

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 492 Session of 2021

INTRODUCED BY MASTRIANO, BAKER, STEFANO, MENSCH, PHILLIPS-HILL AND VOGEL, APRIL 13, 2021

REFERRED TO STATE GOVERNMENT, APRIL 13, 2021

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, for uniform form, for requests and for retention of
 15 records and providing for inmate access; in procedure,
 16 further providing for access, for requests, for written
 17 requests, for electronic access, for creation of record, for
 18 redaction, for production of certain records and for
 19 exceptions for public records; in agency response, further
 20 providing for general rule and for extension of time; in
 21 appeal of agency determination, further providing for filing
 22 of appeal and for appeals officers; in judicial review,
 23 further providing for civil penalty, for fee limitations and
 24 for Office of Open Records; and, in miscellaneous provisions,
 25 further providing for relation to other laws.

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

28 Section 1. The definitions of "independent agency," "local
 29 agency," "personal financial information" and "State-affiliated

1 entity" in section 102 of the act of February 14, 2008 (P.L.6,
2 No.3), known as the Right-to-Know Law, are amended and the
3 section is amended by adding 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:

11 (i) for the purpose of selling or reselling any
12 portion of the record;

13 (ii) to obtain names and addresses from the record
14 for the purpose of commercial solicitation; or

15 (iii) for the purpose of generating revenue or in a
16 manner through which the requester can reasonably expect
17 to generate revenue.

18 (2) The term does not include the use of a record by an
19 educational or noncommercial scientific institution for
20 scholarly or scientific research or the use of a record by
21 the news media, a journalist or an author for news gathering
22 or dissemination in a newspaper, periodical, book, digital
23 publication or radio or television news broadcast.

24 * * *

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

29 "Inmate." An individual currently incarcerated, after having
30 been sentenced by a court of competent jurisdiction, in a

1 Federal, State or county correctional facility or prison.

2 * * *

3 "Local agency." Any of the following:

4 (1) Any political subdivision, intermediate unit,
5 charter school, cyber charter school or public trade or
6 vocational school.

7 (2) Any local, intergovernmental, regional or municipal
8 agency, authority, council, board, commission or similar
9 governmental entity. This paragraph includes an economic
10 development authority and an industrial development
11 authority.

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

14 * * *

15 "Personal financial information." An individual's personal
16 credit, charge or debit card information; bank account or other
17 financial institution account information; bank, credit or
18 financial statements; account or PIN numbers; forms required to
19 be filed by a taxpayer with a Federal or Commonwealth taxing
20 authority; employee benefit election information; individual
21 employee contributions to retirement plans and investment
22 options; individual employee contributions to health care
23 benefits and other benefits; individual employee contributions
24 to charitable organizations; and other information relating to
25 an individual's personal finances.

26 * * *

27 "State-affiliated entity." A Commonwealth authority or
28 Commonwealth entity. The term includes the Pennsylvania Higher
29 Education Assistance Agency and any entity established thereby,
30 the Pennsylvania Gaming Control Board, the Pennsylvania Game

1 Commission, the Pennsylvania Fish and Boat Commission, the
2 Pennsylvania Housing Finance Agency, the Pennsylvania Municipal
3 Retirement Board, the State System of Higher Education, a
4 community college, the Pennsylvania Turnpike Commission, the
5 Pennsylvania Public Utility Commission, the Pennsylvania
6 Infrastructure Investment Authority, the State Public School
7 Building Authority[, the Pennsylvania Interscholastic Athletic
8 Association] and the Pennsylvania Higher Educational Facilities
9 Authority. The term does not include a State-related
10 institution.

11 * * *

12 "Time response log." A log created, received, maintained or
13 retained by a public safety answering point (PSAP), as defined
14 in 35 Pa.C.S. § 5302 (relating to definitions), containing the
15 following information:

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

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

19 (3) The dedicated emergency response organization
20 dispatched.

21 (4) The time the dedicated emergency response
22 organization responded.

