
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
2007

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EICHELBERGER, MARCH 29, 2007

SENATE AMENDMENTS TO HOUSE AMENDMENTS, JANUARY 28, 2008

AN ACT

1 ~~Providing for access to public information, for a designated~~ <—
2 ~~open-records officer in each Commonwealth agency, local~~
3 ~~agency, judicial agency and legislative agency, for~~
4 ~~procedure, for appeal of agency determination, for judicial~~
5 ~~review and for the Pennsylvania Public Records Office;~~
6 ~~imposing penalties; providing for reporting by State-related~~
7 ~~institutions; requiring the posting of certain State contract~~
8 ~~information on the Internet; and making related repeals.~~
9 PROVIDING FOR ACCESS TO PUBLIC INFORMATION, FOR A DESIGNATED <—
10 OPEN-RECORDS OFFICER IN EACH COMMONWEALTH AGENCY, LOCAL
11 AGENCY, JUDICIAL AGENCY AND LEGISLATIVE AGENCY, FOR
12 PROCEDURE, FOR APPEAL OF AGENCY DETERMINATION, FOR JUDICIAL
13 REVIEW AND FOR THE OFFICE OF OPEN RECORDS; IMPOSING
14 PENALTIES; PROVIDING FOR REPORTING BY STATE-RELATED
15 INSTITUTIONS; REQUIRING THE POSTING OF CERTAIN STATE CONTRACT
16 INFORMATION ON THE INTERNET; AND MAKING RELATED REPEALS.

17 ~~TABLE OF CONTENTS~~ <—

18 ~~Chapter 1. Preliminary Provisions~~

19 ~~Section 101. Short title.~~

20 ~~Section 102. Definitions.~~

21 ~~Chapter 3. Requirements and Prohibitions~~

22 ~~Section 301. Commonwealth agencies.~~

1 ~~Section 302. Local agencies.~~
2 ~~Section 303. Legislative agencies.~~
3 ~~Section 304. Judicial agencies.~~
4 ~~Section 305. Presumption.~~
5 ~~Section 306. Nature of document.~~
6 ~~Chapter 5. Access~~
7 ~~Section 501. Scope of chapter.~~
8 ~~Section 502. Open records officer.~~
9 ~~Section 503. (Reserved).~~
10 ~~Section 504. Regulations and policies.~~
11 ~~Section 505. Uniform form.~~
12 ~~Section 506. Requests.~~
13 ~~Section 507. Retention of records.~~
14 ~~Chapter 7. Procedure~~
15 ~~Section 701. Access.~~
16 ~~Section 702. Requests.~~
17 ~~Section 703. Written requests.~~
18 ~~Section 704. Electronic access.~~
19 ~~Section 705. Creation of record.~~
20 ~~Section 706. Redaction.~~
21 ~~Section 707. Production of certain records.~~
22 ~~Section 708. Exceptions for public records.~~
23 ~~Section 709. Internet access.~~
24 ~~Chapter 9. Agency Response~~
25 ~~Section 901. General rule.~~
26 ~~Section 902. Extension of time.~~
27 ~~Section 903. Denial.~~
28 ~~Section 904. Certified copies.~~
29 ~~Section 905. Administrative denial.~~
30 ~~Section 906. Record discard.~~

1 Chapter 11. ~~Appeal of Agency Determination~~
2 Section 1101. ~~Filing of appeal.~~
3 Chapter 13. ~~Judicial Review~~
4 Section 1301. ~~Commonwealth agencies, legislative agencies and~~
5 ~~judicial agencies.~~
6 Section 1302. ~~Local agencies.~~
7 Section 1303. ~~Notice and records.~~
8 Section 1304. ~~Court costs and attorney fees.~~
9 Section 1305. ~~Penalties.~~
10 Section 1306. ~~Immunity.~~
11 Section 1307. ~~Fee limitations.~~
12 Section 1308. ~~Prohibition.~~
13 Section 1309. ~~Practice and procedure.~~
14 Section 1310. ~~Pennsylvania Public Records Office.~~
15 Section 1311. ~~Administrative appeals.~~
16 Chapter 15. ~~State-Related Institutions~~
17 Section 1501. ~~Definition.~~
18 Section 1502. ~~Reporting.~~
19 Section 1503. ~~Contents of report.~~
20 Section 1504. ~~Copies and posting.~~
21 Chapter 17. ~~State Contract Information~~
22 Section 1701. ~~Submission and retention of contracts.~~
23 Section 1702. ~~Public availability of contracts.~~
24 Chapter 19. ~~Public Officials~~
25 Section 1901. ~~Disclosure of affiliation.~~
26 Chapter 31. ~~Miscellaneous Provisions~~
27 Section 3101. ~~Applicability.~~
28 Section 3101.1. ~~Relation to other law or judicial actions.~~
29 Section 3101.2. ~~Severability.~~
30 Section 3102. ~~Repeals.~~

1 ~~Section 3103. References.~~

2 ~~Section 3104. Effective date.~~

3 TABLE OF CONTENTS

←

4 CHAPTER 1. PRELIMINARY PROVISIONS

5 SECTION 101. SHORT TITLE.

6 SECTION 102. DEFINITIONS.

7 CHAPTER 3. REQUIREMENTS AND PROHIBITIONS

8 SECTION 301. COMMONWEALTH AGENCIES.

9 SECTION 302. LOCAL AGENCIES.

10 SECTION 303. LEGISLATIVE AGENCIES.

11 SECTION 304. JUDICIAL AGENCIES.

12 SECTION 305. PRESUMPTION.

13 SECTION 306. NATURE OF DOCUMENT.

14 CHAPTER 5. ACCESS

15 SECTION 501. SCOPE OF CHAPTER.

16 SECTION 502. OPEN-RECORDS OFFICER.

17 SECTION 503. APPEALS OFFICER.

18 SECTION 504. REGULATIONS AND POLICIES.

19 SECTION 505. UNIFORM FORM.

20 SECTION 506. REQUESTS.

21 SECTION 507. RETENTION OF RECORDS.

22 CHAPTER 7. PROCEDURE

23 SECTION 701. ACCESS.

24 SECTION 702. REQUESTS.

25 SECTION 703. WRITTEN REQUESTS.

26 SECTION 704. ELECTRONIC ACCESS.

27 SECTION 705. CREATION OF RECORD.

28 SECTION 706. REDACTION.

29 SECTION 707. PRODUCTION OF CERTAIN RECORDS.

30 SECTION 708. EXCEPTIONS FOR PUBLIC RECORDS.

1 CHAPTER 9. AGENCY RESPONSE
2 SECTION 901. GENERAL RULE.
3 SECTION 902. EXTENSION OF TIME.
4 SECTION 903. DENIAL.
5 SECTION 904. CERTIFIED COPIES.
6 SECTION 905. RECORD DISCARD.
7 CHAPTER 11. APPEAL OF AGENCY DETERMINATION
8 SECTION 1101. FILING OF APPEAL.
9 SECTION 1102. APPEALS OFFICERS.
10 CHAPTER 13. JUDICIAL REVIEW
11 SECTION 1301. COMMONWEALTH AGENCIES, LEGISLATIVE AGENCIES AND
12 JUDICIAL AGENCIES.
13 SECTION 1302. LOCAL AGENCIES.
14 SECTION 1303. NOTICE AND RECORDS.
15 SECTION 1304. COURT COSTS AND ATTORNEY FEES.
16 SECTION 1305. PENALTIES.
17 SECTION 1306. IMMUNITY.
18 SECTION 1307. FEE LIMITATIONS.
19 SECTION 1308. PROHIBITION.
20 SECTION 1309. PRACTICE AND PROCEDURE.
21 SECTION 1310. OFFICE OF OPEN RECORDS.
22 CHAPTER 15. STATE-RELATED INSTITUTIONS
23 SECTION 1501. DEFINITION.
24 SECTION 1502. REPORTING.
25 SECTION 1503. CONTENTS OF REPORT.
26 SECTION 1504. COPIES AND POSTING.
27 CHAPTER 17. STATE CONTRACT INFORMATION
28 SECTION 1701. SUBMISSION AND RETENTION OF CONTRACTS.
29 SECTION 1702. PUBLIC AVAILABILITY OF CONTRACTS.
30 CHAPTER 31. MISCELLANEOUS PROVISIONS

1 SECTION 3101. APPLICABILITY.

2 SECTION 3101.1. RELATION TO OTHER LAW OR JUDICIAL ACTIONS.

3 SECTION 3101.2. SEVERABILITY.

4 SECTION 3102. REPEALS.

5 SECTION 3103. REFERENCES.

6 SECTION 3104. EFFECTIVE DATE.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 CHAPTER 1

<—

10 PRELIMINARY PROVISIONS

11 ~~Section 101. Short title.~~

12 ~~This act shall be known and may be cited as the Right to Know~~
13 ~~Law.~~

14 ~~Section 102. Definitions.~~

15 ~~The following words and phrases when used in this act shall~~
16 ~~have the meanings given to them in this section unless the~~
17 ~~context clearly indicates otherwise:~~

18 ~~"Administrative proceeding." A proceeding by an agency the~~
19 ~~outcome of which is required to be based on a record or~~
20 ~~documentation prescribed by law or in which a statute or~~
21 ~~regulation is particularized in application to individuals. The~~
22 ~~term includes an appeal.~~

23 ~~"Agency." A Commonwealth agency, a local agency, a judicial~~
24 ~~agency or a legislative agency.~~

25 ~~"Aggregated data." A tabulation of data which relate to~~
26 ~~broad classes, groups or categories so that it is not possible~~
27 ~~to distinguish the properties of individuals within those~~
28 ~~classes, groups or categories.~~

29 ~~"Commonwealth agency." Any of the following:~~

30 ~~(1) Any office, department, authority, board, multistate~~

~~agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:~~

~~(i) The Governor's Office.~~

~~(ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.~~

~~(iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.~~

~~(2) The term does not include a judicial or legislative agency.~~

~~"Confidential proprietary information." Commercial or financial information received by an agency:~~

~~(1) which is privileged or confidential; and~~

~~(2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.~~

~~"Financial record." Includes:~~

~~(1) Any account, voucher or contract dealing with:~~

~~(i) the receipt or disbursement of funds by an agency; or~~

~~(ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.~~

~~(2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.~~

~~(3) Results of a financial audit.~~

~~(4) Application and database compilation or log of applications by political subdivisions, nonprofit organizations, other entities and individuals for the receipt~~

~~of State-funded grants awarded on a discretionary basis by a Commonwealth agency, including legislative initiative grants, regardless of whether the applicant receives the grant for which it has applied. For purposes of this paragraph, financial record shall include information regarding:~~

~~(i) where applicable, the application sequence number;~~

~~(ii) the date the application was received by the Commonwealth agency;~~

~~(iii) the applicant name and contact person;~~

~~(iv) the project description;~~

~~(v) the project location;~~

~~(vi) the amount of funding requested;~~

~~(vii) any notations as to whether the application was complete and consistent with program guidelines;~~

~~(viii) whether or not the Commonwealth agency had approved the application;~~

~~(ix) where applicable, the amount of the grant awarded;~~

~~(x) where applicable, the date on which the Commonwealth agency notified the applicant that it approved the application;~~

~~(xi) in the case of a legislative initiative grant, the name of any member of the General Assembly who recommends the grantee; and~~

~~(xii) any other relevant information that qualifies as a public record or financial record under this act.~~

~~"Homeland security." Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or~~

~~manmade. The term includes activities relating to the following:~~

~~(1) emergency preparedness and response, including preparedness and response activities by volunteer medical, police, emergency management, hazardous materials and fire personnel;~~

~~(2) intelligence activities;~~

~~(3) critical infrastructure protection;~~

~~(4) border security;~~

~~(5) ground, aviation and maritime transportation security;~~

~~(6) biodefense;~~

~~(7) detection of nuclear and radiological materials; and~~

~~(8) research on next-generation securities technologies.~~

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

~~"Judicial agency." A court of the Commonwealth or any other entity or office of the unified judicial system.~~

~~"Legislative agency." Any of the following:~~

~~(1) The Senate.~~

~~(1.1) Political party caucuses of the Senate.~~

~~(2) The House of Representatives.~~

~~(2.1) Political party caucuses of the House of Representatives.~~

~~(3) The Capitol Preservation Committee.~~

~~(4) The Center for Rural Pennsylvania.~~

~~(5) The Joint Legislative Air and Water Pollution Control and Conservation Committee.~~

~~(6) The Joint State Government Commission.~~

~~(7) The Legislative Budget and Finance Committee.~~

~~(8) The Legislative Data Processing Committee.~~

~~(9) The Independent Regulatory Review Commission.~~

~~(10) The Legislative Reference Bureau.~~

~~(11) The Local Government Commission.~~

~~(12) The Pennsylvania Commission on Sentencing.~~

~~(13) The Legislative Reapportionment Commission.~~

~~"Legislative initiative grant." A grant that is awarded, in whole or in part, on the basis of a recommendation made by or on behalf of a member of the General Assembly.~~

