

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 444 Session of 2013

INTRODUCED BY PILEGGI, SMUCKER, RAFFERTY, WAUGH, FONTANA, FOLMER, TEPLITZ, GREENLEAF, WARD, ALLOWAY, YAW, YUDICHAK, BAKER, FERLO, MENSCH, ERICKSON, VANCE, VULAKOVICH, FARNESE, BROWNE, CORMAN, BLAKE AND BREWSTER, APRIL 26, 2013

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 23, 2014

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; providing for Pennsylvania
11 Interscholastic Athletic Association; further providing for
12 requests; providing for inmate access; further providing for
13 access, for requests, for written requests, for production of
14 certain records, for exceptions for public records, for
15 agency response in general, FOR EXTENSION OF TIME, for filing <--
16 of appeal, for appeals officers, for specified agencies, for
17 fee limitations, for Office of Open Records, for reporting,
18 for contents of report and for copies and posting; and
19 providing for contracts AND FOR APPLICABILITY. <--

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. The definitions of "confidential proprietary
23 information," "independent agency," "local agency," "personal
24 financial information" INFORMATION," "REQUESTER" and "State- <--
25 affiliated entity" in section 102 of the act of February 14,

1 2008 (P.L.6, No.3), known as the Right-to-Know Law, are amended
2 and the section is amended by adding definitions to read:
3 Section 102. Definitions.

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

7 * * *

8 "Commercial purpose." The use of a record:

9 (1) for the purpose of selling or reselling any portion
10 of the record;

11 (2) to obtain names and addresses from the record for
12 the purpose of COMMERCIAL solicitation; or <--

13 (3) in a manner through which the requester can
14 reasonably expect to make a profit.

15 The term does not include the use of a public record by an
16 educational or noncommercial scientific institution for
17 scholarly or scientific research or the use of a public record
18 by the news media for news gathering or dissemination in a
19 newspaper, periodical, digital publication or radio or
20 television news broadcast.

21 * * *

22 "Confidential proprietary information." Commercial or
23 financial information received or created by an agency:

24 (1) which is privileged or confidential; and

25 (2) the disclosure of which would cause substantial harm
26 to the competitive position of the person that submitted the
27 information.

28 * * *

29 "Funding source." The General Fund, a special fund or other
30 Federal or State funds appropriated by the General Assembly by

1 statute or by executive authorization.

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 ~~"Local agency." Any of the following:~~ <--

9 ~~(1) Any political subdivision, intermediate unit,~~
10 ~~charter school, cyber charter school or public trade or~~
11 ~~vocational school.~~

12 ~~(2) Any local, intergovernmental, regional or municipal~~
13 ~~agency, authority, council, board, commission or similar~~
14 ~~governmental entity. This paragraph includes an economic~~
15 ~~development authority and an industrial development~~
16 ~~authority.~~

17 ~~(3) Any campus police department of a State owned or~~
18 ~~State related college or university.~~

19 "LOCAL AGENCY." ANY OF THE FOLLOWING: <--

20 (1) ANY POLITICAL SUBDIVISION, INTERMEDIATE UNIT,
21 CHARTER SCHOOL, CYBER CHARTER SCHOOL OR PUBLIC TRADE OR
22 VOCATIONAL SCHOOL.

23 (2) ANY LOCAL, INTERGOVERNMENTAL, REGIONAL OR MUNICIPAL
24 AGENCY, AUTHORITY, COUNCIL, BOARD, COMMISSION OR SIMILAR
25 GOVERNMENTAL ENTITY. THIS PARAGRAPH INCLUDES AN ECONOMIC
26 DEVELOPMENT AUTHORITY AND AN INDUSTRIAL DEVELOPMENT
27 AUTHORITY. THE TERM DOES NOT INCLUDE AN OFFICE OF AN ELECTED
28 TAX COLLECTOR.

29 (3) ANY CAMPUS POLICE DEPARTMENT OF A STATE-OWNED OR
30 STATE-RELATED COLLEGE OR UNIVERSITY.

1 * * *

2 "Personal financial information." An individual's personal
3 credit, charge or debit card information; bank account or other
4 financial institution account information; bank, credit or
5 financial statements; account or PIN numbers; forms required to
6 be filed by a taxpayer with a Federal or Commonwealth taxing
7 authority; EMPLOYEE BENEFIT ELECTION INFORMATION; and other <--
8 information relating to an individual's personal finances.

9 * * *

10 "REQUESTER." A PERSON THAT IS A LEGAL RESIDENT OF [THE <--
11 UNITED STATES] THIS COMMONWEALTH AND REQUESTS A RECORD PURSUANT
12 TO THIS ACT. THE TERM INCLUDES AN AGENCY.

13 * * *

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

28 * * *

29 "Time response log." A log created, received, maintained or
30 retained by a public-safety answering point (PSAP), as defined

1 in 35 Pa.C.S. § 5302 (relating to definitions), containing the
2 following information:

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

4 (2) The time the PSAP contacted or dispatched the
5 appropriate agency for response.

6 (3) The time the appropriate agency responded.

7 (4) The time the appropriate agency arrived on the
8 scene.

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

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

12 * * *

13 Section 2. The act is amended by adding a section to read:

14 Section 307. Pennsylvania Interscholastic Athletic Association.

15 For purposes of this act, the Pennsylvania Interscholastic

16 Athletic Association is considered to be a ~~Commonwealth~~ LOCAL <--

17 agency and shall provide public records in accordance with this
18 act.

