

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2072 Session of
2007

INTRODUCED BY MAHONEY, GRELL, SHAPIRO, DeWEESE, McCALL, JOSEPHS, BENNINGHOFF, SAMUELSON, KING, HARKINS, GIBBONS, SAYLOR, DALLY, KAUFFMAN, KORTZ, LEACH, DePASQUALE, GALLOWAY, BRENNAN, LONGIETTI, R. TAYLOR, BENNINGTON, McILHATTAN, TRUE, KULA, TANGRETTI, R. STEVENSON, STEIL, BOYD, CARROLL, DALEY, SCAVELLO, MELIO, ARGALL, PETRONE, GEORGE, HORNAMAN, M. O'BRIEN, FREEMAN, FRANKEL, REED, SURRA, RAMALEY, MANN, LEVDANSKY, THOMAS, FABRIZIO, MANDERINO, KOTIK, HARHAI, MUSTIO, GRUCELA, HANNA, McILVAINE SMITH, J. EVANS, COHEN, CALTAGIRONE, HESS, ROAE, HELM AND D. O'BRIEN, NOVEMBER 21, 2007

REFERRED TO COMMITTEE ON STATE GOVERNMENT, NOVEMBER 21, 2007

AN ACT

1 Providing for access to public information, for a designated
2 open-records officer in each Commonwealth agency, local
3 agency, judicial agency and legislative agency, for
4 procedure, for appeal of agency determination, for judicial
5 review and for an Office of Open Records Clearinghouse;
6 imposing penalties; providing for reporting by State-related
7 institutions; requiring the posting of certain State contract
8 information on the Internet; and making related repeals.

9 TABLE OF CONTENTS

10 Chapter 1. Preliminary Provisions

11 Section 101. Short title.

12 Section 102. Definitions.

13 Chapter 3. Requirements and Prohibitions

14 Section 301. Commonwealth agencies.

15 Section 302. Local agencies.

16 Section 303. Legislative agencies.

1 Section 304. Judicial agencies.
2 Section 305. Presumption.
3 Section 306. Nature of document.
4 Chapter 5. Access
5 Section 501. Scope of chapter.
6 Section 502. Open-records officer.
7 Section 503. Appeals officer.
8 Section 504. Regulations and policies.
9 Section 505. Uniform form.
10 Section 506. Requests.
11 Section 507. Retention of records.
12 Chapter 7. Procedure
13 Section 701. Access to public records.
14 Section 702. Requests.
15 Section 703. Written requests.
16 Section 704. Electronic access.
17 Section 705. Creation of record.
18 Section 706. Redaction.
19 Section 707. Production of certain records.
20 Section 708. Exceptions for public records.
21 Chapter 9. Agency Response
22 Section 901. General rule.
23 Section 902. Extension of time.
24 Section 903. Denial.
25 Section 904. Certified copies.
26 Chapter 11. Appeal of Agency Determination
27 Section 1101. Filing of appeal.
28 Section 1102. Appeals officers.
29 Chapter 13. Judicial Review
30 Section 1301. Commonwealth agencies, legislative agencies and

- 1 judicial agencies.
- 2 Section 1302. Local agencies.
- 3 Section 1303. Notice and records.
- 4 Section 1304. Court costs and attorney fees.
- 5 Section 1305. Penalties.
- 6 Section 1306. Immunity.
- 7 Section 1307. Fee limitations.
- 8 Section 1308. Prohibition.
- 9 Section 1309. Practice and procedure.
- 10 Section 1310. Office of Open Records Clearinghouse.
- 11 Chapter 15. State-Related Institutions
- 12 Section 1501. Definition.
- 13 Section 1502. Reporting.
- 14 Section 1503. Contents of report.
- 15 Section 1504. Copies and posting.
- 16 Chapter 17. State Contract Information
- 17 Section 1701. Submission and retention of contracts.
- 18 Section 1702. Public availability of contracts.
- 19 Chapter 31. Miscellaneous Provisions
- 20 Section 3101. Applicability.
- 21 Section 3102. Repeals.
- 22 Section 3103. Effective date.

23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 CHAPTER 1

26 PRELIMINARY PROVISIONS

27 Section 101. Short title.

28 This act shall be known and may be cited as the Right-to-Know
29 Law.

30 Section 102. Definitions.

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

4 "Agency." A Commonwealth agency, a local agency, a judicial
5 agency or a legislative agency.

6 "Aggregated data." A tabulation of data which relate to
7 broad classes, groups or categories so that it is not possible
8 to distinguish the properties of individuals within those
9 classes, groups or categories.

10 "Appeals officer." As follows:

11 (1) For a Commonwealth agency or a local agency, the
12 appeals officer designated under section 503(a).

13 (2) For a judicial agency, the individual designated
14 under section 503(b).

15 (3) For a legislative agency, the individual designated
16 under section 503(c).

17 "Clearinghouse." The Office of Open Records Clearinghouse
18 established pursuant to the provisions of section 1310.

19 "Commonwealth agency." Any of the following:

20 (1) Any office, department, authority, board, multistate
21 agency or commission of the executive branch; an independent
22 agency; and a State-affiliated entity. The term includes:

23 (i) The Governor's Office.

24 (ii) The Office of Attorney General, the Department
25 of the Auditor General and the Treasury Department.

26 (iii) A statutorily established organization which
27 performs or is intended to perform an essential
28 governmental function.

29 (2) The term does not include a judicial or legislative
30 agency.

1 "Confidential proprietary information." Commercial or
2 financial information received by an agency:

3 (1) which is privileged or confidential; and

4 (2) the disclosure of which would cause substantial harm
5 to the competitive position of the person that submitted the
6 information.

7 "Financial record." Includes:

8 (1) Any account, voucher or contract dealing with:

9 (i) the receipt or disbursement of funds by an
10 agency; or

11 (ii) an agency's acquisition, use or disposal of
12 services, supplies, materials, equipment or property.

13 (2) The salary or other payments or expenses paid to an
14 officer or employee of an agency, including the name and
15 title of the officer or employee.

16 (3) Results of a financial audit.

17 "Homeland security." Governmental actions designed to
18 prevent, detect, respond to and recover from acts of terrorism,
19 major disasters and other emergencies, whether natural or
20 manmade. The term includes activities relating to the following:

21 (1) emergency preparedness and response, including
22 preparedness and response activities by volunteer medical,
23 police, emergency management, hazardous materials and fire
24 personnel;

25 (2) intelligence activities;

26 (3) critical infrastructure protection;

27 (4) border security;

28 (5) ground, aviation and maritime transportation
29 security;

30 (6) biodefense;

1 (7) detection of nuclear and radiological materials; and

2 (8) research on next-generation securities technologies.

3 "Independent agency." Any board, commission or other agency
4 or officer of the Commonwealth, that is not subject to the
5 policy supervision and control of the Governor. The term does
6 not include a legislative or judicial agency.

7 "Judicial agency." A court of the Commonwealth or any other
8 entity or office of the unified judicial system.

9 "Legislative agency." Any of the following:

10 (1) The Senate.

11 (2) Political party caucuses of the Senate.

12 (3) The House of Representatives.

13 (4) Political party caucuses of the House of
14 Representatives.