~~"Legislative record." Any of the following relating to a legislative agency:~~

~~(1) A financial record.~~

~~(2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.~~

~~(3) Fiscal notes.~~

~~(4) A cosponsorship memorandum.~~

~~(5) The journal of a chamber.~~

~~(6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.~~

~~(7) The transcript of a public hearing when available.~~

~~(8) Executive nomination calendars.~~

~~(9) The rules of a chamber.~~

~~(10) A record of all recorded votes taken in a legislative session.~~

~~(11) Any administrative staff manuals or written policies.~~

1 ~~(12) An audit prepared pursuant to the act of June 30,~~
2 ~~1970 (P.L.442, No.151) entitled, "An act implementing the~~
3 ~~provisions of Article VIII, section 10 of the Constitution of~~
4 ~~Pennsylvania, by designating the Commonwealth officers who~~
5 ~~shall be charged with the function of auditing the financial~~
6 ~~transactions after the occurrence thereof of the Legislative~~
7 ~~and Judicial branches of the government of the Commonwealth,~~
8 ~~establishing a Legislative Audit Advisory Commission, and~~
9 ~~imposing certain powers and duties on such commission."~~

10 ~~(13) Final or annual reports required by law to be~~
11 ~~submitted to the General Assembly.~~

12 ~~(14) Legislative Budget and Finance Committee reports.~~

13 ~~(15) Daily Legislative Session Calendars and marked~~
14 ~~calendars.~~

15 ~~(16) A record communicating to an agency the official~~
16 ~~appointment of a legislative appointee.~~

17 ~~(17) A record communicating to the appointing authority~~
18 ~~the resignation of a legislative appointee.~~

19 ~~(18) Proposed regulations, final form regulations and~~
20 ~~final omitted regulations submitted to a legislative agency.~~

21 ~~(19) The results of polling contracted for or conducted~~
22 ~~by a legislative agency and paid for with funds of the~~
23 ~~legislative agency.~~

24 ~~"Local agency." Any of the following:~~

25 ~~(1) Any political subdivision, intermediate unit,~~
26 ~~charter school or public trade or vocational school.~~

27 ~~(2) Any local, intergovernmental, regional or municipal~~
28 ~~agency, authority, council, board, commission or similar~~
29 ~~governmental entity.~~

30 ~~"Personal financial information." An individual's personal~~

1 ~~credit, charge or debit card information; bank account~~
2 ~~information; bank, credit or financial statements; account or~~
3 ~~PIN numbers and other information relating to an individual's~~
4 ~~personal finances.~~

5 ~~"Privilege." The attorney work product doctrine, the~~
6 ~~attorney-client privilege, the doctor-patient privilege or other~~
7 ~~privilege recognized by a court interpreting the laws of this~~
8 ~~Commonwealth.~~

9 ~~"Public record." A record of a Commonwealth or local agency~~
10 ~~that:~~

11 ~~(1) is not exempt under section 708;~~

12 ~~(2) is not exempt from being disclosed under any other~~
13 ~~Federal or State law or regulation or judicial order or~~
14 ~~decree; or~~

15 ~~(3) is not protected by a privilege.~~

16 ~~"Record." Information, regardless of physical form or~~
17 ~~characteristics, that documents a transaction or activity of an~~
18 ~~agency and that is created, received or retained pursuant to law~~
19 ~~or in connection with a legal transaction, business or activity~~
20 ~~of the agency. The term includes a document, paper, letter, map,~~
21 ~~book, tape, photograph, film or sound recording, information~~
22 ~~stored or maintained electronically and a data-processed or~~
23 ~~image-processed document. The term includes a financial record,~~
24 ~~a legislative record and a public record.~~

25 ~~"Records office." The Pennsylvania Public Records Office~~
26 ~~established under section 1310.~~

27 ~~"Requester." A person that is a resident of the United~~
28 ~~States or a legal entity and requests a record pursuant to this~~
29 ~~act. The term includes a political subdivision.~~

30 ~~"Response." Access to a record or an agency's written notice~~

1 ~~to a requester granting, denying or partially granting and~~
2 ~~partially denying access to a record.~~

3 ~~"Social services." Cash assistance and other welfare~~
4 ~~benefits, medical, mental and other health care services, drug~~
5 ~~and alcohol treatment, adoption services, vocational and~~
6 ~~occupational training, education services, counseling services,~~
7 ~~workers' compensation services and unemployment compensation~~
8 ~~services, foster care services and services for victims of~~
9 ~~crimes.~~

10 ~~"State-affiliated entity." A Commonwealth authority or~~
11 ~~Commonwealth entity. The term includes the Pennsylvania Gaming~~
12 ~~Control Board, the Pennsylvania Game Commission, the~~
13 ~~Pennsylvania Fish and Boat Commission, the Pennsylvania Higher~~
14 ~~Education Assistance Agency and all nonprofit corporations~~
15 ~~established thereby, the Pennsylvania Housing Finance Agency,~~
16 ~~the Pennsylvania Municipal Retirement Board, the State System of~~
17 ~~Higher Education, a community college, the Pennsylvania Turnpike~~
18 ~~Commission, the Pennsylvania Public Utility Commission, the~~
19 ~~Pennsylvania Infrastructure Investment Authority, the State~~
20 ~~Public School Building Authority, the Pennsylvania~~
21 ~~Interscholastic Athletic Association and the Pennsylvania~~
22 ~~Educational Facilities Authority. The term does not include a~~
23 ~~State-related institution.~~

24 ~~"Terrorist act." A violent or life-threatening act that~~
25 ~~violates the criminal laws of the United States or any state and~~
26 ~~appears to be intended to:~~

27 ~~(1) intimidate or coerce a civilian population;~~
28 ~~(2) influence the policy of a government; or~~
29 ~~(3) affect the conduct of a government by mass~~
30 ~~destruction, assassination or kidnapping.~~

~~"Trade secret." Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:~~

~~(1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and~~

~~(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.~~

~~The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.~~

~~CHAPTER 3~~

~~REQUIREMENTS AND PROHIBITIONS~~

~~Section 301. Commonwealth agencies.~~

~~(a) Requirement. A Commonwealth agency shall provide public records in accordance with this act.~~

~~(b) Prohibition. A Commonwealth agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.~~

~~Section 302. Local agencies.~~

~~(a) Requirement. A local agency shall provide public records in accordance with this act.~~

~~(b) Prohibition. A local agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.~~

~~Section 303. Legislative agencies.~~

~~(a) Requirement. A legislative agency shall provide legislative records in accordance with this act.~~

~~(b) Prohibition. A legislative agency may not deny a~~

1 ~~requester access to a legislative record due to the intended use~~
2 ~~of the legislative record by the requester.~~

3 ~~Section 304. Judicial agencies.~~

4 ~~(a) Requirement. A judicial agency shall provide financial~~
5 ~~records in accordance with this act or any rule or order of~~
6 ~~court providing equal or greater access to the records.~~

7 ~~(b) Prohibition. A judicial agency may not deny a requester~~
8 ~~access to a financial record due to the intended use of the~~
9 ~~financial record by the requester.~~

10 ~~Section 305. Presumption.~~

11 ~~(a) General rule. A record in the possession of a~~
12 ~~Commonwealth agency or local agency shall be presumed to be a~~
13 ~~public record unless:~~

- 14 ~~(1) the record is exempt under section 708;~~
15 ~~(2) the record is protected by a privilege; or~~
16 ~~(3) the record is exempt from disclosure under any other~~
17 ~~Federal or State law or regulation or judicial order or~~
18 ~~decree.~~

19 ~~(b) Legislative records and financial records. A~~
20 ~~legislative record in the possession of a legislative agency and~~
21 ~~a financial record in the possession of a judicial agency shall~~
22 ~~be presumed to be available to the public unless:~~

- 23 ~~(1) the record is exempt under 708(c) or (d);~~
24 ~~(2) the record is protected by a privilege; or~~
25 ~~(3) the record is exempt from disclosure under any other~~
26 ~~Federal or State law or regulation or judicial order or~~
27 ~~decree.~~

28 ~~Section 306. Nature of document.~~

29 ~~Nothing in this act shall supersede or modify the public or~~
30 ~~confidential nature of a record or document established in~~

1 ~~Federal or State law, regulation or judicial order or decree.~~

2 ~~CHAPTER 5~~

3 ~~ACCESS~~

4 ~~Section 501. Scope of chapter.~~

5 ~~This chapter applies to all agencies.~~

6 ~~Section 502. Open records officer.~~

7 ~~(a) Establishment.~~

8 ~~(1) An agency shall designate an official or employee to~~
9 ~~act as the open records officer.~~

10 ~~(2) For a legislative agency other than the Senate or~~
11 ~~the House of Representatives, or a political party caucus of~~
12 ~~the Senate or the House of Representatives the open records~~
13 ~~officer designated by the Legislative Reference Bureau shall~~
14 ~~serve as the open records officer.~~

15 ~~(b) Functions.~~

16 ~~(1) The open records officer shall receive requests~~
17 ~~submitted to the agency under this act, direct requests to~~
18 ~~other appropriate persons within the agency or to appropriate~~
19 ~~persons in another agency, track the agency's progress in~~
20 ~~responding to requests and issue interim and final responses~~
21 ~~under this act.~~

22 ~~(2) Upon receiving a request for a public record,~~
23 ~~legislative record or financial record, the open records~~
24 ~~officer shall do all of the following:~~

25 ~~(i) Note the date of receipt on the written request.~~

26 ~~(ii) Compute the day on which the five-day period~~
27 ~~under section 901 will expire and make a notation of that~~
28 ~~date on the written request.~~

29 ~~(iii) Maintain an electronic or paper copy of a~~
30 ~~written request, including all documents submitted with~~

~~the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) or the appeal is deemed denied.~~

~~(iv) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications. This subparagraph shall only apply to Commonwealth agencies.~~

~~Section 503. (Reserved).~~

~~Section 504. Regulations and policies.~~

~~(a) Authority. An agency may promulgate regulations, rules or policies necessary for the agency to implement this act. The records office may promulgate regulations relating to appeals involving a Commonwealth agency, legislative agency or local agency.~~

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

~~(1) Contact information for the open records officer.~~

~~(2) Contact information for the records office or other applicable appeals officer.~~

~~(3) A form which may be used to file a request.~~

~~(4) Rules, regulations, policies and procedures of the agency relating to this act.~~

~~Section 505. Uniform form.~~

~~(a) Commonwealth agencies and legislative agencies. The records office shall develop a uniform form which shall be accepted by all Commonwealth agencies, legislative agencies and~~

1 ~~local agencies in addition to any form used by the agency to~~
2 ~~file a request under this act. The uniform form shall be~~
3 ~~published in the Pennsylvania Bulletin and on the record~~
4 ~~office's Internet website.~~

5 ~~(b) Judicial agencies. A judicial agency may develop a form~~
6 ~~to request financial records or may use a form developed by the~~
7 ~~Administrative Office of Pennsylvania Courts or the records~~
8 ~~office.~~

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 ~~which requests have placed an unreasonable burden on the~~
14 ~~agency.~~

15 ~~(2) A denial under this subsection shall not restrict~~
16 ~~the ability to request a different record.~~

17 ~~(b) Disaster or potential damage.~~

18 ~~(1) An agency may deny a requester access:~~

19 ~~(i) when timely access is not possible due to fire,~~
20 ~~flood or other disaster; or~~

21 ~~(ii) to historical, ancient or rare documents,~~
22 ~~records, archives and manuscripts when access may, in the~~
23 ~~professional judgment of the curator or custodian of~~
24 ~~records, cause physical damage or irreparable harm to the~~
25 ~~record.~~

26 ~~(2) To the extent possible, the contents of a record~~
27 ~~under this subsection shall be made accessible to a requester~~
28 ~~even when the record is physically unavailable.~~

29 ~~(c) Agency discretion. An agency may exercise its~~
30 ~~discretion to make any otherwise exempt record accessible for~~

~~inspection and copying under this chapter, if all of the following apply:~~

~~(1) Disclosure of the record is not prohibited under any of the following:~~

~~(i) Federal or State law or regulation.~~

~~(ii) Judicial order or decree.~~

~~(2) The record is not protected by a privilege.~~

~~(3) The agency head determines that the public interest favoring access substantially outweighs any individual, agency or public interest that may favor restriction of access.~~

~~(d) Agency possession.—~~

~~(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under section 305, shall be considered a public record of the agency for purposes of this act.~~

~~(2) Nothing in this act shall be construed to require access to any other record of the party in possession of the public record.~~

~~(3) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination to grant the request, the open records officer shall assess the duplication fee established under section 1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.~~