23 (5) The time the dedicated emergency response
24 organization arrived on the scene.

25 (6) The time the dedicated emergency response
26 organization became available.

27 (7) The address of the incident or the street block
28 identifier, the cross street or the mile marker nearest the
29 scene of the incident.

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

1 * * *

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

3 Section 307. Pennsylvania Interscholastic Athletic Association.

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

7 Section 3. Section 502 of the act is amended by adding a
8 subsection to read:

9 Section 502. Open-records officer.

10 * * *

11 (c) Agency registration.--An agency shall register the
12 agency's open-records officer with the Office of Open Records in
13 a manner prescribed by the Office of Open Records.

14 Section 4. Section 504(b) (1) of the act is amended to read:

15 Section 504. Regulations and policies.

16 * * *

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

20 (1) Contact information for the open-records officer[.],
21 including name, address, telephone number, facsimile number
22 if used and email address if used.

23 * * *

24 Section 5. Section 505 of the act is amended by adding a
25 subsection to read:

26 Section 505. Uniform form.

27 * * *

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

29 (1) An agency may require a requester to certify in
30 writing whether the request is for a commercial purpose. A

1 requester that submits a false written statement under this
2 subsection shall be subject to 18 Pa.C.S. § 4904 (relating to
3 unsworn falsification to authorities).

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

7 Section 6. Sections 506(a) and 507 of the act are amended to
8 read:

9 Section 506. Requests.

10 (a) Disruptive requests.--

11 (1) An agency may deny a requester access to a record if
12 the requester has made repeated requests for that same record
13 and the repeated requests have placed an unreasonable burden
14 on the agency.

15 (1.1) An agency may deny a request to a party to
16 litigation when the request:

17 (i) is material to a pending civil action or
18 proceeding to which the agency is a party and the
19 Pennsylvania Rules of Civil Procedure or the Federal
20 Rules of Civil Procedure apply; or

21 (ii) was previously made in litigation discovery.

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

24 * * *

25 Section 507. Retention of records.

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

30 (b) Prohibition.--

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

6 (2) A court may impose a civil penalty of not more than
7 \$25,000 if an agency or public official, in violation of
8 paragraph (1), disposes of any potentially responsive record
9 in bad faith.

10 Section 7. The act is amended by adding a section to read:
11 Section 508. Inmate access.

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

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

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

22 (2) Institutional housing information.

23 (3) The inmate's financial records.

24 (4) The inmate's work records.

25 (5) The inmate's educational records.

26 (6) The inmate's disciplinary records.

27 (7) Disciplinary, housing and other policies adopted by
28 the correctional institution or the Department of
29 Corrections.

30 (8) A record relating to any Federal or State benefit

1 received by the inmate or for which the inmate is eligible.

2 (9) The inmate's tax records.

3 (10) The inmate's voting records.

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

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

10 Section 8. Sections 701, 702 and 703 of the act are amended
11 to read:

12 Section 701. Access.

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

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

26 Section 702. Requests.

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

1 request.

2 Section 703. Written requests.

3 (a) General rule.--A written request for access to records
4 may be submitted in person, by mail, by e-mail, by facsimile or,
5 to the extent provided by agency rules, by any other electronic
6 means. A written request must be addressed to the open-records
7 officer designated pursuant to section 502 or to the
8 administrative office of the agency. [Employees of an] The
9 administrative office of the agency shall [be directed to]
10 promptly forward requests for records to the open-records
11 officer of the agency that received the request. A written
12 request should identify or describe the records sought with
13 sufficient specificity to enable the agency to ascertain which
14 records are being requested and shall include the name and
15 address to which the agency should address its response. [A]
16 Except as required under section 505(d), a written request need
17 not include any explanation of the requester's reason for
18 requesting or intended use of the records unless otherwise
19 required by law.

20 (b) False certification.--A requester that submits a false
21 certification under section 505(d) shall be subject to 18
22 Pa.C.S. § 4904 (relating to unsworn falsification to
23 authorities).