19 Section 3. Section 506 of the act is amended to read:

20 Section 506. Requests.

21 (a) Disruptive requests.--

22 (1) An agency may deny a requester access to a record if
23 the requester has made repeated requests for that same record
24 and the repeated requests have placed an unreasonable burden
25 on the agency.

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

28 (b) Disaster or potential damage.--

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

30 (i) when timely access is not possible due to fire,

1 flood or other disaster; or
2 (ii) to historical, ancient or rare documents,
3 records, archives and manuscripts when access may, in the
4 professional judgment of the curator or custodian of
5 records, cause physical damage or irreparable harm to the
6 record.

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

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

14 (1) Disclosure of the record is not prohibited or
15 restricted under any of the following:

16 (i) Federal or State law or regulation.

17 (ii) Judicial order or decree.

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

19 (3) The agency head determines that the public interest
20 favoring access outweighs any individual, agency or public
21 interest that may favor restriction of access.

22 (d) Agency possession.--

23 (1) [A public record that is not in the possession of an
24 agency but is in the possession of a party with whom the
25 agency has contracted to perform a governmental function on
26 behalf of the agency, and which directly relates to the
27 governmental function and is not exempt under this act, shall
28 be considered a public record of the agency for purposes of
29 this act.] An agency which is a party to a contract shall
30 provide a copy of the contract and any public records of the

1 agency relating to the contract.

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

5 (3) A request for a public record in possession of a
6 party other than the agency shall be submitted to the open
7 records officer of the agency. Upon a determination that the
8 record is subject to access under this act, the open records
9 officer shall assess the duplication fee established under
10 section 1307(b) and upon collection shall remit the fee to
11 the party in possession of the record if the party duplicated
12 the record.

13 Section 4. The act is amended by adding a section to read:

14 Section 508. Inmate access.

15 (a) Status.--Except as provided in subsection (b), an inmate
16 may not be a requester for purposes of this act.

17 (b) Records.--An agency shall provide an inmate with copies
18 of the following records as they pertain directly to the inmate
19 if the disclosure of the record will not diminish the safety or
20 security of any person or correctional facility:

21 (1) Criminal records relating to the criminal commitment
22 of the inmate.

23 (2) Institutional housing information.

24 (3) The inmate's financial records.

25 (4) The inmate's work records.

26 (5) The inmate's educational records.

27 (6) The inmate's disciplinary records.

28 (7) Disciplinary, housing and other policies adopted by
29 the correctional institution OR THE DEPARTMENT OF
30 CORRECTIONS.

<--

1 (8) A record relating to any Federal or State benefit
2 received by the inmate or for which the inmate is eligible.

3 (9) The inmate's tax records.

4 (10) The inmate's voting records.

5 (11) Records relating to any license issued to the
6 inmate by a Commonwealth or local agency.

7 (c) Applicability.--Nothing under this section shall
8 prohibit an agency from voluntarily permitting an inmate to have
9 access to records not listed under subsection (b) or prevent an
10 agency from complying with a lawful subpoena or court order.

11 Section 5. Sections 701, 702, 703 and 707 of the act are
12 amended to read:

13 Section 701. Access.

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

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

27 Section 702. Requests.

28 Agencies may fulfill verbal[, written or anonymous verbal] or
29 written requests for access to records under this act. If the
30 requester wishes to pursue the relief and remedies provided for

1 in this act, the request for access to records must be a written
2 request.

3 Section 703. Written requests.

4 A written request for access to records may be submitted in
5 person, by mail, by e-mail, by facsimile or, to the extent
6 provided by agency rules, by any other electronic means. A
7 written request must be addressed to the open-records officer
8 designated pursuant to section 502 or to the administrative
9 office of the agency. [Employees of an] The administrative
10 office of the agency shall [be directed to] promptly forward
11 requests for records to the ~~agency's~~ open-records officer OF THE <--
12 AGENCY THAT RECEIVED THE REQUEST. A written request [should] <--
13 SHALL INCLUDE THE PHYSICAL MAILING ADDRESS OF THE REQUESTER,
14 SHALL identify or describe the records sought with sufficient
15 specificity to enable the agency to ascertain which records are
16 being requested and shall include the name and address to which
17 the agency should address its response. [A] Except as required
18 under section 707(d), a written request need not include any
19 explanation of the requester's reason for requesting or intended
20 use of the records unless otherwise required by law. A written
21 request must include the name and address of the requester and
22 the name of the agency to which the request is addressed.

23 Section 707. Production of certain records.

24 (a) General rule.--If, in response to a request, an agency
25 produces a record that is not a public record, legislative
26 record or financial record, the agency shall notify any third
27 party that provided the record to the agency, the person that is
28 the subject of the record and the requester.

29 (b) Requests for trade secrets.--An agency shall notify a
30 third party of a request for a record if the third party

1 provided the record and included a written statement signed by a
2 representative of the third party that the record contains a
3 trade secret or confidential proprietary information.
4 Notification shall be provided within five business days of
5 receipt of the request for the record. The third party shall
6 have five business days from receipt of notification from the
7 agency to provide input on the release of the record. The agency
8 shall deny the request for the record or release the record
9 within ten business days of the provision of notice to the third
10 party and shall notify the third party of the decision.