~~Section 507.— Retention of records.~~

1 ~~Nothing in this act shall be construed to modify, rescind or~~
2 ~~supersede any record retention disposition schedule of an agency~~
3 ~~established pursuant to law, regulation, policy or other~~
4 ~~directive.~~

5 ~~CHAPTER 7~~

6 ~~PROCEDURE~~

7 ~~Section 701. Access.~~

8 ~~(a) General rule. Unless otherwise provided by law, a~~
9 ~~public record, legislative record or financial record shall be~~
10 ~~accessible for inspection and duplication in accordance with~~
11 ~~this act. A record being provided to a requester shall be~~
12 ~~provided in the medium requested if it exists in that medium;~~
13 ~~otherwise, it shall be provided in the medium in which it~~
14 ~~exists. Public records, legislative records or financial records~~
15 ~~shall be available for access during the regular business hours~~
16 ~~of an agency.~~

17 ~~(a.1) Gaming Control Board policies. All information~~
18 ~~related to the development of Gaming Control Board policies,~~
19 ~~regulations, procedures or any other recommendations regarding~~
20 ~~implementation of 4 Pa.C.S. § 1212 (relating to diversity goals~~
21 ~~of board) or 1325 (relating to license or permit issuance),~~
22 ~~including, but not limited to, any documents or other materials~~
23 ~~prepared for the use of the board, its employees or independent~~
24 ~~contractors, shall be considered a public record and subject to~~
25 ~~disclosure.~~

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

29 ~~Section 702. Requests.~~

30 ~~Agencies may fulfill informal verbal, written or anonymous~~

1 ~~verbal or written requests for access to records under this act.~~
2 ~~In the event that the requester wishes to pursue the relief and~~
3 ~~remedies provided for in this act, the requester must initiate~~
4 ~~such relief with a written request.~~

5 ~~Section 703. Written requests.~~

6 ~~A written request for access to records may be submitted in~~
7 ~~person, by mail, by e-mail, by facsimile or, to the extent~~
8 ~~provided by agency rules, any other electronic means. A written~~
9 ~~request shall be addressed to the agency head or open records~~
10 ~~officer designated pursuant to section 502. A written request~~
11 ~~should identify or describe the records sought with sufficient~~
12 ~~specificity to enable the agency to ascertain which records are~~
13 ~~being requested and shall include the name and address to which~~
14 ~~the agency should address its response. A written request need~~
15 ~~not include any explanation of the requester's reason for~~
16 ~~requesting or intended use of the records unless otherwise~~
17 ~~provided by law.~~

18 ~~Section 704. Electronic access.~~

19 ~~(a) General rule. In addition to the requirements of~~
20 ~~section 701, an agency may make its records available through~~
21 ~~any publicly accessible electronic means.~~

22 ~~(b) Response.~~

23 ~~(1) In addition to the requirements of section 701, an~~
24 ~~agency may respond to a request by notifying the requester~~
25 ~~that the record is available through publicly accessible~~
26 ~~electronic means or that the agency will provide access to~~
27 ~~inspect the record electronically.~~

28 ~~(2) If the requester is unwilling or unable to access~~
29 ~~the record electronically, the requester may, within 30 days~~
30 ~~following receipt of the agency notification, submit a~~

~~written request to the agency to have the record converted to paper. The agency shall provide the record in printed form within five days of the receipt of the written request for conversion to paper.~~

~~Section 705. — Creation of record.~~

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

~~Section 706. — Redaction.~~

~~If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.~~

~~Section 707. — Production of certain records.~~

~~(a) General rule. — If, in response to a request, an agency produces a record that is not a public record, legislative record or financial record, the agency shall notify any third~~

~~party that provided the record to the agency, the person that is the subject of the record and the requester.~~

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

~~Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.~~

~~(c) Transcripts.—~~

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

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

~~Section 708.— Exceptions for public records.~~

~~(a) Burden of proof.—~~

~~(1) The burden of proving that a public record is exempt from public access shall be on the agency receiving a request by a preponderance of the evidence.~~

~~(2) The burden of proving that a legislative record is~~

~~exempt from public access shall be on the legislative agency receiving a request, by a preponderance of the evidence.~~

~~(3) The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request, by a preponderance of the evidence.~~

~~(b) Exceptions. In the case of a public record, unless disclosure is otherwise required or authorized by law, the following are exempt from access by a requester under this act:~~

~~(1) A record the disclosure of which:~~

~~(i) would result in the loss of Federal or State funds by an agency or the Commonwealth; or~~

~~(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to an individual.~~

~~(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.~~

~~(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:~~

~~(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability~~

~~in preventing, protecting against, mitigating or
responding to a terrorist act;~~

~~(ii) lists of infrastructure, resources and
significant special events, including those defined by
the Federal Government in the National Infrastructure
Protections, which are deemed critical due to their
nature and which result from risk analysis; threat
assessments; consequences assessments; antiterrorism
protective measures and plans; counterterrorism measures
and plans; and security and response needs assessments;
and~~

~~(iii) building plans or infrastructure records that
expose or create vulnerability through disclosure of the
location, configuration or security of critical systems,
including public utility systems, structural elements,
technology, communication, electrical, fire suppression,
ventilation, water, wastewater, sewage and gas systems.~~

~~(4) A record regarding computer hardware, software and
networks, including administrative or technical records,
which, if disclosed, would be reasonably likely to jeopardize
computer security.~~

~~(5) A record of an individual's medical, psychiatric or
psychological history or disability status, including
evaluation, consultation, a prescription, diagnosis or
treatment; results of tests, including drug tests; enrollment
in a health care program or program designed for
participation by persons with disabilities, including
vocation rehabilitation, workers' compensation and
unemployment compensation; or related information that would
disclose individually identifiable health information.~~

~~(6) (i) The following personal identification information:~~

~~(A) A record containing all or part of a person's Social Security number; date of birth; driver's license number; personal financial information of an individual; telephone numbers; personal e-mail addresses; employee numbers; or other confidential personal identification numbers.~~

~~(B) A spouse's name; marital status, beneficiary or dependent information.~~

~~(ii) Nothing in this paragraph shall:~~

~~(A) Prevent an agency from providing access to the date of birth of a deceased person for genealogical purposes.~~

~~(B) Preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee.~~

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

~~(7) The following records relating to an agency employee:~~

~~(i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office~~

1 ~~requiring Senate confirmation.~~

2 ~~(ii) A performance rating or review.~~

3 ~~(iii) The result of a civil service or similar test~~
4 ~~administered by a Commonwealth agency, legislative agency~~
5 ~~or judicial agency. The result of a civil service or~~
6 ~~similar test administered by a local agency shall not be~~
7 ~~disclosed if restricted by a collective bargaining~~
8 ~~agreement. Only test scores of individuals who obtained a~~
9 ~~passing score on a test administered by a local agency~~
10 ~~may be disclosed.~~

11 ~~(iv) The employment application of an individual who~~
12 ~~is not hired by the agency.~~

13 ~~(v) Workplace support services program information.~~

14 ~~(vi) Written criticisms of an employee.~~

15 ~~(vii) Grievance material, including documents~~
16 ~~related to discrimination or sexual harassment.~~

17 ~~(viii) (A) Information regarding discipline,~~
18 ~~demotion or discharge contained in a personnel file.~~

19 ~~(B) This subparagraph shall not apply to the~~
20 ~~final action of an agency that results in demotion or~~
21 ~~discharge.~~

22 ~~(8) (i) A record pertaining to strategy or negotiations~~
23 ~~relating to labor relations or collective bargaining or~~
24 ~~arbitration proceedings.~~

25 ~~(ii) An arbitration opinion and award, any exhibits~~
26 ~~entered into evidence at an arbitration proceeding and~~
27 ~~any transcript of an arbitration proceeding.~~

28 ~~(iii) This paragraph does not apply to any final or~~
29 ~~executed contract or agreement between the parties or to~~
30 ~~any final order in an arbitration proceeding.~~

1 ~~(9) The draft of a bill, resolution, regulation,~~
2 ~~statement of policy, management directive, ordinance or~~
3 ~~amendment thereto prepared by or for an agency.~~

4 ~~(10) (i) A record that reflects:~~

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

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

18 ~~(ii) This paragraph applies to:~~

19 ~~(A) The Governor's Office, the head of a~~
20 ~~Commonwealth agency and the staff of the Governor or~~
21 ~~agency.~~

22 ~~(B) The chief executive officer or governing~~
23 ~~body of a local agency, or a member or staff of the~~
24 ~~local agency prior to the presentation of the~~
25 ~~decision, policy, proposal or course of action to a~~
26 ~~quorum of the governing body at a meeting subject to~~
27 ~~65 Pa.C.S. Ch. 7 (relating to open meetings).~~

28 ~~(iii) This paragraph does not apply to a written~~
29 ~~application or other document used to request~~
30 ~~Commonwealth funds.~~

1 ~~(11) A record that constitutes or reveals a trade secret~~
2 ~~or confidential proprietary information.~~

3 ~~(12) Notes and working papers prepared by or for a~~
4 ~~public official or agency employee used solely for that~~
5 ~~official's or employee's own personal use, including~~
6 ~~telephone message slips, routing slips and other materials~~
7 ~~that do not have an official purpose.~~

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

16 ~~(14) Unpublished lecture notes, unpublished manuscripts,~~
17 ~~unpublished articles, creative works in progress, research-~~
18 ~~related material and scholarly correspondence of a community~~
19 ~~college or an institution of the State System of Higher~~
20 ~~Education or a faculty member, staff employee, guest speaker~~
21 ~~or student thereof.~~

22 ~~(15) Examination questions, scoring keys or answers to~~
23 ~~an examination.~~

24 ~~(16) A record of an agency relating to or resulting in a~~
25 ~~criminal investigation, including:~~

26 ~~(i) Complaints of potential criminal conduct other~~
27 ~~than a private criminal complaint.~~

28 ~~(ii) Investigative materials, notes, correspondence,~~
29 ~~videos and reports.~~

30 ~~(iii) A record that includes the identity of a~~

~~confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.~~

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

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

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

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

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

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

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

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

~~This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) or in a traffic report.~~

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

~~(i) Complaints submitted to an agency.~~

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

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

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

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

5 ~~(v) Work papers underlying an audit.~~

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

8 ~~(A) Reveal the institution, progress or result~~
9 ~~of an agency investigation, except the imposition of~~
10 ~~a fine or civil penalty or the suspension,~~
11 ~~modification or revocation of a license, permit,~~
12 ~~registration, certification or similar authorization~~
13 ~~issued by an agency.~~

14 ~~(B) Deprive a person of the right to an~~
15 ~~impartial adjudication.~~

16 ~~(C) Constitute an unwarranted invasion of~~
17 ~~privacy.~~

18 ~~(D) Hinder an agency's ability to secure an~~
19 ~~administrative or civil sanction.~~

20 ~~(E) Endanger the life or physical safety of an~~
21 ~~individual.~~

22 ~~(18) Records or parts of records pertaining to audio~~
23 ~~recordings, telephone or radio transmissions received by~~
24 ~~emergency dispatch personnel, including 911 recordings.~~

25 ~~However, a transcript of a recording may be released when the~~
26 ~~agency or a court determines that the public interest in~~
27 ~~disclosure outweighs the interest in nondisclosure.~~

28 ~~(19) DNA records.~~

29 ~~(20) An autopsy record of a coroner or medical examiner~~
30 ~~and any audiotape of a postmortem examination or autopsy, or~~

1 ~~a copy, reproduction or facsimile of an autopsy report, a~~
2 ~~photograph, negative or print, including a photograph or~~
3 ~~videotape of the body or any portion of the body of a~~
4 ~~deceased person at the scene of death or in the course of a~~
5 ~~postmortem examination or autopsy taken or made by or caused~~
6 ~~to be taken or made by the coroner or medical examiner. This~~
7 ~~exception shall not limit the reporting of the name of the~~
8 ~~deceased individual and the cause and manner of death to all~~
9 ~~persons interested therein in accordance with section 1251 of~~
10 ~~the act of August 9, 1955 (P.L.323, No.130), known as The~~
11 ~~County Code.~~

12 ~~(21) Draft minutes of any meeting of an agency and~~
13 ~~minutes of an executive session and any record of discussions~~
14 ~~held in executive session.~~

15 ~~(22) (i) The contents of real estate appraisals,~~
16 ~~engineering or feasibility estimates, environmental~~
17 ~~reviews, audits or evaluations made for or by an agency~~
18 ~~relative to the following:~~

19 ~~(A) The leasing, acquiring or disposing of real~~
20 ~~property.~~

21 ~~(B) The purchase of public supplies or equipment~~
22 ~~included in the real estate transaction.~~