24 Section 9. Section 704(b) of the act is amended by adding a
25 paragraph to read:

26 Section 704. Electronic access.

27 * * *

28 (b) Response.--

29 * * *

30 (3) If the requester is seeking access to the contents

1 of a database, the requester may, within 30 days following
2 receipt of the agency notification, submit a written request
3 to the agency to receive some or all of the underlying
4 database. The agency shall provide access to the database or
5 provide a reason for denying access to the database within 14
6 days of the receipt of the written request. Any denial under
7 this paragraph may be appealed pursuant to the provisions of
8 Chapter 11.

9 Section 10. Sections 705, 706 and 707 of the act are amended
10 to read:

11 Section 705. Creation of record.

12 When responding to a request for access, an agency shall not
13 be required to create a record which does not currently exist or
14 to compile, maintain, format or organize a record in a manner in
15 which the agency does not currently compile, maintain, format or
16 organize the record. Providing data from an agency database does
17 not constitute creating a record.

18 Section 706. Redaction.

19 If an agency determines that a [public record, legislative
20 record or financial] record contains information which is
21 subject to access as well as information which is not subject to
22 access, the agency's response shall grant access to the
23 information which is subject to access and deny access to the
24 information which is not subject to access. If the information
25 which is not subject to access is an integral part of the
26 [public record, legislative record or financial] record and
27 cannot be separated, the agency shall redact from the record the
28 information which is not subject to access, and the response
29 shall grant access to the information which is subject to
30 access. The agency may not deny access to the record if the

1 information which is not subject to access is able to be
2 redacted. Information which an agency redacts in accordance with
3 this subsection shall be deemed a denial under Chapter 9.

4 Section 707. Production of certain records.

5 (a) General rule.--If, in response to a request, an agency
6 produces a record that is not a public record, legislative
7 record or financial record, the agency shall notify any third
8 party that provided the record to the agency, the person that is
9 the subject of the record and the requester.

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

25 (c) Transcripts.--

26 (1) Prior to an adjudication becoming final, binding and
27 nonappealable, a transcript of an administrative proceeding
28 shall be provided to a requester by the agency stenographer
29 or a court reporter, in accordance with agency procedure or
30 an applicable contract.

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

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

8 (d) Information privacy.--When an agency believes that
9 responsive material to a request may include personal
10 information protected under section 1 of Article I of the
11 Constitution of Pennsylvania, it may require a requester to
12 provide additional information as to:

13 (1) why the requester believes that the information is
14 not protected; or

15 (2) if the information is protected, why the interest of
16 the public in having access to the information outweighs the
17 individual privacy rights.

18 Section 11. Section 708(b)(6), (9), (10), (13), (16), (17)
19 and (18) and (c) of the act are amended and subsection (b) is
20 amended by adding paragraphs to read:

21 Section 708. Exceptions for public records.

22 * * *

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

26 * * *

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

29 (A) A record containing all or part of a
30 person's Social Security number, driver's license

1 number, personal financial information, home,
2 cellular or personal telephone numbers, personal e-
3 mail addresses, employee number or other confidential
4 personal identification number.

5 (B) A spouse's name, marital status or
6 beneficiary or dependent information, including the
7 number, names and ages of an employee's dependents.

8 (C) The home address of a law enforcement
9 officer or judge.

10 (ii) Nothing in this paragraph shall preclude the
11 release of the name, position, salary, actual
12 compensation or other payments or expenses, employment
13 contract, employment-related contract or agreement and
14 length of service of a public official or an agency
15 employee.

16 (iii) An agency may redact the name or other
17 identifying information relating to an individual
18 performing an undercover or covert law enforcement
19 activity from a record.

20 (iv) Nothing in this paragraph shall prevent the
21 disclosure of aggregated data of employer or employee
22 costs related to retirement benefits, health care
23 benefits or other benefits or the disclosure of options
24 made available to employees regarding retirement, health
25 care or other benefits plans.

