

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

SENATOR ARGALL, STATE GOVERNMENT, AS AMENDED, SEPTEMBER 20, 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 requirements and prohibitions, providing for Pennsylvania
12 Interscholastic Athletic Association; in access, further
13 providing for open-records officer, FOR APPEALS OFFICER, for <--
14 regulations and policies, for uniform form, for requests and <--
15 for retention of records and providing for inmate access; in <--
16 procedure, further providing for access, for requests, for <--
17 written requests, for electronic access, for creation of
18 record, for redaction, for production of certain records and <--
19 for exceptions for public records; in agency response,
20 further providing for general rule and for extension of time;
21 in appeal of agency determination, further providing for
22 filing of appeal and for appeals officers; in judicial
23 review, further providing for civil penalty, for fee <--
24 limitations and for Office of Open Records; and, in
25 miscellaneous provisions, further providing for relation to
26 other laws.

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

29 Section 1. The definitions of "independent agency," "local
30 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~~ A DEFINITION 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 4. SECTIONS 503(D) (2), 504(B) (1), 506(A), 507, 702 <--
16 AND 703 OF THE ACT ARE AMENDED TO READ:

17 SECTION 503. APPEALS OFFICER.

18 * * *

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

20 * * *

21 (2) THE DISTRICT ATTORNEY OF A COUNTY SHALL DESIGNATE
22 ONE OR MORE APPEALS OFFICERS TO HEAR APPEALS UNDER CHAPTER 11
23 RELATING TO ACCESS TO CRIMINAL INVESTIGATIVE RECORDS IN
24 POSSESSION OF A LOCAL AGENCY OF THAT COUNTY OR A CAMPUS
25 POLICE DEPARTMENT OF A STATE-OWNED OR STATE-RELATED
26 UNIVERSITY IN THAT COUNTY. THE APPEALS OFFICER DESIGNATED BY
27 THE DISTRICT ATTORNEY SHALL DETERMINE IF THE RECORD REQUESTED
28 IS A CRIMINAL INVESTIGATIVE RECORD.

29 Section 504. Regulations and policies.

30 * * *

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

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

7 * * *

8 ~~Section 5. Section 505 of the act is amended by adding a~~ <--
9 ~~subsection to read:~~

10 ~~Section 505. Uniform form.~~

11 ~~* * *~~

12 ~~(d) Commercial requests. The following shall apply:~~

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

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

21 ~~Section 6. Sections 506(a) and 507 of the act are amended to~~
22 ~~read:~~

23 Section 506. Requests.

24 (a) Disruptive requests.--

25 (1) An agency may deny a requester access to a record if
26 the requester has made repeated requests for that same record
27 and the repeated requests have placed an unreasonable burden
28 on the agency.

29 (1.1) An agency may deny a request to a party to
30 litigation when the request:

1 (i) is material to a pending civil action or
2 proceeding to which the agency is a party and the
3 Pennsylvania Rules of Civil Procedure or the Federal
4 Rules of Civil Procedure apply; or

5 (ii) was previously made in litigation discovery.

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

8 * * *

9 Section 507. Retention of records.

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

14 (b) Prohibition.--

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

20 (2) A court may impose a civil penalty of not more than
21 \$25,000, PER REQUEST, if an agency or public official, in <--
22 violation of paragraph (1), disposes of any potentially
23 responsive record in bad faith.

24 Section 7. ~~The act is amended by adding a section to read: <--~~

25 ~~Section 508. Inmate access.~~

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

28 ~~(b) Records. An agency shall provide an inmate with copies~~
29 ~~of the following records as they pertain directly to the inmate~~
30 ~~if the disclosure of the record will not diminish the safety or~~

~~1 security of any person or correctional facility and if there are
2 no other policies or procedures in place for the inmate to
3 obtain the requested information:~~

~~4 (1) Criminal records relating to the criminal commitment
5 of the inmate.~~

~~6 (2) Institutional housing information.~~

~~7 (3) The inmate's financial records.~~

~~8 (4) The inmate's work records.~~

~~9 (5) The inmate's educational records.~~

~~10 (6) The inmate's disciplinary records.~~

~~11 (7) Disciplinary, housing and other policies adopted by
12 the correctional institution or the Department of
13 Corrections.~~