23 ~~(C) Construction projects.~~

24 ~~(ii) This paragraph does not apply once the decision~~
25 ~~is made to proceed with the lease, acquisition or~~
26 ~~disposal of real property or the purchase of public~~
27 ~~supply or construction project.~~

28 ~~(23) Library and archive circulation and order records~~
29 ~~of an identifiable individual or groups of individuals.~~

30 ~~(24) Library archived and museum materials, or valuable~~

1 ~~or rare book collections or documents contributed by gift,~~
2 ~~grant, bequest or devise, to the extent of any limitations~~
3 ~~imposed by the donor as a condition of the contribution.~~

4 ~~(25) A record identifying the location of an~~
5 ~~archeological site or an endangered or threatened plant or~~
6 ~~animal species if not already known to the general public.~~

7 ~~(26) A proposal pertaining to agency procurement or~~
8 ~~disposal of supplies, services or construction prior to the~~
9 ~~award of the contract or prior to the opening and rejection~~
10 ~~of all bids; financial information of a bidder or offeror~~
11 ~~requested in an invitation for bid or request for proposals~~
12 ~~to demonstrate the bidder's or offeror's economic capability;~~
13 ~~or the identity of members, notes and other records of agency~~
14 ~~proposal evaluation committees established under 62 Pa.C.S. §~~
15 ~~513 (relating to competitive sealed proposals).~~

16 ~~(27) A record or information relating to a communication~~
17 ~~between an agency and its insurance carrier, administrative~~
18 ~~service organization or risk management office. This~~
19 ~~paragraph does not apply to a contract with an insurance~~
20 ~~carrier, administrative service organization or risk~~
21 ~~management office or to financial records relating to the~~
22 ~~provision of insurance.~~

23 ~~(28) A record or information:~~

24 ~~(i) identifying an individual who applies for or~~
25 ~~receives social services;~~

26 ~~(ii) relating to the following:~~

27 ~~(A) the type of social services received by an~~
28 ~~individual;~~

29 ~~(B) an individual's application to receive~~
30 ~~social services, including a record or information~~

1 ~~related to an agency decision to grant, deny, reduce~~
2 ~~or restrict benefits, including a quasi-judicial~~
3 ~~decision of the agency and the identity of a~~
4 ~~caregiver or others who provide services to the~~
5 ~~individual; or~~

6 ~~(C) eligibility to receive social benefits,~~
7 ~~including the individual's income, assets, physical~~
8 ~~or mental health, age, disability, family~~
9 ~~circumstances or record of abuse; or~~

10 ~~(iii) identifying a person that requests assistance~~
11 ~~or constituent services from a member of the General~~
12 ~~Assembly.~~

13 ~~(c) Financial records.—With respect to financial records,~~
14 ~~the exceptions set forth in subsection (b)(1), (2), (3), (4) or~~
15 ~~(5) shall apply. Information described in paragraph (4) of the~~
16 ~~definition of "financial record" relating to individuals and~~
17 ~~protected under subsection (b)(28) shall also be exempt from~~
18 ~~access by a requester under this act. An agency shall redact~~
19 ~~that portion of a financial record which would disclose~~
20 ~~information protected under subsection (b)(6) or disclose the~~
21 ~~identity of a crime victim, confidential source or an individual~~
22 ~~performing an undercover or covert law enforcement activity~~
23 ~~protected under subsection (b)(16) or (17).~~

24 ~~(d) Aggregated data.—The exceptions set forth in subsection~~
25 ~~(b)(1), (2), (3), (4) or (5) shall apply to aggregated data,~~
26 ~~maintained or received by an agency.~~

27 ~~Section 709.—Internet access.~~

28 ~~The Department of Community and Economic Development shall~~
29 ~~post on its Internet website a list of community revitalization~~
30 ~~grants by legislative and senatorial districts.~~

1 CHAPTER 9

2 AGENCY RESPONSE

3 ~~Section 901. General rule.~~

4 ~~Upon receipt of a written request for access to a record, an~~
5 ~~agency shall make a good faith effort to determine if the record~~
6 ~~requested is a public record, legislative record or financial~~
7 ~~record and whether the agency has possession, custody or control~~
8 ~~of the identified record, and to respond as promptly as possible~~
9 ~~under the circumstances existing at the time of the request. The~~
10 ~~response shall include a notice of applicable fees. The time for~~
11 ~~response shall not exceed five business days from the date the~~
12 ~~written request is received by the agency head or open records~~
13 ~~officer for an agency. If the agency fails to send the response~~
14 ~~within five business days of receipt of the written request for~~
15 ~~access, the written request for access shall be deemed denied.~~

16 ~~Section 902. Extension of time.~~

17 ~~(a) Determination. Upon receipt of a written request for~~
18 ~~access, the open records officer for an agency shall determine~~
19 ~~if one of the following applies:~~

20 ~~(1) the request for access requires redaction of a~~
21 ~~record in accordance with section 706;~~

22 ~~(2) the request for access requires the retrieval of a~~
23 ~~record stored in a remote location;~~

24 ~~(3) a timely response to the request for access cannot~~
25 ~~be accomplished due to bona fide and specified staffing~~
26 ~~limitations;~~

27 ~~(4) a legal review is necessary to determine whether the~~
28 ~~record is a record subject to access under this act;~~

29 ~~(5) the requester has not complied with the Commonwealth~~
30 ~~agency's policies regarding access to records;~~

~~(6) the requester refuses to pay applicable fees authorized by this act; or~~

~~(7) the extent or nature of the request precludes a response within the required time period.~~

~~(b) Notice.~~

~~(1) Upon a determination that one of the factors listed in subsection (a) applies, the open records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).~~

~~(2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing for an extension to the date specified in the notice.~~

~~(3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.~~

~~Section 903. Denial.~~

~~If an agency's response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include:~~

~~(1) A description of the record requested.~~

~~(2) The specific reasons for the denial, including a citation of supporting legal authority.~~

~~(3) The typed or printed name, title, business address, business telephone number and signature of the agency head or open records officer on whose authority the denial is issued.~~

~~(4) Date of the response.~~

~~(5) The procedure to appeal the denial of access under this act.~~

~~Section 904. Certified copies.~~

~~If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees pursuant to section 1307.~~

~~Section 905. Administrative denial.~~

~~The following shall apply:~~

~~(1) An agency may deny access to a public record, legislative record or financial record due to the failure of the requester to pay the applicable fee.~~

~~(2) An agency may deny access to a public record, legislative record or financial record due to the failure of the requester to pay any fee associated with a previous request made by the requester to the same agency.~~

~~Section 906. Record discard.~~

~~If an agency response to a requester provides that the requested records are available for delivery at the office of an agency and the requester fails to retrieve the records within 60 days of the agency's response, the agency shall send a written notice to the requester specifying that the requested copies will be held for an additional 30 days, within which time the requester may return to the agency to retrieve the records. Thereafter, the agency may dispose of any copies which have not been retrieved and retain any fees paid to date.~~

CHAPTER 11

APPEAL OF AGENCY DETERMINATION

~~Section 1101. Filing of appeal.~~

~~(a) Authorization.~~

~~(1) If a written request for access is denied or deemed denied, the requester may file an appeal with the records office within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.~~

~~(2) In the case of an appeal of a decision by an agency, the records office shall review the denial.~~

~~(b) Determination.~~

~~(1) Unless the requester agrees otherwise, the records office shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).~~

~~(2) If the records office fails to issue a final determination within 30 days, the appeal is deemed denied.~~

~~(3) Prior to issuing a final determination, a hearing may be conducted. The determination by the records office shall be a final order. The records office shall provide a written explanation of the reason for the decision to the requester and the agency.~~

~~(c) Direct interest.~~

~~(1) A person other than the agency or requester with a direct interest in the record subject to an appeal under this~~

~~section may, within 15 calendar days following receipt of actual knowledge of the appeal but no later than the date the records office issues an order, file a written request to provide information or appear before the records office or to file information in support of the requester's or agency's position.~~

~~(2) The records office may grant the request if:~~

~~(i) no hearing has been held;~~

~~(ii) the office has not yet issued its order; and~~

~~(iii) the records office believes the information will be probative.~~

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

~~CHAPTER 13~~

~~JUDICIAL REVIEW~~

~~Section 1301. Commonwealth agencies, legislative agencies and judicial agencies.~~

~~(a) General rule. Within 30 days of the mailing date of the final determination of the records office relating to a decision of a Commonwealth agency, a legislative agency or a judicial agency issued under section 1101(b) or the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.~~

~~(b) Stay. An appeal under this section shall stay the release of documents until a decision under subsection (a) is issued.~~

1 ~~Section 1302. Local agencies.~~

2 ~~(a) General rule. Within 30 days of the mailing date of the~~
3 ~~final determination of the records office relating to a decision~~
4 ~~of a local agency issued under section 1101(b) or of the date a~~
5 ~~request for access is deemed denied, a requester or local agency~~
6 ~~may file a petition for review or other document as required by~~
7 ~~rule of court with the court of common pleas for the county~~
8 ~~where the local agency is located. The decision of the court~~
9 ~~shall contain findings of fact and conclusions of law based upon~~
10 ~~the evidence as a whole. The decision shall clearly and~~
11 ~~concisely explain the rationale for the decision.~~

12 ~~(b) Stay. An appeal under this section shall stay the~~
13 ~~release of documents until a decision under subsection (a) is~~
14 ~~issued.~~

15 ~~Section 1303. Notice and records.~~

16 ~~(a) Notice. An agency, the requester and the appeals~~
17 ~~officer shall be served notice of actions commenced in~~
18 ~~accordance with section 1301 or 1302 and shall have an~~
19 ~~opportunity to respond in accordance with applicable court~~
20 ~~rules.~~

21 ~~(b) Record on appeal. The record before a court shall~~
22 ~~consist of the request, the agency's response, the appeal filed~~
23 ~~under section 1101, the hearing transcript, if any, and the~~
24 ~~final written determination of the records office.~~

25 ~~Section 1304. Court costs and attorney fees.~~

26 ~~(a) Reversal of agency determination. If a court reverses~~
27 ~~the final determination of the records office or grants access~~
28 ~~after a request for access was deemed denied, the court may~~
29 ~~award reasonable attorney fees and costs of litigation or an~~
30 ~~appropriate portion thereof to a requester if the court finds~~

1 ~~either of the following:~~

2 ~~(1) the agency receiving the original request willfully~~
3 ~~or with wanton disregard deprived the requester of access to~~
4 ~~a public record subject to access or otherwise acted in bad~~
5 ~~faith under the provisions of this act; or~~

6 ~~(2) the exemptions, exclusions or defenses asserted by~~
7 ~~the agency in its final determination were not based on a~~
8 ~~reasonable interpretation of law.~~

9 ~~(b) Sanctions for frivolous requests or appeals. The court~~
10 ~~may award reasonable attorney fees and costs of litigation or an~~
11 ~~appropriate portion thereof to an agency or the requester if the~~
12 ~~court finds that the legal challenge under this chapter was~~
13 ~~frivolous.~~

14 ~~(c) Other sanctions. Nothing in this act shall prohibit a~~
15 ~~court from imposing penalties and costs in accordance with~~
16 ~~applicable rules of court.~~

17 ~~Section 1305. Civil penalty.~~

18 ~~(a) Denial of access. A court may impose a civil penalty of~~
19 ~~not more than \$1,000 if an agency denied access to a public~~
20 ~~record in bad faith.~~

21 ~~(b) Failure to comply with court order. An agency or public~~
22 ~~official who does not promptly comply with a court order under~~
23 ~~this act is subject to a civil penalty of not more than \$500 per~~
24 ~~day until the public records are provided.~~

25 ~~Section 1306. Immunity.~~

26 ~~(a) General rule. Except as provided in sections 1304 and~~
27 ~~1305 and other statutes governing the release of records, no~~
28 ~~agency, public official or public employee shall be liable for~~
29 ~~civil penalties resulting from compliance or failure to comply~~
30 ~~with this act.~~

~~(b) Schedules. No agency, public official or public employee shall be liable for civil or criminal damages or penalties under this act for complying with any written public record retention and disposition schedule.~~

~~Section 1307. Fee limitations.~~

~~(a) Postage. Fees for postage may not exceed the actual cost of mailing.~~

~~(b) Duplication.~~

~~(1) Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established by the records office.~~

~~(2) (i) The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.~~

~~(ii) Fees for copying data, collections of data and compiled data, including, but not limited to, geographic information systems and property lists, may be based on consideration of the reasonable market value of same or closely comparable data, collections of data or compiled data.~~

~~(3) Fees for local agencies may reflect regional price differences and shall be subject to review by the clearinghouse as provided in section 1310(a)(8).~~

