical systems, such as information technology, and  
6 communication, electrical, structural, fire  
7 suppression, ventilation, water, wastewater, sewage  
8 and gas systems.

9 (ii) Notwithstanding subparagraph (i), the following  
10 are public records and shall be publicly accessible:

11 (A) Simple floor plans or plans showing spatial  
12 arrangements of buildings.

13 (B) Budgetary information concerning the  
14 authorization of public funds to implement public  
15 security plans and arrangements or for the  
16 construction, renovation or repair of public  
17 buildings and infrastructure facilities.

18 (iii) If an agency denies an individual access to a  
19 record listed under subparagraph (ii), it must provide a  
20 general description of the record being withheld and how  
21 disclosure of the record would endanger the life or  
22 safety of any person or create a substantial likelihood  
23 of endangering public safety or the physical security of  
24 a building, infrastructure facility or information  
25 storage system.

26 (9) A record identifying the location of an  
27 archeological or geophysical site or an endangered or  
28 threatened plant or animal species.

29 (10) RECORDS OR PARTS OF RECORDS PERTAINING TO AUDIO  
30 RECORDINGS, TELEPHONE OR RADIO TRANSMISSIONS RECEIVED BY

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1 EMERGENCY DISPATCH PERSONNEL.

2 (b) Investigations.--Except to the extent disclosure is  
3 otherwise required by law or this section, the following records  
4 or parts of records pertaining to investigations shall be deemed  
5 not to be public records and are exempt from the access  
6 requirements of this chapter:

7 (1) As follows:

8 (i) Except as set forth under subparagraph (ii), a  
9 record created or received by any agency in the process  
10 of or resulting in an investigation, including:

11 (A) Investigative materials and complaints made  
12 to the agency.

13 (B) Criminal investigatory reports and victim  
14 records.

15 (C) A record that includes the identity of a  
16 confidential source.

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

19 (E) A record regarding a juvenile, except as  
20 specifically permitted by law.

21 (F) A record which, if disclosed, would:

22 (I) reveal the institution, progress or  
23 result of an investigation by an agency;

24 (II) deprive another person of a right to a  
25 fair trial or an impartial adjudication;

26 (III) constitute an unwarranted invasion of  
27 personal privacy;

28 (IV) disclose an investigative technique or  
29 procedure;

30 (V) prejudice an investigation;

1 (VI) hinder an agency's ability to secure an  
2 arrest, prosecution or administrative, civil or  
3 criminal sanction; or

4 (VII) endanger the life or physical safety  
5 of an individual.

6 (G) Work papers underlying an audit.

7 (H) Audio tapes or transcripts of telephone  
8 calls or radio transmissions received by emergency  
9 dispatch personnel.

10 (I) VIDEO RECORDS PRODUCED BY OR USED IN AN  
11 INVESTIGATION PRIOR TO THE CONCLUSION OF A CRIMINAL  
12 TRIAL.

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13 (ii) Notwithstanding subparagraph (i), the following  
14 are public records and shall be publicly accessible, but  
15 only if their release does not substantially compromise  
16 an investigation as determined by the investigator:

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

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

23 (C) Traffic accident reports and compilations of  
24 data derived from the reports or compilations.

25 (2) Any part of an autopsy record or other official  
26 record of the coroner or medical examiner that is an  
27 audiotape of a postmortem examination or autopsy or a copy,  
28 reproduction or facsimile of AN AUTOPSY REPORT, a photograph, <—  
29 negative or print, including a photograph or videotape of the  
30 body or any portion of the body of a deceased person taken by



1 or for THE CORONER OR the medical examiner at the scene of <—  
2 death or in the course of a postmortem examination or autopsy  
3 made by or caused to be made by the coroner or medical  
4 examiner.

5 (c) Work product.--Except to the extent disclosure is  
6 otherwise required by law or this section, the following records  
7 or parts of records pertaining to personal work product,  
8 academic work product or institutional process to which an  
9 individual has a reasonable expectation of privacy shall be  
10 deemed not to be public records and are exempt from the access  
11 requirements of this chapter:

12 (1) Correspondence and related records by and among a  
13 public official, a public official's staff and an agency.

14 (2) Correspondence and related records between a public  
15 official, a public official's staff or an agency and a  
16 private individual which contains information that the  
17 private individual is not required by law to transmit and  
18 which would constitute a clearly unwarranted invasion of  
19 personal privacy if disclosed.

20 (3) Notes and working papers personally prepared by a  
21 public official or employee of an agency and telephone  
22 messaging slips, routing slips and other materials made by or  
23 for a public official's or an agency employee's personal use  
24 that do not have an official purpose.

25 (4) Electronic mail, if that the electronic mail does  
26 not contain a detailed discussion of the spending of public  
27 money.