11 (c) Transcripts.--

12 (1) Prior to an adjudication becoming final, binding and
13 nonappealable, a transcript of an administrative proceeding
14 shall be provided to a requester by the agency stenographer
15 or a court reporter, in accordance with agency procedure or
16 an applicable contract.

17 (2) Following an adjudication becoming final, binding
18 and nonappealable, a transcript of an administrative
19 proceeding shall be provided to a requester in accordance
20 with the duplication rates established in section 1307(b).

21 (3) Nothing in this subsection shall be construed to
22 require an agency to transcribe a proceeding solely for
23 purposes of responding to a request under this act.

24 (d) Commercial requests.--An agency may require a requester
25 to certify in writing whether the request is for a commercial
26 purpose. Certification shall be submitted on a form developed by
27 the Office of Open Records that shall provide a checkoff for the
28 requester to use to indicate whether the request is for a
29 commercial purpose. A requester that submits a false written
30 statement shall be subject to 18 Pa.C.S. § 4904 (relating to

1 unsworn falsification to authorities).

2 (E) HOME ADDRESS.--IF A REQUEST INCLUDES A HOME ADDRESS OF <--
3 AN EMPLOYEE OF THE AGENCY, THE AGENCY MUST NOTIFY THE SUBJECT OF
4 THE REQUEST AT LEAST 14 DAYS PRIOR TO RELEASE OF THE RECORD. IF
5 THE SUBJECT OF THE REQUEST NOTIFIES THE AGENCY THAT THE
6 EXCEPTION UNDER SECTION 708(B) (1) (II) APPLIES, THE AGENCY SHALL
7 DETERMINE IF THE HOME ADDRESS SHALL BE WITHHELD.

8 Section 6. Section 708(b)(10)(i) and (ii), (13), (17) and
9 (18) and (c) of the act are amended and subsection (b) is
10 amended by adding paragraphs to read:

11 Section 708. Exceptions for public records.

12 * * *

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

16 * * *

17 (5.1) The payment records of a person receiving services
18 from a ~~public~~ MUNICIPAL water or sewer authority or other <--
19 municipal authority, municipality or cooperative that
20 provides electricity, water, sewer, storm water, natural gas
21 or similar service. The authority, municipality or
22 cooperative shall establish a process to provide a clearance
23 certificate to a person to certify that all fees and charges
24 owed have been paid. A reasonable fee for a clearance
25 certificate may be charged. This paragraph shall not apply to
26 reports of aggregate payments made by a municipality,
27 authority or cooperative to assist low-income consumers or
28 other consumers in obtaining services. If funds are owed, the
29 amount of the delinquency shall appear on the clearance
30 certificate.

1 * * *

2 ~~(6.1) Tax payment records in the possession of a tax collector or municipality responsible for the collection of taxes. A tax collector or municipality shall establish a process to provide a clearance certificate to a person certifying that all local taxes owed have been paid. If funds are owed, the amount of the delinquency shall appear on the clearance certificate. A reasonable fee for a clearance certificate may be charged. As used in this paragraph, the term "tax collector" means an elected tax collector or an employee or contractor of an agency that collects local taxes pursuant to law.~~ <--

13 * * *

14 (10) As follows:

15 (i) A record that reflects, contains or includes:

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

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

29 (ii) Subparagraph (i) (A) shall apply to agencies
30 subject to 65 Pa.C.S. Ch. 7 (relating to open meetings)

1 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
2 which is not otherwise exempt from access under this act
3 and which is presented to a quorum for deliberation in
4 accordance with 65 Pa.C.S. Ch. 7 shall be a public record
5 regardless of whether a vote occurs at the meeting.

6 * * *

7 (13) Records that would disclose the identity of, or
8 personal financial information relating to, an individual who
9 lawfully makes a donation to OR FOR THE BENEFIT OF an agency <--
10 unless the donation is intended for or restricted to
11 providing remuneration or personal tangible benefit to a
12 named public official or employee of the agency, including
13 lists of potential donors compiled by an agency to pursue
14 donations, donor profile information or personal identifying
15 information relating to a donor.

16 * * *

17 (17) [A] Except for a safety inspection report made
18 pursuant to Federal or State law, a record of an agency
19 relating to 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.

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 (18) Emergency dispatches as follows:

19 (i) Records or parts of records, except time
20 response logs, pertaining to audio recordings, telephone
21 or radio transmissions received by emergency dispatch
22 personnel, including 911 recordings.

23 (ii) This paragraph shall not apply to a 911
24 recording, or a transcript of a 911 recording, if the
25 agency or a court determines that the public interest in
26 disclosure outweighs the interest in nondisclosure.

27 (iii) The home address of the individual who
28 accesses emergency dispatch. The record may include the
29 nearest cross streets STREET to that address. <--

30 * * *

1 (31) An agency's bank account numbers, bank FINANCIAL <--
2 INSTITUTION ACCOUNT NUMBERS, routing numbers, credit card
3 numbers ~~or~~ AND passwords. <--

4 (32) A record of any of the following:

5 (i) A volunteer ambulance service.

6 (ii) A volunteer fire company.

7 (iii) A volunteer rescue company.

8 (iv) A volunteer water rescue company.

9 (v) A volunteer organization that provides hazardous
10 materials response services.