~~(c) Certification. An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.~~

~~(d) Conversion to paper. If a record is only maintained~~

1 ~~electronically or in other nonpaper media, duplication fees~~
2 ~~shall be limited to the lesser of the fee for duplication on~~
3 ~~paper or the fee for duplication in the original media as~~
4 ~~provided by subsection (b) unless the requester specifically~~
5 ~~requests for the record to be duplicated in the more expensive~~
6 ~~medium.~~

7 ~~(e) Enhanced electronic access. If an agency offers~~
8 ~~enhanced electronic access to records in addition to making the~~
9 ~~records accessible for inspection and duplication by a requester~~
10 ~~as required by this act, the agency may establish user fees~~
11 ~~specifically for the provision of the enhanced electronic~~
12 ~~access, but only to the extent that the enhanced electronic~~
13 ~~access is in addition to making the records accessible for~~
14 ~~inspection and duplication by a requester as required by this~~
15 ~~act. The user fees for enhanced electronic access may be a flat~~
16 ~~rate, a subscription fee for a period of time, a per transaction~~
17 ~~fee, a fee based on the cumulative time of system access or any~~
18 ~~other reasonable method and any combination thereof. The user~~
19 ~~fees for enhanced electronic access must be reasonable, must be~~
20 ~~approved by the clearinghouse and may not be established with~~
21 ~~the intent or effect of excluding persons from access to records~~
22 ~~or duplicates thereof or of creating profit for the agency.~~

23 ~~(f) Waiver of fees. An agency may waive the fees for~~
24 ~~duplication of a record, including, but not limited to, when:~~

- 25 ~~(1) the requester duplicates the record; or~~
26 ~~(2) the agency deems it is in the public interest to do~~
27 ~~so.~~

28 ~~(g) Limitations. Except as otherwise provided by statute,~~
29 ~~no other fees may be imposed unless the agency necessarily~~
30 ~~incurs costs for complying with the request, including costs~~

~~associated with legal reviews of records or record requests requiring the contracting or procuring of legal counsel outside the agency. Such fees must be reasonable. An agency shall not charge a requester any fee for any of the following costs:~~

~~(1) Costs related to reviewing a record to determine if it is a public record.~~

~~(2) Costs related to redacting exempt information from a record.~~

~~(3) Personnel costs for copying a record.~~

~~(4) Personnel costs for preparing a record for delivery.~~

~~(5) Personnel costs for observing a requester who is reviewing or copying a record.~~

~~(6) For use of agency computers, viewers or other equipment necessary for gaining access to examining a record.~~

~~(7) Costs for agency personnel to instruct a requester on the use of agency equipment used to view a record.~~

~~(8) Any other processing costs not specifically permitted under this section.~~

~~(h) Prepayment. Prior to granting a request for access in accordance with this act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100. The agency may require a certified check, money order or other form of verified payment of funds when requiring open records request fees to be prepaid.~~

~~Section 1308. Prohibition.~~

~~A policy, rule or regulation adopted under this act may not include any of the following:~~

~~(1) A limitation on the number of records which may be requested or made available for inspection or duplication.~~

~~(2) A requirement to disclose the purpose or motive in requesting access to records.~~

~~Section 1309. Practice and procedure.~~

~~The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this act unless specifically adopted by rule or regulation.~~

~~Section 1310. Pennsylvania Public Records Office.~~

~~(a) Establishment. The Pennsylvania Public Records Office is established within the State Ethics Commission, which shall appoint an executive director of the public records office who shall hire other staff as necessary to operate the office.~~

~~(b) Powers and duties. The director of the public records office has the following powers and duties:~~

~~(1) To receive and respond to requests for information from persons who have been denied access to public records by a Commonwealth agency, a local agency, the General Assembly or a legislative agency under this act.~~

~~(2) To receive and respond to requests for information from a Commonwealth agency, a local agency, the General Assembly or a legislative agency regarding compliance with this act.~~

~~(3) To order a Commonwealth agency, a local agency, the General Assembly or a legislative agency to comply with provisions of this act upon finding that a request for access to a public record was properly made.~~

~~(4) To issue advisory opinions on compliance with this act.~~

~~(5) To request information from Commonwealth agencies, local agencies, the General Assembly and legislative agencies in order to make compliance determinations under this act.~~

1 All information supplied by a Commonwealth agency, a local
2 agency, the General Assembly or a legislative agency which is
3 relevant to a request shall be subject to confidentiality
4 under subsection (c).

5 (6) To guide and oversee the compliance with this act by
6 all Commonwealth agencies, local agencies, the General
7 Assembly and legislative agencies.

8 (7) To provide a list to any requesting agency or
9 individual of Federal and State laws that exempt certain
10 types of records from disclosure.

11 (8) To make its advisory opinions and written decisions
12 available for review.

13 (9) To conduct training for public officials, public
14 employees and third parties relating to the Commonwealth's
15 access laws with assistance from the Department of Community
16 and Economic Development's Center for Local Government.

17 (10) To issue a report semi-annually to the General
18 Assembly and to the Governor, which report shall include, but
19 not be limited to:

20 (i) The number of requests to review denials from
21 persons making public record requests.

22 (ii) The number of public record requests which were
23 determined, upon review of the access office, to have
24 been improperly denied.

25 (iii) The number of requests made by agencies
26 seeking clarification on compliance with this act.

27 (iv) The number of orders issued by the public
28 records office directing an agency to comply with this
29 act.

30 (v) The number of advisory opinions issued by the

~~public records office.~~

~~(vi) The number of requests for the list of Federal and State exemptions to public access of records.~~

~~(vii) The number of training sessions conducted for public officials, public employees and third parties relating to public access of records, including the number of persons attending such training sessions.~~

~~(11) To make available in electronic form to persons making requests for public records, examples of previous requests for public records by other persons and the documents to which the other persons were given access. In performing this duty, the office may not reveal any information relating to the identity of the persons who made the previous requests.~~

~~(12) To promulgate any regulations necessary to administer this act.~~

~~(13) Set a schedule for the requester and agency to submit documents in support of their positions.~~

~~(14) To review all information filed relating to a request. The public records office may hold a hearing, but the decision to hold or not to hold a hearing is not appealable. The public records office may admit into evidence testimony, evidence and documents it believes to be reasonably probative and relevant to an issue in dispute. The public records office may limit the nature and extent of evidence to be cumulative.~~

~~(c) Confidentiality. All information requested by the public records office from an agency in order to make a determination of whether an agency is complying with this act shall remain confidential and shall not be subject to public~~

1 access.

2 ~~(d) Fees. The following shall apply:~~

3 ~~(1) The public records office may impose a reasonable~~
4 ~~filing fee for an appeal made under section 1101, and any~~
5 ~~fees collected under this subsection shall be deposited in a~~
6 ~~restricted account in the General Fund which is established~~
7 ~~for the public records office. The money from this account~~
8 ~~shall be appropriated as necessary for the operation of the~~
9 ~~public records office.~~

10 ~~(2) The public records office may waive the filing fee~~
11 ~~if the person requesting access to the public record is~~
12 ~~unable to afford the fee based on guidelines established by~~
13 ~~the public records office.~~

14 ~~Section 1311. Administrative appeals.~~

15 ~~(a) General rule. Notwithstanding any other provision of~~
16 ~~law, a party aggrieved by a denial or deemed denial of access to~~
17 ~~a public record by a Commonwealth agency, local agency, the~~
18 ~~General Assembly or a legislative agency may, within 30 days~~
19 ~~after a request is denied or deemed denied, appeal to the public~~
20 ~~records office by forwarding to the office a copy of the request~~
21 ~~and the written explanation for the denial, if any, provided by~~
22 ~~the Commonwealth agency, local agency, the General Assembly or~~
23 ~~legislative agency, and requesting a review of the matter.~~

24 ~~(b) Ruling.~~

25 ~~(1) Within 30 business days after receipt of the appeal,~~
26 ~~the public records office shall rule either that the denial~~
27 ~~or deemed denial of access to the record by the Commonwealth~~
28 ~~agency, local agency, the General Assembly or legislative~~
29 ~~agency is upheld or that the decision to deny access to the~~
30 ~~record was improper, and a Commonwealth agency, the local~~

1 ~~agency, the General Assembly or legislative agency must~~
2 ~~provide access to the record. The public records office may~~
3 ~~hold a private hearing on the matter and may review the~~
4 ~~record.~~

5 ~~(2) The 30 business day period may be extended by~~
6 ~~agreement of the parties. If the parties do not agree to an~~
7 ~~extension or the public records office does not issue a~~
8 ~~ruling within 30 business days after the date of the appeal,~~
9 ~~the denial from the Commonwealth agency, local agency, the~~
10 ~~General Assembly or legislative agency shall be deemed~~
11 ~~affirmed.~~

12 ~~(c) Explanation.—If the public records office upholds the~~
13 ~~decision of the Commonwealth agency, local agency, the General~~
14 ~~Assembly or legislative agency to deny access to the public~~
15 ~~record, the office shall fully explain in writing to the person~~
16 ~~requesting the public record the reason for the denial. If the~~
17 ~~public records office rules that the Commonwealth agency, local~~
18 ~~agency, the General Assembly or legislative agency shall provide~~
19 ~~access to the public record, it shall order the Commonwealth~~
20 ~~agency, local agency, the General Assembly or legislative agency~~
21 ~~to provide the individual with access to the record and shall~~
22 ~~fully explain in writing the reason access must be provided.~~

23 ~~(d) Other appeals.—Costs or attorney fees shall not be~~
24 ~~awarded under this section for administrative appeal to the~~
25 ~~public records office under this section.~~

26 CHAPTER 15

27 STATE-RELATED INSTITUTIONS

28 ~~Section 1501.—Definition.~~

29 ~~As used in this chapter, "State-related institution" means~~
30 ~~any of the following:~~

STATE CONTRACT INFORMATION

~~Section 1701. Submission and retention of contracts.~~

~~(a) General rule. Whenever any Commonwealth agency, legislative agency or judicial agency shall enter into any contract involving any property, real, personal or mixed of any kind or description or any contract for personal services where the consideration involved in the contract is \$5,000 or more, a copy of the contract shall be furnished to the Treasury Department within ten days after the contract is executed on behalf of the Commonwealth agency, legislative agency or judicial agency or otherwise becomes an obligation of the Commonwealth agency, legislative agency or judicial agency. The provisions of this subsection shall not apply to contracts for services protected by a privilege. The following shall apply:~~

~~(1) Each Commonwealth agency, legislative agency and judicial agency shall submit contracts in a form and structure mutually agreed upon by the Commonwealth agency, legislative agency or judicial agency and the State Treasurer.~~

~~(2) The Treasury Department may require each Commonwealth agency, legislative agency or judicial agency to provide a summary with each contract, which shall include the following:~~

~~(i) Date of execution.~~

~~(ii) Amount of the contract.~~

~~(iii) Beginning date of the contract.~~

~~(iv) End date of the contract, if applicable.~~

~~(v) Name of the agency entering into the contract.~~

~~(vi) The name and business address of all parties executing the contract.~~

~~(vii) Subject matter of the contract.~~

~~Each agency shall create and maintain the data under this paragraph in an ASCII-delimited text file, spreadsheet file or other file provided by Treasury Department regulation.~~

~~(b) Retention.—Every contract filed pursuant to subsection (a) shall remain on file with the Treasury Department for a period of not less than four years after the end date of the contract.~~

~~(c) Accuracy.—Each Commonwealth agency, legislative agency and judicial agency is responsible for verifying the accuracy and completeness of the information that it submits to the State Treasurer. The contract provided to the Treasury Department pursuant to this chapter shall be redacted in accordance with applicable provisions of this act by the agency providing the contract to the Treasury Department.~~

~~(d) Contracts provided pursuant to The Fiscal Code.—The copy of a contract provided to the Treasury Department pursuant to section 1701 shall be in addition to any copy of the contract provided to the Treasury Department under the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. Copies of contracts received by the Treasury Department, Office of Auditor General, or Department of Revenue from an agency pursuant to The Fiscal Code shall not be made available to a requester by the State Treasurer, Auditor General or the Department of Revenue.~~
~~Section 1702.—Public availability of contracts.~~

~~(a) General rule.—Except as otherwise provided in this chapter, a request for a copy of a contract shall only be made to an agency who is a party to the contract.~~

~~(b) Posting.—The Treasury Department shall make each contract filed pursuant to section 1701 available for public~~

~~inspection either by posting a copy of the contract on the Treasury Department's publicly accessible Internet website or by posting a contract summary on the department's publicly accessible Internet website. The Treasury Department shall post the information received pursuant to this chapter in a way that allows the public to search contracts or contract summaries by the categories enumerated in section 1701(a)(2).~~

~~(c) Request to review or receive copy of contract.—The Treasury Department shall maintain a page on its publicly accessible Internet website with instructions on how to request to review a contract and how to request a copy of a contract. Requests to review or receive a copy of a contract shall be allowed by letter, facsimile or e-mail. Additionally, both requests shall be honored within five days of the submission of the request and in the case of a request for a copy of a contract it shall be provided to the individual at cost. The Treasury Department may offer to provide a copy of the requested contract electronically to the requester at no cost.~~