15 (5) The Capitol Preservation Committee.

16 (6) The Center for Rural Pennsylvania.

17 (7) The Joint Legislative Air and Water Pollution
18 Control and Conservation Committee.

19 (8) The Joint State Government Commission.

20 (9) The Legislative Budget and Finance Committee.

21 (10) The Legislative Data Processing Committee.

22 (11) The Independent Regulatory Review Commission.

23 (12) The Legislative Reference Bureau.

24 (13) The Local Government Commission.

25 (14) The Pennsylvania Commission on Sentencing.

26 "Legislative record." Any of the following relating to a
27 legislative agency:

28 (1) A financial record.

29 (2) A bill or resolution that has been introduced and
30 amendments offered thereto in committee or in legislative

1 session, including resolutions to adopt or amend the rules of
2 a chamber.

3 (3) Fiscal notes.

4 (4) A cosponsorship memorandum.

5 (5) The journal of a chamber.

6 (6) The minutes of a public committee meeting.

7 (7) The transcript of a public hearing when available.

8 (8) The record of attendance of members at a public
9 committee meeting or a public hearing.

10 (9) The rules of a chamber.

11 (10) A record of all recorded votes taken in a public
12 committee meeting or legislative session.

13 (11) Any administrative staff manuals or written
14 policies.

15 (12) An audit prepared pursuant to the act of June 30,
16 1970 (P.L.442, No.151) entitled, "An act implementing the
17 provisions of Article VIII, section 10 of the Constitution of
18 Pennsylvania, by designating the Commonwealth officers who
19 shall be charged with the function of auditing the financial
20 transactions after the occurrence thereof of the Legislative
21 and Judicial branches of the government of the Commonwealth,
22 establishing a Legislative Audit Advisory Commission, and
23 imposing certain powers and duties on such commission."

24 (13) Final or annual reports required by law to be
25 submitted to the General Assembly.

26 (14) Legislative Budget and Finance Committee reports.

27 (15) Marked calendars.

28 (16) A record communicating to an agency the official
29 appointment or removal of a legislative appointee.

30 (17) A record communicating the resignation of a

1 legislative appointee to the appointing authority.

2 "Local agency." Any of the following:

3 (1) Any political subdivision, intermediate unit,
4 charter school or public trade or vocational school.

5 (2) Any local, intergovernmental, regional or municipal
6 agency, authority, council, board, commission or similar
7 governmental entity.

8 "Personal financial information." An individual's personal
9 credit, charge or debit card information; bank account
10 information; bank, credit or financial statements; account or
11 PIN numbers and other information relating to an individual's
12 personal finances.

13 "Privilege." The attorney-work product doctrine, the
14 attorney-client privilege, the doctor-patient privilege or other
15 privilege recognized by a court interpreting the laws of this
16 Commonwealth.

17 "Public record." A record of a Commonwealth or local agency
18 that:

19 (1) is not exempt under section 708;

20 (2) is not exempt from being disclosed under any other
21 Federal or State law or regulation or judicial order or
22 decree; or

23 (3) is not protected by a privilege.

24 "Record." Information, regardless of physical form or
25 characteristics, that documents a transaction or activity of an
26 agency and that is created, received or retained pursuant to law
27 or in connection with a transaction, business or activity of the
28 agency. The term includes a document, paper, letter, map, book,
29 tape, photograph, film or sound recording, information stored or
30 maintained electronically and a data-processed or image-

1 processed document. The term includes a financial record, a
2 legislative record and a public record.

3 "Requester." A person that is a resident of the United
4 States and requests a record pursuant to this act. The term
5 includes a political subdivision.

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

9 "Social services." Cash assistance and other welfare
10 benefits, medical, mental and other health care services, drug
11 and alcohol treatment, adoption services, vocational and
12 occupational training, education services, counseling services,
13 workers' compensation services and unemployment compensation
14 services, foster care services and services for victims of
15 crimes.

16 "State-affiliated entity." A Commonwealth authority or
17 Commonwealth entity. The term includes the Pennsylvania Higher
18 Education Assistance Agency, the Pennsylvania Housing Finance
19 Agency, the Pennsylvania Municipal Retirement Board, the State
20 System of Higher Education, a community college, the
21 Pennsylvania Turnpike Commission, the Pennsylvania Public
22 Utility Commission, the Pennsylvania Infrastructure Investment
23 Authority, the State Public School Building Authority, the
24 Pennsylvania Interscholastic Athletic Association and the
25 Pennsylvania Educational Facilities Authority. The term does not
26 include a State-related institution.

27 "Terrorist act." A violent or life-threatening act that
28 violates the criminal laws of the United States or any state and
29 appears to be intended to:

30 (1) intimidate or coerce a civilian population;

- 1 (2) influence the policy of a government; or
2 (3) affect the conduct of a government by mass
3 destruction, assassination or kidnapping.

4 "Trade secret." Information, including a formula, drawing,
5 pattern, compilation, including a customer list, program,
6 device, method, technique or process that:

7 (1) derives independent economic value, actual or
8 potential, from not being generally known to and not being
9 readily ascertainable by proper means by other persons who
10 can obtain economic value from its disclosure or use; and

11 (2) is the subject of efforts that are reasonable under
12 the circumstances to maintain its secrecy.

13 The term includes data processing software obtained by an agency
14 under a licensing agreement prohibiting disclosure.

15 CHAPTER 3

16 REQUIREMENTS AND PROHIBITIONS

17 Section 301. Commonwealth agencies.

18 (a) Requirement.--A Commonwealth agency shall provide public
19 records in accordance with this act.

20 (b) Prohibition.--A Commonwealth agency may not deny a
21 requester access to a public record due to the intended use of
22 the public record by the requester.

23 Section 302. Local agencies.

24 (a) Requirement.--A local agency shall provide public
25 records in accordance with this act.

26 (b) Prohibition.--A local agency may not deny a requester
27 access to a public record due to the intended use of the public
28 record by the requester.

29 Section 303. Legislative agencies.

30 (a) Requirement.--A legislative agency shall provide

1 legislative records in accordance with this act.

2 (b) Prohibition.--A legislative agency may not deny a
3 requester access to a legislative record due to the intended use
4 of the legislative record by the requester.

5 Section 304. Judicial agencies.

6 (a) Requirement.--A judicial agency shall provide financial
7 records in accordance with this act.

8 (b) Prohibition.--A judicial agency may not deny a requester
9 access to a financial record due to the intended use of the
10 financial record by the requester.

11 Section 305. Presumption.

12 (a) Records in possession of Commonwealth or local agency.--
13 A record in the possession of a Commonwealth agency or local
14 agency shall be presumed to be a public record unless:

15 (1) the record is exempt under section 708;

16 (2) the record is protected by a privilege; or

17 (3) the record is exempt from disclosure under any other
18 Federal or State law or regulation or judicial order or
19 decree.

20 (b) Legislative records and financial records.--A
21 legislative record in the possession of a legislative agency and
22 a financial record in the possession of a judicial agency shall
23 be presumed to be available to the public unless:

24 (1) the record is exempt under 708(c) or (d);

25 (2) the record is protected by a privilege; or

26 (3) the record is exempt from disclosure under any other
27 Federal or State law or regulation or judicial order or
28 decree.