11 (vi) A volunteer organization that provides
12 emergency medical services.

13 Section 506(d)(1) shall apply to a volunteer organization
14 under this paragraph that contracts with a local agency to
15 provide services to the local agency.

16 (c) Financial records.--The exceptions set forth in
17 subsection (b) shall not apply to financial records, except that
18 an agency may redact that portion of a financial record
19 protected under subsection (b)(1), (2), (3), (4), (5), (6),
20 (11), (13), (16) or (17). An agency shall not disclose the
21 identity of an individual performing an undercover or covert law
22 enforcement activity.

23 * * *

24 Section 7. Sections 901, 902 and 1101 of the act are amended <--
25 to read:

26 Section 901. General rule.

27 (a) Determination.---Upon receipt of a written request for
28 access to a record, an agency shall make a good faith effort to
29 determine if the record requested is a public record,
30 legislative record or financial record and whether the agency

1 has possession, custody or control of the identified record, and
2 to respond as promptly as possible under the circumstances
3 existing at the time of the request. All applicable fees shall
4 be paid in order to receive access to the record requested.

5 (b) Time for response.---The time for response shall not
6 exceed:

7 (1) In the case of a request made in person or submitted
8 by regular mail, e-mail, web form, facsimile or similar
9 means, five business days from the date the written request
10 is received by the open-records officer for an agency. If the
11 agency fails to send the response within five business days
12 of receipt of the written request for access, the written
13 request for access shall be deemed denied.

14 (2) (Reserved).

15 SECTION 902. EXTENSION OF TIME. <--

16 (A) DETERMINATION.--UPON RECEIPT OF A WRITTEN REQUEST FOR
17 ACCESS, THE OPEN-RECORDS OFFICER FOR AN AGENCY SHALL DETERMINE
18 IF ONE OF THE FOLLOWING APPLIES:

19 (1) THE REQUEST FOR ACCESS REQUIRES REDACTION OF A
20 RECORD IN ACCORDANCE WITH SECTION 706;

21 (2) THE REQUEST FOR ACCESS REQUIRES THE RETRIEVAL OF A
22 RECORD STORED IN A REMOTE LOCATION;

23 (3) A TIMELY RESPONSE TO THE REQUEST FOR ACCESS CANNOT
24 BE ACCOMPLISHED DUE TO BONA FIDE AND SPECIFIED STAFFING
25 LIMITATIONS;

26 (4) A LEGAL REVIEW IS NECESSARY TO DETERMINE WHETHER THE
27 RECORD IS A RECORD SUBJECT TO ACCESS UNDER THIS ACT;

28 (5) THE REQUESTER HAS NOT COMPLIED WITH THE AGENCY'S
29 POLICIES REGARDING ACCESS TO RECORDS;

30 (6) THE REQUESTER REFUSES TO PAY APPLICABLE FEES

1 AUTHORIZED BY THIS ACT; [OR]

2 (7) THE EXTENT OR NATURE OF THE REQUEST PRECLUDES A
3 RESPONSE WITHIN THE REQUIRED TIME PERIOD[.];

4 (8) TIME IS REQUIRED TO PROVIDE NOTICE UNDER SECTION
5 707(E).

6 (B) NOTICE.--

7 (1) UPON A DETERMINATION THAT ONE OF THE FACTORS LISTED
8 IN SUBSECTION (A) APPLIES, THE OPEN-RECORDS OFFICER SHALL
9 SEND WRITTEN NOTICE TO THE REQUESTER WITHIN FIVE BUSINESS
10 DAYS OF RECEIPT OF THE REQUEST FOR ACCESS UNDER SUBSECTION
11 (A).

12 (2) THE NOTICE SHALL INCLUDE A STATEMENT NOTIFYING THE
13 REQUESTER THAT THE REQUEST FOR ACCESS IS BEING REVIEWED, THE
14 REASON FOR THE REVIEW, A REASONABLE DATE THAT A RESPONSE IS
15 EXPECTED TO BE PROVIDED AND AN ESTIMATE OF APPLICABLE FEES
16 OWED WHEN THE RECORD BECOMES AVAILABLE. IF THE DATE THAT A
17 RESPONSE IS EXPECTED TO BE PROVIDED IS IN EXCESS OF 30 DAYS,
18 FOLLOWING THE FIVE BUSINESS DAYS ALLOWED FOR IN SECTION 901,
19 THE REQUEST FOR ACCESS SHALL BE DEEMED DENIED UNLESS THE
20 REQUESTER HAS AGREED IN WRITING TO AN EXTENSION TO THE DATE
21 SPECIFIED IN THE NOTICE.

22 (3) IF THE REQUESTER AGREES TO THE EXTENSION, THE
23 REQUEST SHALL BE DEEMED DENIED ON THE DAY FOLLOWING THE DATE
24 SPECIFIED IN THE NOTICE IF THE AGENCY HAS NOT PROVIDED A
25 RESPONSE BY THAT DATE.

26 Section 1101. Filing of appeal.

27 [(a) Authorization.--

28 (1) If a written request for access to a record is]

29 (a) Authorization.--The following shall apply:

30 (1) (i) If a written request for access to a record is

1 denied or deemed denied, the requester may file an appeal
2 with the Office of Open Records or judicial, legislative
3 or other appeals officer designated under section 503(d)
4 within [15] 20 business days of the [mailing] postmark OR <--
5 E-MAIL date of the agency's response or within [15] 20
6 business days of a deemed denial, whichever comes first.