~~CHAPTER 19~~

~~PUBLIC OFFICIALS~~

~~Section 1901.—Disclosure of affiliation.~~

~~(a) Scope.—This section applies to:~~

~~(1) an individual who is elected or appointed to an office of the Commonwealth; and~~

~~(2) the spouse of an individual under paragraph (1).~~

~~(b) Requirement.—Annually, each individual subject to subsection (a) shall submit to the clearinghouse for Internet website publication under section 1310(a)(7) disclosure as to a business relationship between a Commonwealth agency and:~~

~~(1) the individual;~~

- ~~(2) a partnership in which the individual is a partner;~~
~~(3) an association in which the individual is an officer or a director;~~
~~(4) a corporation in which the individual is an officer or a director; or~~
~~(5) a corporation in which the individual has an equity interest of at least 5%.~~

~~CHAPTER 31~~

~~MISCELLANEOUS PROVISIONS~~

~~Section 3101. Applicability.~~

~~This act applies as follows:~~

~~(1) This act shall apply to requests for information made on or after December 31, 2008.~~

~~(2) With respect to an agency as defined under section 102, this act shall apply prospectively.~~

~~(3) In addition to paragraph (2), with respect only to an agency which was an agency as defined under the former act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, this act shall apply retroactively.~~

~~(4) Chapter 15 shall apply to fiscal years beginning after June 30, 2008.~~

~~(5) Chapter 17 shall apply to contracts entered into or renewed after June 30, 2008.~~

~~(6) Section 3102(1)(ii)(B) shall apply to bids submitted on or after June 30, 2008.~~

~~(7) If a provision of this act regarding access to a record conflicts with any other Federal or State statute, regulation or judicial order or decree, the provision of this act shall not control.~~

~~Section 3101.1. Relation to other law or judicial actions.~~

~~If the provisions of this act regarding access to public records conflict with any Federal or State statute, the provisions of this act shall not apply.~~

~~Section 3101.2.— Severability.~~

~~All provisions of this act are severable.~~

~~Section 3102.— Repeals.~~

~~Repeals are as follows:~~

~~(1) (i) General Assembly declares that the repeals under subparagraph (ii) are necessary to effectuate this act.~~

~~(ii) The following acts and parts of acts are repealed:~~

~~(A) The act of June 21, 1957 (P.L.390, No.212), referred to as the Right to Know Law.~~

~~(B) 62 Pa.C.S. § 106.~~

~~(2) (i) The General Assembly declares that the repeal under subparagraph (ii) is necessary to effectuate Chapter 17.~~

~~(ii) Section 1104 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.~~

~~Section 3103.— References.~~

~~A reference in a statute, regulation or judicial order or decree to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right to Know Law, shall be deemed a reference to this act.~~

~~Section 3104.— Effective date.~~

~~This act shall take effect as follows:~~

~~(1) Sections 101, 102, 1310, 3101 and 3102(1)(i) and (ii)(B) and (2) shall take effect July 1, 2008.~~

~~(2) This section shall take effect immediately.~~

~~(3) The remainder of this act shall take effect January
1, 2009.~~

CHAPTER 1

PRELIMINARY PROVISIONS

SECTION 101. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE RIGHT-TO-KNOW
LAW.

SECTION 102. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"ADMINISTRATIVE PROCEEDING." A PROCEEDING BY AN AGENCY THE
OUTCOME OF WHICH IS REQUIRED TO BE BASED ON A RECORD OR
DOCUMENTATION PRESCRIBED BY LAW OR IN WHICH A STATUTE OR
REGULATION IS PARTICULARIZED IN APPLICATION TO INDIVIDUALS. THE
TERM INCLUDES AN APPEAL.

"AGENCY." A COMMONWEALTH AGENCY, A LOCAL AGENCY, A JUDICIAL
AGENCY OR A LEGISLATIVE AGENCY.

"AGGREGATED DATA." A TABULATION OF DATA WHICH RELATE TO
BROAD CLASSES, GROUPS OR CATEGORIES SO THAT IT IS NOT POSSIBLE
TO DISTINGUISH THE PROPERTIES OF INDIVIDUALS WITHIN THOSE
CLASSES, GROUPS OR CATEGORIES.

"APPEALS OFFICER." AS FOLLOWS:

(1) FOR A COMMONWEALTH AGENCY OR A LOCAL AGENCY, THE
APPEALS OFFICER DESIGNATED UNDER SECTION 503(A).

(2) FOR A JUDICIAL AGENCY, THE INDIVIDUAL DESIGNATED
UNDER SECTION 503(B).

(3) FOR A LEGISLATIVE AGENCY, THE INDIVIDUAL DESIGNATED
UNDER SECTION 503(C).

1 "COMMONWEALTH AGENCY." ANY OF THE FOLLOWING:

2 (1) ANY OFFICE, DEPARTMENT, AUTHORITY, BOARD, MULTISTATE
3 AGENCY OR COMMISSION OF THE EXECUTIVE BRANCH; AN INDEPENDENT
4 AGENCY; AND A STATE-AFFILIATED ENTITY. THE TERM INCLUDES:

5 (I) THE GOVERNOR'S OFFICE.

6 (II) THE OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT
7 OF THE AUDITOR GENERAL AND THE TREASURY DEPARTMENT.

8 (III) AN ORGANIZATION ESTABLISHED BY THE
9 CONSTITUTION OF PENNSYLVANIA, A STATUTE OR AN EXECUTIVE
10 ORDER WHICH PERFORMS OR IS INTENDED TO PERFORM AN
11 ESSENTIAL GOVERNMENTAL FUNCTION.

12 (2) THE TERM DOES NOT INCLUDE A JUDICIAL OR LEGISLATIVE
13 AGENCY.

14 "CONFIDENTIAL PROPRIETARY INFORMATION." COMMERCIAL OR
15 FINANCIAL INFORMATION RECEIVED BY AN AGENCY:

16 (1) WHICH IS PRIVILEGED OR CONFIDENTIAL; AND

17 (2) THE DISCLOSURE OF WHICH WOULD CAUSE SUBSTANTIAL HARM
18 TO THE COMPETITIVE POSITION OF THE PERSON THAT SUBMITTED THE
19 INFORMATION.

20 "FINANCIAL RECORD." INCLUDES:

21 (1) ANY ACCOUNT, VOUCHER OR CONTRACT DEALING WITH:

22 (I) THE RECEIPT OR DISBURSEMENT OF FUNDS BY AN
23 AGENCY; OR

24 (II) AN AGENCY'S ACQUISITION, USE OR DISPOSAL OF
25 SERVICES, SUPPLIES, MATERIALS, EQUIPMENT OR PROPERTY.

26 (2) THE SALARY OR OTHER PAYMENTS OR EXPENSES PAID TO AN
27 OFFICER OR EMPLOYEE OF AN AGENCY, INCLUDING THE NAME AND
28 TITLE OF THE OFFICER OR EMPLOYEE.

29 (3) RESULTS OF A FINANCIAL AUDIT.

30 "HOMELAND SECURITY." GOVERNMENTAL ACTIONS DESIGNED TO

1 PREVENT, DETECT, RESPOND TO AND RECOVER FROM ACTS OF TERRORISM,
2 MAJOR DISASTERS AND OTHER EMERGENCIES, WHETHER NATURAL OR
3 MANMADE. THE TERM INCLUDES ACTIVITIES RELATING TO THE FOLLOWING:

4 (1) EMERGENCY PREPAREDNESS AND RESPONSE, INCLUDING
5 PREPAREDNESS AND RESPONSE ACTIVITIES BY VOLUNTEER MEDICAL,
6 POLICE, EMERGENCY MANAGEMENT, HAZARDOUS MATERIALS AND FIRE
7 PERSONNEL;

8 (2) INTELLIGENCE ACTIVITIES;

9 (3) CRITICAL INFRASTRUCTURE PROTECTION;

10 (4) BORDER SECURITY;

11 (5) GROUND, AVIATION AND MARITIME TRANSPORTATION
12 SECURITY;

13 (6) BIODEFENSE;

14 (7) DETECTION OF NUCLEAR AND RADIOLOGICAL MATERIALS; AND

15 (8) RESEARCH ON NEXT-GENERATION SECURITIES TECHNOLOGIES.

16 "INDEPENDENT AGENCY." ANY BOARD, COMMISSION OR OTHER AGENCY
17 OR OFFICER OF THE COMMONWEALTH, THAT IS NOT SUBJECT TO THE
18 POLICY SUPERVISION AND CONTROL OF THE GOVERNOR. THE TERM DOES
19 NOT INCLUDE A LEGISLATIVE OR JUDICIAL AGENCY.

20 "JUDICIAL AGENCY." A COURT OF THE COMMONWEALTH OR ANY OTHER
21 ENTITY OR OFFICE OF THE UNIFIED JUDICIAL SYSTEM.

22 "LEGISLATIVE AGENCY." ANY OF THE FOLLOWING:

23 (1) THE SENATE.

24 (2) THE HOUSE OF REPRESENTATIVES.

25 (3) THE CAPITOL PRESERVATION COMMITTEE.

26 (4) THE CENTER FOR RURAL PENNSYLVANIA.

27 (5) THE JOINT LEGISLATIVE AIR AND WATER POLLUTION
28 CONTROL AND CONSERVATION COMMITTEE.

29 (6) THE JOINT STATE GOVERNMENT COMMISSION.

30 (7) THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE.

- 1 (8) THE LEGISLATIVE DATA PROCESSING COMMITTEE.
- 2 (9) THE INDEPENDENT REGULATORY REVIEW COMMISSION.
- 3 (10) THE LEGISLATIVE REFERENCE BUREAU.
- 4 (11) THE LOCAL GOVERNMENT COMMISSION.
- 5 (12) THE PENNSYLVANIA COMMISSION ON SENTENCING.
- 6 (13) THE LEGISLATIVE REAPPORTIONMENT COMMISSION.
- 7 (14) THE LEGISLATIVE OFFICE OF RESEARCH LIAISON.

8 "LEGISLATIVE RECORD." ANY OF THE FOLLOWING RELATING TO A
9 LEGISLATIVE AGENCY OR A STANDING COMMITTEE, SUBCOMMITTEE OR
10 CONFERENCE COMMITTEE OF A LEGISLATIVE AGENCY:

- 11 (1) A FINANCIAL RECORD.
- 12 (2) A BILL OR RESOLUTION THAT HAS BEEN INTRODUCED AND
13 AMENDMENTS OFFERED THERETO IN COMMITTEE OR IN LEGISLATIVE
14 SESSION, INCLUDING RESOLUTIONS TO ADOPT OR AMEND THE RULES OF
15 A CHAMBER.
- 16 (3) FISCAL NOTES.
- 17 (4) A COSPONSORSHIP MEMORANDUM.
- 18 (5) THE JOURNAL OF A CHAMBER.
- 19 (6) THE MINUTES OF, RECORD OF ATTENDANCE OF MEMBERS AT A
20 PUBLIC HEARING OR A PUBLIC COMMITTEE MEETING AND ALL RECORDED
21 VOTES TAKEN IN A PUBLIC COMMITTEE MEETING.
- 22 (7) THE TRANSCRIPT OF A PUBLIC HEARING WHEN AVAILABLE.
- 23 (8) EXECUTIVE NOMINATION CALENDARS.
- 24 (9) THE RULES OF A CHAMBER.
- 25 (10) A RECORD OF ALL RECORDED VOTES TAKEN IN A
26 LEGISLATIVE SESSION.
- 27 (11) ANY ADMINISTRATIVE STAFF MANUALS OR WRITTEN
28 POLICIES.
- 29 (12) AN AUDIT PREPARED PURSUANT TO THE ACT OF JUNE 30,
30 1970 (P.L.442, NO.151) ENTITLED, "AN ACT IMPLEMENTING THE

1 PROVISIONS OF ARTICLE VIII, SECTION 10 OF THE CONSTITUTION OF
2 PENNSYLVANIA, BY DESIGNATING THE COMMONWEALTH OFFICERS WHO
3 SHALL BE CHARGED WITH THE FUNCTION OF AUDITING THE FINANCIAL
4 TRANSACTIONS AFTER THE OCCURRENCE THEREOF OF THE LEGISLATIVE
5 AND JUDICIAL BRANCHES OF THE GOVERNMENT OF THE COMMONWEALTH,
6 ESTABLISHING A LEGISLATIVE AUDIT ADVISORY COMMISSION, AND
7 IMPOSING CERTAIN POWERS AND DUTIES ON SUCH COMMISSION."

8 (13) FINAL OR ANNUAL REPORTS REQUIRED BY LAW TO BE
9 SUBMITTED TO THE GENERAL ASSEMBLY.