28 (5) A record that constitutes intellectual property,  
29 which is submitted to an agency by a commercial enterprise  
30 and which, if disclosed, would cause substantial injury to

1 the competitive position of the subject enterprise including  
2 any document marked as confidential with respect to the  
3 intellectual property. The commercial enterprise submitting  
4 the information must provide a written claim that the  
5 information contains intellectual property regarding the  
6 enterprise and a concise statement of the reasons supporting  
7 the claim. The claim shall be construed as a public record  
8 for purposes of this act.

9 (6) Unpublished lecture notes, unpublished manuscripts,  
10 unpublished articles, creative works in progress and  
11 scholarly correspondence, any of which have been developed,  
12 discovered or received by or on behalf of:

13 (i) any State related institution, community college  
14 or institution within the State System of Higher  
15 Education; or

16 (ii) the faculty, the staff, an employee, a guest  
17 speaker or a student of any State-related institution,  
18 community college or institution within the State System  
19 of Higher Education.

20 (7) Examination questions, scoring keys or answers in an  
21 academic institution, which are requested prior to the final  
22 administration of an examination or which might be used in a  
23 subsequent examination.

24 (8) A record which relates to research or research and  
25 development activities undertaken by an agency in conjunction  
26 with a nongovernmental entity, except that the contract  
27 between the agency and the nongovernmental entity, EXCLUDING <—  
28 PARTS OF THE CONTRACT THAT CONTAIN OR DESCRIBE CONFIDENTIAL  
29 PROPRIETARY INFORMATION OR INFORMATION THAT CONSTITUTES  
30 INTELLECTUAL PROPERTY, shall be a public record.

1           (9) Library and archive circulation and order records  
2     pertaining to identifiable individuals or groups of  
3     individuals.

4           (10) Library archived and museum materials contributed  
5     by private persons, to the extent of any limitations imposed  
6     by the donor as conditions of the contribution.

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

15          (12) Requests from public officials or agency employees  
16     to a legislative agency or the staff of a legislative agency  
17     staff. This paragraph shall not apply to reports produced by  
18     legislative agencies as mandated by statute or directed by  
19     resolution.

20          (13) A record pertaining to strategy and negotiations  
21     with respect to claims, threatened litigation or litigation.

22          (14) A record pertaining to strategy and negotiations  
23     with respect to labor relations or collective bargaining. Any  
24     final or executed contract or agreement between the parties  
25     other than an arbitration award shall be a public record and  
26     shall be publicly accessible.

27          (15) A record, including, but not limited to, a budget  
28     recommendation, legislative proposal or proposed policy  
29     statement of a public official or public official's staff  
30     which would reveal a contemplated policy or course of action

1 before the recommendation, legislative proposal or policy  
2 statement is publicly proposed.

3 (16) An audit, including underlying work papers  
4 developed in the course of the audit, prepared by or for an  
5 agency of its own internal programs or procedures for the  
6 purpose of identifying and improving upon deficiencies in the  
7 delivery of services to the public under the programs or  
8 procedures.

9 (17) A record that reflects internal, pre-decisional  
10 deliberations by and between public officials or agency  
11 employees.

12 (18) Minutes of executive sessions and any record of  
13 discussions held in executive session, except where  
14 authorized and released by the agency or the release of which  
15 is ordered by a court.

16 (19) Documents or records prepared exclusively for any  
17 meeting not subject to 65 Pa.C.S. Ch. 7 (relating to open  
18 meetings).

19 (20) State employment or licensing examination  
20 questions, scoring keys or answers that are requested prior  
21 to the final administration of an examination or which might  
22 be used in a subsequent examination.

23 (21) Draft minutes of any meeting of an agency.

24 (22) TELEPHONE RECORDS THAT IDENTIFY THE CALLER OR THE  
25 PERSON CALLED.

26 (d) General property.--Except to the extent disclosure is  
27 otherwise required by law or this section, the following record  
28 or parts of records pertaining to real estate and tangible  
29 property within the custody and control of the government  
30 generally shall be deemed not to be public records and are

<—

1 exempt from the access requirements of this chapter:

2 (1) The following information regarding donations to  
3 agencies:

4 (i) The identity of an individual who lawfully makes  
5 a donation, if anonymity of the donor is a condition of  
6 the donation, unless the donation is intended for or  
7 restricted to providing remuneration or personal tangible  
8 benefit to a named public official or employee of an  
9 agency or is required to be reported by law.

10 (ii) A list of potential donors compiled by an  
11 agency and used in pursuit of donations.

12 (2) A valuable or rare collection of books or documents  
13 obtained by gift, grant, bequest or devise upon the condition  
14 that public access to the collection be limited.

15 (3) The contents of real estate appraisals, engineering  
16 or feasibility estimates, environmental reviews, audits or  
17 evaluations made for or by an agency relative to the leasing,  
18 acquiring or disposing of real property. This exemption shall  
19 cease to apply to any record once the real property has been  
20 leased, acquired or disposed of.

