

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2524 Session of  
2022INTRODUCED BY SCHMITT, RIGBY, HENNESSEY, B. MILLER, TOPPER,  
RYAN, ZIMMERMAN, MOUL AND GROVE, APRIL 20, 2022AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 13, 2022

## 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 access, further providing for open-records officer, FOR <--  
12 APPEALS OFFICER, for regulations and policies, for uniform  
13 form, for requests and for retention of records and providing  
14 for inmate access; in procedure, further providing for  
15 written requests, for redaction, for production of certain  
16 records and for exceptions for public records; in agency  
17 response, further providing for extension of time and  
18 providing for relief from vexatious requesters; in appeal of  
19 agency determination, further providing for filing of appeal  
20 and for appeals officers; in judicial review, further  
21 providing for court costs and attorney fees, for civil  
22 penalty, for fee limitations and for Office of Open Records;  
23 and, in miscellaneous provisions, further providing for  
24 relation to other laws.

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

27 Section 1. The definitions of "independent agency," "local  
28 agency" and "personal financial information" in section 102 of

1 the act of February 14, 2008 (P.L.6, No.3), known as the Right-  
2 to-Know Law, are amended and the section is amended by adding  
3 definitions to read:

4 Section 102. Definitions.

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

8 \* \* \*

9 "Commercial purpose." As follows:

10 (1) The use of a record to obtain names and addresses  
11 from the record for the purpose of commercial solicitation.

12 (2) THE DIRECT USE OF A RECORD FOR SALE OR RESALE. <--

13 ~~(2)~~ (3) The term does not include : <--

14 (i) the use of a record by an educational or  
15 noncommercial scientific institution for scholarly or  
16 scientific research or the use of a record by the news  
17 media, a journalist or an author for news gathering or  
18 dissemination in a newspaper, periodical, book, digital  
19 publication or radio or television news broadcast; or <--

20 (ii) a request for records from an attorney on  
21 behalf of a client if the records are not obtained for  
22 the purpose of selling, reselling or solicitation by the  
23 attorney or client or used by the client for a purpose  
24 under subparagraph (i); <--

25 (III) A REQUEST FOR RECORDS FROM AN ENTITY HOLDING A  
26 CERTIFICATE OF AUTHORITY OR LICENSE FROM THE INSURANCE  
27 DEPARTMENT, THEIR CONTRACTORS, VENDORS, LICENSEES,  
28 SERVICE PROVIDERS OR AFFILIATES, PROVIDED THAT THE  
29 RECORDS OBTAINED SHALL ONLY BE USED FOR THE BUSINESS OF  
30 INSURANCE;

1           (IV) A REQUEST FOR REAL ESTATE-RELATED RECORDS USED  
2           FOR REAL ESTATE PURPOSES; OR

3           (V) A REQUEST FOR RECORDS BY AN ENTITY FOR PURPOSES  
4           OF PROVIDING FRAUD PREVENTION, IDENTITY THEFT, FINANCIAL  
5           TRANSACTIONS, CREDIT REPORTING AND PUBLIC SAFETY  
6           SERVICES, INCLUDING LAW ENFORCEMENT.

7           \* \* \*

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

12          "Inmate." An individual incarcerated, after having been  
13 sentenced by a court of competent jurisdiction, in a Federal,  
14 State or county correctional facility or prison.

15          \* \* \*

16          "Local agency." As follows:

17           (1) Any of the following:

18           [(1)] (i) Any political subdivision, intermediate  
19 unit, charter school, cyber charter school or public  
20 trade or vocational school.

21           [(2)] (ii) Any local, intergovernmental, regional or  
22 municipal agency, authority, council, board, commission  
23 or similar governmental entity. This subparagraph  
24 includes an economic development authority and an  
25 industrial development authority.

26           ~~(iii) Any campus police department of a State owned~~ <--  
27 ~~or State related college or university.~~

28           (2) The term does not include the following volunteer  
29 organizations:

30           (i) A volunteer ambulance service.

1           (ii) A volunteer fire company.

2           (iii) A volunteer rescue company.

3           (iv) A volunteer water rescue company.

4           (v) A volunteer organization that provides hazardous  
5           materials response services.

6           (vi) A volunteer organization that provides  
7           emergency medical services.

8           \* \* \*

9           "Personal financial information." As follows:

10           (1) An individual's personal credit, charge or debit  
11           card information; bank account or other financial institution  
12           account information; bank, credit or financial statements;  
13           account or PIN numbers; forms required to be filed by a  
14           taxpayer with a Federal, State or local taxing authority;  
15           employee benefit election information; individual employee  
16           contributions to retirement plans and investment options;  
17           individual employee contributions to health care benefits and  
18           other benefits; individual employee contributions to  
19           charitable organizations; and other information relating to  
20           an individual's personal finances.

21           (2) The term does not include employer costs or  
22           aggregated data of employee costs related to retirement  
23           benefits, health care benefits or other benefits or the  
24           disclosure of options made available to employees regarding  
25           retirement benefits, health care benefits or other benefits.

