

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 411 Session of 2015

INTRODUCED BY PILEGGI, BLAKE, BAKER, COSTA, FOLMER, FONTANA, GORDNER, MENSCH, RAFFERTY, SMUCKER, STEFANO, TEPLITZ, VANCE, WARD, WILLIAMS, YAW, VULAKOVICH, BOSCOLA, YUDICHAK, LEACH AND BROWNE, FEBRUARY 5, 2015

AS AMENDED ON SECOND CONSIDERATION, OCTOBER 19, 2015

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," in
10 preliminary provisions, further providing for definitions; in
11 requirements and prohibitions, providing for Pennsylvania
12 Interscholastic Athletic Association; in access, FURTHER <--
13 PROVIDING FOR OPEN-RECORDS OFFICER, FOR REGULATIONS AND
14 POLICIES AND FOR REQUESTS, AND providing for inmate access;
15 in procedure, further providing for access, for requests, for
16 written requests, for production of certain records and for
17 exceptions for public records; in agency response, further
18 providing for general rule and for extension of time; in
19 appeal of agency determination, further providing for filing
20 of appeal and for appeals officers; in judicial review,
21 further providing for Commonwealth agencies, legislative
22 agencies and judicial agencies, for fee limitations and for
23 Office of Open Records; and, in State-related institutions,
24 further providing for reporting, for contents of report and
25 for copies and posting, and providing for contracts.

26 The General Assembly of the Commonwealth of Pennsylvania
27 hereby enacts as follows:

28 ~~Section 1. The definitions of "confidential proprietary"~~ <--

1 ~~information," "independent agency," "local agency," "personal~~
2 ~~financial information," "requester" and "State-affiliated~~
3 ~~entity" in section 102 of the act of February 14, 2008 (P.L.6,~~
4 ~~No.3), known as the Right to Know Law, are amended and the~~
5 ~~section is amended by adding definitions to read:~~

6 SECTION 1. THE DEFINITIONS OF "INDEPENDENT AGENCY," "LOCAL <--
7 AGENCY," "PERSONAL FINANCIAL INFORMATION" AND "STATE-AFFILIATED
8 ENTITY" IN SECTION 102 OF THE ACT OF FEBRUARY 14, 2008 (P.L.6,
9 NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW, ARE AMENDED AND THE
10 SECTION IS AMENDED BY ADDING DEFINITIONS TO READ:

11 Section 102. Definitions.

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

15 * * *

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

17 (1) for the purpose of selling or reselling any portion
18 of the record;

19 (2) to obtain names and addresses from the record for
20 the purpose of commercial solicitation; or

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

23 The term does not include the use of a public record by an
24 educational or noncommercial scientific institution for
25 scholarly or scientific research or the use of a public record
26 by the news media, a journalist or an author for news gathering
27 or dissemination in a newspaper, periodical, book, digital
28 publication or radio or television news broadcast.

29 * * *

30 ~~"Confidential proprietary information." Commercial or <--~~

1 ~~financial information received or created by an agency:~~

2 ~~(1) which is privileged or confidential; and~~

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

6 * * *

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

11 "INMATE." AN INDIVIDUAL CURRENTLY INCARCERATED, AFTER HAVING <--
12 BEEN SENTENCED BY A COURT OF COMPETENT JURISDICTION, IN A
13 FEDERAL, STATE OR COUNTY CORRECTIONAL FACILITY OR PRISON.

14 * * *

15 "Local agency." Any of the following:

16 (1) Any political subdivision, intermediate unit,
17 charter school, cyber charter school or public trade or
18 vocational school.

19 (2) Any local, intergovernmental, regional or municipal
20 agency, authority, council, board, commission or similar
21 governmental entity. This paragraph includes an economic
22 development authority and an industrial development
23 authority. The term does not include an office of an elected
24 tax collector.

25 (3) Any campus police department of a State-owned or
26 State-related college or university.

27 * * *

28 "Personal financial information." An individual's personal
29 credit, charge or debit card information; bank account or other
30 financial institution account information; bank, credit or

1 financial statements; account or PIN numbers; forms required to
2 be filed by a taxpayer with a Federal or Commonwealth taxing
3 authority; employee benefit election information; INDIVIDUAL <--
4 EMPLOYEE CONTRIBUTIONS TO RETIREMENT PLANS AND INVESTMENT
5 OPTIONS; INDIVIDUAL EMPLOYEE CONTRIBUTIONS TO HEALTH CARE
6 BENEFITS AND OTHER BENEFITS; INDIVIDUAL EMPLOYEE CONTRIBUTIONS
7 TO CHARITABLE ORGANIZATIONS; and other information relating to
8 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 street block
11 identifier, the cross street or mile marker nearest the scene
12 of the incident.