29 Section 306. Nature of document.

30 Nothing in this act shall supersede or modify the public or

1 confidential nature of a record or document established in
2 Federal or State statute or law, regulation or judicial order or
3 decree.

4 CHAPTER 5

5 ACCESS

6 Section 501. Scope of chapter.

7 This chapter applies to all agencies.

8 Section 502. Open-records officer.

9 (a) Establishment.--

10 (1) An agency shall designate an official or employee to
11 act as the open-records officer.

12 (2) For a legislative agency other than the Senate or
13 the House of Representatives, or a political party caucus of
14 the Senate or the House of Representatives, the open-records
15 officer designated by the Legislative Reference Bureau shall
16 serve as the open-records officer.

17 (b) Functions.--

18 (1) The open-records officer shall receive requests
19 submitted to the agency under this act, direct requests to
20 other appropriate persons within the agency, track the
21 agency's progress in responding to requests and issue interim
22 and final responses under this act.

23 (2) Upon receiving a request for a public record,
24 legislative record or financial record, the open-records
25 officer shall do all of the following:

26 (i) Note the date of receipt on the written request.

27 (ii) Compute the day on which the five-day period
28 under section 901 will expire and make a notation of that
29 date on the written request.

30 (iii) Maintain an electronic or paper copy of a

1 written request, including all documents submitted with
2 the request until the request has been fulfilled. If the
3 request is denied, the written request shall be
4 maintained for 30 days or, if an appeal is filed, until a
5 final determination is issued under section 1101(b) or
6 the appeal is deemed denied.

7 (iv) Create a file for the retention of the original
8 request, a copy of the response, a record of written
9 communications with the requester and a copy of other
10 communications.

11 Section 503. Appeals officer.

12 (a) Commonwealth agencies and local agencies.--Except as
13 provided in subsection (d), the clearinghouse established under
14 section 1310 shall designate an appeals officer under section
15 1101(a)(2) for all:

16 (1) Commonwealth agencies; and

17 (2) local agencies.

18 (b) Judicial agencies.--A judicial agency shall designate an
19 appeals officer to hear appeals under Chapter 11.

20 (c) Legislative agencies.--

21 (1) Except as set forth in paragraph (2), the
22 Legislative Reference Bureau shall designate an appeals
23 officer to hear appeals under Chapter 11 for all legislative
24 agencies.

25 (2) Each of the following shall designate an appeals
26 officer to hear appeals under Chapter 11:

27 (i) The Senate.

28 (ii) The House of Representatives.

29 (iii) A political party caucus of the Senate or the
30 House of Representatives.

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

2 (1) The Attorney General, State Treasurer and Auditor
3 General shall each designate an appeals officer to hear
4 appeals under Chapter 11.

5 (2) The district attorney of a county shall designate an
6 appeals officer to hear appeals under Chapter 11 relating to
7 access to criminal investigative records in possession of a
8 local agency of that county. The appeals officer designated
9 by the district attorney shall determine if the record
10 requested is a criminal investigative record.

11 Section 504. Regulations and policies.

12 (a) Authority.--An agency may promulgate regulations, rules
13 or policies necessary for the agency to implement this act,
14 consistent with directives of the clearinghouse. The
15 clearinghouse may promulgate regulations relating to appeals
16 involving a Commonwealth agency or local agency.

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

20 (1) Contact information for the open-records officer.

21 (2) Contact information for the clearinghouse or other
22 applicable appeals officer.

23 (3) A form which may be used to file a request.

24 (4) Rules, regulations, policies and procedures of the
25 agency relating to this act.

26 Section 505. Uniform form.

27 (a) Commonwealth agencies.--The clearinghouse shall develop
28 a uniform form which shall be accepted by all Commonwealth and
29 local agencies in addition to any form used by the agency to
30 file a request under this act. The uniform form shall be

1 published in the Pennsylvania Bulletin and on the
2 clearinghouse's Internet website.

3 (b) Judicial agencies.--A judicial agency may develop a form
4 to request financial records or may use a form developed by the
5 Administrative Office of Pennsylvania Courts or the
6 clearinghouse.

7 (c) Legislative agencies.--A legislative agency may develop
8 a form to request legislative records or may use the form
9 developed by the clearinghouse.

10 Section 506. Requests.

11 (a) Disruptive requests.--

12 (1) An agency may deny a requester access to a record if
13 the requester has made repeated requests for that same record
14 which requests have placed an unreasonable burden on the
15 agency.

16 (2) A denial under this subsection shall not restrict
17 the ability to request a different record.

18 (b) Disaster or potential damage.--

19 (1) An agency may deny a requester access:

20 (i) when timely access is not possible due to fire,
21 flood or other disaster; or

22 (ii) to historical, ancient or rare documents,
23 records, archives and manuscripts when access may, in the
24 professional judgment of the curator or custodian of
25 records, cause physical damage or irreparable harm to the
26 record.

27 (2) To the extent possible, the contents of a record
28 under this subsection shall be made accessible to a requester
29 even when the record is physically unavailable.

30 (c) Agency discretion.--An agency may exercise its

1 discretion to make any otherwise exempt record accessible for
2 inspection and copying under this chapter, if all of the
3 following apply:

4 (1) Disclosure of the record is not prohibited under any
5 of the following:

6 (i) Federal or State law or regulation.

7 (ii) Judicial order or decree.

8 (2) The record is not protected by a privilege.

9 (3) The agency head determines that the public interest
10 favoring access outweighs any individual, agency or public
11 interest that may favor restriction of access.

12 (d) Agency possession.--

13 (1) A public record that is not in the possession of an
14 agency but is in the possession of a party with whom the
15 agency has contracted to perform a governmental function on
16 behalf of the agency, and which directly relates to the
17 governmental function and is not exempt under section 305,
18 shall be considered a public record of the agency for
19 purposes of this act.

20 (2) Nothing in this act shall be construed to require
21 access to any other record of the party in possession of the
22 public record.

23 (3) A request for a record in the possession of a party
24 other than the agency shall be submitted to the open records
25 officer of the agency. Upon a determination to grant the
26 request, the open records officer shall assess the
27 duplication fee established under section 1307(b) and upon
28 collection shall remit the fee to the party in possession of
29 the record if the party duplicated the record.

30 Section 507. Retention of records.

1 Nothing in this act shall be construed to modify, rescind or
2 supersede any record retention disposition schedule of an agency
3 established pursuant to law, regulation, policy or other
4 directive.

5 CHAPTER 7

6 PROCEDURE

7 Section 701. Access to public records.

8 (a) General rule.--Unless otherwise provided by law, a
9 public record, legislative record or financial record shall be
10 accessible for inspection and duplication in accordance with
11 this act. A record being provided to a requester shall be
12 provided in the medium requested if it exists in that medium;
13 otherwise, it shall be provided in the medium in which it
14 exists. Public records, legislative records or financial records
15 shall be available for access during the regular business hours
16 of an agency.

17 (b) Construction.--Nothing in this act shall be construed to
18 require access to any computer of either an agency or individual
19 employee of an agency.