26           \* \* \*

27           ~~"Row office." The Office of Attorney General, the Department~~ <--  
28           ~~of the Auditor General or the Treasury Department.~~

29           \* \* \*

30           "Time response log." A log created, received, maintained or

1 retained by a public safety answering point (PSAP), as defined  
2 in 35 Pa.C.S. § 5302 (relating to definitions), containing the  
3 following information:

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

5 (2) The time the PSAP contacted or dispatched the  
6 dedicated emergency response organization for response.

7 (3) The dedicated emergency response organization  
8 dispatched.

9 (4) The time the dedicated emergency response  
10 organization responded.

11 (5) The time the dedicated emergency response  
12 organization arrived on the scene.

13 (6) The time the dedicated emergency response  
14 organization became available.

15 (7) The location of the incident by way of the street  
16 block identifier, the cross street or the mile marker nearest  
17 the scene of the incident.

18 (8) A description of the reason for the dispatch.

19 \* \* \*

20 "Vexatious requester." ~~An individual whose sole intention in~~<--  
21 ~~filing a request is~~ A PERSON WHO, BY THE PERSON'S CONDUCT,<--  
22 DEMONSTRATES AN INTENT to annoy or harass a local agency. AN<--  
23 INDIVIDUAL MAY NOT BE FOUND TO BE A VEXATIOUS REQUESTER SOLELY  
24 DUE TO THE NUMBER OF REQUESTS THEY HAVE FILED OR THE NUMBER OF  
25 RECORDS SOUGHT.

26 Section 2. Section 502 of the act is amended by adding a  
27 subsection to read:

28 Section 502. Open-records officer.

29 \* \* \*

30 (c) Agency registration.--A Commonwealth agency or local

1 agency shall register the agency's open-records officer with the  
2 Office of Open Records in a manner prescribed by the Office of  
3 Open Records.

4 SECTION 2.1. SECTION 503(D) OF THE ACT IS AMENDED BY ADDING <--  
5 A PARAGRAPH TO READ:

6 SECTION 503. APPEALS OFFICER.

7 \* \* \*

8 (D) LAW ENFORCEMENT RECORDS AND STATEWIDE OFFICIALS.--

9 \* \* \*

10 (3) AN APPEALS OFFICER DESIGNATED BY A DISTRICT ATTORNEY  
11 UNDER PARAGRAPH (2) SHALL HAVE JURISDICTION OVER AN APPEAL  
12 ONLY INsofar AS IT RELATES TO ACCESS TO CRIMINAL  
13 INVESTIGATIVE RECORDS IN POSSESSION OF A LOCAL AGENCY. TO THE  
14 EXTENT AN APPEAL INVOLVES MULTIPLE ISSUES, ONE OF WHICH  
15 RELATES TO ACCESS TO CRIMINAL INVESTIGATIVE RECORDS IN  
16 POSSESSION OF A LOCAL AGENCY, THE OFFICE OF OPEN RECORDS  
17 SHALL HAVE JURISDICTION OVER ALL OTHER ISSUES IN THE APPEAL.

18 Section 3. Section 504(b) (1) of the act is amended to read:

19 Section 504. Regulations and policies.

20 \* \* \*

21 (b) Posting.--The following information shall be posted at  
22 each agency and, if the agency maintains an Internet website, on  
23 the agency's Internet website:

24 (1) Contact information for the open-records officer[.],  
25 including name, address, telephone number, facsimile number, <--  
26 IF APPLICABLE, and email address.

27 \* \* \*

28 Section 4. Section 505 of the act is amended by adding a  
29 subsection to read:

30 Section 505. Uniform form.

\* \* \*

(d) Commercial requests.--The following shall apply:

(1) An agency may require a requester to certify in writing whether the request is for a commercial purpose. A requester that submits a false written statement under this subsection shall be subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(2) Certification to Commonwealth agencies and local agencies shall be submitted in a manner approved by the Office of Open Records.

Section 5. Sections 506(d)(1) and 507 of the act are amended to read:

Section 506. Requests.

\* \* \*

(d) Agency possession.--

(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act. This paragraph shall apply to records of the following volunteer organizations when the organization contracts with a Commonwealth agency or local agency to provide services, including, but not limited to:

(i) A volunteer ambulance service.

(ii) A volunteer fire company.

(iii) A volunteer rescue company.

(iv) A volunteer water rescue company.

(v) A volunteer organization that provides hazardous

materials response services.

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

\* \* \*

Section 507. Retention of records.

(a) Agency schedules.--Nothing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive.

(b) Prohibition.--

(1) Notwithstanding subsection (a), once a request for records has been submitted under Chapter 7, an agency may not knowingly dispose of any potentially responsive record until the request has been responded to and any related appeals have been exhausted.

(2) A court may impose a civil penalty of not more than \$2,500 if an agency or public official, in violation of paragraph (1), disposes of any potentially responsive record in bad faith.

Section 6. The act is amended by adding a section to read:  
Section 508. Inmate access.

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

(b) Records.--An agency shall provide an inmate with copies of the following records as they pertain directly to the inmate or inmate's case if the disclosure of the record will not diminish the safety or security of any person or correctional facility and if there are no other policies or procedures in place for the inmate to obtain the requested information:

(1) Criminal records relating to the criminal commitment <--



of the inmate. PUBLIC RECORDS RELATING TO THE CRIMINAL  
COMMITMENT OF THE INMATE.