13 * * *

14 Section 2. The act is amended by adding ~~sections~~ A SECTION <--
15 to read:

16 Section 307. Pennsylvania Interscholastic Athletic Association.

17 For purposes of this act, the Pennsylvania Interscholastic
18 Athletic Association is considered to be a local agency and
19 shall provide public records in accordance with this act.

20 SECTION 3. SECTIONS 502 AND 504 OF THE ACT ARE AMENDED BY <--
21 ADDING SUBSECTIONS TO READ:

22 SECTION 502. OPEN-RECORDS OFFICER.

23 * * *

24 (C) AGENCY REGISTRATION.--AN AGENCY SHALL REGISTER ITS OPEN-
25 RECORDS OFFICER WITH THE OFFICE OF OPEN RECORDS IN A MANNER
26 PRESCRIBED BY THE OFFICE OF OPEN RECORDS.

27 SECTION 504. REGULATIONS AND POLICIES.

28 * * *

29 (C) HOME ADDRESS OF AGENCY EMPLOYEES.--

30 (1) EACH COMMONWEALTH AGENCY AND LOCAL AGENCY SHALL

1 DEVELOP A POLICY ALLOWING AN EMPLOYEE TO NOTIFY THE AGENCY
2 THAT THE EMPLOYEE BELIEVES THE EXCEPTION UNDER SECTION 708 (B)
3 (1) (II) OR ANY OTHER EXCEPTION APPLIES TO THE EMPLOYEE'S HOME
4 ADDRESS.

5 (2) THE AGENCY SHALL REVIEW EACH NOTIFICATION UNDER THIS
6 SUBSECTION AND INFORM THE EMPLOYEE OF ITS DECISION.

7 (3) THE AGENCY IS NOT REQUIRED TO NOTIFY:

8 (I) AN EMPLOYEE OF THE POLICY UNDER THIS SUBSECTION
9 MORE THAN ONCE PER YEAR; OR

10 (II) A PREVIOUSLY NOTIFIED EMPLOYEE WHILE RESPONDING
11 TO A REQUEST UNDER THIS ACT.

12 SECTION 4. SECTION 506 (A) OF THE ACT IS AMENDED TO READ:
13 SECTION 506. REQUESTS.

14 (A) DISRUPTIVE REQUESTS.--

15 (1) AN AGENCY MAY DENY A REQUESTER ACCESS TO A RECORD IF
16 THE REQUESTER HAS MADE REPEATED REQUESTS FOR THAT SAME RECORD
17 AND THE REPEATED REQUESTS HAVE PLACED AN UNREASONABLE BURDEN
18 ON THE AGENCY.

19 (1.1) AN AGENCY MAY DENY A REQUEST TO A PARTY TO
20 LITIGATION WHEN THE REQUEST:

21 (I) IS MATERIAL TO A PENDING CIVIL ACTION OR
22 PROCEEDING TO WHICH THE AGENCY IS A PARTY AND THE
23 PENNSYLVANIA RULES OF CIVIL PROCEDURE OR THE FEDERAL
24 RULES OF CIVIL PROCEDURE APPLY; OR

25 (II) WAS PREVIOUSLY MADE IN LITIGATION DISCOVERY.

26 (2) A DENIAL UNDER THIS SUBSECTION SHALL NOT RESTRICT
27 THE ABILITY TO REQUEST A DIFFERENT RECORD.

28 * * *

29 SECTION 5. THE ACT IS AMENDED BY A ADDING A SECTION TO READ:
30 Section 508. Inmate access.

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

3 (b) Records.--An agency shall provide an inmate with copies
4 of the following records as they pertain directly to the inmate
5 if the disclosure of the record will not diminish the safety or
6 security of any person or correctional facility: AND IF THERE <--
7 ARE NO OTHER POLICIES OR PROCEDURES IN PLACE FOR THE INMATE TO
8 OBTAIN THE REQUESTED INFORMATION:

9 (1) Criminal records relating to the criminal commitment
10 of the inmate.

11 (2) Institutional housing information.

12 (3) The inmate's financial records.

13 (4) The inmate's work records.

14 (5) The inmate's educational records.

15 (6) The inmate's disciplinary records.

16 (7) Disciplinary, housing and other policies adopted by
17 the correctional institution or the Department of
18 Corrections.

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

21 (9) The inmate's tax records.

