
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1469 Session of
2010

INTRODUCED BY PILEGGI, BAKER, M. WHITE, FONTANA, RAFFERTY,
FOLMER, O'PAKE, ERICKSON, VANCE, COSTA, EARLL, GREENLEAF,
EICHELBERGER AND TOMLINSON, SEPTEMBER 20, 2010

REFERRED TO STATE GOVERNMENT, SEPTEMBER 20, 2010

AN ACT

1 Amending the act of February 14, 2008 (P.L.6, No.3), entitled
2 "An act providing for access to public information, for a
3 designated open-records officer in each Commonwealth agency,
4 local agency, judicial agency and legislative agency, for
5 procedure, for appeal of agency determination, for judicial
6 review and for the Office of Open Records; imposing
7 penalties; providing for reporting by State-related
8 institutions; requiring the posting of certain State contract
9 information on the Internet; and making related repeals,"
10 further providing for definitions, for requests, for access,
11 for written requests, for exceptions for public records, for
12 general rule, for filing of appeal, for appeals officers, for
13 Office of Open Records and for applicability.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The definitions of "independent agency,"
17 "personal financial information" and "State-affiliated entity"
18 in section 102 of the act of February 14, 2008 (P.L.6, No.3),
19 known as the Right-to-Know Law, are amended and the section is
20 amended by adding a definition to read:

21 Section 102. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

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

7 * * *

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; forms required to be filed with or by any taxing
12 authority; and other information relating to an individual's
13 personal finances.

14 * * *

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

1 Authority, the State Public School Building Authority, the
2 Pennsylvania Higher Educational Facilities Authority and the
3 State System of Higher Education. The term does not include any
4 court or other officer or agency of the unified judicial system,
5 the General Assembly and its officers and agencies, any State-
6 related institution, political subdivision or any local,
7 regional or metropolitan transportation authority.

8 * * *

9 "Time response log." A log created, received, maintained, or
10 retained by a public-safety answering point (PSAP) containing
11 the following information:

12 (1) The time the call was received by the PSAP.

13 (2) The time the PSAP contacted or dispatched the
14 appropriate agency for response.

15 (3) The time the appropriate agency responded.

16 (4) The time the appropriate agency arrived on the
17 scene.

18 (5) The time the appropriate agency became available.

19 (6) The address of the incident or the cross street or
20 mile marker nearest the scene of the incident.

21 * * *

22 Section 2. Sections 506, 701 and 703 of the act are amended
23 to read:

24 Section 506. Requests.

25 (a) Disruptive requests.--

26 (1) An agency may deny a requester access to a record if
27 the requester has made repeated requests for that same record
28 and the repeated requests have placed an unreasonable burden
29 on the agency.

30 (2) A denial under this subsection shall not restrict

1 the ability to request a different record.

2 (b) Disaster or potential damage.--

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

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

6 (ii) to historical, ancient or rare documents,
7 records, archives and manuscripts when access may, in the
8 professional judgment of the curator or custodian of
9 records, cause physical damage or irreparable harm to the
10 record.

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

14 (c) Agency discretion.--An agency may exercise its
15 discretion to make any otherwise exempt record accessible for
16 inspection and copying under this chapter, if all of the
17 following apply:

18 (1) Disclosure of the record is not prohibited under any
19 of the following:

20 (i) Federal or State law or regulation.

21 (ii) Judicial order or decree.

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

23 (3) The agency head determines that the public interest
24 favoring access outweighs any individual, agency or public
25 interest that may favor restriction of access.

26 (d) Agency possession.--

27 (1) A [public record] contract between an agency and a
28 business or organization that is not in the possession of an
29 agency but is in the possession of [a party with whom the
30 agency has contracted to perform a governmental function on

1 behalf of the agency, and which directly relates to the
2 governmental function and is not exempt under this act,] the
3 business or organization shall be [considered a] public
4 [record of the agency for purposes of] under this act. This
5 paragraph includes financial records directly relating to the
6 contract.

7 (2) Nothing in this act shall be construed to require
8 access to any other record of the party in possession of the
9 public record.

10 (3) A request for a [public record] contract in
11 possession of a party other than the agency shall be
12 submitted to the open records officer of the agency. Upon a
13 determination that the record is subject to access under this
14 act, the open records officer shall assess the duplication
15 fee established under section 1307(b) and upon collection
16 shall remit the fee to the party in possession of the record
17 if the party duplicated the record.