~~14 (8) A record relating to any Federal or State benefit
15 received by the inmate or for which the inmate is eligible.~~

~~16 (9) The inmate's tax records.~~

~~17 (10) The inmate's voting records.~~

~~18 (11) Records relating to any license issued to the
19 inmate by a Commonwealth or local agency.~~

~~20 (c) Applicability. This section shall not prohibit an
21 agency from voluntarily permitting an inmate to have access to
22 records not listed under subsection (b) or prevent an agency
23 from complying with a lawful subpoena or court order.~~

~~24 Section 8. Sections 701, 702 and 703 of the act are amended
25 to read:~~

~~26 Section 701. Access.~~

~~27 (a) General rule. Unless otherwise provided by law, a
28 public record, legislative record or financial record shall be
29 accessible for inspection and duplication in accordance with
30 this act. A record being provided to a requester shall be~~

1 ~~provided in the medium, computer file format or other format~~
2 ~~requested if it exists in that medium, computer file format or~~
3 ~~other format; otherwise, it shall be provided in the medium in~~
4 ~~which it exists. Public records, legislative records or~~
5 ~~financial records shall be available for access during the~~
6 ~~regular business hours of an agency.~~

7 ~~(b) Construction. Nothing in this act shall be construed to~~
8 ~~require access to any computer either of an agency or individual~~
9 ~~employee of an agency.~~

10 Section 702. ~~[Requests]~~ VERBAL REQUESTS. <--

11 Agencies may fulfill verbal[, ~~written or anonymous verbal~~] or <--
12 ~~written~~] requests for access to records under this act. If the <--
13 requester wishes to pursue the relief and remedies provided for
14 in this act, the request for access to records must be a written
15 request.

16 Section 703. Written requests.

17 ~~(a) General rule.~~ A written request for access to records <--
18 may be submitted in person, by mail, by e-mail, by facsimile or,
19 to the extent provided by agency rules, by any other electronic
20 means. A written request must be addressed to the open-records
21 officer designated pursuant to section 502 or to the
22 administrative office of the agency. [~~Employees of an~~] The
23 administrative office of the agency shall [~~be directed to~~]
24 promptly forward requests for records to the open-records
25 officer of the agency that received the request. A written
26 request should identify or describe the records sought with
27 sufficient specificity to enable the agency to ascertain which
28 records are being requested and shall include the name and
29 address to which the agency should address its response. ~~{A}~~ <--
30 ~~Except as required under section 505(d), a~~ written request need

1 not include any explanation of the requester's reason for
2 requesting or intended use of the records unless otherwise
3 required by law.

4 ~~(b) False certification. A requester that submits a false <--
5 certification under section 505(d) shall be subject to 18
6 Pa.C.S. § 4904 (relating to unsworn falsification to
7 authorities).~~

8 Section 9 5. Section 704(b) of the act is amended by adding <--
9 a paragraph to read:

10 Section 704. Electronic access.

11 * * *

12 (b) Response.--

13 * * *

14 (3) If the requester is seeking access to the contents
15 of a database, the requester may, within 30 days following
16 receipt of the agency notification, submit a written request
17 to the agency to receive some or all of the underlying
18 database. The agency shall provide access to the database A <--
19 COPY OF THE DATABASE IN THE SAME MANNER AS IT IS UTILIZED BY
20 THE AGENCY or provide a reason for denying access to A COPY <--
21 OF the database within 14 days of the receipt of the written
22 request. Any denial under this paragraph may be appealed
23 pursuant to the provisions of Chapter 11.

24 Section 10 6. Sections 705, 706 and 707 of the act are <--
25 amended to read:

26 Section 705. Creation of record.

27 When responding to a request for access, an agency shall not
28 be required to create a record which does not currently exist or
29 to compile, maintain, format or organize a record in a manner in
30 which the agency does not currently compile, maintain, format or

1 organize the record. Providing data from an agency database does
2 not constitute creating a record.