20 Section 702. Requests.

21 Agencies may fulfill informal verbal, written or anonymous
22 verbal or written requests for access to records under this act.
23 In the event that the requester wishes to pursue the relief and
24 remedies provided for in this act, the requester must initiate
25 such relief with a written request.

26 Section 703. Written requests.

27 A written request for access to records may be submitted in
28 person, by mail, by e-mail, by facsimile or, to the extent
29 provided by agency rules, any other electronic means. A written
30 request shall be addressed to the agency head or open-records

1 officer designated pursuant to section 502. A written request
2 should identify or describe the records sought with sufficient
3 specificity to enable the agency to ascertain which records are
4 being requested and shall include the name and address to which
5 the agency should address its response. A written request need
6 not include any explanation of the requester's reason for
7 requesting or intended use of the records.

8 Section 704. Electronic access.

9 (a) General rule.--In addition to the requirements of
10 section 701, an agency may make its records available through
11 any publicly accessible electronic means.

12 (b) Response.--

13 (1) In addition to the requirements of section 701, an
14 agency may respond to a request by notifying the requester
15 that the record is available through publicly accessible
16 electronic means or that the agency will provide access to
17 inspect the record electronically.

18 (2) If the requester is unwilling or unable to access
19 the record electronically, the requester may, within 30 days
20 following receipt of the agency notification, submit a
21 written request to the agency to have the record converted to
22 paper. The agency shall provide the record in printed form
23 within five days of the receipt of the written request for
24 conversion to paper.

25 Section 705. Creation of record.

26 When responding to a request for access, an agency shall not
27 be required to create a record which does not currently exist or
28 to compile, maintain, format or organize a record in a manner in
29 which the agency does not currently compile, maintain, format or
30 organize the record.

1 Section 706. Redaction.

2 If an agency determines that a public record, legislative
3 record or financial record contains information which is subject
4 to access as well as information which is not subject to access,
5 the agency's response shall grant access to the information
6 which is subject to access and deny access to the information
7 which is not subject to access. If the information which is not
8 subject to access is an integral part of the public record,
9 legislative record or financial record and cannot be separated,
10 the agency shall redact from the record the information which is
11 not subject to access, and the response shall grant access to
12 the information which is subject to access. The agency may not
13 deny access to the record if the information which is not
14 subject to access is able to be redacted. Information which an
15 agency redacts in accordance with this subsection shall be
16 deemed a denial under Chapter 9.

17 Section 707. Production of certain records.

18 (a) General rule.--If, in response to a request, an agency
19 produces a record that is not a public record, legislative
20 record or financial record, the agency shall notify any third
21 party that provided the record to the agency, the person that is
22 the subject of the record and the requester.

23 (b) Requests for trade secrets.--An agency shall notify a
24 third party of a request for a record if the third party
25 provided the record and included a written statement signed by a
26 representative of the third party that the record contains a
27 trade secret or confidential proprietary information.

28 Notification shall be provided within five business days of
29 receipt of the request for the record. The third party shall
30 have five business days from receipt of notification from the

1 agency to provide input on the release of the record. The agency
2 shall deny the request for the record or release the record
3 within ten business days of the provision of notice to the third
4 party and shall notify the third party of the decision.

5 (c) Transcripts of hearings and administrative
6 proceedings.--Transcripts of hearings and administrative
7 proceedings shall be deemed public records at the conclusion of
8 the hearings and administrative proceedings. Nothing in this act
9 shall prohibit a litigant or a party to a hearing or
10 administrative proceeding or the legal representative of the
11 litigant or party, from acquiring a full transcript of the
12 hearing or administrative proceeding which shall not be subject
13 to redaction prior to or after final adjudication. An agency may
14 refer a litigant or a party to a hearing or administrative
15 proceeding, or the legal representative of the litigant or
16 party, to the court reporter or other transcriber to obtain a
17 copy of the transcript if all of the following apply:

18 (1) The court reporter or transcriber prepared the
19 transcript under contract with the agency.

20 (2) The court reporter or transcriber is able to make
21 the transcripts available within a reasonable time and at a
22 cost which is reasonable and customary within the court
23 reporting industry.

24 (3) The name, address and telephone number of the court
25 reporting or transcribing entity under contract with the
26 agency is made available by the agency.

27 Section 708. Exceptions for public records.

28 (a) Burden of proof.--

29 (1) The burden of proving that a public record is exempt
30 from public access shall be on the Commonwealth or local

1 agency receiving a request by a preponderance of the
2 evidence.

3 (2) The burden of proving that a legislative record is
4 exempt from public access shall be on the legislative agency
5 receiving a request, by a preponderance of the evidence.

6 (3) The burden of proving that a financial record of a
7 judicial agency is exempt from public access shall be on the
8 judicial agency receiving a request, by a preponderance of
9 the evidence.

10 (b) Exceptions.--In the case of a public record, unless
11 disclosure is otherwise required by law, the following are
12 exempt from access by a requester under this act:

13 (1) A record the disclosure of which:

14 (i) would result in the loss of Federal or State
15 funds by an agency or the Commonwealth; or

16 (ii) would be reasonably likely to result in a
17 substantial and demonstrable risk of physical harm to an
18 individual.

19 (2) A record maintained by an agency in connection with
20 the military, homeland security, national defense, law
21 enforcement or other public safety activity that if disclosed
22 would be reasonably likely to jeopardize or threaten public
23 safety or preparedness or public protection activity or a
24 record that is designated classified by an appropriate
25 Federal or State military authority.

26 (3) A record, the disclosure of which creates a
27 reasonable likelihood of endangering the life, safety or the
28 physical security of a building, public utility, resource,
29 infrastructure, facility or information storage system, which
30 may include:

1 (i) documents or data relating to computer hardware,
2 source files, software and system networks that could
3 jeopardize computer security by exposing a vulnerability
4 in preventing, protecting against, mitigating or
5 responding to a terrorist act;

6 (ii) lists of infrastructure, resources and
7 significant special events, including those defined by
8 the Federal Government in the National Infrastructure
9 Protections, which are deemed critical due to their
10 nature and which result from risk analysis; threat
11 assessments; consequences assessments; antiterrorism
12 protective measures and plans; counterterrorism measures
13 and plans; and security and response needs assessments;
14 and

15 (iii) building plans or infrastructure records that
16 expose or create vulnerability through disclosure of the
17 location, configuration or security of critical systems,
18 including public utility systems, structural elements,
19 technology, communication, electrical, fire suppression,
20 ventilation, water, wastewater, sewage and gas systems.

21 (4) A record regarding computer hardware, software and
22 networks, including administrative or technical records,
23 which, if disclosed, would be reasonably likely to jeopardize
24 computer security.

25 (5) A record of an individual's medical, psychiatric or
26 psychological history or disability status, including
27 evaluation, consultation, a prescription, diagnosis or
28 treatment; results of tests, including drug tests; enrollment
29 in a health care program or program designed for
30 participation by persons with disabilities, including

1 vocation rehabilitation, workers' compensation and
2 unemployment compensation; or related information that would
3 disclose individually identifiable health information.