18 Section 701. Access.

19 (a) General rule.--Unless otherwise provided by law, a
20 public record, legislative record or financial record shall be
21 accessible for inspection and duplication in accordance with
22 this act. A record being provided to a requester shall be
23 provided in the medium or computer file format requested if it
24 exists in that medium or computer file format; otherwise, it
25 shall be provided in the medium in which it exists. Public
26 records, legislative records or financial records shall be
27 available for access during the regular business hours of an
28 agency.

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

1 employee of an agency.

2 Section 703. Written requests.

3 A written request for access to records may be submitted in
4 person, by mail, by e-mail, by facsimile or, to the extent
5 provided by agency rules, by any other electronic means. A
6 written request must be addressed to the open-records officer
7 designated pursuant to section 502 or to the agency head.

8 Employees of an agency shall be directed to promptly forward
9 requests for records to the agency's open-records officer. A
10 written request should identify or describe the records sought
11 with sufficient specificity to enable the agency to ascertain
12 which records are being requested and shall include the name and
13 address to which the agency should address its response. A
14 written request need not include any explanation of the
15 requester's reason for requesting or intended use of the records
16 unless otherwise required by law.

17 Section 3. Section 708(b) (9), (10) and (17) of the act are
18 amended and the subsection is amended by adding paragraphs to
19 read:

20 Section 708. Exceptions for public records.

21 * * *

22 (b) Exceptions.--Except as provided in subsections (c) and
23 (d), the following are exempt from access by a requester under
24 this act:

25 * * *

26 (5.1) The payment records of a person receiving services
27 from a public water or sewer authority or other municipality
28 authority, cooperative or entity that provides a utility
29 service, including electricity, telecommunications, water,
30 sewer, natural gas or similar service. The authority or

1 entity shall establish a process to provide a clearance
2 certificate to a person to certify that all fees and charges
3 owed have been paid. A reasonable fee for certification may
4 be charged.

5 * * *

6 (6.1) Tax records. An agency shall establish a process
7 to provide a clearance certificate to a person certifying
8 that all taxes owed have been paid. A reasonable fee for
9 certification may be charged.

10 * * *

11 (9) The draft of a bill, resolution, regulation,
12 statement of policy, management directive, ordinance or
13 amendment thereto prepared by or for an agency, except when
14 the record is presented to a quorum for deliberation at an
15 advertised public meeting in accordance with 65 Pa.C.S. Ch.7
16 (relating to open meetings).

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

18 (A) The internal, predecisional deliberations of
19 an agency, its members, employees or officials or
20 predecisional deliberations between agency members,
21 employees or officials and members, employees or
22 officials of another agency, including predecisional
23 deliberations relating to a budget recommendation,
24 legislative proposal, legislative amendment,
25 contemplated or proposed policy or course of action
26 or any research, memos or other documents used in the
27 predecisional deliberations.

28 (B) The strategy to be used to develop or
29 achieve the successful adoption of a budget,
30 legislative proposal or regulation.

1 (ii) [Subparagraph (i) (A)] This paragraph shall
2 apply to agencies subject to 65 Pa.C.S. Ch. 7 [(relating
3 to open meetings)] in a manner consistent with 65 Pa.C.S.
4 Ch. 7. A record which is not otherwise exempt from access
5 under this act and which is presented to a quorum for
6 deliberation at a public meeting in accordance with 65
7 Pa.C.S. Ch. 7 shall be a public record regardless of
8 whether a vote occurs at that meeting.

9 (iii) This paragraph shall not apply to a written or
10 Internet application or other document that has been
11 submitted to request Commonwealth funds.

12 (iv) This paragraph shall not apply to the results
13 of public opinion surveys, polls, focus groups, marketing
14 research or similar effort designed to measure public
15 opinion.

16 * * *

17 (17) A record of an agency [relating to a noncriminal
18 investigation] that would reveal the institution, progress or
19 result of a noncriminal investigation, including:

20 (i) Complaints submitted to an agency.

21 (ii) Investigative materials, notes, correspondence
22 and reports.

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

27 (iv) A record that includes information made
28 confidential by law.

29 (v) Work papers underlying an audit.

30 (vi) A record that, if disclosed, would do any of

1 the following:

2 (A) [Reveal the institution, progress or result
3 of an agency investigation, except the imposition of
4 a fine or civil penalty, the suspension, modification
5 or revocation of a license, permit, registration,
6 certification or similar authorization issued by an
7 agency or an executed settlement agreement unless the
8 agreement is determined to be confidential by a
9 court] (Reserved).