22 (10) The inmate's voting records.

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

25 (c) Applicability.--This section shall not prohibit an
26 agency from voluntarily permitting an inmate to have access to
27 records not listed under subsection (b) or prevent an agency
28 from complying with a lawful subpoena or court order.

29 Section ~~3~~ 6. Sections 701, 702, 703 and 707 of the act are <--
30 amended to read:

1 Section 701. Access.

2 (a) General rule.--Unless otherwise provided by law, a
3 public record, legislative record or financial record shall be
4 accessible for inspection and duplication in accordance with
5 this act. A record being provided to a requester shall be
6 provided in the medium, computer file format or other format
7 requested if it exists in that medium, computer file format or
8 other format; otherwise, it shall be provided in the medium in
9 which it exists. Public records, legislative records or
10 financial records shall be available for access during the
11 regular business hours of an agency.

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

15 Section 702. Requests.

16 Agencies may fulfill verbal[, written or anonymous verbal] or
17 written requests for access to records under this act. If the
18 requester wishes to pursue the relief and remedies provided for
19 in this act, the request for access to records must be a written
20 request.

21 Section 703. Written requests.

22 A written request for access to records may be submitted in
23 person, by mail, by e-mail, by facsimile or, to the extent
24 provided by agency rules, by any other electronic means. A
25 written request must be addressed to the open-records officer
26 designated pursuant to section 502 or to the administrative
27 office of the agency. [Employees of an] The administrative
28 office of the agency shall [be directed to] promptly forward
29 requests for records to the open-records officer of the agency
30 that received the request. A written request [should] shall

1 include the name and physical mailing address of the requester,
2 shall 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] Except as required
6 under section 707(d), a written request need not include any
7 explanation of the requester's reason for requesting or intended
8 use of the records unless otherwise required by law.

9 Section 707. Production of certain records.

10 (a) General rule.--If, in response to a request, an agency
11 produces a record that is not a public record, legislative
12 record or financial record, the agency shall notify any third
13 party that provided the record to the agency, the person that is
14 the subject of the record and the requester.

15 (b) Requests for trade secrets.--An agency shall notify a
16 third party of a request for a record if the third party
17 provided the record and included a written statement signed by a
18 representative of the third party that the record contains a
19 trade secret or confidential proprietary information.
20 Notification shall be provided within five business days of
21 receipt of the request for the record. The third party shall
22 have five business days from receipt of notification from the
23 agency to provide input on the release of the record. The agency
24 shall deny the request for the record or release the record
25 within ten business days of the provision of notice to the third
26 party and shall notify the third party of the decision.

27 (c) Transcripts.--

28 (1) Prior to an adjudication becoming final, binding and
29 nonappealable, a transcript of an administrative proceeding
30 shall be provided to a requester by the agency stenographer

1 or a court reporter, in accordance with agency procedure or
2 an applicable contract.

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

7 (3) This subsection shall not be construed to require an
8 agency to transcribe a proceeding solely for purposes of
9 responding to a request under this act.

10 (d) Commercial requests.--An agency may require a requester
11 to certify in writing whether the request is for a commercial
12 purpose. Certification shall be submitted on a form developed by
13 the Office of Open Records that shall provide a checkoff for the <--
14 requester to use to indicate whether the request is for a
15 commercial purpose. A requester that submits a false written
16 statement shall be subject to 18 Pa.C.S. § 4904 (relating to
17 unsworn falsification to authorities).

18 (e) Home address. If a request includes a home address of <--
19 an employee of the agency, the agency must notify the subject of
20 the request at least 14 days prior to release of the record. If
21 the subject of the request notifies the agency that the
22 exception under section 708(b)(1)(ii) applies, the agency shall
23 determine if the home address shall be withheld.

24 Section 4 7. Section ~~708(b)(10)(i)~~ 708(B)(6), (10)(I) and <--
25 (ii), (13), (17) and (18) and (c) of the act are amended and
26 subsection (b) is amended by adding paragraphs to read:
27 Section 708. Exceptions for public records.

28 * * *

29 (b) Exceptions.--Except as provided in subsections (c) and
30 (d), the following are exempt from access by a requester under

1 this act:

2 * * *

3 (5.1) The payment records of a person receiving services
4 from a municipal water or sewer authority or other municipal
5 authority, municipality or cooperative that provides
6 electricity, water, sewer, storm water, natural gas or
7 similar service. The authority, municipality or cooperative <--
8 shall establish a process to provide a clearance certificate
9 to a person to certify that all fees and charges owed have
10 been paid. A reasonable fee for a clearance certificate may
11 be charged. This paragraph shall not apply to reports of
12 aggregate payments made by a municipality, authority or
13 cooperative to assist low-income consumers or other consumers
14 in obtaining services. If funds are owed, the amount of the <--
15 delinquency shall appear on the clearance certificate.