21 (4) The contents of real estate appraisals, engineering  
22 or feasibility estimates, environmental reviews, audits or  
23 evaluations made for or by an agency relative to prospective  
24 public supply or a construction project. This exemption shall  
25 cease to apply to any record once the decision is made to  
26 proceed with the public supply or construction project.

27 (5) A proposal pertaining to agency procurement or  
28 disposal of supplies, services or construction until award of  
29 the contract; a proposal pertaining to agency leasing,  
30 acquisition or disposition of real property until award of

1 the contract; financial information of a bidder or offeror  
2 requested in an invitation for bids or request for proposals  
3 to demonstrate the bidder's or offeror's economic capability;  
4 a commercial or financial record given in confidence  
5 containing information not otherwise available to the public;  
6 however, the identity of members of agency proposal  
7 evaluation committees established under 62 Pa.C.S. § 513  
8 (relating to competitive sealed proposals) shall become a  
9 public record after the contract is awarded or upon the  
10 rejection of all proposals.

11 (6) A record relating to a communication between an  
12 agency and its insurance carrier, administrative service  
13 organization or risk management office.

14 Section 308. Agency discretion.

15 ~~The following shall apply:~~ <—

16 ~~(1) An agency may deny a request for access due to fire,~~  
17 ~~flood, terrorist act or other disaster, as determined by the~~

18 (A) NATURAL OR MANMADE EMERGENCY.--AN AGENCY MAY DENY A <—  
19 REQUEST FOR ACCESS DUE TO FIRE, FLOOD, TERRORIST ACT OR OTHER  
20 DISASTER, AS DETERMINED BY THE governing body or chief executive  
21 officer of the agency. In the event of a denial under this  
22 paragraph, the agency shall comply with the request when it  
23 determines that the cause for the denial no longer exists.

24 ~~(2) An agency may deny a request for access to~~ <—  
25 ~~historical, ancient or rare records, archives, manuscripts or~~

26 (B) FRAGILE DOCUMENTS.--AN AGENCY MAY DENY A REQUEST FOR <—  
27 ACCESS TO HISTORICAL, ANCIENT OR RARE RECORDS, ARCHIVES,  
28 MANUSCRIPTS OR documents when access may cause physical damage  
29 or irreparable harm to the record, as determined by the  
30 governing body or chief executive officer of the agency. To the

1 extent possible, the contents of any such record requested shall  
2 be made accessible to a person making a request even when the  
3 record is physically unavailable.

4 ~~(3) An agency may exercise its discretion to make any~~ <—  
5 ~~record enumerated under section 307 accessible for inspection~~

6 (C) ADDITIONAL DISCRETION.--AN AGENCY MAY EXERCISE ITS <—  
7 DISCRETION TO MAKY ANY RECORD ENUMERATED UNDER SECTION 307  
8 ACCESSIBLE FOR INSPECTION and copying only if:

9 ~~(i) disclosure of the record is not expressly~~ <—  
10 ~~prohibited by Federal or State law or judicial order; and~~

11 ~~(ii) the governing body or the chief executive~~  
12 ~~officer of a Commonwealth or local agency determines that~~

13 (1) DISCLOSURE OF THE RECORD IS NOT EXPRESSLY PROHIBITED <—  
14 BY FEDERAL OR STATE LAW OR JUDICIAL ORDER; AND

15 (2) THE GOVERNING BODY OR THE CHIEF EXECUTIVE OFFICER OF  
16 A COMMONWEALTH OR LOCAL AGENCY DETERMINES THAT the public  
17 interest favoring access outweighs the individual or agency  
18 interest favoring restriction of access.

19 ~~(4) In the event the agency exercises its discretion to~~ <—  
20 ~~make a record available under this section, then prior to the~~

21 (D) THIRD PARTIES OF INTEREST.--IN THE EVENT THE AGENCY <—  
22 EXERCISES ITS DISCRETION TO MAKE A RECORD AVAILABLE UNDER THIS  
23 SECTION, THEN PRIOR TO THE release of any information which  
24 constitutes confidential or proprietary information related to  
25 intellectual property of a third party, the agency shall give  
26 notice to the third party that provided the document to the  
27 agency and allow the party five business days to object to the  
28 disclosure of the information. The agency shall, within five  
29 business days after receiving the objection, inform the third  
30 party whether it plans to make the records available over the

1 party's objection.

2 Section 309. Fee limitations.

3 (a) Fees.--Unless otherwise provided by law or a regulation  
4 of the public records office or unless waived under this  
5 section, an agency may charge a reasonable fee for the  
6 following:

7 (1) For mailing a public record upon request of the  
8 individual which shall not exceed the actual cost of mailing.

9 (2) For copying a public record, but any fee for  
10 duplication by photocopying, printing from electronic media  
11 or microfilm, copying onto electronic media, transmission by  
12 facsimile or other electronic means and other means of  
13 duplication must be reasonable and based on prevailing fees  
14 for comparable duplication services provided by local copying  
15 services.