4 (6) (i) The following personal identification
5 information:

6 (A) A record containing all or part of an
7 individual's Social Security number; driver's license
8 number; personal financial information of an
9 individual; telephone number or telephone record;
10 personal e-mail address; employee number; other
11 personal identification number.

12 (B) A spouse's name; marital status, beneficiary
13 or dependent information.

14 (ii) Nothing in this paragraph shall preclude the
15 release of the name, position, salary, actual
16 compensation or other payments or expenses, employment
17 contract or agreement and length of service of a public
18 official or an agency employee.

19 (iii) An agency may redact the name or other
20 identifying information relating to an individual
21 performing an undercover or covert law enforcement
22 activity from a record.

23 (7) The following records relating to an agency
24 employee:

25 (i) A letter of reference or recommendation
26 pertaining to the character or qualifications of an
27 identifiable individual, unless it was prepared in
28 relation to the appointment of an individual to fill a
29 vacancy in an elected office or an appointed office
30 requiring Senate confirmation.

1 (ii) A performance rating or review.

2 (iii) The result of a civil service or similar test
3 administered by a Commonwealth agency, legislative agency
4 or judicial agency. The result of a civil service or
5 similar test administered by a local agency shall not be
6 disclosed if restricted by a collective bargaining
7 agreement. Only test scores of individuals who obtained a
8 passing score on a test administered by a local agency
9 may be disclosed.

10 (iv) The employment application of an individual who
11 is not hired by the agency.

12 (v) Workplace support services program information.

13 (vi) Written criticisms of an employee.

14 (vii) Grievance material, including documents
15 related to discrimination or sexual harassment.

16 (viii) (A) Information regarding discipline,
17 demotion or discharge contained in a personnel file.

18 (B) This subparagraph shall not apply to the
19 final action of an agency that results in demotion or
20 discharge.

21 (8) (i) A record pertaining to strategy or negotiations
22 relating to labor relations or collective bargaining or
23 arbitration award.

24 (ii) This paragraph does not apply to any final or
25 executed contract or agreement or arbitration award
26 between the parties.

27 (9) The draft of a bill, resolution, regulation,
28 statement of policy, management directive, ordinance or
29 amendment thereto prepared by or for an agency.

30 (10) (i) A record that reflects:

1 (A) The internal, predecisional deliberations of
2 an agency, its members, employees or officials or
3 predecisional deliberations between agency members,
4 employees or officials and members, employees or
5 officials of another agency, including predecisional
6 deliberations relating to a budget recommendation,
7 legislative proposal, legislative amendment,
8 contemplated or proposed policy or course of action
9 or any research, memos or other documents used in the
10 predecisional deliberations.

11 (B) The strategy to be used to develop or
12 achieve the successful adoption of a budget,
13 legislative proposal or regulation.

14 (ii) This paragraph applies to:

15 (A) The Governor's Office, the head of a
16 Commonwealth agency and the staff of the Governor or
17 agency.

18 (B) The chief executive officer or governing
19 body of a local agency, or a member or staff of the
20 local agency prior to the presentation of the
21 decision, policy, proposal or course of action to a
22 quorum of the governing body.

23 (iii) This paragraph does not apply to a written
24 application or other document used to request
25 Commonwealth funds.

26 (11) A record that constitutes or reveals a trade secret
27 or confidential proprietary information.

28 (12) Notes and working papers prepared by or for a
29 public official or agency employee used solely for that
30 official's or employee's own personal use, including

1 telephone message slips, routing slips and other materials
2 that do not have an official purpose.

3 (13) Records that would disclose the identity of an
4 individual who lawfully makes a donation to an agency unless
5 the donation is intended for or restricted to providing
6 remuneration or personal tangible benefit to a named public
7 official or employee of the agency, including lists of
8 potential donors compiled by an agency to pursue donations,
9 donor profile information or personal identifying information
10 relating to a donor.

11 (14) Unpublished lecture notes, unpublished manuscripts,
12 unpublished articles, creative works in progress, research-
13 related material and scholarly correspondence of a community
14 college or an institution of the State System of Higher
15 Education or a faculty member, staff employee, guest speaker
16 or student thereof.

17 (15) Examination questions, scoring keys or answers to
18 an examination.

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

21 (i) Complaints of potential criminal conduct other
22 than a private criminal complaint.

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

25 (iii) A record that includes the identity of a
26 confidential source or the identity of a suspect who has
27 not been charged with an offense to whom confidentiality
28 has been promised.

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

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

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

5 (A) Reveal the institution, progress or result
6 of a criminal investigation, except the filing of
7 criminal charges.

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

10 (C) Impair the ability to locate a defendant or
11 codefendant.

12 (D) Hinder an agency's ability to secure an
13 arrest, prosecution or conviction.

14 (E) Endanger the life or physical safety of an
15 individual.

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

18 (i) Complaints submitted to an agency.

19 (ii) Investigative materials, notes, correspondence
20 and reports.

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

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

27 (v) Work papers underlying an audit.

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

30 (A) Reveal the institution, progress or result

1 of an agency investigation, except the imposition of
2 a fine or civil penalty or the suspension,
3 modification or revocation of a license, permit,
4 registration, certification or similar authorization
5 issued by an agency.

6 (B) Deprive a person of the right to an
7 impartial adjudication.

8 (C) Constitute an unwarranted invasion of
9 privacy.

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

12 (E) Endanger the life or physical safety of an
13 individual.

14 (18) 911 recordings.

15 (19) DNA records.

16 (20) An autopsy record of a coroner or medical examiner
17 and any audiotape of a postmortem examination or autopsy, or
18 a copy, reproduction or facsimile of a photograph, negative
19 or print, including a photograph or videotape of the body or
20 any portion of the body of a deceased person at the scene of
21 death or in the course of a postmortem examination or autopsy
22 taken or made by or caused to be taken or made by the coroner
23 or medical examiner. This exception shall not limit the
24 reporting of the name of the deceased individual, the cause
25 of death and whether the death was caused by criminal
26 activity or criminal negligence in accordance with section
27 1251 of the act of August 9, 1955 (P.L.323, No.130), known as
28 The County Code.

29 (21) Minutes of an executive session and any record of
30 discussions held in executive session.

1 (22) (i) The contents of real estate appraisals,
2 engineering or feasibility estimates, environmental
3 reviews, audits or evaluations made for or by an agency
4 relative to the following:

5 (A) The leasing, acquiring or disposing of real
6 property.

7 (B) The purchase of public supplies or equipment
8 included in the real estate transaction.

9 (C) Construction projects.

10 (ii) This paragraph does not apply once the decision
11 is made to proceed with the lease, acquisition or
12 disposal of real property or the purchase of public
13 supply or construction project.

14 (23) Library and archive circulation and order records
15 of an identifiable individual or groups of individuals.

16 (24) Library archived and museum materials, or valuable
17 or rare book collections or documents contributed by gift,
18 grant, bequest or devise, to the extent of any limitations
19 imposed by the donor as a condition of the contribution.

20 (25) A record identifying the location of an
21 archeological site or an endangered or threatened plant or
22 animal species if not already known to the general public.