16 (6) (I) THE FOLLOWING PERSONAL IDENTIFICATION <--
17 INFORMATION:

18 (A) A RECORD CONTAINING ALL OR PART OF A
19 PERSON'S SOCIAL SECURITY NUMBER, DRIVER'S LICENSE
20 NUMBER, PERSONAL FINANCIAL INFORMATION, HOME,
21 CELLULAR OR PERSONAL TELEPHONE NUMBERS, PERSONAL E-
22 MAIL ADDRESSES, EMPLOYEE NUMBER OR OTHER CONFIDENTIAL
23 PERSONAL IDENTIFICATION NUMBER.

24 (B) A SPOUSE'S NAME, MARITAL STATUS OR
25 BENEFICIARY OR DEPENDENT INFORMATION, INCLUDING THE
26 NUMBER, NAMES AND AGES OF AN EMPLOYEE'S DEPENDENTS.

27 (C) THE HOME ADDRESS OF A LAW ENFORCEMENT
28 OFFICER [OR], JUDGE[.], COMMONWEALTH EMPLOYEE,
29 MUNICIPAL EMPLOYEE OR EMPLOYEE OF A SCHOOL ENTITY.
30 FOR THE PURPOSES OF THIS CLAUSE, THE TERM "SCHOOL

1 ENTITY" SHALL INCLUDE A SCHOOL DISTRICT, INTERMEDIATE
2 UNIT, AREA VOCATIONAL-TECHNICAL SCHOOL, CHARTER
3 SCHOOL OR CYBER CHARTER SCHOOL.

4 (II) NOTHING IN THIS PARAGRAPH SHALL PRECLUDE THE
5 RELEASE OF THE NAME, POSITION, SALARY, ACTUAL
6 COMPENSATION OR OTHER PAYMENTS OR EXPENSES, EMPLOYMENT
7 CONTRACT, EMPLOYMENT-RELATED CONTRACT OR AGREEMENT AND
8 LENGTH OF SERVICE OF A PUBLIC OFFICIAL OR AN AGENCY
9 EMPLOYEE.

10 (III) AN AGENCY MAY REDACT THE NAME OR OTHER
11 IDENTIFYING INFORMATION RELATING TO AN INDIVIDUAL
12 PERFORMING AN UNDERCOVER OR COVERT LAW ENFORCEMENT
13 ACTIVITY FROM A RECORD.

14 (IV) NOTHING IN THIS PARAGRAPH SHALL PREVENT THE
15 DISCLOSURE OF AGGREGATED DATA OF EMPLOYER OR EMPLOYEE
16 COSTS RELATED TO RETIREMENT BENEFITS, HEALTH CARE
17 BENEFITS OR OTHER BENEFITS OR THE DISCLOSURE OF OPTIONS
18 MADE AVAILABLE TO EMPLOYEES REGARDING RETIREMENT, HEALTH
19 CARE OR OTHER BENEFITS PLANS.

20 * * *

21 (10) As follows:

22 (i) A record that reflects, ~~contains or includes:~~ <--

23 (A) The internal, predecisional deliberations of
24 an agency, its members, employees or officials or
25 predecisional deliberations between agency members,
26 employees or officials and members, employees or
27 officials of another agency, including predecisional
28 deliberations relating to a budget recommendation,
29 legislative proposal, legislative amendment,
30 contemplated or proposed policy or course of action

1 or any research, memos or other documents used in the
2 predecisional deliberations.

3 (B) The strategy to be used to develop or
4 achieve the successful adoption of a budget,
5 legislative proposal or regulation.

6 (ii) Subparagraph (i) (A) shall apply to agencies
7 subject to 65 Pa.C.S. Ch. 7 (relating to open meetings)
8 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
9 which is not otherwise exempt from access under this act
10 and which is presented to a quorum for deliberation in
11 accordance with 65 Pa.C.S. Ch. 7 shall be a public record
12 regardless of whether a vote occurs at the meeting.

13 * * *

14 (13) Records that would disclose the identity of, or
15 personal financial information relating to, an individual who
16 lawfully makes a donation to or for the benefit of an agency
17 unless the donation is intended for or restricted to
18 providing remuneration or personal tangible benefit to a
19 named public official or employee of the agency, including
20 lists of potential donors compiled by an agency to pursue
21 donations, donor profile information or personal identifying
22 information relating to a donor.