- (2) Institutional housing information.
- (3) The inmate's financial records.
- (4) The inmate's work records.
- (5) The inmate's educational records.
- (6) The inmate's disciplinary records.
- (7) Disciplinary, housing and other policies adopted by  
the correctional institution or the Department of  
Corrections.
- (8) A record relating to any Federal or State benefit  
received by the inmate or for which the inmate may be  
eligible.

- (9) The inmate's tax records.
- (10) The inmate's voting records.
- (11) Records relating to any license issued to the  
inmate by a Commonwealth or local agency.

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

Section 7. Sections 703, 706 and 707(c) of the act are  
amended to read:

Section 703. Written requests.

(a) General rule.--A written request for access to records  
may be submitted in person, by mail, by e-mail, by facsimile or,  
to the extent provided by agency rules, by any other electronic  
means. A written request must be addressed to the open-records  
officer designated pursuant to section 502. [Employees of an  
agency shall be directed to forward requests for records to the

1 open-records officer.] A written request should identify or  
2 describe the records sought with sufficient specificity to  
3 enable the agency to ascertain which records are being requested  
4 and shall include the name and address to which the agency  
5 should address its response. [A] Except as required under  
6 section 505(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 (b) False certification.--A requester that submits a false  
10 certification under section 505(d) shall be subject to 18  
11 Pa.C.S. § 4904 (relating to unsworn falsification to  
12 authorities).

13 Section 706. Redaction.

14 If an agency determines that a [public record, legislative  
15 record or financial] record contains information which is  
16 subject to access as well as information which is not subject to  
17 access, the agency's response shall grant access to the  
18 information which is subject to access and deny access to the  
19 information which is not subject to access. If the information  
20 which is not subject to access is an integral part of the  
21 [public record, legislative record or financial] record and  
22 cannot be separated, the agency shall redact from the record the  
23 information which is not subject to access, and the response  
24 shall grant access to the information which is subject to  
25 access. The agency may not deny access to the record if the  
26 information which is not subject to access is able to be  
27 redacted. Information which an agency redacts in accordance with  
28 this subsection shall be deemed a denial under Chapter 9.

29 Section 707. Production of certain records.

30 \* \* \*

1 (c) Transcripts.--

2 (1) Prior to an adjudication becoming final, binding and  
3 nonappealable, a transcript, IF IT EXISTS, of an <--  
4 administrative proceeding shall be provided to a requester by  
5 the agency stenographer or a court reporter, in accordance  
6 with agency procedure or an applicable contract. THIS <--  
7 PARAGRAPH DOES NOT APPLY TO A TRANSCRIPT THAT IS NOT PART OF  
8 AN ADJUDICATORY PROCEEDING.

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

13 (3) This subsection may not be construed to require an  
14 agency to transcribe a proceeding solely for purposes of  
15 responding to a request under this act.

16 Section 8. Section 708(b)(6)(i)(B), (7) INTRODUCTORY <--  
17 PARAGRAPH AND (IV), (9), (10), (13), (16), (17) and (18) and (c)  
18 of the act are amended and subsection (b) is amended by adding a  
19 paragraph to read:

20 Section 708. Exceptions for public records.

21 \* \* \*

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

25 \* \* \*

26 (6) (i) The following personal identification  
27 information:

28 \* \* \*

29 (B) A spouse's or immediate family member's  
30 name, marital status or beneficiary or dependent

1           information, including the number, names and ages of  
2           an employee's dependents.

3           \* \* \*

4           (7) THE FOLLOWING RECORDS RELATING TO [AN AGENCY  
5           EMPLOYEE:] A CURRENT, PAST OR PROSPECTIVE APPLICANT FOR  
6           EMPLOYMENT OR FOR LEGISLATIVE OR GUBERNATORIAL APPOINTMENT:

<--

7           \* \* \*

8           (IV) THE [EMPLOYMENT] APPLICATION OF AN INDIVIDUAL  
9           WHO IS NOT HIRED [BY THE AGENCY.] OR APPOINTED BY THE  
10          AGENCY, GENERAL ASSEMBLY OR GOVERNOR.

11          \* \* \*

12          (9) The draft of a bill, resolution, regulation,  
13          statement of policy, management directive, ordinance or  
14          amendment thereto prepared by or for an agency. This  
15          paragraph shall not apply to a draft that is presented to a  
16          quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7  
17          (relating to open meetings) at a public meeting, regardless  
18          of whether a vote occurs or is scheduled to occur at the  
19          meeting.

20          (10) As follows:

21           (i) A record that reflects:

22           (A) The internal, predecisional deliberations of  
23           an agency, its members, employees [or], officials, CONTRACTORS OR SUBCONTRACTORS or predecisional  
24           deliberations between agency members, employees [or],  
25           officials, CONTRACTORS OR SUBCONTRACTORS and members, employees [or], officials, CONTRACTORS OR  
26           SUBCONTRACTORS of another agency, including  
27           predecisional deliberations relating to a budget  
28           recommendation, legislative proposal, legislative

<--

<--

<--

<--

1 amendment, contemplated or proposed policy or course  
2 of action or any research, memos or other documents  
3 used in the predecisional deliberations.