23 (26) A proposal pertaining to agency procurement or
24 disposal of supplies, services or construction prior to the
25 award of the contract or prior to the opening and rejection
26 of all bids; financial information of a bidder or offeror
27 requested in an invitation for bid or request for proposals
28 to demonstrate the bidder's or offeror's economic capability;
29 or the identity of members, notes and other records of agency
30 proposal evaluation committees established under 62 Pa.C.S. §

1 513 (relating to competitive sealed proposals).

2 (27) A record or information relating to a communication
3 between an agency and its insurance carrier, administrative
4 service organization or risk management office. This
5 paragraph does not apply to a contract with an insurance
6 carrier, administrative service organization or risk
7 management office or to financial records relating to the
8 provision of insurance.

9 (28) A record or information:

10 (i) identifying an individual who applies for or
11 receives social services;

12 (ii) relating to the following:

13 (A) the type of social services received by an
14 individual;

15 (B) an individual's application to receive
16 social services, including a record or information
17 related to an agency decision to grant, deny, reduce
18 or restrict benefits, including a quasi-judicial
19 decision of the agency and the identity of a
20 caregiver or others who provide services to the
21 individual; or

22 (C) eligibility to receive social benefits,
23 including the individual's income, assets, physical
24 or mental health, age, disability, family
25 circumstances or record of abuse; or

26 (iii) identifying a person that requests assistance
27 or constituent services from a member of the General
28 Assembly.

29 (c) Financial records.--The exceptions set forth in
30 subsection (b)(1), (2), (3), (4) or (5) shall apply to financial

1 records. An agency shall redact that portion of a financial
2 record which would disclose information protected by subsection
3 (b)(6) or disclose the identity of a crime victim, confidential
4 source or an individual performing an undercover or covert law
5 enforcement activity under subsection (b)(16) or (17).

6 (d) Aggregated data.--The exceptions set forth in subsection
7 (b)(1), (2), (3), (4) or (5) shall not apply to aggregated data,
8 maintained or received by an agency.

9 CHAPTER 9

10 AGENCY RESPONSE

11 Section 901. General rule.

12 Upon receipt of a written request for access to a record, an
13 agency shall make a good faith effort to determine if the record
14 requested is a public record, legislative record or financial
15 record and whether the agency has possession, custody or control
16 of the identified record, and to respond as promptly as possible
17 under the circumstances existing at the time of the request. The
18 time for response shall not exceed five business days from the
19 date the written request is received by the agency head or open-
20 records officer for an agency. If the agency fails to send the
21 response within five business days of receipt of the written
22 request for access, the written request for access shall be
23 deemed denied.

24 Section 902. Extension of time.

25 (a) Determination.--Upon receipt of a written request for
26 access, the open-records officer for an agency shall determine
27 if one of the following applies:

28 (1) the request for access requires redaction of a
29 record in accordance with section 706;

30 (2) the request for access requires the retrieval of a

1 record stored in a remote location;

2 (3) a timely response to the request for access cannot
3 be accomplished due to bona fide and specified staffing
4 limitations;

5 (4) a legal review is necessary to determine whether the
6 record is a record subject to access under this act;

7 (5) the requester has not complied with the Commonwealth
8 agency's policies regarding access to records;

9 (6) the requester refuses to pay applicable fees
10 authorized by this act; or

11 (7) the extent or nature of the request precludes a
12 response within the required time period.

13 (b) Notice.--

14 (1) Upon a determination that one of the factors listed
15 in subsection (a) applies, the open-records officer shall
16 send written notice to the requester within five business
17 days of receipt of the request for access under subsection
18 (a).

19 (2) The notice shall include a statement notifying the
20 requester that the request for access is being reviewed, the
21 reason for the review and a reasonable date that a response
22 is expected to be provided. If the date that a response is
23 expected to be provided is in excess of 30 days, following
24 the five business days allowed for in section 901, the
25 request for access shall be deemed denied unless the
26 requester has agreed in writing for an extension to the date
27 specified in the notice.

28 (3) If the requester agrees to the extension, the
29 request shall be deemed denied on the day following the date
30 specified in the notice if the agency has not provided a

1 response by that date.

2 Section 903. Denial.

3 If an agency's response is a denial of a written request for
4 access, whether in whole or in part, a written response shall be
5 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.

9 (3) The typed or printed name, title, business address,
10 business telephone number and signature of the agency head or
11 open-records officer on whose authority the denial is issued.

12 (4) Date of the response.

13 (5) The procedure to appeal the denial of access under
14 this act.

15 Section 904. Certified copies.

16 If an agency's response grants a request for access, the
17 agency shall, upon request, provide the requester with a
18 certified copy of the record if the requester pays the
19 applicable fees pursuant to section 1307.

20 CHAPTER 11

21 APPEAL OF AGENCY DETERMINATION

22 Section 1101. Filing of appeal.

23 (a) Authorization.--

24 (1) If a written request for access is denied or deemed
25 denied, the requester may file an appeal with the
26 clearinghouse or with the appropriate legislative or judicial
27 appeals officer within 15 business days of the mailing date
28 of the agency's response or within 15 business days of a
29 deemed denial. The appeal shall state the grounds upon which
30 the requester asserts that the record is a public record,

1 legislative record or financial record and shall address any
2 grounds stated by the agency for delaying or denying the
3 request.

4 (2) In the case of an appeal of a decision by a
5 Commonwealth agency or local agency, the clearinghouse shall
6 assign an appeals officer to review the denial.

7 (b) Determination.--

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

12 (2) If the appeals officer fails to issue a final
13 determination within 30 days, the appeal is deemed denied.

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

19 (c) Direct interest.--

20 (1) A person other than the agency or requester with a
21 direct interest in the record subject to an appeal under this
22 section may, within 15 calendar days following receipt of
23 actual knowledge of the appeal but no later than the date the
24 appeals officer issues an order, file a written request to
25 provide information or appear before the appeals officer or
26 to file information in support of the requester's or agency's
27 position.

28 (2) The appeals officer may grant the request if:

29 (i) no hearing has been held;

30 (ii) the office has not yet issued its order; and

1 (iii) the appeals officer believes the information
2 will be probative.

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

5 Section 1102. Appeals officers.

6 (a) Scope.--This section applies to all agencies.

7 (b) Duties.--The appeals officer shall do all of the
8 following:

9 (1) Set a schedule for the requester and the open-
10 records officer to submit documents in support of their
11 positions.

12 (2) Review all information filed relating to the
13 request. The appeals officer may hold a hearing. A decision
14 to hold or not to hold a hearing is not appealable. The
15 appeals officer may admit into evidence testimony, evidence
16 and documents that the appeals officer believes to be
17 reasonably probative and relevant to an issue in dispute. The
18 appeals officer may limit the nature and extent of evidence
19 found to be cumulative.

20 (3) Consult with agency counsel as appropriate.

21 (4) Issue a final determination on behalf of the agency.

22 (c) Procedures.--The clearinghouse, a judicial agency or a
23 legislative agency may adopt procedures relating to appeals
24 under this chapter.

25 (1) If an appeal is resolved without a hearing, 1 Pa.
26 Code Pt. II (relating to general rules of administrative
27 practice and procedure) does not apply except to the extent
28 that the clearinghouse, legislative agency or judicial agency
29 has adopted these chapters in its regulations or rules.