23 * * *

24 (17) ~~{A} Except for a safety inspection report made~~ <--
25 ~~pursuant to Federal or State law,~~ a record of an agency
26 relating to a noncriminal investigation, including:

27 (i) Complaints submitted to an agency.

28 (ii) Investigative materials, notes, correspondence
29 and reports.

30 (iii) A record that includes the identity of a

1 confidential source, including individuals subject to the
2 act of December 12, 1986 (P.L.1559, No.169), known as the
3 Whistleblower Law.

4 (iv) A record that includes information made
5 confidential by law.

6 (v) Work papers underlying an audit.

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

9 (A) Reveal the institution, progress or result
10 of an agency investigation, except the imposition of
11 a fine or civil penalty, the suspension, modification
12 or revocation of a license, permit, registration,
13 certification or similar authorization issued by an
14 agency or an executed settlement agreement unless the
15 agreement is determined to be confidential by a
16 court.

17 (B) Deprive a person of the right to an
18 impartial adjudication.

19 (C) Constitute an unwarranted invasion of
20 privacy.

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

23 (E) Endanger the life or physical safety of an
24 individual.

25 THIS PARAGRAPH SHALL NOT APPLY TO A FINAL SAFETY INSPECTION <--
26 REPORT MADE PURSUANT TO LAW OR REGULATION.

27 (18) Emergency dispatches as follows:

28 (i) Records or parts of records, except time
29 response logs, pertaining to audio recordings, telephone
30 or radio transmissions received by emergency dispatch

1 personnel, including 911 recordings.

2 (ii) This paragraph shall not apply to a 911
3 recording, or a transcript of a 911 recording, if the
4 agency or a court determines that the public interest in
5 disclosure outweighs the interest in nondisclosure.

6 (iii) The home address of the individual who
7 accesses emergency dispatch.

8 * * *

9 (31) An agency's financial institution account numbers,
10 routing numbers, credit card numbers and passwords.

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

12 (i) A volunteer ambulance service.

13 (ii) A volunteer fire company.

14 (iii) A volunteer rescue company.

15 (iv) A volunteer water rescue company.

16 (v) A volunteer organization that provides hazardous
17 materials response services.

18 (vi) A volunteer organization that provides
19 emergency medical services.

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

23 (c) Financial records.--The exceptions set forth in
24 subsection (b) shall not apply to financial records, except that
25 an agency may redact that portion of a financial record
26 protected under subsection (b)(1), (2), (3), (4), (5), (6),
27 (11), (13), (16) or (17). An agency shall not disclose the
28 identity of an individual performing an undercover or covert law
29 enforcement activity.

30 * * *

1 Section 5 8. Sections 901, 902 and 1101 of the act are

2 amended to read:

3 Section 901. General rule.

4 (a) Determination.--Upon receipt of a written request for
5 access to a record, an agency shall make a good faith effort to
6 determine if the record requested is a public record,
7 legislative record or financial record and whether the agency
8 has possession, custody or control of the identified record, and
9 to respond as promptly as possible under the circumstances
10 existing at the time of the request. All applicable fees shall
11 be paid in order to receive access to the record requested.

12 (b) Time for response.--The time for response shall not
13 exceed, in the case of a request made in person or submitted by
14 regular mail, e-mail, web form, facsimile or similar means, five
15 business days from the date the written request is received by
16 the open-records officer for an agency. If the agency fails to
17 send the response within five business days of receipt of the
18 written request for access, the written request for access shall
19 be deemed denied.

20 Section 902. Extension of time.

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

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

26 (2) the request for access requires the retrieval of a
27 record stored in a remote location;

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

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

3 (5) the requester has not complied with the agency's
4 policies regarding access to records;

5 (6) the requester refuses to pay applicable fees
6 authorized by this act; [or]

7 (7) the extent or nature of the request precludes a
8 response within the required time period[.]; or

9 (8) time is required to provide notice under section
10 ~~707(e)~~ 504(C). <--

11 (b) Notice.--

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

17 (2) The notice shall include a statement notifying the
18 requester that the request for access is being reviewed, the
19 reason for the review, a reasonable date that a response is
20 expected to be provided and an estimate of applicable fees
21 owed when the record becomes available. [If the date that a <--

22 response is expected to be provided is in excess of 30 days,
23 following the five business days allowed for in section 901,
24 the request for access shall be deemed denied unless the
25 requester has agreed in writing to an extension to the date
26 specified in the notice.] THE REQUEST FOR ACCESS SHALL BE <--

27 DEEMED DENIED IF THE AGENCY FAILS TO SEND A RESPONSE WITHIN
28 30 DAYS FOLLOWING THE FIVE BUSINESS DAYS ALLOWED FOR IN
29 SECTION 901, UNLESS THE REQUESTER HAS AGREED IN WRITING TO AN
30 ADDITIONAL EXTENSION BEYOND 30 DAYS.