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

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

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

18 (iv) This paragraph shall not apply to the results  
19 of public opinion surveys, polls, focus groups, marketing  
20 research or similar effort designed to measure public  
21 opinion.

22 \* \* \*

23 (13) Records that would disclose the identity ~~of, or~~ <--  
24 ~~personal financial information relating to, an individual who~~  
25 OF [AN INDIVIDUAL], OR PERSONAL FINANCIAL INFORMATION <--  
26 RELATING TO, A PERSON WHO lawfully makes a donation to or for  
27 the benefit of an agency unless the donation is intended for  
28 or restricted to providing remuneration or personal tangible  
29 benefit to a named public official or employee of the agency,  
30 including lists of potential donors compiled by an agency to

1 pursue donations, donor profile information or personal  
2 identifying information relating to a donor.

3 \* \* \*

4 (16) A record of an agency relating to or resulting in a  
5 criminal investigation, including:

6 (i) Complaints of potential criminal conduct other  
7 than a private criminal complaint.

8 (ii) Investigative materials, notes, correspondence,  
9 videos and reports.

10 (iii) A record that includes the identity of a  
11 confidential source or the identity of a suspect who has  
12 not been charged with an offense to whom confidentiality  
13 has been promised.

14 (iv) A record that includes information made  
15 confidential by law or court order.

16 (v) Victim information, including any information  
17 that would jeopardize the safety of the victim.

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

20 (A) Reveal the institution, progress or result  
21 of a criminal investigation, except the filing of  
22 criminal charges.

23 (B) Deprive a person of the right to a fair  
24 trial or an impartial adjudication.

25 (C) Impair the ability to locate a defendant or  
26 codefendant.

27 (D) Hinder an agency's ability to secure an  
28 arrest, prosecution or conviction.

29 (E) Endanger the life or physical safety of an  
30 individual.

~~(vii) This paragraph shall not apply to records  
created more than 50 years prior to the request, unless  
the agency can demonstrate actual harm to an ongoing  
investigation if the records are released.~~

<--

(VII) THIS PARAGRAPH SHALL NOT:

<--

(A) APPLY TO RECORDS CREATED MORE THAN 50 YEARS  
PRIOR TO THE REQUEST, UNLESS THE AGENCY CAN  
DEMONSTRATE ACTUAL HARM TO AN ONGOING INVESTIGATION  
IF THE RECORDS ARE RELEASED.

(B) ESTABLISH ANY REQUIREMENT THAT AN AGENCY  
RETAIN A RECORD FOR ANY PERIOD OF TIME NOT OTHERWISE  
REQUIRED FOR RETENTION BY LAW.

This paragraph shall not apply to information contained in a  
police blotter as defined in 18 Pa.C.S. § 9102 (relating to  
definitions) and utilized or maintained by the Pennsylvania  
State Police, local, campus, transit or port authority police  
department or other law enforcement agency or in a traffic  
report except as provided under 75 Pa.C.S. § 3754(b)  
(relating to accident prevention investigations). Police  
blotter information, in whatever form it exists, is public  
and includes, but is not limited to, the name and address of  
an individual charged, the alleged offenses, the date of the  
offenses and the date of the charges.

<--

(17) A record of an agency relating to a noncriminal  
investigation, including:

(i) Complaints submitted to an agency.

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

(iii) A record that includes the identity of a  
confidential source, including individuals subject to the

1 act of December 12, 1986 (P.L.1559, No.169), known as the  
2 Whistleblower Law.

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

5 (v) Work papers underlying an audit.

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

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

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

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

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

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

24 ~~(vii) This paragraph shall not apply to records~~ <--  
25 ~~created more than 25 years prior to the request, unless~~  
26 ~~the agency can demonstrate actual harm to an ongoing~~  
27 ~~investigation if the records are released.~~

28 (VII) THIS PARAGRAPH SHALL NOT: <--

29 (A) APPLY TO RECORDS CREATED MORE THAN 25 YEARS  
30 PRIOR TO THE REQUEST, UNLESS THE AGENCY CAN



1           DEMONSTRATE ACTUAL HARM TO AN ONGOING INVESTIGATION  
2           IF THE RECORDS ARE RELEASED.

3           (B) ESTABLISH ANY REQUIREMENT THAT AN AGENCY  
4           RETAIN A RECORD FOR ANY PERIOD OF TIME NOT OTHERWISE  
5           REQUIRED FOR RETENTION BY LAW.

6           (18) Emergency dispatches as follows:

7           (i) Records or parts of records, except time  
8           response logs, pertaining to audio recordings, telephone  
9           or radio transmissions received by emergency dispatch  
10          personnel, including 911 recordings.

11          (ii) This paragraph shall not apply to a 911  
12          recording, or a transcript of a 911 recording, if the  
13          agency or a court determines that the public interest in  
14          disclosure outweighs the interest in nondisclosure.

15          \* \* \*

16          (31) An agency's financial institution account numbers,  
17          routing numbers, credit card numbers, PIN numbers and  
18          passwords.

