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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1931 Session of  
2019

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INTRODUCED BY TOPPER, BROOKS, CALTAGIRONE, DUNBAR, GOODMAN,  
HEFFLEY, JAMES, M. K. KELLER, LONGIETTI, MILLARD, MOUL,  
REESE, RYAN, SCHMITT AND STRUZZI, OCTOBER 15, 2019

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 15, 2019

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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 agency response, providing for vexatious requesters; and, in  
11 judicial review, further providing for court costs and  
12 attorney fees.

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

15 Section 1. The act of February 14, 2008 (P.L.6, No.3), known  
16 as the Right-to-Know Law, is amended by adding a section to  
17 read:

18 Section 906. Vexatious requesters.

19 (a) General rule.--An agency may petition the Office of Open  
20 Records for relief from a requester that the agency alleges is a  
21 vexatious requester. The petition shall:

22 (1) be sworn under penalty of perjury;

1           (2) be provided to the Office of Open Records and the  
2 requester alleged to be a vexatious requester; and

3           (3) detail the conduct that the agency alleges  
4 demonstrates vexatiousness, including:

5                 (i) the number of requests filed;

6                 (ii) the scope of the requests;

7                 (iii) the nature, content, language or subject  
8 matter of the requests;

9                 (iv) the nature, content, language or subject matter  
10 of other oral and written communications to the agency  
11 from the requester;

12                 (v) a pattern of conduct that amounts to an abuse of  
13 the right to access records under this act or an  
14 interference with the operation of the agency; and

15                 (vi) other information the agency believes is  
16 relevant.

17 (b) Initial finding.--

18           (1) Upon receipt of a petition, the executive director  
19 shall review the petition and determine whether further  
20 proceedings are warranted.

21           (2) If the executive director determines that further  
22 proceedings:

23                 (i) are not warranted, the executive director shall  
24 deny the petition within 30 days of its filing. The  
25 denial shall be in writing and include an explanation of  
26 the reasons for the denial. The denial is not appealable;  
27 or

28                 (ii) are warranted, the executive director shall  
29 establish a briefing schedule to provide a fair  
30 opportunity for the requester to respond to the agency's

1           petition.

2           (c) Mediation.--The executive director may require the  
3 parties to participate in mediation conducted by the Office of  
4 Open Records. The mediation shall last for a period of no more  
5 than three months and may be extended with the agreement of both  
6 parties. During the mediation, any other proceedings related to  
7 the allegations of vexatiousness shall be stayed.

8           (d) Hearing determination.--After reviewing the requester's  
9 response to the agency's petition, if any, the executive  
10 director shall determine whether a hearing is warranted. The  
11 executive director shall notify the parties of the  
12 determination. A decision to hold or not hold a hearing is not  
13 appealable. The executive director may admit into evidence  
14 testimony, evidence and documents that the executive director  
15 believes to be reasonably probative and relevant. The executive  
16 director may limit the nature and extent of evidence found to be  
17 cumulative.

18           (e) Final opinion.--The executive director shall issue a  
19 final opinion either granting or denying the petition within six  
20 months of its filing. Upon a grant of the petition, the  
21 executive director may provide appropriate relief commensurate  
22 with the vexatious conduct, including, but not limited to, an  
23 order that the agency need not comply with future requests from  
24 the vexatious requester for a specified period of time, but not  
25 to exceed one year. The final opinion is not appealable.

26           (f) Definitions.--As used in this section, the following  
27 words and phrases shall have the meanings given to them in this  
28 subsection unless the context clearly indicates otherwise:

29           "Executive director." The executive director of the Office  
30 of Open Records.

1 Section 2. Section 1304(a) of the act is amended to read:

2 Section 1304. Court costs and attorney fees.

3 (a) Reversal of agency determination.--[If a court reverses  
4 the final determination of the appeals officer or grants access  
5 to a record after a request for access was deemed denied, the] A  
6 court [may] shall award reasonable attorney fees and costs of  
7 litigation or an appropriate portion thereof to a requester if  
8 the court finds either of the following:

9 (1) the agency receiving the [original] request  
10 willfully or with wanton disregard [deprived] denied the  
11 requester [of] access to a public record subject to access or  
12 otherwise acted in bad faith under the provisions of this  
13 act; or

14 (2) the exemptions, exclusions or defenses asserted by  
15 the agency in its [final determination] denial or during any  
16 subsequent appeal were not based on a reasonable  
17 interpretation of law.

18 \* \* \*

19 Section 3. This act shall take effect in 60 days.