1 (3) If the requester agrees to the extension, the
2 request shall be deemed denied on the day following the date
3 specified in the notice if the agency has not provided a
4 response by that date.

5 Section 1101. Filing of appeal.

6 [(a) Authorization.--

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

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

9 (1) (i) If a written request for access to a record is
10 denied or deemed denied, the requester may file an appeal
11 with the Office of Open Records or judicial, legislative
12 or other appeals officer designated under section 503(d)
13 within [15] 20 business days of the [mailing] postmark or
14 e-mail date of the agency's response or within [15] 20
15 business days of a deemed denial, whichever comes first.

16 (ii) The appeal shall [state the grounds upon which
17 the requester asserts that the record is a public record,
18 legislative record or financial record and shall] address <--
19 any grounds stated by the agency for delaying or denying
20 the request[.] AND SHALL include the following: <--

21 (A) A copy of the original request.

22 (B) The agency denial.

23 ~~(C) A list of the records that were denied.~~ <--

24 ~~(D)~~ (C) Any other information the requester <--
25 believes to be relevant.

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

29 (IV) THE OFFICE MAY ORDER A REQUESTER WHO FAILS TO <--
30 INCLUDE THE INFORMATION UNDER SUBPARAGRAPH (II) TO

1 PROVIDE THE REQUIRED INFORMATION.

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

6 (b) Determination.--

7 (1) Unless the requester agrees otherwise, the appeals
8 officer shall make a final determination which shall be
9 mailed to the requester and the agency within 30 days of
10 receipt of the appeal filed under subsection (a). The appeals
11 officer may extend this deadline by up to 15 days by
12 providing notice to both parties. If a hearing or in-camera
13 review is held ORDERED under section 1102(a)(2), the appeals <--
14 officer may extend the deadline up to 90 additional days.

15 (1.1) If the issue before the office is substantially
16 the same as an issue currently on appeal to A COURT OF COMMON <--
17 PLEAS, THE Commonwealth Court OR THE SUPREME COURT, the <--
18 appeals officer may stay the appeal until Commonwealth Court <--
19 issues a decision on the matter. OFFICE'S OPINION UNTIL THE <--
20 APPEAL IS DECIDED.

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

24 (3) Prior to issuing a final determination, a hearing
25 may be conducted. The determination by the appeals officer
26 shall be a final order. The appeals officer shall provide a
27 written explanation [of the reason for the decision] <--
28 CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW to the
29 requester and the agency.

30 (4) IF AN APPEALS OFFICER DESIGNATED UNDER SECTION 503 <--

1 DOES NOT HAVE JURISDICTION TO HEAR AN APPEAL BUT ANOTHER
2 APPEALS OFFICER HAS JURISDICTION, THE APPEALS OFFICER SHALL
3 TRANSFER THE APPEAL TO THE OTHER APPEALS OFFICER WITH
4 JURISDICTION OVER THE MATTER.

5 (c) Direct interest.--

6 (1) A person other than the agency or requester with a
7 direct interest in the record subject to an appeal under this
8 section may, within 15 days following receipt of actual
9 knowledge of the appeal but no later than the date the
10 appeals officer issues an order, file a written request to
11 provide information or to appear before the appeals officer
12 or to file information in support of the requester's or
13 agency's position.

14 (2) The appeals officer may grant a request under
15 paragraph (1) if:

16 (i) no hearing has been held;

17 (ii) the appeals officer has not yet issued its
18 order; and

19 (iii) the appeals officer believes the information
20 will be probative.

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

23 Section ~~6~~ 9. Section 1102(a) of the act is amended and the <--
24 section is amended by adding a subsection to read:

25 Section 1102. Appeals officers.

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

28 (1) Set a schedule for the requester and the open-
29 records officer to submit documents in support of their
30 positions.

1 (2) Review all information filed relating to the
2 request. The appeals officer may hold a hearing or conduct an
3 in-camera review, in which case the appeals officer may <--
4 extend the deadline in section 1101(b)(1) by up to 90 days. A
5 decision to hold or not to hold a hearing is not appealable.
6 The appeals officer may admit into evidence testimony,
7 evidence and documents that the appeals officer believes to
8 be reasonably probative and relevant to an issue in dispute.
9 The appeals officer may limit the nature and extent of
10 evidence found to be cumulative.