7 (ii) The appeal shall [state the grounds upon which
8 the requester asserts that the record is a public record,
9 legislative record or financial record and shall address
10 any grounds stated by the agency for delaying or denying
11 the request.] include the following:

12 (A) A copy of the original request.

13 (B) The agency denial.

14 (C) A list of the records that were denied.

15 (iii) The office shall provide a form on its
16 publicly accessible Internet website which may be used by
17 the requester to file the appeal.

18 (2) Except as provided in section 503(d), in the case of
19 an appeal of a decision by a Commonwealth agency or local
20 agency, the Office of Open Records shall assign an appeals
21 officer to review the denial.

22 (b) Determination.--

23 (1) Unless the requester agrees otherwise, the appeals
24 officer shall make a final determination which shall be
25 mailed to the requester and the agency within 30 days of
26 receipt of the appeal filed under subsection (a). The appeals
27 officer may extend this deadline by up to 15 days by
28 providing notice to both parties. If a hearing or in-camera
29 review is held under section 1102(a)(2), the appeals officer
30 may extend the deadline up to 90 additional days.

1 (1.1) If the issue before the office is substantially
2 the same as an issue currently on appeal to Commonwealth
3 Court, the appeals officer may stay the appeal until
4 Commonwealth Court issues a decision on the matter.

5 (2) If the office or other appeals officer fails to
6 issue a final determination within 30 days or as otherwise
7 provided under paragraph (1), the appeal is deemed denied.

8 (3) Prior to issuing a final determination, a hearing
9 may be conducted. The determination by the appeals officer
10 shall be a final order. The appeals officer shall provide a
11 written explanation of the reason for the decision to the
12 requester and the agency.

13 (c) Direct interest.--

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

22 (2) The appeals officer may grant a request under
23 paragraph (1) if:

24 (i) no hearing has been held;

25 (ii) the appeals officer has not yet issued its
26 order; and

27 (iii) the appeals officer believes the information
28 will be probative.

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

1 Section 8. Section 1102(a) of the act is amended and the
2 section is amended by adding a subsection to read:

3 Section 1102. Appeals officers.

4 (a) Duties.--An appeals officer designated under section 503
5 shall do all of the following:

6 (1) Set a schedule for the requester and the open-
7 records officer to submit documents in support of their
8 positions.

9 (2) Review all information filed relating to the
10 request. The appeals officer may hold a hearing or conduct an
11 in-camera review under subsection (c), in which case the <--
12 appeals officer may extend the deadline in section 1101(b)(1)
13 by up to 90 days. A decision to hold or not to hold a hearing
14 is not appealable. The appeals officer may admit into
15 evidence testimony, evidence and documents that the appeals
16 officer believes to be reasonably probative and relevant to
17 an issue in dispute. The appeals officer may limit the nature
18 and extent of evidence found to be cumulative.

19 (3) Consult with agency counsel as appropriate.

20 (4) Issue a final determination on behalf of the Office
21 of Open Records or other agency.

22 * * *

23 (c) Review.--The Office of Open Records may require an
24 agency to submit a record for the purpose of conducting an in-
25 camera review to determine if the record is a public record.

26 Section 9. Section 1301 heading and (a) of the act are
27 amended to read:

28 Section 1301. Commonwealth agencies, legislative agencies
29 [and], judicial agencies and the Office of Open
30 Records.

1 (a) General rule.--Within 30 days of the mailing date of the
2 final determination of the appeals officer relating to a
3 decision of a Commonwealth agency, a legislative agency [or], a
4 judicial agency or the Office of Open Records issued under
5 section 1101(b) or the date a request for access is deemed
6 denied, a requester or the agency may file a petition for review
7 or other document as might be required by rule of court with the
8 Commonwealth Court. The court shall notify the Commonwealth
9 agency, legislative agency, judicial agency or Office of Open
10 Records of the appeal. The decision of the court shall contain
11 findings of fact and conclusions of law based upon the evidence
12 as a whole. The decision shall clearly and concisely explain the
13 rationale for the decision.

14 * * *

15 Section 10. Section 1307(h) of the act is amended and the
16 section is amended by adding a subsection to read:
17 Section 1307. Fee limitations.

18 * * *

19 (g.1) Additional fees.--

20 (1) Notwithstanding subsection (e), each agency may
21 assess fees for responding to commercial requests under this
22 act. In addition to fees under subsections (a) and (b),
23 reasonable standard charges may be charged for document
24 search, RETRIEVAL, review and redaction for documents for <--
25 commercial use.

26 (2) Fees under paragraph (1) must be calculated at no
27 more than the hourly wage of the lowest-paid public employee
28 of the agency who is capable of searching, retrieving,
29 reviewing and providing for redaction of the information
30 necessary to comply with the request.

1 (3) A FEE MAY NOT BE CHARGED UNDER PARAGRAPH (2) FOR THE <--
2 FIRST HOUR OF SEARCH AND RETRIEVAL TIME FOR ALL COMMERCIAL
3 REQUESTS FROM A SINGLE REQUESTER IN A 90-DAY PERIOD.

4 (h) Prepayment.--Prior to granting a request for access in
5 accordance with this act, an agency may require a requester to
6 prepay an estimate of the fees authorized under this section if
7 the fees required to fulfill the request are expected to exceed
8 [\$100] \$50.