19          (c) Financial records.--The exceptions set forth in  
20          subsection (b) shall not apply to financial records, except that  
21          an agency may redact that portion of a financial record  
22          protected under subsection (b) (1), (2), (3), (4), (5), (6),  
23          (13), (16) [or], (17), (28), (30) or (31). An agency shall not  
24          disclose the identity of an individual performing an undercover  
25          or covert law enforcement activity.

26          \* \* \*

27          Section 9. Section 902(b) (2) of the act is amended to read:  
28          Section 902. Extension of time.

29          \* \* \*

30          (b) Notice.--

1           \* \* \*

2           (2) The notice shall include a statement notifying the  
3 requester that the request for access is being reviewed, the  
4 reason for the review, a reasonable date that a response is  
5 expected to be provided and an estimate of applicable fees  
6 owed when the record becomes available. [If the date that a  
7 response is expected to be provided is in excess of 30 days,  
8 following the five business days allowed for in section 901,  
9 the request for access shall be deemed denied unless the  
10 requester has agreed in writing to an extension to the date  
11 specified in the notice.] The request for access shall be  
12 deemed denied if the agency fails to send a response within  
13 30 days following the five business days allowed under  
14 section 901, unless the requester has agreed in writing to an  
15 additional extension beyond 30 days.

16           \* \* \*

17       Section 10. The act is amended by adding a section to read:  
18 Section 906. Relief from vexatious requesters.

19       (a) General rule.--In order to merit relief under this  
20 section, a local agency shall be required to demonstrate clear  
21 and convincing evidence that a requester's sole intentions are <--  
22 to annoy or harass the local agency. REQUESTER, BY THE <--  
23 REQUESTER'S CONDUCT, HAS DEMONSTRATED AN INTENT TO ANNOY OR  
24 HARASS THE LOCAL AGENCY BY FILING A REQUEST OR REQUESTS. A local  
25 agency may petition the Office of Open Records for relief from  
26 an individual that the local agency alleges is a vexatious  
27 requester. The petition shall:

28           (1) Be submitted under penalty of 18 Pa.C.S. § 4904  
29 (relating to unsworn falsification to authorities).

30           (2) Be provided to the Office of Open Records and the

1 requester alleged to be a vexatious requester.

2 (3) Detail the conduct by the individual which the local  
3 agency alleges demonstrates vexatiousness, including, as  
4 appropriate:

5 (i) The number of requests filed.

6 (ii) The total number of pending requests.

7 (iii) The scope of the requests.

8 (iv) The nature, content, language or subject matter  
9 of the requests.

10 (v) The nature, content, language or subject matter  
11 of other oral and written communications to the local  
12 agency.

13 (vi) Conduct that the local agency alleges is  
14 placing an unreasonable burden on the local agency.

15 (vii) Conduct that the local agency alleges is  
16 intended to harass the local agency.

17 (viii) Any other relevant information, INCLUDING  
18 RELIEF SOUGHT OR GRANTED TO OTHER AGENCIES AGAINST THE  
19 SAME INDIVIDUAL.

<--

20 (b) Exception.--A local agency may not petition the Office  
21 of Open Records for relief under subsection (a) from an  
22 individual employed by or ~~connected~~ WHO CONTRACTS with a  
23 newspaper or magazine of general circulation, weekly  
24 publication, press association or radio or television station  
25 who submits a request for the purpose of news gathering or  
26 dissemination in a newspaper, periodical, book, digital  
27 publication or radio or television broadcast.

<--

28 (c) Timing.--Upon the filing of a petition for relief from a  
29 vexatious requester, all other proceedings and deadlines under  
30 this act shall be stayed pending a resolution of the petition by

1 the Office of Open Records. The stay shall apply to any pending  
2 or new requests by the alleged vexatious requester.

3 (d) Processing requests.--Upon receipt of a petition under  
4 subsection (a), the executive director of the Office of Open  
5 Records or a designee shall: <--

6 ~~(1) Within~~ WITHIN five business days, notify the <--  
7 requester alleged to be a vexatious requester that the  
8 requester may, within 10 business days, file a preliminary  
9 response to the petition.

10 ~~(2) Within 15 business days, inform the agency whether~~ <--  
11 ~~pending requests and new requests from the requester alleged~~  
12 ~~to be a vexatious requester should continue to be processed~~  
13 ~~or should be stayed pending resolution of the proceedings~~  
14 ~~under this section. A decision under this paragraph is not~~  
15 ~~appealable.~~

16 (e) Initial finding.--The executive director or the  
17 executive director's designee shall, within 30 calendar days  
18 after receiving a petition under subsection (a), review the  
19 petition and determine whether further proceedings are  
20 warranted. The following shall apply:

21 (1) If the executive director or the executive  
22 director's designee determines that further proceedings are  
23 not warranted, the executive director or the executive  
24 director's designee shall deny the petition. The denial shall  
25 be in writing and include an explanation of the reasons for  
26 the denial.

27 (2) If the executive director or the executive  
28 director's designee determines that further proceedings are  
29 warranted, the executive director or the executive director's  
30 designee shall establish a briefing schedule to provide a

1 fair opportunity for the requester to respond to the local  
2 agency's petition. The executive director or the executive  
3 director's designee may admit into evidence testimony,  
4 evidence and documents that the executive director or the  
5 executive director's designee believes to be reasonably  
6 probative and relevant. The executive director or the  
7 executive director's designee may limit the nature and extent  
8 of evidence found to be cumulative.