26 * * *

27 (9) The draft of a bill, resolution, regulation,
28 statement of policy, management directive, ordinance or
29 amendment thereto prepared by or for an agency. This
30 paragraph shall not apply to a draft that is presented to a

1 quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7
2 (relating to open meetings) or that is discussed by agency
3 officials or employees at a public meeting regardless of
4 whether a vote occurs at the meeting.

5 (10) As follows:

6 (i) A record that reflects:

7 (A) The internal, predecisional deliberations of
8 an agency, its members, employees or officials or
9 predecisional deliberations between agency members,
10 employees or officials and members, employees or
11 officials of another agency, including predecisional
12 deliberations relating to a budget recommendation,
13 legislative proposal, legislative amendment,
14 contemplated or proposed policy or course of action
15 or any research, memos or other documents used in the
16 predecisional deliberations.

17 (B) The strategy to be used to develop or
18 achieve the successful adoption of a budget,
19 legislative proposal or regulation.

20 (ii) Subparagraph (i) (A) shall apply to agencies
21 subject to 65 Pa.C.S. Ch. 7 [(relating to open meetings)]
22 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
23 which is not otherwise exempt from access under this act
24 and which is presented to a quorum for deliberation in
25 accordance with 65 Pa.C.S. Ch. 7 or which is discussed by
26 agency officials or employees at a public meeting shall
27 be a public record regardless of whether a vote occurs at
28 the meeting.

29 (iii) This paragraph shall not apply to a written or
30 Internet application or other document that has been

1 submitted to request Commonwealth funds.

2 (iv) This paragraph shall not apply to the results
3 of public opinion surveys, polls, focus groups, marketing
4 research or similar effort designed to measure public
5 opinion.

6 (v) This paragraph shall not apply to records
7 created more than 20 years prior to the request.

8 * * *

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

18 * * *

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

21 (i) Complaints of potential criminal conduct other
22 than a private criminal complaint.

23 (ii) Investigative materials, notes, correspondence,
24 videos and reports.

25 (iii) A record that includes the identity of a
26 confidential source or the identity of a suspect who has
27 not been charged with an offense to whom confidentiality
28 has been promised.

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

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

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

5 (A) Reveal the institution, progress or result
6 of a criminal investigation, except the filing of
7 criminal charges.

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

10 (C) Impair the ability to locate a defendant or
11 codefendant.

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

14 (E) Endanger the life or physical safety of an
15 individual.

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

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

1 (17) [A] Except for a final safety inspection report
2 made pursuant to law or regulation or a final agency decision
3 in the noncriminal investigation, a record of an agency
4 relating to a noncriminal investigation, including:

5 (i) Complaints submitted to an agency.

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

8 (iii) A record that includes the identity of a
9 confidential source, including individuals subject to the
10 act of December 12, 1986 (P.L.1559, No.169), known as the
11 Whistleblower Law.

12 (iv) A record that includes information made
13 confidential by law.

14 (v) Work papers underlying an audit.

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

17 (A) Reveal the institution, progress or result
18 of an agency investigation, except the imposition of
19 a fine or civil penalty, the suspension, modification
20 or revocation of a license, permit, registration,
21 certification or similar authorization issued by an
22 agency or an executed settlement agreement unless the
23 agreement is determined to be confidential by a
24 court.

25 (B) Deprive a person of the right to an
26 impartial adjudication.

27 (C) Constitute an unwarranted invasion of
28 privacy.

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

1 (E) Endanger the life or physical safety of an
2 individual.

3 (vii) This paragraph shall not apply to records
4 created more than 25 years prior to the request, unless
5 the agency can demonstrate actual harm to an ongoing
6 investigation if the records are released.

7 (18) Emergency dispatches as follows:

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

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

16 * * *

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

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

21 (i) A volunteer ambulance service.

22 (ii) A volunteer fire company.

23 (iii) A volunteer rescue company.