9 Section 11. Sections 1310, 1502, 1503 and 1504 of the act
10 are amended to read:

11 Section 1310. Office of Open Records.

12 (a) Establishment.--There is established [in the Department
13 of Community and Economic Development an] the Office of Open
14 Records, as an independent agency. The office shall do all of
15 the following:

16 (1) Provide information relating to the implementation
17 and enforcement of this act.

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

19 (3) Provide annual training courses to agencies, public
20 officials and public employees on this act and 65 Pa.C.S. Ch.
21 7 (relating to open meetings).

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

24 (5) Assign appeals officers to review appeals of
25 decisions by Commonwealth agencies or local agencies, except
26 as provided in section 503(d), filed under section 1101 and
27 issue orders and opinions. The office shall employ or
28 contract with attorneys to serve as appeals officers to
29 review appeals and, if necessary, to hold hearings on a
30 regional basis under this act. Each appeals officer must

1 comply with all of the following:

2 (i) Complete a training course provided by the
3 Office of Open Records prior to acting as an appeals
4 officer.

5 (ii) If a hearing is necessary, hold hearings
6 regionally as necessary to ensure access to the remedies
7 provided by this act.

8 (iii) Comply with the procedures under section
9 1102(b).

10 (6) Establish an informal mediation program to resolve
11 disputes under this act.

12 (7) Establish an Internet website with information
13 relating to this act, including information on fees, advisory
14 opinions and decisions and the name and address of all open
15 records officers in this Commonwealth.

16 (8) Conduct a biannual review of fees charged under this
17 act.

18 (9) Annually report on its activities and findings to
19 the Governor and the General Assembly. The report shall be
20 posted and maintained on the Internet website established
21 under paragraph (7).

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

29 (c) Limitation.--The executive director shall not seek
30 election nor accept appointment to any political office during

1 his tenure as executive director and for one year thereafter.

2 (d) Staffing.--The executive director shall appoint
3 attorneys to act as appeals officers and additional clerical,
4 technical and professional staff as may be appropriate and may
5 contract for additional services as necessary for the
6 performance of the executive director's duties. The compensation
7 of attorneys and other staff shall be set by the Executive
8 Board. The appointment of attorneys shall not be subject to the
9 act of October 15, 1980 (P.L.950, No.164), known as the
10 Commonwealth Attorneys Act.

11 (e) Duties.--

12 (1) The executive director shall ensure that the duties
13 of the Office of Open Records are carried out and shall
14 monitor cases appealed to the Office of Open Records.

15 (2) The Department of Community and Economic Development
16 shall provide payroll and administrative support to the
17 office.

18 (3) THE EXECUTIVE DIRECTOR SHALL PROMULGATE REGULATIONS <--
19 TO ADMINISTER THIS ACT. INITIAL RULEMAKING UNDER THIS
20 PARAGRAPH SHALL BE INITIATED BY JULY 1, 2015.

21 (e.1) Public comment.--The office shall abstain from public
22 comment about a pending proceeding before the office. This
23 subsection shall not prohibit employees of the office from
24 making public statements in the course of official duties, from
25 issuing written advisory opinions, from making general comments
26 on this act that are not related to a specific pending case or
27 from explaining the procedures of the office.

28 (f) Appropriation.--The appropriation for the office shall
29 be in a separate line item and shall be under the jurisdiction
30 of the executive director.

1 (g) Participation.--The office may participate as amicus
2 curiae in an appeal from a decision of the office and may, upon
3 approval of an appellate court, participate in oral argument.

4 Section 1502. [Reporting.] FILING. <--

5 No later than May 30 of each year, unless otherwise provided
6 under this chapter, a State-related institution shall file [with
7 the Governor's Office, the General Assembly, the Auditor General
8 and the State Library] the information set forth in section 1503
9 under the requirements of section 1504.

10 Section 1503. Contents of [report.] FILING. <--

11 (a) Information included.--The [report] FILING required <--
12 under section 1502 shall include the following:

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

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

21 (3) [The] For a State-related institution with fewer
22 than 2,500 employees, the highest 25 salaries paid to
23 employees of the institution that are not included under
24 paragraph (2). For a State-related institution with 2,500
25 employees or more, the highest 200 salaries paid to employees
26 of the institution that are not included under paragraph (2).

27 FACULTY MEMBERS' SALARIES SHALL BE PRESENTED IN SALARY <--
28 RANGES.

29 (4) The [report] FILING shall not include information <--
30 relating to individual donors.

1 (5) Revenue and expenditure budgets of the State-related
2 institution's academic and administrative support units for
3 the current fiscal year.

4 (6) The actual revenue and expenditures for the prior
5 year.

6 (7) For any defined project or program which is the
7 subject of a specific line item appropriation from the
8 General Fund, the State-related institution shall disclose
9 the following:

10 (i) Revenue and expenditure budgets of the defined
11 program or project for the current fiscal year.

12 (ii) The actual revenue and expenditures of the
13 defined program or project for the prior year.

14 (8) The revenue and expenditures of any auxiliary
15 enterprise which is directly funded in whole or in part by
16 tuition or a State appropriation for the current fiscal year.

17 (9) The most recent audited financial statement for the
18 State-related institution.