16 (3) For compiling or assembling public records, but any  
17 fee for records which must be compiled or assembled from  
18 various sources or formats may be charged only to cover the  
19 actual cost of compiling or assembling the requests  
20 requested.

21 (4) A reasonable fee for official certification of  
22 copies if the certification is made by the person making the  
23 request for the purpose of certifying the public record.

24 (5) If a public record is only maintained electronically  
25 or in other nonpaper media, duplication fees shall be limited  
26 to the lesser of the fee for duplication on paper or the fee  
27 for duplication in the native media as provided under  
28 paragraph (2) unless the person making the request  
29 specifically requests that the public record be duplicated in  
30 the more expensive medium.



1           (6) If an agency offers enhanced electronic access to  
2 public records in addition to making the public records  
3 accessible for inspection and duplication by a person making  
4 the request as required by this act, the agency may establish  
5 user fees specifically for the provisions of the enhanced  
6 electronic access, but only to the extent that the enhanced  
7 electronic access is in addition to making the public records  
8 accessible for inspection and duplication by a person making  
9 a request as required by this act. The user fees for enhanced  
10 electronic access may be a flat rate, a subscription fee for  
11 a period of time, a per-transaction fee, a fee based on the  
12 cumulative time of system access or any other reasonable  
13 method and any combination thereof. The user fees for  
14 enhanced electronic access must be reasonable and may not be  
15 established with the intent or effect of excluding persons  
16 from access to public records or duplicates thereof or of  
17 creating profit for the agency.

18       (b) Waiver of fees.--An agency may waive fees for  
19 duplication of a public record, including if:

20           (1) the request results in a document that does not  
21 exceed ten pages;

22           (2) the person making the request duplicates the public  
23 record, if the record remains in the custody and control or  
24 in the physical presence of the agency or a representative  
25 thereof and does not disrupt or unnecessarily infringe upon  
26 the normal working process of the agency;

27           (3) the person making the request cannot afford to pay  
28 the fee and attests or certifies in writing that he or she  
29 cannot afford to pay the fee; or

30           (4) the agency deems it is in the public interest to do

1 so.

2 (c) Limitation.--No fee may be imposed for an agency's  
3 review of a record to determine whether the record is a public  
4 record subject to access in accordance with this act.

5 (d) Prepayment.--Prior to granting a request for access in  
6 accordance with this act, an agency may require a person making  
7 a request to prepay a portion of the fees authorized under this  
8 section based on an estimate required to fulfill the request  
9 when such fees are expected to exceed \$100. THE AGENCY MAY  
10 REQUIRE A CERTIFIED CHECK, MONEY ORDER OR OTHER FORM OF VERIFIED  
11 PAYMENT OF FUNDS WHEN REQUIRING OPEN RECORDS REQUEST FEES TO BE  
12 PREPAID.

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## 13 CHAPTER 5

### 14 PUBLIC RECORDS OFFICE

15 Section 501. Pennsylvania Public Records Office.

16 (a) Establishment.--The Pennsylvania Public Records Office  
17 is established within the State Ethics Commission. ~~The Governor,~~  
18 WHICH shall appoint an executive director of the public records  
19 office who shall hire other staff as necessary to operate the  
20 office.

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21 (b) Powers and duties.--The director of the public records  
22 office has the following powers and duties:

23 (1) To receive and respond to requests for information  
24 from persons who have been denied access to public records by  
25 a Commonwealth agency or a local agency under this act.

26 (2) To receive and respond to requests for information  
27 from a Commonwealth agency or local agency regarding  
28 compliance with this act.

29 (3) To order a Commonwealth or local agency to comply  
30 with provisions of this act upon finding that a request for

1 access to a public record was properly made.

2 (4) To issue advisory opinions on compliance with this  
3 act.

4 (5) To request information from Commonwealth agencies  
5 and local agencies in order to make compliance determinations  
6 under this act. All information supplied by a Commonwealth  
7 agency or local agency which is relevant to a request shall  
8 be subject to confidentiality under subsection (c).

9 (6) To guide and oversee the compliance with this act by  
10 all Commonwealth and local agencies.

11 (7) To provide a list to any requesting agency or  
12 individual of Federal and State laws that exempt certain  
13 types of records from disclosure.

14 (8) To make its advisory opinions and written decisions  
15 available for review.

16 (9) To conduct training for public officials, public  
17 employees and third parties relating to the Commonwealth's  
18 access laws with assistance from the Department of Community  
19 and Economic Development's Center for Local Government.

20 (10) To issue a report semi-annually to the General  
21 Assembly and to the Governor, which report shall include, but  
22 not be limited to:

23 (i) The number of requests to review denials from  
24 persons making public record requests.

25 (ii) The number of public record requests which were  
26 determined, upon review of the access office, to have  
27 been improperly denied.

28 (iii) The number of requests made by agencies  
29 seeking clarification on compliance with this act.

30 (iv) The number of orders issued by the public

1 records office directing an agency to comply with this  
2 act.