10 (14) LEGISLATIVE BUDGET AND FINANCE COMMITTEE REPORTS.

11 (15) DAILY LEGISLATIVE SESSION CALENDARS AND MARKED
12 CALENDARS.

13 (16) A RECORD COMMUNICATING TO AN AGENCY THE OFFICIAL
14 APPOINTMENT OF A LEGISLATIVE APPOINTEE.

15 (17) A RECORD COMMUNICATING TO THE APPOINTING AUTHORITY
16 THE RESIGNATION OF A LEGISLATIVE APPOINTEE.

17 (18) PROPOSED REGULATIONS, FINAL-FORM REGULATIONS AND
18 FINAL-OMITTED REGULATIONS SUBMITTED TO A LEGISLATIVE AGENCY.

19 (19) THE RESULTS OF PUBLIC OPINION SURVEYS, POLLS, FOCUS
20 GROUPS, MARKETING RESEARCH OR SIMILAR EFFORTS DESIGNED TO
21 MEASURE PUBLIC OPINION FUNDED BY A LEGISLATIVE AGENCY.

22 "LOCAL AGENCY." ANY OF THE FOLLOWING:

23 (1) ANY POLITICAL SUBDIVISION, INTERMEDIATE UNIT,
24 CHARTER SCHOOL, CYBER CHARTER SCHOOL OR PUBLIC TRADE OR
25 VOCATIONAL SCHOOL.

26 (2) ANY LOCAL, INTERGOVERNMENTAL, REGIONAL OR MUNICIPAL
27 AGENCY, AUTHORITY, COUNCIL, BOARD, COMMISSION OR SIMILAR
28 GOVERNMENTAL ENTITY.

29 "OFFICE OF OPEN RECORDS." THE OFFICE OF OPEN RECORDS
30 ESTABLISHED IN SECTION 1310.

1 "PERSONAL FINANCIAL INFORMATION." AN INDIVIDUAL'S PERSONAL
2 CREDIT, CHARGE OR DEBIT CARD INFORMATION; BANK ACCOUNT
3 INFORMATION; BANK, CREDIT OR FINANCIAL STATEMENTS; ACCOUNT OR
4 PIN NUMBERS AND OTHER INFORMATION RELATING TO AN INDIVIDUAL'S
5 PERSONAL FINANCES.

6 "PRIVILEGE." THE ATTORNEY-WORK PRODUCT DOCTRINE, THE
7 ATTORNEY-CLIENT PRIVILEGE, THE DOCTOR-PATIENT PRIVILEGE OR OTHER
8 PRIVILEGE RECOGNIZED BY A COURT INTERPRETING THE LAWS OF THIS
9 COMMONWEALTH.

10 "PUBLIC RECORD." A RECORD OF A COMMONWEALTH OR LOCAL AGENCY
11 THAT:

12 (1) IS NOT EXEMPT UNDER SECTION 708;

13 (2) IS NOT EXEMPT FROM BEING DISCLOSED UNDER ANY OTHER
14 FEDERAL OR STATE LAW OR REGULATION OR JUDICIAL ORDER OR
15 DECREE; OR

16 (3) IS NOT PROTECTED BY A PRIVILEGE.

17 "RECORD." INFORMATION, REGARDLESS OF PHYSICAL FORM OR
18 CHARACTERISTICS, THAT DOCUMENTS A TRANSACTION OR ACTIVITY OF AN
19 AGENCY AND THAT IS CREATED, RECEIVED OR RETAINED PURSUANT TO LAW
20 OR IN CONNECTION WITH A TRANSACTION, BUSINESS OR ACTIVITY OF THE
21 AGENCY. THE TERM INCLUDES A DOCUMENT, PAPER, LETTER, MAP, BOOK,
22 TAPE, PHOTOGRAPH, FILM OR SOUND RECORDING, INFORMATION STORED OR
23 MAINTAINED ELECTRONICALLY AND A DATA-PROCESSED OR IMAGE-
24 PROCESSED DOCUMENT.

25 "REQUESTER." A PERSON THAT IS A LEGAL RESIDENT OF THE UNITED
26 STATES AND REQUESTS A RECORD PURSUANT TO THIS ACT. THE TERM
27 INCLUDES A POLITICAL SUBDIVISION.

28 "RESPONSE." ACCESS TO A RECORD OR AN AGENCY'S WRITTEN NOTICE
29 TO A REQUESTER GRANTING, DENYING OR PARTIALLY GRANTING AND
30 PARTIALLY DENYING ACCESS TO A RECORD.

1 "SOCIAL SERVICES." CASH ASSISTANCE AND OTHER WELFARE
2 BENEFITS, MEDICAL, MENTAL AND OTHER HEALTH CARE SERVICES, DRUG
3 AND ALCOHOL TREATMENT, ADOPTION SERVICES, VOCATIONAL AND
4 OCCUPATIONAL TRAINING, EDUCATION SERVICES, COUNSELING SERVICES,
5 WORKERS' COMPENSATION SERVICES AND UNEMPLOYMENT COMPENSATION
6 SERVICES, FOSTER CARE SERVICES AND SERVICES FOR VICTIMS OF
7 CRIMES.

8 "STATE-AFFILIATED ENTITY." A COMMONWEALTH AUTHORITY OR
9 COMMONWEALTH ENTITY. THE TERM INCLUDES THE PENNSYLVANIA HIGHER
10 EDUCATION ASSISTANCE AGENCY AND ANY ENTITY ESTABLISHED THEREBY,
11 THE PENNSYLVANIA GAMING CONTROL BOARD, THE PENNSYLVANIA GAME
12 COMMISSION, THE PENNSYLVANIA FISH AND BOAT COMMISSION, THE
13 PENNSYLVANIA HOUSING FINANCE AGENCY, THE PENNSYLVANIA MUNICIPAL
14 RETIREMENT BOARD, THE STATE SYSTEM OF HIGHER EDUCATION, A
15 COMMUNITY COLLEGE, THE PENNSYLVANIA TURNPIKE COMMISSION, THE
16 PENNSYLVANIA PUBLIC UTILITY COMMISSION, THE PENNSYLVANIA
17 INFRASTRUCTURE INVESTMENT AUTHORITY, THE STATE PUBLIC SCHOOL
18 BUILDING AUTHORITY, THE PENNSYLVANIA INTERSCHOLASTIC ATHLETIC
19 ASSOCIATION AND THE PENNSYLVANIA EDUCATIONAL FACILITIES
20 AUTHORITY. THE TERM DOES NOT INCLUDE A STATE-RELATED
21 INSTITUTION.

22 "STATE-RELATED INSTITUTION." INCLUDES:

- 23 (1) TEMPLE UNIVERSITY.
24 (2) THE UNIVERSITY OF PITTSBURGH.
25 (3) THE PENNSYLVANIA STATE UNIVERSITY.
26 (4) LINCOLN UNIVERSITY.

27 "TERRORIST ACT." A VIOLENT OR LIFE-THREATENING ACT THAT
28 VIOLATES THE CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND
29 APPEARS TO BE INTENDED TO:

- 30 (1) INTIMIDATE OR COERCE A CIVILIAN POPULATION;

1 (2) INFLUENCE THE POLICY OF A GOVERNMENT; OR
2 (3) AFFECT THE CONDUCT OF A GOVERNMENT BY MASS
3 DESTRUCTION, ASSASSINATION OR KIDNAPPING.

4 "TRADE SECRET." INFORMATION, INCLUDING A FORMULA, DRAWING,
5 PATTERN, COMPILATION, INCLUDING A CUSTOMER LIST, PROGRAM,
6 DEVICE, METHOD, TECHNIQUE OR PROCESS THAT:

7 (1) DERIVES INDEPENDENT ECONOMIC VALUE, ACTUAL OR
8 POTENTIAL, FROM NOT BEING GENERALLY KNOWN TO AND NOT BEING
9 READILY ASCERTAINABLE BY PROPER MEANS BY OTHER PERSONS WHO
10 CAN OBTAIN ECONOMIC VALUE FROM ITS DISCLOSURE OR USE; AND

11 (2) IS THE SUBJECT OF EFFORTS THAT ARE REASONABLE UNDER
12 THE CIRCUMSTANCES TO MAINTAIN ITS SECRECY.

13 THE TERM INCLUDES DATA PROCESSING SOFTWARE OBTAINED BY AN AGENCY
14 UNDER A LICENSING AGREEMENT PROHIBITING DISCLOSURE.

15 CHAPTER 3

16 REQUIREMENTS AND PROHIBITIONS

17 SECTION 301. COMMONWEALTH AGENCIES.

18 (A) REQUIREMENT.--A COMMONWEALTH AGENCY SHALL PROVIDE PUBLIC
19 RECORDS IN ACCORDANCE WITH THIS ACT.

20 (B) PROHIBITION.--A COMMONWEALTH AGENCY MAY NOT DENY A
21 REQUESTER ACCESS TO A PUBLIC RECORD DUE TO THE INTENDED USE OF
22 THE PUBLIC RECORD BY THE REQUESTER UNLESS OTHERWISE PROVIDED BY
23 LAW.

24 SECTION 302. LOCAL AGENCIES.

25 (A) REQUIREMENT.--A LOCAL AGENCY SHALL PROVIDE PUBLIC
26 RECORDS IN ACCORDANCE WITH THIS ACT.

27 (B) PROHIBITION.--A LOCAL AGENCY MAY NOT DENY A REQUESTER
28 ACCESS TO A PUBLIC RECORD DUE TO THE INTENDED USE OF THE PUBLIC
29 RECORD BY THE REQUESTER UNLESS OTHERWISE PROVIDED BY LAW.

30 SECTION 303. LEGISLATIVE AGENCIES.

1 (A) REQUIREMENT.--A LEGISLATIVE AGENCY SHALL PROVIDE
2 LEGISLATIVE RECORDS IN ACCORDANCE WITH THIS ACT.

3 (B) PROHIBITION.--A LEGISLATIVE AGENCY MAY NOT DENY A
4 REQUESTER ACCESS TO A LEGISLATIVE RECORD DUE TO THE INTENDED USE
5 OF THE LEGISLATIVE RECORD BY THE REQUESTER.

6 SECTION 304. JUDICIAL AGENCIES.

7 (A) REQUIREMENT.--A JUDICIAL AGENCY SHALL PROVIDE FINANCIAL
8 RECORDS IN ACCORDANCE WITH THIS ACT OR ANY RULE OR ORDER OF
9 COURT PROVIDING EQUAL OR GREATER ACCESS TO THE RECORDS.

10 (B) PROHIBITION.--A JUDICIAL AGENCY MAY NOT DENY A REQUESTER
11 ACCESS TO A FINANCIAL RECORD DUE TO THE INTENDED USE OF THE
12 FINANCIAL RECORD BY THE REQUESTER.

13 SECTION 305. PRESUMPTION.

14 (A) GENERAL RULE.--A RECORD IN THE POSSESSION OF A
15 COMMONWEALTH AGENCY OR LOCAL AGENCY SHALL BE PRESUMED TO BE A
16 PUBLIC RECORD. THE PRESUMPTION SHALL NOT APPLY IF:

- 17 (1) THE RECORD IS EXEMPT UNDER SECTION 708;
18 (2) THE RECORD IS PROTECTED BY A PRIVILEGE; OR
19 (3) THE RECORD IS EXEMPT FROM DISCLOSURE UNDER ANY OTHER
20 FEDERAL OR STATE LAW OR REGULATION OR JUDICIAL ORDER OR
21 DECREE.

22 (B) LEGISLATIVE RECORDS AND FINANCIAL RECORDS.--A
23 LEGISLATIVE RECORD IN THE POSSESSION OF A LEGISLATIVE AGENCY AND
24 A FINANCIAL RECORD IN THE POSSESSION OF A JUDICIAL AGENCY SHALL
25 BE PRESUMED TO BE AVAILABLE IN ACCORDANCE WITH THIS ACT. THE
26 PRESUMPTION SHALL NOT APPLY IF:

- 27 (1) THE RECORD IS EXEMPT UNDER SECTION 708;
28 (2) THE RECORD IS PROTECTED BY A PRIVILEGE; OR
29 (3) THE RECORD IS EXEMPT FROM DISCLOSURE UNDER ANY OTHER
30 FEDERAL OR STATE LAW, REGULATION OR JUDICIAL ORDER OR DECREE.

1 SECTION 306. NATURE OF DOCUMENT.

2 NOTHING IN THIS ACT SHALL SUPERSEDE OR MODIFY THE PUBLIC OR
3 NONPUBLIC NATURE OF A RECORD OR DOCUMENT ESTABLISHED IN FEDERAL
4 OR STATE LAW, REGULATION OR JUDICIAL ORDER OR DECREE.