9 (f) Mediation.--At any time during proceedings under this  
10 section, the executive director or the executive director's  
11 designee may recommend that both parties participate in  
12 mediation conducted by the Office of Open Records. If both  
13 parties agree, the mediation shall last for a period of up to 30  
14 calendar days. During the mediation, any other proceedings under  
15 this section shall be stayed.

16 (g) Final opinion.--The executive director or the executive  
17 director's designee shall issue a final opinion either granting  
18 or denying the petition within 90 calendar days of its filing.  
19 Upon a grant of the petition, the executive director or the  
20 executive director's designee may provide appropriate relief  
21 commensurate with the vexatious conduct, including an order that <--  
22 the local agency need not comply with future requests from the  
23 vexatious requester for a specified period of time, but not to  
24 exceed one year. The final opinion shall be posted on the Office  
25 of Open Record's publicly accessible Internet website. INCLUDING <--  
26 AN ORDER THAT THE LOCAL AGENCY NEED NOT COMPLY WITH FUTURE  
27 REQUESTS FROM THE VEXATIOUS REQUESTER FOR A SPECIFIED PERIOD OF  
28 TIME, BUT NOT TO EXCEED ONE YEAR IN THE FIRST INSTANCE AN  
29 INDIVIDUAL IS DETERMINED TO BE A VEXATIOUS REQUESTER. THE  
30 EXECUTIVE DIRECTOR MAY ALSO REQUEST THAT THE COMMONWEALTH COURT

1 IMPOSE A CIVIL PENALTY COMMENSURATE WITH THE BURDEN PLACED ON  
2 THE LOCAL AGENCY DUE TO THE VEXATIOUS CONDUCT.

3 (h) Appeal to Commonwealth Court.--Any party aggrieved by a  
4 decision made under this section may appeal the decision to the  
5 Commonwealth Court within 15 calendar days. IF A LOCAL AGENCY <--  
6 FILES A PETITION FOR RELIEF UNDER THIS SECTION AND THE PETITION  
7 IS DENIED, THE LOCAL AGENCY MAY NOT FILE ANOTHER PETITION UNDER  
8 THIS SECTION FOR A PERIOD OF TWELVE MONTHS.

9 Section 11. Sections 1101, 1102, 1304(a) and 1305 of the act  
10 are amended to read:

11 Section 1101. Filing of appeal.

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

13 (1) (i) If a written request for access to a record is  
14 denied or deemed denied, the requester may file an appeal  
15 with the Office of Open Records or judicial, legislative  
16 or other appeals officer designated under section 503(d)  
17 within [15 business] 30 days of the [mailing] postmark or  
18 e-mail date of the agency's response or within [15  
19 business] 30 days of a deemed denial, whichever comes  
20 first.

21 (ii) The appeal shall [state the grounds upon which  
22 the requester asserts that the record is a public record,  
23 legislative record or financial record and shall address  
24 any grounds stated by the agency for delaying or denying  
25 the request.] provide a succinct statement of the grounds  
26 upon which the appeal is based and include all of the  
27 following:

28 (A) The text of the original request.

29 (B) The text of the agency denial.

30 (C) Any other information the requester believes

1           to be relevant.

2           (iii) The Office of Open Records shall provide a  
3           form on its publicly accessible Internet website that may  
4           be used by the requester to file the appeal. The form  
5           under this subparagraph may also be used to file an  
6           appeal with a legislative agency or judicial agency.

7           (iv) The Office of Open Records may order a  
8           requester who fails to include the information under  
9           subparagraph (ii) to provide the required information.

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

14          (b) Determination.--

15          (1) Unless the requester agrees otherwise, the appeals  
16          officer shall make a final determination which shall be  
17          mailed to the requester and the agency within 30 days of  
18          receipt of the appeal filed under subsection (a). The appeals  
19          officer may extend this deadline by up to 15 days by  
20          providing notice to both parties.

21          (1.1) If a hearing is ordered under section 1102(a)(2),  
22          the appeals officer may extend the deadline up to 90  
23          additional days.

24          (1.2) If an in-camera review is ordered under section  
25          1102(a)(2), the appeals officer may extend the deadline up to  
26          120 additional days.

27          (2) If the Office of Open Records or other appeals  
28          officer fails to issue a final determination within 30 days  
29          or as otherwise provided under paragraph (1), (1.1) or (1.2),  
30          the appeal is deemed denied.

1 (3) Prior to issuing a final determination, a hearing  
2 may be conducted. The determination by the appeals officer  
3 shall be a final order. The appeals officer shall provide a  
4 written explanation of the reason for the decision to the  
5 requester and the agency.

6 (4) Except as provided in section 503(d), the Office of  
7 Open Records shall have exclusive jurisdiction over all  
8 appeals filed against Commonwealth and local agencies.