30 (2) If a hearing is held, 1 Pa. Code Pt. II shall apply

1 unless the clearinghouse, the judicial agency or the
2 legislative agency has adopted regulations or rules to the
3 contrary.

4 (3) In the absence of a regulation or rule governing
5 appeals under this chapter, the appeals officer shall rule on
6 procedural matters on the basis of justice, fairness and the
7 expeditious resolution of the dispute.

8 CHAPTER 13

9 JUDICIAL REVIEW

10 Section 1301. Commonwealth agencies, legislative agencies and
11 judicial agencies.

12 (a) General rule.--Within 30 days of the mailing date of the
13 final determination of the appeals officer relating to a
14 decision of a Commonwealth agency, a legislative agency or a
15 judicial agency issued under section 1101(b) or the date a
16 request for access is deemed denied, a requester or the agency
17 may file a petition for review or other document as might be
18 required by rule of court with the Commonwealth Court. The
19 decision of the court shall contain findings of fact and
20 conclusions of law based upon the evidence as a whole. The
21 decision shall clearly and concisely explain the rationale for
22 the decision.

23 (b) Stay.--An appeal under this section shall stay the
24 release of documents until a decision under subsection (a) is
25 issued.

26 Section 1302. Local agencies.

27 (a) General rule.--Within 30 days of the mailing date of the
28 final determination of the appeals officer relating to a
29 decision of a local agency issued under section 1101(b) or of
30 the date a request for access is deemed denied, a requester or

1 local agency may file a petition for review or other document as
2 required by rule of court with the court of common pleas for the
3 county where the local agency is located. The decision of the
4 court shall contain findings of fact and conclusions of law
5 based upon the evidence as a whole. The decision shall clearly
6 and concisely explain the rationale for the decision.

7 (b) Stay.--An appeal under this section shall stay the
8 release of documents until a decision under subsection (a) is
9 issued.

10 Section 1303. Notice and records.

11 (a) Notice.--An agency, the requester and the appeals
12 officer shall be served notice of actions commenced in
13 accordance with section 1301 or 1302 and shall have an
14 opportunity to respond in accordance with applicable court
15 rules.

16 (b) Record on appeal.--The record before a court shall
17 consist of the request, the agency's response, the appeal filed
18 under section 1101, the hearing transcript, if any, and the
19 final written determination of the appeals officer.

20 Section 1304. Court costs and attorney fees.

21 (a) Reversal of agency determination.--If a court reverses
22 the final determination of the appeals officer or grants access
23 after a request for access was deemed denied, the court may
24 award reasonable attorney fees and costs of litigation or an
25 appropriate portion thereof to a requester if the court finds
26 either of the following:

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

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

4 (b) Sanctions for frivolous requests or appeals.--The court
5 may award reasonable attorney fees and costs of litigation or an
6 appropriate portion thereof to an agency or the requester if the
7 court finds that the legal challenge under this chapter was
8 frivolous.

9 (c) Other sanctions.--Nothing in this act shall prohibit a
10 court from imposing penalties and costs in accordance with
11 applicable rules of court.

12 Section 1305. Civil penalty.

13 (a) Denial of access.--A court may impose a civil penalty of
14 not more than \$1,000 if an agency denied access to a public
15 record in bad faith.

16 (b) Failure to comply with court order.--An agency or public
17 official who does not promptly comply with a court order under
18 this act is subject to a civil penalty of not more than \$500 per
19 day until the public records are provided.

20 Section 1306. Immunity.

21 (a) General rule.--Except as provided in sections 1304 and
22 1305 and other statutes governing the release of records, no
23 agency, public official or public employee shall be liable for
24 civil or criminal damages or penalties resulting from compliance
25 or failure to comply with this act.

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

30 Section 1307. Fee limitations.

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

3 (b) Duplication.--

4 (1) Fees for duplication by photocopying, printing from
5 electronic media or microfilm, copying onto electronic media,
6 transmission by facsimile or other electronic means and other
7 means of duplication shall be established:

8 (i) by the clearinghouse, for Commonwealth agencies
9 and local agencies;

10 (ii) by each judicial agency; and

11 (iii) by each legislative agency.

12 (2) (i) The fees must be reasonable and based on
13 prevailing fees for comparable duplication services
14 provided by local business entities.

15 (ii) Fees for copying data, collections of data and
16 compiled data, including, but not limited to, geographic
17 information systems and property lists, may be based on
18 consideration of the reasonable market value of same or
19 closely comparable data, collections of data or compiled
20 data.

21 (3) Fees for local agencies may reflect regional price
22 differences.

23 (c) Certification.--An agency may impose reasonable fees for
24 official certification of copies if the certification is at the
25 behest of the requester and for the purpose of legally verifying
26 the public record.

27 (d) Conversion to paper.--If a record is only maintained
28 electronically or in other nonpaper media, duplication fees
29 shall be limited to the lesser of the fee for duplication on
30 paper or the fee for duplication in the original media as

1 provided by subsection (b) unless the requester specifically
2 requests for the record to be duplicated in the more expensive
3 medium.

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

20 (f) Waiver of fees.--An agency may waive the fees for
21 duplication of a record, including, but not limited to, when:

- 22 (1) the requester duplicates the record; or
23 (2) the agency deems it is in the public interest to do
24 so.

25 (g) Limitations.--Except as otherwise provided by statute,
26 no other fees may be imposed unless the agency necessarily
27 incurs costs for complying with the request, and such fees must
28 be reasonable. No fee may be imposed for an agency's review of a
29 record to determine whether the record is a public record,
30 legislative record or financial record subject to access in

1 accordance with this act.

2 (h) Prepayment.--Prior to granting a request for access in
3 accordance with this act, an agency may require a requester to
4 prepay an estimate of the fees authorized under this section if
5 the fees required to fulfill the request are expected to exceed
6 \$100.

7 Section 1308. Prohibition.

8 A policy, rule or regulation adopted under this act may not
9 include any of the following:

10 (1) A limitation on the number of records which may be
11 requested or made available for inspection or duplication.

12 (2) A requirement to disclose the purpose or motive in
13 requesting access to records.

14 Section 1309. Practice and procedure.

15 The provisions of 2 Pa.C.S. (relating to administrative law
16 and procedure) shall not apply to this act unless specifically
17 adopted by rule or regulation.

18 Section 1310. Office of Open Records Clearinghouse.

19 (a) Establishment.--There is hereby established in the
20 Department of Community and Economic Development the Office of
21 Open Records Clearinghouse. The clearinghouse shall do all of
22 the following:

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

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

26 (3) Provide annual training courses to agencies on this
27 act and 65 Pa.C.S. Ch. 7 (relating to open meetings).

28 (4) Provide annual, regional training courses to local
29 agencies.

30 (5) Review appeals of decisions by Commonwealth agencies

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

8 (i) Complete a training course provided by the
9 clearinghouse prior to acting as an appeals officer.

10 (ii) If a hearing is necessary, hold hearings
11 regionally as necessary to ensure access to the remedies
12 provided by this act.

13 (iii) Comply with the procedures under section
14 1102(b).

15 (6) Establish an informal mediation program to resolve
16 disputes under this act.