19 (10) The following information for the prior fiscal year
20 for each academic or administrative support unit, for each
21 defined project or program and for an auxiliary enterprise:

22 (i) The number of employees by academic rank.

23 (ii) The number of administrators, staff, clerical
24 and technical service employees, by classification.

25 (iii) Median and mean salary by academic rank.

26 (iv) Median and mean salaries of administrators,
27 staff, clerical and technical service employees, by
28 classification.

29 (v) Nonsalary compensation as a percentage of
30 salary. Nonsalary compensation shall include:

- 1 (A) Medical benefits.
- 2 (B) Life insurance benefits.
- 3 (C) Pension benefits.
- 4 (D) Leave benefits.
- 5 (E) Employer Social Security payments.
- 6 (F) Workers' compensation benefits.

7 (vi) A statement of the State-related institution's
8 retirement policies.

9 (vii) A policy statement relating to a reduction of
10 tuition for employees' family members.

11 (viii) A list by academic or administrative support
12 unit in the aggregate of the expenses of travel,
13 subsistence and lodging, whether provided or reimbursed.

14 (b) Providing information.--Each State-related institution
15 shall provide full, complete and accurate information as may be
16 required by the Department of Education or the chairman or the
17 minority chairman of the Appropriations Committee of the Senate
18 or the chairman or the minority chairman of the Appropriations
19 Committee of the House of Representatives.

20 (c) Financial statements.--Each State-related institution
21 shall present and report its financial statements required under
22 the provisions of this act in accordance with:

23 (1) The generally accepted accounting principles as
24 prescribed by the National Association of College and
25 University Business Officers, the American Institute of
26 Certified Public Accountants or by another recognized
27 authoritative body.

28 (2) The "Commonwealth of Pennsylvania Budget
29 Instructions for the State System of Higher Education, State-
30 Related Universities and Non-State-Related Colleges and

1 Universities."

2 (3) The financial reporting policies and standards
3 promulgated by the Commonwealth of Pennsylvania and by the
4 Federal Government that apply to the State-related
5 institutions.

6 (d) Nonpreferred appropriations.--

7 (1) In a year a State-related institution receives a
8 nonpreferred appropriation, a report shall be submitted prior
9 to September 1 and must cover the 12-month period beginning
10 with the summer term of the preceding year. The report shall
11 include:

12 (i) The following counts and distributions for each
13 term during the period:

14 (A) The definition and number of:

15 (I) Faculty members employed full time.

16 (II) Faculty members employed part time.

17 (III) Full-time students enrolled in a
18 graduate course.

19 (IV) Full-time students enrolled in an
20 undergraduate course.

21 (V) Part-time students enrolled in a
22 graduate course.

23 (VI) Part-time students enrolled in an
24 undergraduate course.

25 (B) The total number of:

26 (I) Undergraduate student credit hours,
27 divided into lower division and upper division
28 course levels.

29 (II) Graduate student credit hours, divided
30 into three course levels: master's, first

1 professional and doctoral.

2 (C) The number of different courses scheduled by
3 level of instruction and the number of sections of
4 individual instruction scheduled by level of
5 instruction, each further subdivided by two-digit
6 Classification of Instructional Program (CIP)
7 categories of instructional programs of higher
8 education as defined by the National Center for
9 Education Statistics, United States Department of
10 Education.

11 (D) The number of terms scheduled and the dates
12 of the terms.

13 (ii) For the summer term and the following academic
14 year in total and for each two-digit CIP program
15 category:

16 (A) A classification of faculty members or other
17 professional employees by title, including:

18 (I) Professor.

19 (II) Associate professor.

20 (III) Assistant professor.

21 (IV) Instructor.

22 (V) Lecturer.

23 (VI) Research associate.

24 (VII) Librarian and academic administrator.

25 (B) Faculty members or other professional
26 employees under each title to be subdivided into
27 teaching and nonteaching.

28 (C) Each set of faculty members or other
29 professional employees to be further subdivided by
30 full-time or part-time employment.

1 (D) The following aggregates for each
2 subdivided classification:

3 (I) The number of faculty and other
4 professional employees and the full-time
5 equivalence in instructional and non-
6 instructional functions.

7 (II) The sum of credits assigned to
8 undergraduate classroom courses and the sum of
9 credits assigned to graduate classroom courses
10 taught divided into lower division, upper
11 division, master's, first professional and
12 doctoral course levels.

13 (III) The sum of credits assigned to
14 undergraduate individual instruction courses and
15 the sum of credits assigned to graduate
16 individual instruction courses taught divided
17 into lower division, upper division, master's,
18 first professional and doctoral course levels.

19 (IV) The sum of undergraduate classroom
20 student credit hours and the sum of graduate
21 classroom student credit hours generated, divided
22 into lower division, upper division, masters,
23 first professional and doctoral course levels.

24 (V) The sum of undergraduate individual
25 instruction student credit hours and the sum of
26 graduate individual instruction student credit
27 hours generated, divided into lower division,
28 upper division, master's, first professional and
29 doctoral course levels.

30 (VI) The total salary paid for instructional

1 functions and for noninstructional functions and
2 the amount of salary paid for each of these
3 functions from State-related institution funds,
4 Federal funds and other funds.

