

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 552 Session of 2021

INTRODUCED BY DUSH, LANGERHOLC AND BROOKS, 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 agency response, providing for vexatious requester.

11 The General Assembly of the Commonwealth of Pennsylvania
 12 hereby enacts as follows:

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

16 Section 906. Vexatious requester.

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

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

22 (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
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 agency.

12 (vi) Conduct the agency alleges is placing an
13 unreasonable burden on the agency.

14 (vii) Conduct the agency alleges is intended to
15 harass the agency.

16 (viii) Any other relevant information.

17 (b) Processing requests.--Upon receipt of a petition under
18 subsection (a), the executive director of the Office of Open
19 Records or a designee shall:

20 (1) Within five business days, notify the requester
21 alleged to be a vexatious requester that the requester may,
22 within 10 business days, file a preliminary response to the
23 petition.

24 (2) Within 15 business days, inform the agency whether
25 pending requests and new requests from the requester alleged
26 to be a vexatious requester should continue to be processed
27 or should be stayed pending resolution of the proceedings
28 under this section. A decision under this paragraph is not
29 appealable.

30 (c) Initial finding.--The executive director or a designee

1 shall, within 30 calendar days after receiving a petition under
2 subsection (a), review the petition and determine whether
3 further proceedings are warranted. The following shall apply:

4 (1) If the executive director or a designee determines
5 that further proceedings are not warranted, the executive
6 director or a designee shall deny the petition. The denial
7 shall be in writing and include an explanation of the reasons
8 for the denial.

9 (2) If the executive director or a designee determines
10 that further proceedings are warranted, the executive
11 director or a designee shall establish a briefing schedule to
12 provide a fair opportunity for the requester to respond to
13 the agency's petition.

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

24 (e) Mediation.--At any time during proceedings under this
25 section, the executive director or a designee may recommend that
26 both parties participate in mediation conducted by the Office of
27 Open Records. If both parties agree, the mediation shall last
28 for a period of up to 90 calendar days and may be extended with
29 the agreement of both parties. During the mediation, any other
30 proceedings under this section shall be stayed.

1 (f) Final opinion.--The executive director or a designee
2 shall issue a final opinion either granting or denying the
3 petition within 90 calendar days of the petition's filing. Upon
4 a grant of the petition, the executive director or a designee
5 may provide appropriate relief commensurate with the vexatious
6 conduct, including, but not limited to, an order that the agency
7 need not comply with future requests from the vexatious
8 requester for a specified period of time, but not to exceed one
9 year. The final opinion shall be posted on the Office of Open
10 Record's publicly accessible Internet website.

11 (g) Appeal to Commonwealth Court.--Except for a decision
12 under subsection (b) or (d), any party aggrieved by a decision
13 made under this section may appeal the decision to the
14 Commonwealth Court within 15 calendar days.

15 Section 2. This act shall take effect in 60 days.