17 (7) Establish an Internet website with information
18 relating to this act, including advisory opinions and
19 decisions and the name and address of all open records
20 officers in this Commonwealth.

21 (8) Conduct a biannual review of fees charged under this
22 act.

23 (9) Annually report on its activities and findings to
24 the Governor and the General Assembly. The report shall be
25 posted and maintained on the Internet website established
26 under paragraph (7).

27 (b) Executive director.--The Governor shall appoint an
28 executive director of the clearinghouse who shall serve for a
29 term of six years. Compensation shall be set by the Executive
30 Board established under section 204 of the act of April 9, 1929

1 (P.L.177, No.175), known as The Administrative Code of 1929. The
2 executive director may serve no more than two terms.

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

6 (d) Staffing.--The executive director shall appoint
7 attorneys to act as appeals officers and additional clerical,
8 technical and professional staff as may be appropriate and may
9 contract for additional services as necessary for the
10 performance of the executive director's function. The
11 compensation of attorneys and other staff shall be set by the
12 Executive Board.

13 (e) Duties.--The executive director shall ensure that the
14 duties of the clearinghouse are carried out and shall monitor
15 cases appealed to the clearinghouse.

16 (f) Appropriation.--The appropriation for the clearinghouse
17 shall be in a separate line item and shall be under the
18 jurisdiction of the executive director.

19 CHAPTER 15

20 STATE-RELATED INSTITUTIONS

21 Section 1501. Definition.

22 As used in this chapter, "State-related institution" means
23 any of the following:

- 24 (1) Temple University.
- 25 (2) The University of Pittsburgh.
- 26 (3) The Pennsylvania State University.
- 27 (4) Lincoln University.

28 Section 1502. Reporting.

29 No later than May 30 of each year, a State-related
30 institution shall file with the Governor's Office, the General

1 Assembly, the Auditor General and the State Library the
2 information set forth in section 1503.

3 Section 1503. Contents of report.

4 The report required under section 1502 shall include the
5 following:

6 (1) Except as provided in paragraph (4), all information
7 required by Form 990 or an equivalent form, of the United
8 States Department of the Treasury, Internal Revenue Service,
9 entitled the Return of Organization Exempt From Income Tax,
10 regardless of whether the State-related institution is
11 required to file the form by the Federal Government.

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

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

16 (4) The report shall not include information relating to
17 individual donors.

18 Section 1504. Copies and posting.

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

23 CHAPTER 17

24 STATE CONTRACT INFORMATION

25 Section 1701. Submission and retention of contracts.

26 (a) General rule.--Whenever any Commonwealth agency,
27 legislative agency or judicial agency shall enter into any
28 contract involving any property, real, personal or mixed of any
29 kind or description or any contract for personal services where
30 the consideration involved in the contract is \$5,000 or more, a

1 copy of the contract shall be furnished to the Treasury
2 Department within ten days after the contract is executed on
3 behalf of the Commonwealth agency, legislative agency or
4 judicial agency or otherwise becomes an obligation of the
5 Commonwealth agency, legislative agency or judicial agency. The
6 contract provided to the Treasury Department pursuant to this
7 chapter shall be redacted in accordance with applicable
8 provisions of this act by the agency providing the contract to
9 the Treasury Department. The contract provided to the Treasury
10 Department pursuant to this chapter shall be in addition to any
11 copy of the contract provided to the State Treasurer under the
12 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal
13 Code. A contract provided to the State Treasurer, Auditor
14 General or Secretary of Revenue under The Fiscal Code shall be
15 confidential and shall not be subject to this act. The
16 provisions of this chapter shall not apply to contracts for
17 services protected by a privilege. The following shall apply:

18 (1) Each Commonwealth agency, legislative agency and
19 judicial agency shall submit contracts in a form and
20 structure mutually agreed upon by the Commonwealth agency,
21 legislative agency or judicial agency and the State
22 Treasurer.

23 (2) The Treasury Department may require each
24 Commonwealth agency, legislative agency or judicial agency to
25 provide a summary with each contract, which shall include the
26 following:

- 27 (i) Date of execution.
28 (ii) Amount of the contract.
29 (iii) Beginning date of the contract.
30 (iv) End date of the contract, if applicable.

- 1 (v) Name of the agency entering into the contract.
- 2 (vi) All parties to the contract.
- 3 (vii) Subject matter of the contract.

4 Each agency shall create and maintain the data under this
5 paragraph in an ASCII-delimited text format, spreadsheet
6 format or other format provided by regulation.

7 (b) Retention.--Every contract filed pursuant to subsection
8 (a) shall remain on file with the Treasury Department for a
9 period of not less than four years after the end date of the
10 contract.

11 (c) Accuracy.--Each Commonwealth agency, legislative agency
12 and judicial agency is responsible for verifying the accuracy
13 and completeness of the information that it submits to the State
14 Treasurer.

15 Section 1702. Public availability of contracts.

16 (a) General rule.--The Treasury Department shall make each
17 contract filed pursuant to section 1701 available for public
18 inspection either by posting a copy of the contract on the
19 Treasury Department's publicly accessible Internet website or by
20 posting a contract summary on the department's publicly
21 accessible Internet website.

22 (b) Posting.--The Treasury Department shall post the
23 information received pursuant to this chapter in a way that
24 allows the public to search contracts or contract summaries by
25 the categories enumerated in section 1701(a)(2).

26 (c) Request to review or receive copy of contract.--The
27 Treasury Department shall maintain a page on its publicly
28 accessible Internet website with instructions on how to request
29 to review a contract and how to request a copy of a contract.
30 Requests to review or receive a copy of a contract shall be

1 allowed by letter, facsimile or e-mail. Additionally, both
2 requests shall be honored within five days of the submission of
3 the request and in the case of a request for a copy of a
4 contract it shall be provided to the individual at cost. The
5 Treasury Department may offer to provide a copy of the requested
6 contract electronically to the requester at no cost.

7 CHAPTER 31

8 MISCELLANEOUS PROVISIONS

9 Section 3101. Applicability.

10 This act applies as follows:

11 (1) This act shall apply to requests filed after the
12 effective date of this section.

13 (2) Chapter 15 shall apply to fiscal years beginning
14 after June 30, 2008.

15 (3) Chapter 17 shall apply to contracts entered into or
16 renewed after the effective date of this section.

17 (4) Section 3102(1)(ii)(B) shall apply to bids submitted
18 on or after the effective date of this section.

19 Section 3102. Repeals.

20 Repeals are as follows:

21 (1) (i) General Assembly declares that the repeals
22 under subparagraph (ii) are necessary to effectuate this
23 act.

24 (ii) The following acts and parts of acts are
25 repealed:

26 (A) The act of June 21, 1957 (P.L.390, No.212),
27 referred to as the Right-to-Know Law.

28 (B) 62 Pa.C.S. § 106.

29 (2) (i) The General Assembly declares that the repeal
30 under subparagraph (ii) is necessary to effectuate

1 Chapter 17.

2 (ii) Section 1104 of the act of April 9, 1929
3 (P.L.177, No.175), known as The Administrative Code of
4 1929, is repealed.

5 Section 3103. Effective date.

6 This act shall take effect in 180 days or July 1, 2008,
7 whichever is later.