5 (iii) For each term of the period covered for each
6 faculty member employed full time identified by two-digit
7 CIP program category and title, the report shall contain
8 an analysis of the average hours per week spent:

9 (A) In State-related institution-related
10 activities, stating specifically hours spent in
11 undergraduate classroom contact and graduate
12 classroom contact hours spent in preparation.

13 (B) In research.

14 (C) In public service.

15 (2) The report covering the 12-month period shall
16 include for each program of the State-related institution:

17 (i) Minimum number of credits required for a
18 baccalaureate degree and for a master's degree.

19 (ii) Number of bachelor's degrees, master's degrees,
20 first professional degrees and doctoral degrees awarded
21 for the previous five years and those estimates for that
22 year.

23 (e) Minutes.--Each State-related institution shall make a
24 copy of the minutes of each public meeting of the institution's
25 board of trustees available for public inspection in the
26 institution's library in print format and online at the
27 institution's publicly accessible Internet website. The minutes
28 shall be maintained in print and online for no fewer than 20
29 years.

30 (f) Data systems report.--Each State-related university

1 shall make a copy of the institution's integrated postsecondary
2 education data systems report available for public inspection in
3 the institution's library in print format and online at the
4 institution's publicly accessible Internet website.

5 Section 1504. [Copies and posting] Requirements for information
6 in reports FILINGS. <--

7 [A State-related institution shall maintain, for at least
8 seven years, a copy of the report in the institution's library
9 and shall provide free access to the report on the institution's
10 Internet website.] A State-related institution shall make the
11 information required by section 1502 accessible to the public in
12 accordance with the following:

13 (1) The information shall be posted online at the
14 institution's publicly accessible Internet website in a
15 searchable, sortable and downloadable database format that is
16 freely accessible by the public. To the extent possible, a
17 State-related institution shall post the information online
18 in a similar manner in order to facilitate easy public
19 review. The information of prior years shall be maintained
20 for no fewer than ten years.

21 (2) The information shall be maintained in print format
22 in the institution's library for no fewer than ten years.

23 (3) The information shall be provided in electronic
24 format to the Department of Education and the Joint State
25 Government Commission.

26 (4) The information shall be provided in print format to
27 the General Assembly and to each of the State regional
28 library resource centers.

29 Section 12. The act is amended by adding a section to read:
30 Section 1505. Contracts.

<--

1 ~~(a) Posting online. Whenever a State related institution~~
2 ~~shall enter into any contract involving any property, real,~~
3 ~~personal or mixed of any kind or description or a contract for~~
4 ~~personal services where the consideration involved in the~~
5 ~~contract is \$5,000 or more, the State related institution and~~
6 ~~the Treasury Department shall comply with the requirements of~~
7 ~~Chapter 17.~~

8 ~~(b) Categories. A contract posted in accordance with~~
9 ~~subsection (a) shall disclose the category of service,~~
10 ~~including:~~

- 11 ~~(1) Legal.~~
- 12 ~~(2) Instructional.~~
- 13 ~~(3) Management.~~
- 14 ~~(4) Accounting.~~
- 15 ~~(5) Architecture.~~
- 16 ~~(6) Public Relations.~~
- 17 ~~(7) Maintenance.~~

<--

18 ~~(A) SCOPE.--BY MAY 30 OF EACH YEAR, A STATE-RELATED~~
19 ~~INSTITUTION SHALL FILE WITH THE GOVERNOR'S OFFICE, THE SECRETARY~~
20 ~~OF THE SENATE, THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES~~
21 ~~AND THE STATE LIBRARY AN ANNUAL LIST OF CONTRACTS IN EXCESS OF~~
22 ~~\$5,000 FOR THE PURCHASE OF ALL GOODS AND THIRD-PARTY SERVICES.~~

23 ~~(B) CONTENTS.--THE LIST SHALL INCLUDE ALL OF THE FOLLOWING:~~

- 24 ~~(1) DATE OF EXECUTION.~~
- 25 ~~(2) AMOUNT OF THE CONTRACT.~~
- 26 ~~(3) BEGINNING DATE OF THE CONTRACT.~~
- 27 ~~(4) END DATE OF THE CONTRACT, IF APPLICABLE.~~
- 28 ~~(5) THE NAME AND ADDRESS OF THE VENDOR.~~
- 29 ~~(6) SUBJECT MATTER OF THE CONTRACT.~~

30 ~~(C) PRIVILEGE.--THIS SECTION SHALL NOT APPLY TO A CONTRACT~~

1 FOR SERVICES PROTECTED BY A PRIVILEGE.

2 (D) EVIDENCE.--THIS SECTION:

3 (1) SHALL APPLY TO A PURCHASE ORDER EVIDENCING NEW
4 OBLIGATIONS; BUT

5 (2) SHALL NOT APPLY TO A PURCHASE ORDER EVIDENCING
6 FULFILLMENT OF AN EXISTING CONTRACT.

7 (E) POSTING.--INFORMATION UNDER THIS SECTION SHALL BE POSTED
8 AND MAINTAINED ON THE INSTITUTION'S INTERNET WEBSITE.

9 Section 13. This act shall take effect as follows:

10 (1) The amendment or addition of sections 1502, 1503, ~~1504~~ <--
11 AND 1504 ~~and 1505~~ of the act shall take effect July 1, 2015. <--

12 (2) This section shall take effect immediately.

13 (3) The remainder of this act shall take effect in 60
14 days.