9 ~~(5) An appeals officer designated by a district attorney <--~~  
10 ~~under section 503(d)(2) shall have jurisdiction over an~~  
11 ~~appeal only insofar as it relates to access to criminal~~  
12 ~~investigative records in possession of a local agency. To the~~  
13 ~~extent an appeal involves multiple issues, one of which~~  
14 ~~relates to access to criminal investigative records in~~  
15 ~~possession of a local agency, the Office of Open Records~~  
16 ~~shall have jurisdiction over all other issues in the appeal.~~

17 ~~(6) (5) If an appeals officer does not have jurisdiction <--~~  
18 ~~to hear an appeal or part of an appeal but another appeals~~  
19 ~~officer designated under section 503 has jurisdiction, the~~  
20 ~~appeals officer without jurisdiction shall transfer the~~  
21 ~~appeal or part of the appeal, as appropriate, to the appeals~~  
22 ~~officer with jurisdiction. If the appeal was timely filed~~  
23 ~~with the original appeals officer, it shall be considered~~  
24 ~~timely filed upon the transfer, but response times or~~  
25 ~~deadlines under this act shall be considered from the date of~~  
26 ~~the transfer to the appeals officer with jurisdiction.~~

27 (c) Direct interest.--

28 (1) A person other than the agency or requester with a  
29 direct interest in the record subject to an appeal under this  
30 section may, within 15 days following receipt of actual



1 knowledge of the appeal but no later than the date the  
2 appeals officer issues an order, file a written request to  
3 provide information or to appear before the appeals officer  
4 or to file information in support of the requester's or  
5 agency's position.

6 (2) The appeals officer may grant a request under  
7 paragraph (1) if:

8 (i) no hearing has been held;

9 (ii) the appeals officer has not yet issued its  
10 order; and

11 (iii) the appeals officer believes the information  
12 will be probative.

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

15 Section 1102. Appeals officers.

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

18 (1) Set a schedule for the requester and the open-  
19 records officer to submit documents in support of their  
20 positions.

21 (2) Review all information filed relating to the  
22 request. The appeals officer may hold a hearing or conduct an  
23 in-camera review. A decision to hold or not to hold a hearing  
24 is not appealable. A decision to conduct or not to conduct an  
25 in-camera review is not appealable. The appeals officer may  
26 admit into evidence testimony, evidence and documents that  
27 the appeals officer believes to be reasonably probative and  
28 relevant to an issue in dispute. The appeals officer may  
29 limit the nature and extent of evidence found to be  
30 cumulative.

1           [(3) Consult with agency counsel as appropriate.]

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

4           ~~(5) For a Commonwealth agency other than a row office or~~ <--  
5 ~~local agency~~ LOCAL AGENCY OR AN AGENCY FOR WHICH THE OFFICE <--  
6 OF OPEN RECORDS DESIGNATES AN APPEALS OFFICER UNDER SECTION  
7 503(A), provide to the Office of Open Records, in a manner  
8 and form prescribed by the Office of Open Records, a copy of  
9 all final determinations issued within seven days of  
10 issuance.

11       (b) Procedures.--The Office of Open Records, a judicial  
12 agency, a legislative agency, the Attorney General, Auditor  
13 General, State Treasurer or district attorney may adopt  
14 procedures relating to appeals under this chapter.

15           (1) If an appeal is resolved without a hearing, 1 Pa.  
16 Code Pt. II (relating to general rules of administrative  
17 practice and procedure) does not apply except to the extent  
18 that the agency has adopted these chapters in its regulations  
19 or rules under this subsection.

20           (2) If a hearing is held, 1 Pa. Code Pt. II shall apply  
21 unless the agency has adopted regulations, policies or  
22 procedures to the contrary under this subsection.

23           (3) In the absence of a regulation, policy or procedure  
24 governing appeals under this chapter, the appeals officer  
25 shall rule on procedural matters on the basis of justice,  
26 fairness and the expeditious resolution of the dispute.

27           (4) If a procedural defect would otherwise cause an  
28 appeal to be dismissed, the appeals officer may, with the  
29 agreement of the agency and the requester, waive the defect  
30 and proceed to consider the case on its merits.

1 (c) Review.--The Office of Open Records may request that a  
2 Commonwealth agency other than a row office or local agency <--  
3 LOCAL AGENCY OR AN AGENCY FOR WHICH THE OFFICE OF OPEN RECORDS <--  
4 DESIGNATES AN APPEALS OFFICER UNDER SECTION 503(A) submit a  
5 record and a privilege or exemption log for the purpose of  
6 conducting an in-camera review to determine if the record is a  
7 public record.

8 Section 1304. Court costs and attorney fees.

9 (a) Reversal of agency determination.--~~If a court reverses~~ <--  
10 the final determination OR RESPONSE of the appeals officer or IF <--  
11 A COURT OR APPEALS OFFICER grants access to a record after a  
12 request for access was deemed denied, the~~y~~ ~~The~~ court OR APPEALS <--  
13 OFFICER may award reasonable attorney fees and costs of  
14 litigation or an appropriate portion thereof to a requester if  
15 the court OR APPEALS OFFICER finds either of the following: <--

16 (1) the agency receiving the original request willfully  
17 or with wanton disregard deprived the requester of access to  
18 a public record subject to access or otherwise acted in bad  
19 faith under the provisions of this act; or

20 (2) the exemptions, exclusions or defenses asserted by  
21 the agency in its final determination OR RESPONSE were not <--  
22 based on a reasonable interpretation of law.