3 ~~Section 706. Redaction.~~

<--

4 ~~If an agency determines that a [public record, legislative~~
5 ~~record or financial] record contains information which is~~
6 ~~subject to access as well as information which is not subject to~~
7 ~~access, the agency's response shall grant access to the~~
8 ~~information which is subject to access and deny access to the~~
9 ~~information which is not subject to access. If the information~~
10 ~~which is not subject to access is an integral part of the~~
11 ~~[public record, legislative record or financial] record and~~
12 ~~cannot be separated, the agency shall redact from the record the~~
13 ~~information which is not subject to access, and the response~~
14 ~~shall grant access to the information which is subject to~~
15 ~~access. The agency may not deny access to the record if the~~
16 ~~information which is not subject to access is able to be~~
17 ~~redacted. Information which an agency redacts in accordance with~~
18 ~~this subsection shall be deemed a denial under Chapter 9.~~

19 Section 707. Production of certain records.

20 (a) General rule.--If, in response to a request, an agency
21 produces a record that is not a public record, legislative
22 record or financial record, the agency shall notify any third
23 party that provided the record to the agency, the person that is
24 the subject of the record and the requester.

25 (b) Requests for trade secrets.--An agency shall notify a
26 third party of a request for a record if the third party
27 provided the record and included a written statement signed by a
28 representative of the third party that the record contains a
29 trade secret or confidential proprietary information.

30 Notification shall be provided within five business days of

1 receipt of the request for the record. The third party shall
2 have five business days from receipt of notification from the
3 agency to provide input on the release of the record. The agency
4 shall [deny the request for the record or release the record
5 within ten business days of the provision of notice to the third
6 party and shall notify the third party of the decision.] notify
7 the third party of the agency's decision to deny access to the
8 record or release the record within one business day of
9 responding to the requester.

10 (c) Transcripts.--

11 (1) Prior to an adjudication becoming final, binding and
12 nonappealable, a transcript, IF IT EXISTS, of an <--
13 administrative proceeding shall be provided to a requester by
14 the agency stenographer or a court reporter, in accordance
15 with agency procedure or an applicable contract.

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

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

23 (d) Information privacy.--When an agency believes that
24 responsive material to a request may include personal
25 information protected under section 1 of Article I of the
26 Constitution of Pennsylvania, it may require a requester to
27 provide additional information as to:

28 (1) why the requester believes that the information is
29 not protected; or

30 (2) if the information is protected, why the interest of

1 the public in having access to the information outweighs the
2 individual privacy rights.

3 Section ~~11~~ 7. Section 708(b)(6), (9), (10), (13), (16), (17) <--
4 and (18) and (c) of the act are amended and subsection (b) is
5 amended by adding paragraphs to read:

6 Section 708. Exceptions for public records.

7 * * *

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

11 * * *

12 (6) (i) The following personal identification
13 information:

14 (A) A record containing all or part of a
15 person's Social Security number, driver's license
16 number, personal financial information, home,
17 cellular or personal telephone numbers, personal e-
18 mail addresses, employee number or other confidential
19 personal identification number.

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

23 (C) The home address of a law enforcement
24 officer or judge.

25 (ii) Nothing in this paragraph shall preclude the
26 release of the name, position, salary, actual
27 compensation or other payments or expenses, employment
28 contract, employment-related contract or agreement and
29 length of service of a public official or an agency
30 employee.

1 (iii) An agency may redact the name or other
2 identifying information relating to an individual
3 performing an undercover or covert law enforcement
4 activity from a record.

5 (iv) Nothing in this paragraph shall prevent the
6 disclosure of aggregated data of employer or employee
7 costs related to retirement benefits, health care
8 benefits or other benefits or the disclosure of options
9 made available to employees regarding retirement, health
10 care or other benefits plans.

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) or that is discussed by agency
18 officials or employees at a public meeting regardless of
19 whether a vote occurs at the 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 or
24 predecisional deliberations between agency members,
25 employees or officials and members, employees or
26 officials of another agency, including predecisional
27 deliberations relating to a budget recommendation,
28 legislative proposal, legislative amendment,
29 contemplated or proposed policy or course of action
30 or any research, memos or other documents used in the

1 predecisional deliberations.

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

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

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

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

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

23 * * *

24 (13) Records that would disclose the identity of, or
25 personal financial information relating to, an individual who
26 lawfully makes a donation to or for the benefit of an agency
27 unless the donation is intended for or restricted to
28 providing remuneration or personal tangible benefit to a
29 named public official or employee of the agency, including
30 lists of potential donors compiled by an agency to pursue

1 donations, donor profile information or personal identifying
2 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.