3 (v) The number of advisory opinions issued by the  
4 access office.

5 (vi) The number of requests for the list of Federal  
6 and State exemptions to public access of records.

7 (vii) The number of training sessions conducted for  
8 public officials, public employees and third parties  
9 relating to public access of records, including the  
10 number of persons attending such training sessions.

11 (11) TO MAKE AVAILABLE IN ELECTRONIC FORM TO PERSONS <—  
12 MAKING REQUESTS FOR PUBLIC RECORDS, EXAMPLES OF PREVIOUS  
13 REQUESTS FOR PUBLIC RECORDS BY OTHER PERSONS AND THE  
14 DOCUMENTS TO WHICH THE OTHER PERSONS WERE GIVEN ACCESS. IN  
15 PERFORMING THIS DUTY, THE OFFICE MAY NOT REVEAL ANY  
16 INFORMATION RELATING TO THE IDENTITY OF THE PERSONS WHO MADE  
17 THE PREVIOUS REQUESTS.

18 ~~(11)~~ (12) To promulgate any regulations necessary to <—  
19 administer this act.

20 (c) Confidentiality.--All information requested by the  
21 public records office from an agency in order to make a  
22 determination of whether an agency is complying with this act  
23 shall remain confidential and shall not be subject to public  
24 access.

25 (d) Fees.--The following shall apply:

26 (1) The public records office may impose a reasonable  
27 filing fee for an appeal made under section 502, and any fees  
28 collected under this subsection shall be deposited in a  
29 restricted account in the General Fund which is established  
30 for the public records office. The money from this account

1 shall be appropriated as necessary for the operation of the  
2 public records office.

3 (2) The public records office may waive the filing fee  
4 if the person requesting access to the public record is  
5 unable to afford the fee based on guidelines established by  
6 the access office.

7 Section 502. Administrative appeals from Commonwealth agencies  
8 and local agencies.

9 (a) General rule.--Notwithstanding any other provision of  
10 law, a party aggrieved by a denial or deemed denial of access to  
11 a public record by a Commonwealth agency or a local agency may,  
12 within 30 days after a request is denied or deemed denied,  
13 appeal to the public records office by forwarding to the office  
14 a copy of the request and the written explanation for the  
15 denial, if any, provided by the Commonwealth agency or local  
16 agency, and requesting a review of the matter.

17 (b) Ruling.--

18 (1) Within 30 business days after receipt of the appeal,  
19 the public records office shall rule either that the denial  
20 or deemed denial of access to the record by the Commonwealth  
21 agency or local agency is upheld or that the decision to deny  
22 access to the record was improper, and the Commonwealth  
23 agency or local agency must provide access to the record. The  
24 public records office may hold a private hearing on the  
25 matter and may review the record.

26 (2) The 30-business-day period may be extended by  
27 agreement of the parties. If the parties do not agree to an  
28 extension or the public records office does not issue a  
29 ruling within 30 business days after the date of the appeal,  
30 the denial from the Commonwealth agency or local agency shall

1 be deemed affirmed.

2 (c) Explanation.--If the public records office upholds the  
3 decision of the Commonwealth agency or local agency to deny  
4 access to the public record, the office shall fully explain in  
5 writing to the person requesting the public record the reason  
6 for the denial. If the public records office rules that the  
7 Commonwealth agency or local agency shall provide access to the  
8 public record, it shall order the Commonwealth agency or local  
9 agency to provide the individual with access to the record and  
10 shall fully explain in writing the reason access must be  
11 provided.

12 (d) Other appeals.--Costs or attorney fees shall not be  
13 awarded under this section for administrative appeal to the  
14 public records office under this section.

15 Section 503. Judicial review.

16 (a) Judicial appeal.--A person aggrieved by a decision of  
17 the public records office or a legislative agency and who has a  
18 direct interest in the record that is the subject of the  
19 decision may, within 30 days after receipt of actual knowledge  
20 of the issuance of the office's order and opinion, appeal the  
21 decision as follows:

22 (1) With respect to the actions of a Commonwealth agency  
23 or a legislative agency, an aggrieved person may file a  
24 petition for review or other document as might be required by  
25 rule of court with the Commonwealth Court.

26 (2) With respect to the actions of a non-Commonwealth  
27 agency, an aggrieved person may file a petition for review or  
28 other document as might be required by rule of court with the  
29 court of common pleas for the county where the non-

30 Commonwealth agency's office or facility is located OR BRING <—

1 AN ACTION IN THE LOCAL MAGISTERIAL DISTRICT.

2 (b) Notice.--All parties in interest shall be served notice  
3 of actions commenced in accordance with subsection (a) and shall  
4 have an opportunity to respond in accordance with the  
5 established rules of the office and applicable court rules, as  
6 appropriate.

7 (c) Record on appeal.--The record before the court under  
8 subsection (a) shall consist of the request, the record before  
9 the office, including the hearing transcript, if any, and the  
10 office's order and opinion. The court, on its own motion, may  
11 augment the record as it sees fit.