23 \* \* \*

24 Section 1305. Civil penalty.

25 (a) Denial of access.--A court may impose a civil penalty of  
26 not more than [~~\$1,500~~] \$2,500 if an agency [~~denied~~] denies  
27 access to a public record in bad faith.

28 (b) Failure to comply with [~~court~~] order.--~~[An]~~ A court may  
29 impose a civil penalty of not more than \$500 per day if an  
30 agency or public official [~~who does not promptly~~] fails to

1 comply with [a court] an order under this act [is subject to a  
2 civil penalty of not more than \$500 per day until the public  
3 records are provided].

4 (C) DESTRUCTION OF RECORDS.--A COURT MAY IMPOSE A CIVIL <--  
5 PENALTY OF NOT MORE THAN \$2,500 IF AN AGENCY OR PUBLIC OFFICIAL,  
6 IN VIOLATION OF SUBSECTION (A), DISPOSES OF ANY POTENTIALLY  
7 RESPONSIVE RECORD IN BAD FAITH.

8 Section 12. Section 1307 of the act is amended by adding  
9 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 \* \* \*

25 (i) Records to be used for a commercial purpose.--The  
26 following apply:

27 (1) In responding to a request for records that will be  
28 used for a commercial purpose, an agency may charge a  
29 requester additional standard fees for the search, retrieval,  
30 review, redaction and duplication of the records. The fees

1 shall be calculated at no more than the hourly wage of the  
2 lowest-paid public employee of the agency who is capable of  
3 searching, retrieving, reviewing, redacting or duplicating  
4 the information necessary to comply with the request.

5 (2) Prior to granting a commercial request, the agency,  
6 upon request, shall provide the requester with an estimate of  
7 the fees to be incurred by the agency in fulfilling the  
8 request.

9 (3) Paragraph (1) shall not apply to the following:

10 (i) A request for records subject to the fees under  
11 subsection (b)(4).

12 (ii) A request for records subject to fees  
13 established in laws or regulations of this Commonwealth  
14 not subject to this act.

15 (iii) A request for records from an attorney on  
16 behalf of a client if records are not obtained for the  
17 purpose of selling, reselling or solicitation by the  
18 attorney or the client or used by the client for a  
19 commercial purpose.

20 (j) Alternative fee arrangement.--An agency and a requester  
21 may enter into a contract, memorandum of understanding or other  
22 agreement that provides an alternative fee arrangement to the  
23 fees authorized under this section. An agreement under this  
24 subsection shall be public.

25 (k) Appeals.--A fee charged under this section BY A LOCAL <--  
26 AGENCY OR AN AGENCY FOR WHICH THE OFFICE OF OPEN RECORDS  
27 DESIGNATES AN APPEALS OFFICER UNDER SECTION 503(A) may be  
28 appealed to the Office of Open Records.

29 Section 13. Sections 1310 and 3101.1 of the act are amended  
30 to read:

1 Section 1310. Office of Open Records.

2 (a) Establishment.--There is established in the Department  
3 of Community and Economic Development an Office of Open Records.  
4 The office shall do all of the following:

5 (1) Provide information relating to the implementation  
6 and enforcement of this act.

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

8 (3) Provide an annual training [courses] course to  
9 agencies, public officials and public employees on this act  
10 and 65 Pa.C.S. Ch. 7 (relating to open meetings).

11 (4) Provide [annual,] regional and online training  
12 courses throughout the year to local agencies, public  
13 officials and public employees.

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

22 (i) Complete a training course provided by the  
23 Office of Open Records prior to acting as an appeals  
24 officer.

25 (ii) If a hearing is necessary, hold hearings  
26 regionally as necessary to ensure access to the remedies  
27 provided by this act.

28 (iii) Comply with the procedures under section  
29 1102(b).

30 (6) Establish an informal mediation program to resolve

disputes under this act.

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

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

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

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

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

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

1 (e) Duties.--

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

5 (2) The Department of Community and Economic Development  
6 shall provide payroll, leave and benefits, budget,  
7 information technology and administrative support, and any  
8 other support which may be necessary for the operation of the  
9 Office of Open Records, to the Office of Open Records.

10 (e.1) Public comment.--The Office of Open Records shall  
11 abstain from public comment about a pending proceeding before  
12 the Office of Open Records. This subsection shall not prohibit  
13 employees of the Office of Open Records from making public  
14 statements in the course of official duties, from issuing  
15 written advisory opinions, from making general comments on this  
16 act that are not related to a specific pending proceeding before  
17 the Office of Open Records or from explaining the procedures of  
18 the Office of Open Records.

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

22 Section 3101.1. Relation to other laws.

23 (a) General rule.--If the provisions of this act regarding  
24 access to records conflict with any other Federal or State law,  
25 the provisions of this act shall not apply.

26 (b) Records made public under other laws.--If records are  
27 expressly made public under any ~~other~~ Federal ~~or~~ State law, the <--  
28 exceptions set forth in section 708(b) shall not apply.

29 Section 14. This act shall take effect in 30 days.