1 (vii) This paragraph shall not apply to records
2 created more than 50 60 years prior to the request, <--
3 unless the agency can demonstrate actual harm to an
4 ongoing investigation if the records are released.

5 This paragraph shall not apply to information contained in a
6 police blotter as defined in 18 Pa.C.S. § 9102 (relating to
7 definitions) and utilized or maintained by the Pennsylvania
8 State Police, local, campus, transit or port authority police
9 department or other law enforcement agency or in a traffic
10 report except as provided under 75 Pa.C.S. § 3754(b)

11 (relating to accident prevention investigations). Police <--
12 ~~blotter information, in whatever form it exists, is public~~
13 ~~and includes, but is not limited to, the name and address of~~
14 ~~an individual charged, the alleged offenses, the date of the~~
15 ~~offenses and the date of the charges.~~

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

20 (i) Complaints submitted to an agency.

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

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

27 (iv) A record that includes information made
28 confidential by law.

29 (v) Work papers underlying an audit.

30 (vi) A record that, if disclosed, would do any of

1 the following:

2 (A) Reveal the institution, progress or result
3 of an agency investigation, except the imposition of
4 a fine or civil penalty, the suspension, modification
5 or revocation of a license, permit, registration,
6 certification or similar authorization issued by an
7 agency or an executed settlement agreement unless the
8 agreement is determined to be confidential by a
9 court.

10 (B) Deprive a person of the right to an
11 impartial adjudication.

12 (C) Constitute an unwarranted invasion of
13 privacy.

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

16 (E) Endanger the life or physical safety of an
17 individual.

18 (vii) This paragraph shall not apply to records
19 created more than 25 35 years prior to the request, <--
20 unless the agency can demonstrate actual harm to an
21 ongoing investigation if the records are released.

22 (18) Emergency dispatches as follows:

23 (i) Records or parts of records, except time
24 response logs, pertaining to audio recordings, telephone
25 or radio transmissions received by emergency dispatch
26 personnel, including 911 recordings.

27 (ii) This paragraph shall not apply to a 911
28 recording, or a transcript of a 911 recording, if the
29 agency or a court determines that the public interest in
30 disclosure outweighs the interest in nondisclosure.

1 * * *

2 (31) An agency's financial institution account numbers,
3 routing numbers, credit card numbers, PIN numbers and
4 passwords.

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

6 (i) A volunteer ambulance service.

7 (ii) A volunteer fire company.

8 (iii) A volunteer rescue company.

9 (iv) A volunteer water rescue company.

10 (v) A volunteer organization that provides hazardous
11 materials response services.

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

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

17 (c) Financial records.--The exceptions set forth in
18 subsection (b) shall not apply to financial records, except that
19 an agency may redact that portion of a financial record
20 protected under subsection (b)(1), (2), (3), (4), (5), (6),
21 (11), (13), (16) [or], (17), (28) or (30). An agency shall not
22 disclose the identity of an individual performing an undercover
23 or covert law enforcement activity.

24 * * *

25 Section ~~12~~ 8. Sections 901, 902(b)(2), 1101, 1102 ~~and 1305,~~ <--
26 1305, 1310 AND 3101.1 of the act are amended to read:

27 Section 901. General rule.

28 (a) Determination.--Upon receipt of a written request for
29 access to a record, an agency shall make a good faith effort to
30 determine if the record requested is a public record,

1 legislative record or financial record and whether the agency
2 has possession, custody or control of the identified record, and
3 to respond as promptly as possible under the circumstances
4 existing at the time of the request. All applicable fees shall
5 be paid in order to receive access to the record requested.

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

14 Section 902. Extension of time.

15 * * *

16 (b) Notice.--

17 * * *

18 (2) The notice shall include a statement notifying the
19 requester that the request for access is being reviewed, the
20 reason for the review, a reasonable date that a response is
21 expected to be provided and an estimate of applicable fees
22 owed when the record becomes available. [If the date that a
23 response is expected to be provided is in excess of 30 days,
24 following the five business days allowed for in section 901,
25 the request for access shall be deemed denied unless the
26 requester has agreed in writing to an extension to the date
27 specified in the notice.] The request for access shall be
28 deemed denied if the agency fails to send a response within
29 30 days following the five business days under section 901,
30 unless the requester has agreed in writing to an additional

1 extension beyond 30 days.