12 (d) Scope of review.--The court shall hear an appeal with  
13 respect to a decision of the office without a jury on the record  
14 certified by the office. After hearing, the court shall affirm  
15 the decision of the office unless it finds that the decision is  
16 in violation of the constitutional rights of an aggrieved party,  
17 is not in accordance with law or that any finding of fact made  
18 by the office necessary to support the decision is not supported  
19 by substantial evidence. If the decision is not affirmed, the  
20 court may enter any order authorized by 42 Pa.C.S. § 706  
21 (relating to disposition of appeals).

22 (e) Effect of notice of appeal.--The filing of a notice of  
23 appeal under subsection (a) shall have the effect of staying  
24 access to the records requested if such access has not yet been  
25 made available. If access to the records requested has already  
26 been made available to the requester at the time the notice of  
27 appeal has been filed and if a copy of the notice has been  
28 provided to the requester, the requester shall be required to  
29 keep the contents of the records confidential until the appeal  
30 has been finally disposed of.

1 (f) Training.--Any court may order agency officials and  
2 employees to attend mandatory training sessions conducted by the  
3 office, which shall include testing on compliance with the law.

4 (g) Civil penalty.--If the court finds that an agency or  
5 public official does not promptly comply with a court order  
6 under this act, the agency shall pay a civil penalty of not more  
7 than \$300 per day until the public records are provided. The  
8 civil penalty shall be paid into the restricted account  
9 established in the General Fund under section 501(d).

10 (h) Procedures.--The provisions of 2 Pa.C.S. (relating to  
11 administrative law and procedure) shall not apply to this  
12 section. Within 180 days following the effective date of this  
13 subsection, the office shall adopt procedures for appeals to the  
14 office under this section and shall forward them to the  
15 Legislative Reference Bureau for publication as a notice in the  
16 Pennsylvania Bulletin.

17 Section 504. Penalties, court costs and attorney fees.

18 (a) Grounds for ~~damages~~ PENALTIES AND LEGAL FEES.--

<—

19 (1) If a court finds that an agency intentionally  
20 violated any provision of this chapter, acted in bad faith or  
21 relied upon an unreasonable interpretation of the law in not  
22 providing access to a public record the court may order the  
23 agency to pay a civil penalty of not more than \$500 to be  
24 paid into the restricted account established in the General  
25 Fund under section 501(d)(1).

26 (2) A decision by the office affirming an agency's  
27 denial or deemed denial shall constitute prima facie evidence  
28 that the agency did not act in bad faith or in reliance upon  
29 an unreasonable interpretation of the law.

30 (b) Attorney fees and court costs.--



1           ~~(1) In an action seeking enforcement of rights under~~ <—  
2           ~~this act, the party prevailing in obtaining information or~~  
3           ~~records shall be awarded reasonable attorney fees and court~~  
4           ~~costs by the court.~~

5           (1) IF A COURT REVERSES AN AGENCY'S FINAL DETERMINATION, <—  
6           THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND COSTS OF  
7           LITIGATION OR AN APPROPRIATE PORTION THEREOF TO A REQUESTER  
8           IF THE COURT FINDS EITHER OF THE FOLLOWING:

9                   (I) THE AGENCY WILLFULLY OR WITH WANTON DISREGARD  
10                  DEPRIVED THE REQUESTER OF ACCESS TO A PUBLIC RECORD  
11                  SUBJECT TO ACCESS UNDER THE PROVISIONS OF THIS ACT.

12                  (II) THE EXEMPTIONS, EXCLUSIONS OR DEFENSES ASSERTED  
13                  BY THE AGENCY IN ITS FINAL DETERMINATION WERE NOT BASED  
14                  ON A REASONABLE INTERPRETATION OF LAW.

15           (2) If the court finds that an appeal brought by any  
16           party was frivolous, the court may award the prevailing party  
17           reasonable attorney fees and court costs or an appropriate  
18           portion of such fees and costs.

19           (c) Other appeals.--Costs or attorney fees shall not be  
20           awarded under this section with respect to administrative  
21           appeals to the office under section 503.

22           Section 505. Immunity.

23           (a) General rule.--Except as may be provided in section  
24           504(a)(1) and in other statutes governing the release of  
25           records, no agency, public official or agency employee shall be  
26           liable for civil or criminal damages or penalties resulting from  
27           compliance or failure to comply with this chapter.

28           (b) Schedules.--No agency, public official or agency  
29           employee shall be liable for civil or criminal damages or  
30           penalties under this chapter for complying with any written

1 record retention and disposition schedule.

2 CHAPTER 7

3 ADMINISTRATION AND ENFORCEMENT

4 Section 701. Policies and regulations.

5 (a) Public records office.--The public records office shall  
6 establish written policies prior to promulgating regulations  
7 necessary to implement this act for all Commonwealth and local  
8 agencies subject to this act.