24 (iv) A volunteer water rescue company.

25 (v) A volunteer organization that provides hazardous
26 materials response services.

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

29 Section 506(d)(1) shall apply to a volunteer organization
30 under this paragraph that contracts with a local agency to

1 provide services to the local agency.

2 (c) Financial records.--The exceptions set forth in
3 subsection (b) shall not apply to financial records, except that
4 an agency may redact that portion of a financial record
5 protected under subsection (b) (1), (2), (3), (4), (5), (6),
6 (11), (13), (16) [or], (17), (28) or (30). An agency shall not
7 disclose the identity of an individual performing an undercover
8 or covert law enforcement activity.

9 * * *

10 Section 12. Sections 901, 902(b) (2), 1101, 1102 and 1305 of
11 the act are amended to read:

12 Section 901. General rule.

13 (a) Determination.--Upon receipt of a written request for
14 access to a record, an agency shall make a good faith effort to
15 determine if the record requested is a public record,
16 legislative record or financial record and whether the agency
17 has possession, custody or control of the identified record, and
18 to respond as promptly as possible under the circumstances
19 existing at the time of the request. All applicable fees shall
20 be paid in order to receive access to the record requested.

21 (b) Time for response.--The time for response shall not
22 exceed, in the case of a request made in person or submitted by
23 regular mail, email, web form, facsimile or similar means, five
24 business days from the date the written request is received by
25 the open-records officer for an agency. If the agency fails to
26 send the response within five business days of receipt of the
27 written request for access, the written request for access shall
28 be deemed denied.

29 Section 902. Extension of time.

30 * * *

1 (b) Notice.--

2 * * *

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

17 * * *

18 Section 1101. Filing of appeal.

19 [(a) Authorization.--

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

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

22 (1) (i) If a written request for access to a record is
23 denied or deemed denied, the requester may file an appeal
24 with the Office of Open Records or judicial, legislative
25 or other appeals officer designated under section 503(d)
26 within [15 business] 60 days of the [mailing] postmark or
27 e-mail date of the agency's response or within [15
28 business] 60 days of a deemed denial, whichever comes
29 first.

30 (ii) The appeal shall [state the grounds upon which

1 the requester asserts that the record is a public record,
2 legislative record or financial record and shall address
3 any grounds stated by the agency for delaying or denying
4 the request.] include all of the following:

5 (A) The text of the original request.

6 (B) The text of the agency denial.

7 (C) Any other information the requester believes
8 to be relevant.

9 (iii) The Office of Open Records shall provide a
10 form on its publicly accessible Internet website that may
11 be used by the requester to file the appeal.

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

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

19 (b) Determination.--

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

26 (1.1) If a hearing is ordered under section 1102(a)(2),
27 the appeals officer may extend the deadline up to 90
28 additional days.

29 (1.2) If an in-camera review is ordered under section
30 1102(a)(2), the appeals officer may extend the deadline:

1 (i) Up to 45 additional days, if the number of
2 records is 10 or fewer.

3 (ii) Up to 90 additional days, if the number of
4 records is greater than 10 or the records include audio
5 or video recordings.

6 (1.3) If the issue before the Office of Open Records is
7 substantially the same as an issue currently on appeal to a
8 court of common pleas, Commonwealth Court or the Supreme
9 Court, the appeals officer may stay the opinion of the Office
10 of Open Records until the appeal is decided.

11 (2) If the Office of Open Records or other appeals
12 officer fails to issue a final determination within 30 days
13 or as otherwise provided under paragraph (1), the appeal is
14 deemed denied.

15 (3) Prior to issuing a final determination, a hearing
16 may be conducted. The determination by the appeals officer
17 shall be a final order. The appeals officer shall provide a
18 written explanation of the reason for the decision to the
19 requester and the agency.