2 * * *

3 Section 1101. Filing of appeal.

4 [(a) Authorization.--

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

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

7 (1) (i) If a written request for access to a record is
8 denied or deemed denied, the requester may file an appeal
9 with the Office of Open Records or judicial, legislative
10 or other appeals officer designated under section 503(d)
11 within [15 business] ~~60~~ 30 days of the [mailing] postmark <--
12 or e-mail date of the agency's response or within [15
13 business] ~~60~~ 30 days of a deemed denial, whichever comes <--
14 first.

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

20 (A) The text A COPY of the original request. <--

21 (B) The text A COPY of the agency denial. <--

22 (C) Any other information the requester believes
23 to be relevant.

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

27 (iv) The Office of Open Records APPEALS OFFICER may <--
28 order a requester who fails to include the information
29 REQUIRED under subparagraph (ii) to provide the required <--
30 information.

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

5 (b) Determination.--

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

12 (1.1) If a hearing is ordered under section 1102(a)(2),
13 the appeals officer may extend the deadline up to 90
14 additional days.

15 (1.2) If an in-camera review is ordered under section
16 1102(a)(2), the appeals officer may extend the deadline:

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

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

22 (1.3) If the issue before the Office of Open Records is
23 substantially the same as an issue currently on appeal to a
24 court of common pleas, Commonwealth Court or the Supreme
25 Court, the appeals officer may stay the opinion of the Office
26 of Open Records until the appeal is decided.

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), the appeal is
30 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 the 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 OR A <--
13 CAMPUS POLICE DEPARTMENT OF A STATE-OWNED OR STATE-RELATED
14 UNIVERSITY IN THAT COUNTY. To the extent an appeal involves
15 multiple issues, one of which relates to access to criminal
16 investigative records in possession of a local agency, the
17 Office of Open Records shall have jurisdiction over all other
18 issues in the appeal.

19 (6) If an appeals officer does not have jurisdiction to
20 hear an appeal or part of an appeal but another appeals
21 officer designated under section 503 has jurisdiction, the
22 appeals officer without jurisdiction shall transfer the
23 appeal or part of the appeal, as appropriate, to the appeals
24 officer with jurisdiction. If the appeal was timely filed
25 with the original appeals officer, it shall be considered
26 timely filed upon the transfer.

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) Provide to the Office of Open Records, in a manner
5 and form prescribed by the Office of Open Records, a copy of
6 all final determinations issued within seven days of
7 issuance.

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

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

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

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

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

28 (c) Review.--The Office of Open Records APPEALS OFFICER may <--
29 require an agency to submit a record and a privilege or
30 exemption log for the purpose of conducting an in-camera review

1 to determine if the record is a public record.

2 Section 1305. Civil penalty.

3 (a) Denial of access.--A court may impose a civil penalty of
4 not more than [~~\$1,500~~] ~~\$10,000~~ \$2,500 if an agency [~~denied~~] <--
5 denies access to a public record in bad faith.

6 (b) Failure to comply with [~~court~~] order.--[~~An~~] A court may
7 impose a civil penalty of not more than \$500 per day if an
8 agency or public official [who does not promptly] fails to
9 comply with [a court] an order under this act [is subject to a
10 civil penalty of not more than \$500 per day until the public
11 records are provided].

12 ~~Section 13. Section 1307 of the act is amended by adding a~~ <--
13 ~~subsection to read:~~

14 ~~Section 1307. Fee limitations.~~

15 ~~* * *~~

16 ~~(g.1) Additional fees.--~~

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

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

28 ~~* * *~~

29 ~~Section 14. 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

1 disputes under this act.

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

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

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

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

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

22 (d) Staffing.--The executive director shall appoint
23 attorneys to act as appeals officers and additional clerical,
24 technical and professional staff as may be appropriate and may
25 contract for additional services as necessary for the
26 performance of the executive director's duties. The compensation
27 of attorneys and other staff shall be set by the Executive
28 [Board] Director. The appointment of attorneys shall not be
29 subject to the act of October 15, 1980 (P.L.950, No.164), known
30 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 ~~15~~ 9. This act shall take effect ~~July 1, 2021, or~~ <--
30 ~~immediately, whichever is later~~ IN 90 DAYS. <--