9 (b) Agency policies.--

10 (1) Prior to the promulgation of regulations by the  
11 public records office, an agency may adopt policies to handle  
12 open records requests that are not inconsistent with this  
13 act. Following the promulgation of regulations by the public  
14 records office, agencies shall revise open records policies  
15 that are inconsistent with the regulations.

16 (2) Any agency policy adopted under this section shall,  
17 at a minimum:

18 (i) Identify the principal office of the agency and  
19 its regular office hours.

20 (ii) List the name and business address of the  
21 agency's compliance officer.

22 (iii) Include a schedule of fees adopted by the  
23 agency as permitted by this act.

24 (iv) Specify the procedures to be followed in  
25 requesting records.

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

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

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

3 (d) Posting.--Any public records policy developed by an  
4 agency shall be conspicuously posted at the agency's principal  
5 office and may be made available by electronic means.

6 Section 702. Confidentiality agreements.

7 If an agency received a request for a record that is subject  
8 to a confidentiality agreement executed before the effective  
9 date of this section, the law in effect at the time the  
10 agreement was executed, including judicial interpretation of the  
11 law, shall govern access to the record, unless all parties to  
12 the confidentiality agreement agree in writing that access or  
13 nonaccess to the record shall be governed by this act.

14 Section 703. Practice and procedure.

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

17 Section 704. Access to personal record.

18 Any person shall have access to any public record relating to  
19 the person, or in which the person is mentioned by name, upon  
20 presentation of appropriate identification, subject to the  
21 provisions of this act. Access under this section shall include  
22 limited access under section 305 where appropriate.

23 ~~Section 705. Prohibition against destruction or damage of~~  
24 ~~records.~~

25 ~~(a) Prohibition. Agency records shall not be removed,~~  
26 ~~destroyed, mutilated, transferred or otherwise damaged or~~  
27 ~~disposed of, in whole or in part, except as provided by law~~  
28 ~~under any applicable records retention schedule or under the~~  
29 ~~rules adopted by the public records office. Records shall be~~  
30 ~~delivered by outgoing officials and employees to their~~

~~successors and shall not be otherwise removed, transferred or destroyed unlawfully.~~

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

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

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

~~Section 706. Replevin of public records unlawfully removed.~~

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

~~SECTION 705. (RESERVED).~~

~~SECTION 706. (RESERVED).~~

~~Section 707. Authority not restricted.~~

~~The provisions of this act shall not impair or restrict the~~

1 authority given by other statutes over the creation of records,  
2 systems, forms, procedures or the control over purchases of  
3 equipment by agencies.

4 Section 708. Internet.

5 ~~All agencies shall make all budgets, expense accounts, grants <—~~  
6 ~~and other records related to the expenditure of public funds~~  
7 ~~except for checks, as the term is defined in 13 Pa.C.S. § 3104~~  
8 ~~(relating to negotiable instrument), available on the Internet~~  
9 ~~without a fee or charge.~~

10 (A) AVAILABILITY.--EXCEPT AS PROVIDED IN SUBSECTION (B), <—  
11 EACH AGENCY SHALL MAKE ALL OF THE AGENCY'S BUDGETS, EXPENSE  
12 ACCOUNTS AND GRANTS AND ALL OTHER AGENCY RECORDS RELATED TO THE  
13 EXPENDITURE OF PUBLIC FUNDS EXCEPT FOR CHECKS, AS THE TERM IS  
14 DEFINED UNDER 13 PA.C.S. § 3104 (RELATING TO NEGOTIABLE  
15 INSTRUMENT), AVAILABLE ON THE INTERNET WITHOUT FEE OR CHARGE.

16 (B) INTERNET SITE.--AN AGENCY THAT DOES NOT HAVE A WORLD  
17 WIDE WEB SITE OR OTHER INTERNET SITE ON THE EFFECTIVE DATE OF  
18 THIS SECTION SHALL NOT BE REQUIRED TO COMPLY WITH SUBSECTION (A)  
19 UNTIL THE AGENCY HAS CREATED A WORLD WIDE WEB SITE OR OTHER  
20 INTERNET SITE.

21 ~~Section 709. Transcripts prepared by court reporter or other <—~~  
22 ~~transcriber.~~

23 ~~If a transcript of a hearing or other administrative~~  
24 ~~proceeding is a public record as defined by this act, copies of~~  
25 ~~the transcript shall be provided upon request as follows:~~

26 ~~(1) If prepared by a court reporter or other transcriber~~  
27 ~~who is an employee of an agency, the agency shall provide a~~  
28 ~~copy to the requester in accordance with the provisions of~~  
29 ~~this act.~~

30 ~~(2) If prepared by a court reporter or other transcriber~~

~~under contract with an agency, the agency shall refer a  
requester of that transcript to the court reporter or  
transcriber to obtain a copy of that transcript.~~

SECTION 709. TRANSCRIPTS OF HEARINGS AND ADMINISTRATIVE  
PROCEEDINGS.