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

23 (5) An appeals officer designated by a district attorney
24 under section 503(d)(2) shall have jurisdiction over an
25 appeal only insofar as it relates to access to criminal
26 investigative records in possession of a local agency. To the
27 extent an appeal involves multiple issues, one of which
28 relates to access to criminal investigative records in
29 possession of a local agency, the Office of Open Records
30 shall have jurisdiction over all other issues in the appeal.

1 (6) If an appeals officer does not have jurisdiction to
2 hear an appeal or part of an appeal but another appeals
3 officer designated under section 503 has jurisdiction, the
4 appeals officer without jurisdiction shall transfer the
5 appeal or part of the appeal, as appropriate, to the appeals
6 officer with jurisdiction. If the appeal was timely filed
7 with the original appeals officer, it shall be considered
8 timely filed upon the transfer.

9 (c) Direct interest.--

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

18 (2) The appeals officer may grant a request under
19 paragraph (1) if:

20 (i) no hearing has been held;

21 (ii) the appeals officer has not yet issued its
22 order; and

23 (iii) the appeals officer believes the information
24 will be probative.

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

27 Section 1102. Appeals officers.

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

30 (1) Set a schedule for the requester and the open-

1 records officer to submit documents in support of their
2 positions.

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

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

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

16 (5) Provide to the Office of Open Records, in a manner
17 and form prescribed by the Office of Open Records, a copy of
18 all final determinations issued within seven days of
19 issuance.

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

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

29 (2) If a hearing is held, 1 Pa. Code Pt. II shall apply
30 unless the agency has adopted regulations, policies or

1 procedures to the contrary under this subsection.

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

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

10 (c) Review.--The Office of Open Records may require an
11 agency to submit a record and a privilege or exemption log for
12 the purpose of conducting an in-camera review to determine if
13 the record is a public record.

14 Section 1305. Civil penalty.

15 (a) Denial of access.--A court may impose a civil penalty of
16 not more than [\$1,500] \$10,000 if an agency [denied] denies
17 access to a public record in bad faith.

18 (b) Failure to comply with [court] order.--[An] A court may
19 impose a civil penalty of not more than \$500 per day if an
20 agency or public official [who does not promptly] fails to
21 comply with [a court] an order under this act [is subject to a
22 civil penalty of not more than \$500 per day until the public
23 records are provided].

24 Section 13. Section 1307 of the act is amended by adding a
25 subsection to read:

26 Section 1307. Fee limitations.

27 * * *

28 (g.1) Additional fees.--

29 (1) Notwithstanding subsection (e), each agency may
30 assess fees for responding to commercial requests under this

1 act. In addition to fees under subsections (a) and (b),
2 reasonable standard charges may be charged for document
3 search, retrieval, review and redaction for documents for
4 commercial use.

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

10 * * *

11 Section 14. Sections 1310 and 3101.1 of the act are amended
12 to read:

13 Section 1310. Office of Open Records.

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

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

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

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

23 (4) Provide [annual,] regional and online training
24 courses throughout the year to local agencies, public
25 officials and public employees.

26 (5) Assign appeals officers to review appeals of
27 decisions by Commonwealth agencies or local agencies, except
28 as provided in section 503(d), filed under section 1101 and
29 issue orders and opinions. The office shall employ or
30 contract with attorneys to serve as appeals officers to

1 review appeals and, if necessary, to hold hearings on a
2 regional basis under this act. Each appeals officer must
3 comply with all of the following:

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

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

10 (iii) Comply with the procedures under section
11 1102(b).

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

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

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

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

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

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

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

13 (e) Duties.--

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

17 (2) The Department of Community and Economic Development
18 shall provide payroll, leave and benefits, budget,
19 information technology and administrative support, and any
20 other support which may be necessary for the operation of the
21 Office of Open Records, to the Office of Open Records.

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

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

4 Section 3101.1. Relation to other laws.

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

8 (b) Records made public under other laws.--If records are
9 expressly made public under any other Federal or State law, the
10 exceptions set forth in section 708(b) shall not apply.

11 Section 15. This act shall take effect July 1, 2021, or
12 immediately, whichever is later.