10 (B) Deprive a person of the right to an
11 impartial adjudication.

12 (C) Constitute an unwarranted invasion of
13 privacy.

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

16 (E) Endanger the life or physical safety of an
17 individual.

18 This paragraph shall not apply to records reflecting the
19 imposition of a fine or civil penalty, the issuance of a
20 notice of violation, the suspension, modification or
21 revocation of a license, permit, registration, certification
22 or similar authorization issued by an agency, the result of a
23 regular inspection, or an executed settlement agreement
24 unless the agreement is determined to be confidential by a
25 court.

26 * * *

27 (31) A record of:

28 (i) A volunteer ambulance service.

29 (ii) A volunteer fire company.

30 (iii) A volunteer rescue company.

1 (iv) A volunteer water rescue company.

2 (v) A volunteer organization that provides hazardous
3 materials response services.

4 (vi) A volunteer organization that provides
5 emergency medical services.

6 This paragraph shall not apply to the financial records of a
7 volunteer organization under this paragraph if the volunteer
8 organization has a contract with a local agency to provide
9 services to the local agency.

10 (32) An agency's bank account numbers, bank routing
11 numbers, credit card numbers or passwords.

12 * * *

13 Section 4. Sections 901, 1101, 1102(a), 1310 and 3101 of the
14 act are amended to read:

15 Section 901. General rule.

16 (a) Determination.--Upon receipt of a written request for
17 access to a record, an agency shall make a good faith effort to
18 determine if the record requested is a public record,
19 legislative record or financial record and whether the agency
20 has possession, custody or control of the identified record, and
21 to respond as promptly as possible under the circumstances
22 existing at the time of the request. All applicable fees shall
23 be paid in order to receive access to the record requested.

24 (b) Time for response.--The time for response shall not
25 exceed:

26 (1) In the case of a request submitted by e-mail, web
27 form, facsimile or similar means, five business days from the
28 date the written request is received by the open-records
29 officer for an agency. If the agency fails to send the
30 response within five business days of receipt of the written

1 request for access, the written request for access shall be
2 deemed denied.

3 (2) In the case of a request submitted by first class
4 mail or similar means, ten business days from the postmark
5 date. If the agency fails to send the response within ten
6 business days from the postmark date, the written request for
7 access shall be deemed denied.

8 (3) In the case of a request submitted by certified mail
9 or similar means requiring signature as proof of delivery,
10 five business days from the date the written request is
11 received by the open-records officer for an agency. If the
12 agency fails to send the response within five business days
13 of receipt of the written request for access, the written
14 request for access shall be deemed denied.

15 Section 1101. Filing of appeal.

16 (a) Authorization.--

17 (1) If a written request for access to a record is
18 denied or deemed denied, the requester may file an appeal
19 with the Office of Open Records or judicial, legislative or
20 other appeals officer designated under section 503(d) within
21 [15] 20 business days of the [mailing] postmark date of the
22 agency's response or within [15] 20 business days of a deemed
23 denial, whichever date comes first. The appeal shall [state
24 the grounds upon which the requester asserts that the record
25 is a public record, legislative record or financial record
26 and shall address any grounds stated by the agency for
27 delaying or denying the request.] identify the records to
28 which the requester has been denied access that are the
29 subject of the appeal.

30 (2) Except as provided in section 503(d), in the case of

1 an appeal of a decision by a Commonwealth agency or local
2 agency, the Office of Open Records shall assign an appeals
3 officer to review the denial.

4 (b) Determination.--

5 (1) [Unless the requester agrees otherwise, the] The
6 appeals officer shall make a final determination which shall
7 be mailed to the requester and the agency within 30 days of
8 receipt of the appeal filed under subsection (a). The appeals
9 officer may extend this deadline by up to 15 days by
10 providing notice to both parties. If a hearing is held under
11 section 1102(a)(2), the appeals officer may extend the
12 deadline up to 15 days.

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

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

20 (c) Direct interest.--

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

29 (2) The appeals officer may grant a request under
30 paragraph (1) if:

- 1 (i) no hearing has been held;
- 2 (ii) the appeals officer has not yet issued its
- 3 order; and
- 4 (iii) the appeals officer believes the information
- 5 will be probative.