TRANSCRIPTS OF HEARINGS AND ADMINISTRATIVE PROCEEDINGS SHALL  
BE DEEMED PUBLIC RECORDS AT THE CONCLUSION OF THE HEARINGS AND  
ADMINISTRATIVE PROCEEDINGS. NOTHING IN THIS ACT SHALL PROHIBIT A  
LITIGANT OR A PARTY TO A HEARING OR ADMINISTRATIVE PROCEEDING OR  
THE LEGAL REPRESENTATIVE OF THE LITIGANT OR PARTY, FROM  
ACQUIRING A FULL TRANSCRIPT OF THE HEARING OR ADMINISTRATIVE  
PROCEEDING WHICH SHALL NOT BE SUBJECT TO REDACTION PRIOR TO OR  
AFTER FINAL ADJUDICATION. AN AGENCY MAY REFER A LITIGANT OR A  
PARTY TO A HEARING OR ADMINISTRATIVE PROCEEDING, OR THE LEGAL  
REPRESENTATIVE OF THE LITIGANT OR PARTY, TO THE COURT REPORTER  
OR OTHER TRANSCRIBER TO OBTAIN A COPY OF THE TRANSCRIPT IF ALL  
OF THE FOLLOWING APPLY:

(1) THE COURT REPORTER OR TRANSCRIBER PREPARED THE  
TRANSCRIPT UNDER CONTRACT WITH THE AGENCY.

(2) THE COURT REPORTER OR TRANSCRIBER IS ABLE TO MAKE  
THE TRANSCRIPTS AVAILABLE WITHIN A REASONABLE TIME AND AT A  
COST WHICH IS REASONABLE AND CUSTOMARY WITHIN THE COURT  
REPORTING INDUSTRY.

(3) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE COURT  
REPORTING OR TRANSCRIBING ENTITY UNDER CONTRACT WITH THE  
AGENCY IS MADE AVAILABLE BY THE AGENCY.

CHAPTER 9

STATE-RELATED INSTITUTIONS

Section 901. Reporting.

No later than 180 days after the close of the fiscal year for

1 which State funds are received, a State-related institution  
2 shall file with the Governor's Office, the General Assembly, the  
3 Auditor General and the State Library the information set forth  
4 in section 902.

5 Section 902. Contents of report.

6 The report required under section 901 shall include all of  
7 the following:

8 (1) All information required by Form 990 or an  
9 equivalent form, of the United States Department of the  
10 Treasury, Internal Revenue Service regardless of whether the  
11 State-related institution is required to file the form by the  
12 Federal Government.

13 (2) The salaries of all officers and directors of the  
14 State-related institution.

15 (3) The highest 25 salaries paid to employees of the  
16 institution that are not included under paragraph (2).

17 Section 903. Copies and posting.

18 A State-related institution shall maintain for at least seven  
19 years a copy of the report in the institution's library and  
20 shall provide free access to the report on the institution's  
21 Internet website.

22 CHAPTER 21

23 MISCELLANEOUS PROVISIONS

24 Section 2101. Applicability.

25 (a) Prospective.--This act shall apply to requests for  
26 information made on or after the effective date of this section.

27 (b) Effect.--With respect to all agencies, application of  
28 this act shall not cause a record in existence on the effective  
29 date of this section to become a public record if it was not  
30 publicly accessible under the former act of June 21, 1957

1 (P.L.390, No.212), referred to as the Right-to-Know Law, except  
2 that a record which reflects current policy of a Commonwealth  
3 agency or local agency and is used or relied upon by an agency  
4 in the course of agency business shall be a public record.

5 (c) Specific designation.--Notwithstanding any other  
6 provision of this act, the General Assembly may provide that a  
7 record in the custody of an agency shall be a public record if  
8 specifically designated by statute.

9 (d) Relation to other judicial actions.--If the provisions  
10 of this chapter regarding access to public records conflict with  
11 any judicial order or decree, the provisions of this chapter  
12 shall not control.

13 Section 2102. Repeals.

14 The following shall apply:

15 (1) The General Assembly declares that the repeal under  
16 paragraph (2) is necessary to effectuate the provisions of  
17 this act.

18 (2) The act of June 21, 1957 (P.L.390, No.212), referred  
19 to as the Right-to-Know Law, is repealed.

20 Section 2103. Effective date.

21 This act shall take effect as follows:

22 (1) The following provisions shall take effect

23 ~~immediately~~ JULY 1, 2008: <—

24 (i) Sections 303, 501(a), (b)(7), (9) and (11), 701,  
25 705, 706 and 707.

26 (ii) This section.

27 (2) The remainder of this act shall take effect ~~in one~~ <—  
28 ~~year~~ JULY 1, 2009, or upon the promulgation of regulations by <—  
29 the public records office under section 501(b)(11), whichever  
30 is earlier.