11 [(3) Consult with agency counsel as appropriate.] <--

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

14 * * *

15 (c) Review.--The Office of Open Records may require an
16 agency to submit a record AND A PRIVILEGE OR EXEMPTION LOG for <--
17 the purpose of conducting an in-camera review to determine if
18 the record is a public record.

19 Section 7 10. Section 1301 heading and (a) of the act are <--
20 amended to read:

21 Section 1301. Commonwealth agencies, legislative agencies
22 [and], judicial agencies and the Office of Open
23 Records.

24 (a) General rule.--Within 30 days of the mailing date of the
25 final determination of the appeals officer relating to a
26 decision of a Commonwealth agency, a legislative agency [or], a
27 judicial agency or the Office of Open Records issued under
28 section 1101(b) or the date a request for access is deemed
29 denied, a requester or the agency may file a petition for review
30 or other document as might be required by rule of court with the

1 Commonwealth Court. The court shall notify the Commonwealth
2 agency, legislative agency, judicial agency or Office of Open
3 Records of the appeal. The decision of the court shall contain
4 findings of fact and conclusions of law based upon the evidence
5 as a whole. The decision shall clearly and concisely explain the
6 rationale for the decision.

7 * * *

8 Section 8 11. Section 1307(h) of the act is amended and the <--
9 section is amended by adding ~~a subsection~~ SUBSECTIONS to read: <--
10 Section 1307. Fee limitations.

11 * * *

12 (g.1) Additional fees.--

13 (1) Notwithstanding subsection (e), each agency may
14 assess fees for responding to commercial requests under this
15 act. In addition to fees under subsections (a) and (b),
16 reasonable standard charges may be charged for document
17 search, retrieval, review and redaction for documents for
18 commercial use.

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

24 (3) A fee may not be charged under paragraph (2) for the
25 first hour of search and retrieval time for all commercial
26 requests from a single requester in a 90-day period.

27 (h) Prepayment.--Prior to granting a request for access in
28 accordance with this act, an agency may require a requester to
29 prepay an estimate of the fees authorized under this section if
30 the fees required to fulfill the request are expected to exceed

1 [\$100] \$50.

2 (I) APPEAL.--A FEE CHARGED UNDER THIS ACT SHALL BE <--
3 APPEALABLE TO THE OFFICE OF OPEN RECORDS.

4 Section 9 12. Sections 1310, 1502, 1503 and 1504 of the act <--
5 are amended to read:

6 Section 1310. Office of Open Records.

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

11 (1) Provide information relating to the implementation
12 and enforcement of this act.

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

14 (3) Provide annual training courses to agencies, public
15 officials and public employees on this act and 65 Pa.C.S. Ch.
16 7 (relating to open meetings).

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

19 (5) Assign appeals officers to review appeals of
20 decisions by Commonwealth agencies or local agencies, except
21 as provided in section 503(d), filed under section 1101 and
22 issue orders and opinions. The office shall employ or
23 contract with attorneys to serve as appeals officers to
24 review appeals and, if necessary, to hold hearings on a
25 regional basis under this act. Each appeals officer must
26 comply with all of the following:

27 (i) Complete a training course provided by the
28 Office of Open Records prior to acting as an appeals
29 officer.

30 (ii) If a hearing is necessary, hold hearings

1 regionally as necessary to ensure access to the remedies
2 provided by this act.

3 (iii) Comply with the procedures under section
4 1102(b).

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

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

11 (8) Conduct a biannual review of fees charged under this
12 act.

13 (9) Annually report on its activities and findings to
14 the Governor and the General Assembly. The report shall be
15 posted and maintained on the Internet website established
16 under paragraph (7).

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

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

27 (d) Staffing.--The executive director shall appoint
28 attorneys to act as appeals officers and additional clerical,
29 technical and professional staff as may be appropriate and may
30 contract for additional services as necessary for the

1 performance of the executive director's duties. The compensation
2 of attorneys and other staff shall be set by the Executive
3 Board. The appointment of attorneys shall not be subject to the
4 act of October 15, 1980 (P.L.950, No.164), known as the
5 Commonwealth Attorneys Act.

6 (e) Duties.--

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

10 (2) The Department of Community and Economic Development
11 shall provide payroll, LEAVE AND BENEFITS, BUDGET, <--
12 INFORMATION TECHNOLOGY and administrative support to the
13 office.