6 (3) Copies of the written request shall be sent to the

7 agency and the requester.

8 Section 1102. Appeals officers.

9 (a) Duties.--An appeals officer designated under section 503

10 shall do all of the following:

11 (1) Set a schedule for the requester and the open-

12 records officer to submit documents in support of their

13 positions.

14 (2) Review all information filed relating to the

15 request. The appeals officer may hold a hearing, in which

16 case the appeals officer may extend the deadline in section

17 1101(b)(1) by up to 15 days. A decision to hold or not to

18 hold a hearing is not appealable. The appeals officer may

19 admit into evidence testimony, evidence and documents that

20 the appeals officer believes to be reasonably probative and

21 relevant to an issue in dispute. The appeals officer may

22 limit the nature and extent of evidence found to be

23 cumulative.

24 (3) Consult with agency counsel as appropriate.

25 (4) Issue a final determination on behalf of the Office

26 of Open Records or other agency.

27 * * *

28 Section 1310. Office of Open Records.

29 (a) Establishment.--There is established in the Department

30 of Community and Economic Development an Office of Open Records.

1 The office shall do all of the following:

2 (1) Provide information relating to the implementation
3 and enforcement of this act.

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

5 (3) Provide annual training courses to agencies, public
6 officials and public employees on this act and 65 Pa.C.S. Ch.
7 7 (relating to open meetings).

8 (4) Provide annual, regional training courses to local
9 agencies, public officials and public employees.

10 (5) Assign appeals officers to review appeals of
11 decisions by Commonwealth agencies or local agencies, except
12 as provided in section 503(d), filed under section 1101 and
13 issue orders and opinions. The office shall employ or
14 contract with attorneys to serve as appeals officers to
15 review appeals and, if necessary, to hold hearings on a
16 regional basis under this act. Each appeals officer must
17 comply with all of the following:

18 (i) Complete a training course provided by the
19 Office of Open Records prior to acting as an appeals
20 officer.

21 (ii) If a hearing is necessary, hold hearings
22 regionally as necessary to ensure access to the remedies
23 provided by this act.

24 (iii) Comply with the procedures under section
25 1102(b).

26 (6) Establish an informal mediation program to resolve
27 disputes under this act.

28 (7) Establish an Internet website with information
29 relating to this act, including information on fees, advisory
30 opinions and decisions and the name and address of all open

1 records officers in this Commonwealth.

2 (8) Conduct a biannual review of fees charged under this
3 act.

4 (9) Annually report on its activities and findings to
5 the Governor and the General Assembly. The report shall be
6 posted and maintained on the Internet website established
7 under paragraph (7).

8 (b) Executive director.--Within 90 days of the effective
9 date of this section, the Governor shall appoint an executive
10 director of the office who shall serve for a term of six years.
11 Compensation shall be set by the Executive Board established
12 under section 204 of the act of April 9, 1929 (P.L.177, No.175),
13 known as The Administrative Code of 1929. The executive director
14 may serve no more than two terms.

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

18 (d) Staffing.--The executive director shall appoint
19 attorneys to act as appeals officers and additional clerical,
20 technical and professional staff as may be appropriate and may
21 contract for additional services as necessary for the
22 performance of the executive director's duties. The compensation
23 of attorneys and other staff shall be set by the Executive
24 Board. The appointment of attorneys shall not be subject to the
25 act of October 15, 1980 (P.L.950, No.164), known as the
26 Commonwealth Attorneys Act.

27 (e) Duties.--The executive director shall ensure that the
28 duties of the Office of Open Records are carried out and shall
29 monitor cases appealed to the Office of Open Records.

30 (f) Appropriation.--The appropriation for the office shall

1 be in a separate line item and shall be under the jurisdiction
2 of the executive director.

3 (g) Standing.--The Office of Open Records shall have
4 standing and may participate as a party in an appeal of a
5 decision of the office.

6 Section 3101. Applicability.

7 The following shall apply:

8 (1) This act shall apply to requests for information
9 made after December 31, 2008.

10 (2) In addition to any other entity to which this act
11 applies by its express provisions, and notwithstanding any
12 other provision of law to the contrary, this act shall apply
13 to the following:

14 (i) The Pennsylvania Higher Education Assistance
15 Agency and any entity established thereby.

16 (ii) The Pennsylvania Interscholastic Athletic
17 Association.

18 (iii) Community colleges.

19 Section 5. This act shall take effect in 60 days.