

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2463 Session of 2020

INTRODUCED BY GROVE, ROAE, RYAN, PICKETT, KAUFFMAN, STAATS, OWLETT, ROTHMAN, M. K. KELLER, O'NEAL, BARRAR, MACKENZIE, ZIMMERMAN, BERNSTINE, MOUL, JOZWIAK, DUSH, GLEIM, KEEFER, B. MILLER, ROWE AND KORTZ, APRIL 29, 2020

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 5, 2020

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; providing for judicial administration; and
18 prescribing the manner in which the number and compensation
19 of the deputies and all other assistants and employes of
20 certain departments, boards and commissions shall be
21 determined," providing for access to public records during
22 disaster declaration.

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

25 Section 1. The act of April 9, 1929 (P.L.177, No.175), known
26 as The Administrative Code of 1929, is amended by adding an

1 article to read:

2 ARTICLE XXVIII-G

3 ACCESS TO PUBLIC RECORDS DURING DISASTER DECLARATION

4 Section 2801-G. Definitions.

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

8 "Commonwealth agency." Any agency or commission of the
9 executive branch under the policy, direction or supervision of
10 the Governor.

11 "Disaster declaration." A declaration by the Governor of
12 disaster emergency under 35 Pa.C.S. § 7301(c) (relating to
13 general authority of Governor).

14 "Office." The Office of Open Records established under
15 section 1310 of the act of February 14, 2008 (P.L.6, No.3),
16 known as the Right-to-Know Law.

17 "Record." Information, regardless of physical form or
18 characteristics, that documents a transaction or activity of a
19 Commonwealth agency and is created, received or retained in
20 accordance with the laws of this Commonwealth or in connection
21 with a transaction, business or activity of the agency. The term
22 includes a document, paper, letter, map, book, tape, photograph,
23 film or sound recording, information stored or maintained
24 electronically and a data-processed or image-processed document.

25 "Request for records." A request made under the Right-to-
26 Know Law for records held by a Commonwealth agency.

27 "Requester." An individual or entity making a request for
28 records.

29 Section 2802-G. Request for records.

30 (a) Prohibition on Governor.--The Governor may not direct a

1 Commonwealth agency to ignore requests for records or suspend
2 the Commonwealth agency's process to answer a request for
3 records during a disaster declaration.

4 (b) Prohibition on Commonwealth agencies.--A Commonwealth
5 agency may not suspend the process by which a Commonwealth
6 agency responds to a request for records during a disaster
7 declaration, EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 902(A) <--
8 OF THE ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE
9 RIGHT-TO-KNOW LAW. IF AN EXTENSION OF TIME IS DETERMINED TO BE
10 NECESSARY, THE COMMONWEALTH AGENCY SHALL COMPLY WITH SECTION
11 902(B) OF THE RIGHT-TO-KNOW LAW.

12 Section 2803-G. Guidelines for Commonwealth agencies.

13 No later than five days after the effective date of this
14 section, the office shall publish guidelines for a Commonwealth
15 agency specifying how the Commonwealth agency is required to
16 respond to a request for records made during a disaster
17 declaration when the Governor has ordered the Commonwealth
18 agency to close the Commonwealth agency's physical location. A
19 Commonwealth agency shall adhere to the guidelines published by
20 the office under this section.

21 Section 2804-G. Failure to respond to requests for records.

22 (a) Petitions.--If a Commonwealth agency fails to respond to
23 a request for records during a disaster declaration, a requester
24 may bring a petition before the Commonwealth Court to compel the
25 Commonwealth agency to respond to the request for records.

26 ~~(b) Reimbursement. If a Commonwealth agency is ordered by <--~~
27 ~~the Commonwealth Court to answer a request for records under~~
28 ~~subsection (a), the Commonwealth agency shall reimburse the~~
29 ~~requester for attorney costs and fees incurred by the requester.~~

30 ~~(c) (B) Appeals.--If a Commonwealth agency denies a request <--~~

1 for records after being ordered to respond by the Commonwealth
2 Court under subsection (a), a requester may conduct the request
3 for records in accordance with Chapter 11 of the act of February
4 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

5 ~~(d)~~ (C) Denials.-- <--

6 (1) Except as provided under paragraph (2), a
7 Commonwealth agency may only deny a request for records
8 during a disaster declaration for reasons authorized under
9 the Right-to-Know Law.

10 (2) A Commonwealth agency may not deny a request for
11 records during a disaster declaration for a reason specified
12 under section 506(b)(1)(i) of the Right-to-Know Law.

13 Section 2805-G. Public records under Right-to-Know Law.

14 The SUBJECT TO SECTION 708 OF THE ACT OF FEBRUARY 14, 2008 <--
15 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW, THE following
16 information shall be considered a public record under the act of <--
17 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, <--
18 during a disaster declaration:

19 (1) Data used by a Commonwealth agency for any rules,
20 policies or actions taken by the Commonwealth agency in
21 relation to a disaster declaration.

22 (2) The process by which a Commonwealth agency
23 determines how the Commonwealth agency will collect the data
24 used by the Commonwealth agency for any rules, policies or
25 actions taken by the Commonwealth agency in relation to a
26 disaster declaration.

27 (3) Any quantitative or predictive models based on the
28 data collected by a Commonwealth agency which are then used
29 by the Commonwealth agency for any rules, policies or actions
30 taken by the Commonwealth agency in relation to a disaster

1 declaration.

2 Section 2806-G. Applicability.

3 ~~This article shall apply retroactively to the disaster~~ <--
4 ~~declaration issued by the Governor on March 6, 2020, published~~
5 ~~at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the~~
6 ~~disaster declaration.~~

7 THIS ARTICLE SHALL APPLY AS FOLLOWS: <--

8 (1) FOR THE DURATION OF ANY DISASTER DECLARATION OR ANY
9 RENEWAL OF A DISASTER DECLARATION UNTIL THE DISASTER
10 DECLARATION EXPIRES OR IS TERMINATED BY EXECUTIVE ORDER,
11 PROCLAMATION OR OPERATION OF LAW.

12 (2) IN ADDITION TO THE PROVISIONS OF PARAGRAPH (1), FOR
13 THE DISASTER DECLARATION ISSUED BY THE GOVERNOR ON MARCH 6,
14 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020), ALL
15 REQUESTS FOR RECORDS RECEIVED BY A COMMONWEALTH AGENCY SINCE
16 MARCH 6, 2020, SHALL BE TREATED AS IF THE REQUEST FOR THE
17 RECORD HAD BEEN RECEIVED BY THE AGENCY ON THE EFFECTIVE DATE
18 OF THIS SECTION.

19 Section 2. This act shall take effect immediately.