14 (3) The executive director shall promulgate regulations
15 to administer this act. Initial rulemaking under this
16 paragraph shall be initiated no later than December 31, 2015 <--
17 2016. <--

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

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

29 ~~(g) Participation. The office may participate as amicus <--~~
30 ~~curiae in an appeal from a decision of the office and may, upon~~

1 ~~approval of an appellate court, participate in oral argument.~~

2 Section 1502. [Reporting] Filing.

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

8 Section 1503. Contents of [report] filing.

9 (a) Information included.--The [report] filing required
10 under section 1502 shall include the following:

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

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

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

21 (3.1) For a State-related institution with 2,500
22 employees or more, the next highest 175 salaries paid to
23 employees of the institution that are not included under
24 paragraph (2). The salaries of faculty members must be
25 presented in salary ranges comprised of bands of no more than
26 \$75,000 with individual faculty member names itemized
27 alphabetically in the respective salary range. The
28 institution department to which a faculty member is assigned
29 must be presented with the name of the faculty member.

30 (4) The [report] filing shall not include information

1 relating to individual donors.

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

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

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

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

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

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

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

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

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

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

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

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

30 (v) Nonsalary compensation as a percentage of

1 salary. Nonsalary compensation shall include:

2 (A) Medical benefits.

3 (B) Life insurance benefits.

4 (C) Pension benefits.

5 (D) Leave benefits.

6 (E) Employer Social Security payments.

7 (F) Workers' compensation benefits.

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

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

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

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

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

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

29 (2) The "Commonwealth of Pennsylvania Budget
30 Instructions for the State System of Higher Education, State-

1 Related Universities and Non-State-Related Colleges and
2 Universities."

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

7 (d) Nonpreferred appropriations.--

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

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

15 (A) The definition and number of:

16 (I) Faculty members employed full time.

17 (II) Faculty members employed part time.

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

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

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

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

26 (B) The total number of:

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

30 (II) Graduate student credit hours, divided

1 into three course levels: master's, first
2 professional and doctoral.

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

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

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

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

19 (I) Professor.

20 (II) Associate professor.

21 (III) Assistant professor.

22 (IV) Instructor.

23 (V) Lecturer.

24 (VI) Research associate.

25 (VII) Librarian and academic administrator.

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

29 (C) Each set of faculty members or other
30 professional employees to be further subdivided by

1 full-time or part-time employment.

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

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

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

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

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

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

1 (VI) The total salary paid for instructional
2 functions and for noninstructional functions and
3 the amount of salary paid for each of these
4 functions from State-related institution funds,
5 Federal funds and other funds.

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

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

14 (B) In research.

15 (C) In public service.

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

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

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

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

1 (f) Data systems report.--Each State-related university
2 shall make a copy of the institution's integrated postsecondary
3 education data systems report available for public inspection in
4 the institution's library in print format and online on the
5 institution's publicly accessible Internet website.

6 Section 1504. [Copies and posting] Requirements for information
7 in filings.

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

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

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

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

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

30 Section ~~10~~ 13. The act is amended by adding a section to <--

1 read:

2 Section 1505. Contracts.

3 (a) Scope.--By May 30 of each year, a State-related
4 institution shall file with the Governor's Office, the Secretary
5 of the Senate, the Chief Clerk of the House of Representatives
6 and the State Library an annual list of contracts in excess of
7 \$5,000 for the purchase of all goods and third-party services.

8 (b) Contents.--The list shall include all of the following:

9 (1) Date of execution.

10 (2) Amount of the contract.

11 (3) Beginning date of the contract.

12 (4) End date of the contract, if applicable.

13 (5) The name and address of the vendor.

14 (6) Subject matter of the contract.

15 (c) Privilege.--This section shall not apply to a contract
16 for services protected by a privilege.

17 (d) Evidence.--This section:

18 (1) shall apply to a purchase order evidencing new
19 obligations; but

20 (2) shall not apply to a purchase order evidencing
21 fulfillment of an existing contract.

22 (e) Posting.--Information under this section shall be posted
23 and maintained on the institution's Internet website.

24 Section ~~14~~ 14. This act shall take effect as follows: <--

25 (1) The amendment or addition of sections ~~1501~~, 1503 and <--
26 1505 of the act shall take effect July 1, ~~2015~~ 2016, or <--
27 immediately, whichever is later.

28 (2) This section shall take effect immediately.

29 (3) The remainder of this act shall take effect December
30 31, 2015.