5 CHAPTER 5

6 ACCESS

7 SECTION 501. SCOPE OF CHAPTER.

8 THIS CHAPTER APPLIES TO ALL AGENCIES.

9 SECTION 502. OPEN-RECORDS OFFICER.

10 (A) ESTABLISHMENT.--

11 (1) AN AGENCY SHALL DESIGNATE AN OFFICIAL OR EMPLOYEE TO
12 ACT AS THE OPEN-RECORDS OFFICER.

13 (2) FOR A LEGISLATIVE AGENCY OTHER THAN THE SENATE OR
14 THE HOUSE OF REPRESENTATIVES, THE OPEN-RECORDS OFFICER
15 DESIGNATED BY THE LEGISLATIVE REFERENCE BUREAU SHALL SERVE AS
16 THE OPEN-RECORDS OFFICER. A POLITICAL PARTY CAUCUS OF A
17 LEGISLATIVE AGENCY MAY APPOINT AN OPEN-RECORDS OFFICER UNDER
18 THIS SECTION.

19 (B) FUNCTIONS.--

20 (1) THE OPEN-RECORDS OFFICER SHALL RECEIVE REQUESTS
21 SUBMITTED TO THE AGENCY UNDER THIS ACT, DIRECT REQUESTS TO
22 OTHER APPROPRIATE PERSONS WITHIN THE AGENCY OR TO APPROPRIATE
23 PERSONS IN ANOTHER AGENCY, TRACK THE AGENCY'S PROGRESS IN
24 RESPONDING TO REQUESTS AND ISSUE INTERIM AND FINAL RESPONSES
25 UNDER THIS ACT.

26 (2) UPON RECEIVING A REQUEST FOR A PUBLIC RECORD,
27 LEGISLATIVE RECORD OR FINANCIAL RECORD, THE OPEN-RECORDS
28 OFFICER SHALL DO ALL OF THE FOLLOWING:

29 (I) NOTE THE DATE OF RECEIPT ON THE WRITTEN REQUEST.

30 (II) COMPUTE THE DAY ON WHICH THE FIVE-DAY PERIOD

1 UNDER SECTION 901 WILL EXPIRE AND MAKE A NOTATION OF THAT
2 DATE ON THE WRITTEN REQUEST.

3 (III) MAINTAIN AN ELECTRONIC OR PAPER COPY OF A
4 WRITTEN REQUEST, INCLUDING ALL DOCUMENTS SUBMITTED WITH
5 THE REQUEST UNTIL THE REQUEST HAS BEEN FULFILLED. IF THE
6 REQUEST IS DENIED, THE WRITTEN REQUEST SHALL BE
7 MAINTAINED FOR 30 DAYS OR, IF AN APPEAL IS FILED, UNTIL A
8 FINAL DETERMINATION IS ISSUED UNDER SECTION 1101(B) OR
9 THE APPEAL IS DEEMED DENIED.

10 (IV) CREATE A FILE FOR THE RETENTION OF THE ORIGINAL
11 REQUEST, A COPY OF THE RESPONSE, A RECORD OF WRITTEN
12 COMMUNICATIONS WITH THE REQUESTER AND A COPY OF OTHER
13 COMMUNICATIONS. THIS SUBPARAGRAPH SHALL ONLY APPLY TO
14 COMMONWEALTH AGENCIES.

15 SECTION 503. APPEALS OFFICER.

16 (A) COMMONWEALTH AGENCIES AND LOCAL AGENCIES.--EXCEPT AS
17 PROVIDED IN SUBSECTION (D), THE OFFICE OF OPEN RECORDS
18 ESTABLISHED UNDER SECTION 1310 SHALL DESIGNATE AN APPEALS
19 OFFICER UNDER SECTION 1101(A)(2) FOR ALL:

20 (1) COMMONWEALTH AGENCIES; AND

21 (2) LOCAL AGENCIES.

22 (B) JUDICIAL AGENCIES.--A JUDICIAL AGENCY SHALL DESIGNATE AN
23 APPEALS OFFICER TO HEAR APPEALS UNDER CHAPTER 11.

24 (C) LEGISLATIVE AGENCIES.--

25 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), THE
26 LEGISLATIVE REFERENCE BUREAU SHALL DESIGNATE AN APPEALS
27 OFFICER TO HEAR APPEALS UNDER CHAPTER 11 FOR ALL LEGISLATIVE
28 AGENCIES.

29 (2) EACH OF THE FOLLOWING SHALL DESIGNATE AN APPEALS
30 OFFICER TO HEAR APPEALS UNDER CHAPTER 11:

1 (I) THE SENATE.

2 (II) THE HOUSE OF REPRESENTATIVES.

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

4 (1) THE ATTORNEY GENERAL, STATE TREASURER AND AUDITOR
5 GENERAL SHALL EACH DESIGNATE AN APPEALS OFFICER TO HEAR
6 APPEALS UNDER CHAPTER 11.

7 (2) THE DISTRICT ATTORNEY OF A COUNTY SHALL DESIGNATE
8 ONE OR MORE APPEALS OFFICERS TO HEAR APPEALS UNDER CHAPTER 11
9 RELATING TO ACCESS TO CRIMINAL INVESTIGATIVE RECORDS IN
10 POSSESSION OF A LOCAL AGENCY OF THAT COUNTY. THE APPEALS
11 OFFICER DESIGNATED BY THE DISTRICT ATTORNEY SHALL DETERMINE
12 IF THE RECORD REQUESTED IS A CRIMINAL INVESTIGATIVE RECORD.

13 SECTION 504. REGULATIONS AND POLICIES.

14 (A) AUTHORITY.--AN AGENCY MAY PROMULGATE REGULATIONS AND
15 POLICIES NECESSARY FOR THE AGENCY TO IMPLEMENT THIS ACT. THE
16 OFFICE OF OPEN RECORDS MAY PROMULGATE REGULATIONS RELATING TO
17 APPEALS INVOLVING A COMMONWEALTH AGENCY OR LOCAL AGENCY.

18 (B) POSTING.--THE FOLLOWING INFORMATION SHALL BE POSTED AT
19 EACH AGENCY AND, IF THE AGENCY MAINTAINS AN INTERNET WEBSITE, ON
20 THE AGENCY'S INTERNET WEBSITE:

21 (1) CONTACT INFORMATION FOR THE OPEN-RECORDS OFFICER.

22 (2) CONTACT INFORMATION FOR THE OFFICE OF OPEN RECORDS
23 OR OTHER APPLICABLE APPEALS OFFICER.

24 (3) A FORM WHICH MAY BE USED TO FILE A REQUEST.

25 (4) REGULATIONS, POLICIES AND PROCEDURES OF THE AGENCY
26 RELATING TO THIS ACT.

27 SECTION 505. UNIFORM FORM.

28 (A) COMMONWEALTH AND LOCAL AGENCIES.--THE OFFICE OF OPEN
29 RECORDS SHALL DEVELOP A UNIFORM FORM WHICH SHALL BE ACCEPTED BY
30 ALL COMMONWEALTH AND LOCAL AGENCIES IN ADDITION TO ANY FORM USED

1 BY THE AGENCY TO FILE A REQUEST UNDER THIS ACT. THE UNIFORM FORM
2 SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN AND ON THE
3 OFFICE OF OPEN RECORD'S INTERNET WEBSITE.

4 (B) JUDICIAL AGENCIES.--A JUDICIAL AGENCY OR THE
5 ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS MAY DEVELOP A FORM
6 TO REQUEST FINANCIAL RECORDS OR MAY ACCEPT A FORM DEVELOPED BY
7 THE OFFICE OF OPEN RECORDS.

8 (C) LEGISLATIVE AGENCIES.--A LEGISLATIVE AGENCY MAY DEVELOP
9 A FORM TO REQUEST LEGISLATIVE RECORDS OR MAY ACCEPT THE FORM
10 DEVELOPED BY THE OFFICE OF OPEN RECORDS.

11 SECTION 506. REQUESTS.

12 (A) DISRUPTIVE REQUESTS.--

13 (1) AN AGENCY MAY DENY A REQUESTER ACCESS TO A RECORD IF
14 THE REQUESTER HAS MADE REPEATED REQUESTS FOR THAT SAME RECORD
15 AND THE REPEATED REQUESTS HAVE PLACED AN UNREASONABLE BURDEN
16 ON THE AGENCY.

17 (2) A DENIAL UNDER THIS SUBSECTION SHALL NOT RESTRICT
18 THE ABILITY TO REQUEST A DIFFERENT RECORD.

19 (B) DISASTER OR POTENTIAL DAMAGE.--

20 (1) AN AGENCY MAY DENY A REQUESTER ACCESS:

21 (I) WHEN TIMELY ACCESS IS NOT POSSIBLE DUE TO FIRE,
22 FLOOD OR OTHER DISASTER; OR

23 (II) TO HISTORICAL, ANCIENT OR RARE DOCUMENTS,
24 RECORDS, ARCHIVES AND MANUSCRIPTS WHEN ACCESS MAY, IN THE
25 PROFESSIONAL JUDGMENT OF THE CURATOR OR CUSTODIAN OF
26 RECORDS, CAUSE PHYSICAL DAMAGE OR IRREPARABLE HARM TO THE
27 RECORD.

28 (2) TO THE EXTENT POSSIBLE, THE CONTENTS OF A RECORD
29 UNDER THIS SUBSECTION SHALL BE MADE ACCESSIBLE TO A REQUESTER
30 EVEN WHEN THE RECORD IS PHYSICALLY UNAVAILABLE.

1 (C) AGENCY DISCRETION.--AN AGENCY MAY EXERCISE ITS
2 DISCRETION TO MAKE ANY OTHERWISE EXEMPT RECORD ACCESSIBLE FOR
3 INSPECTION AND COPYING UNDER THIS CHAPTER, IF ALL OF THE
4 FOLLOWING APPLY:

5 (1) DISCLOSURE OF THE RECORD IS NOT PROHIBITED UNDER ANY
6 OF THE FOLLOWING:

7 (I) FEDERAL OR STATE LAW OR REGULATION.

8 (II) JUDICIAL ORDER OR DECREE.

9 (2) THE RECORD IS NOT PROTECTED BY A PRIVILEGE.

10 (3) THE AGENCY HEAD DETERMINES THAT THE PUBLIC INTEREST
11 FAVORING ACCESS OUTWEIGHS ANY INDIVIDUAL, AGENCY OR PUBLIC
12 INTEREST THAT MAY FAVOR RESTRICTION OF ACCESS.

13 (D) AGENCY POSSESSION.--

14 (1) A PUBLIC RECORD THAT IS NOT IN THE POSSESSION OF AN
15 AGENCY BUT IS IN THE POSSESSION OF A PARTY WITH WHOM THE
16 AGENCY HAS CONTRACTED TO PERFORM A GOVERNMENTAL FUNCTION ON
17 BEHALF OF THE AGENCY, AND WHICH DIRECTLY RELATES TO THE
18 GOVERNMENTAL FUNCTION AND IS NOT EXEMPT UNDER THIS ACT, SHALL
19 BE CONSIDERED A PUBLIC RECORD OF THE AGENCY FOR PURPOSES OF
20 THIS ACT.

21 (2) NOTHING IN THIS ACT SHALL BE CONSTRUED TO REQUIRE
22 ACCESS TO ANY OTHER RECORD OF THE PARTY IN POSSESSION OF THE
23 PUBLIC RECORD.

24 (3) A REQUEST FOR A PUBLIC RECORD IN POSSESSION OF A
25 PARTY OTHER THAN THE AGENCY SHALL BE SUBMITTED TO THE OPEN
26 RECORDS OFFICER OF THE AGENCY. UPON A DETERMINATION THAT THE
27 RECORD IS SUBJECT TO ACCESS UNDER THIS ACT, THE OPEN RECORDS
28 OFFICER SHALL ASSESS THE DUPLICATION FEE ESTABLISHED UNDER
29 SECTION 1307(B) AND UPON COLLECTION SHALL REMIT THE FEE TO
30 THE PARTY IN POSSESSION OF THE RECORD IF THE PARTY DUPLICATED

1 THE RECORD.

2 SECTION 507. RETENTION OF RECORDS.

3 NOTHING IN THIS ACT SHALL BE CONSTRUED TO MODIFY, RESCIND OR
4 SUPERSEDE ANY RECORD RETENTION POLICY OR DISPOSITION SCHEDULE OF
5 AN AGENCY ESTABLISHED PURSUANT TO LAW, REGULATION, POLICY OR
6 OTHER DIRECTIVE.

7 CHAPTER 7

8 PROCEDURE

9 SECTION 701. ACCESS.

10 (A) GENERAL RULE.--UNLESS OTHERWISE PROVIDED BY LAW, A
11 PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL RECORD SHALL BE
12 ACCESSIBLE FOR INSPECTION AND DUPLICATION IN ACCORDANCE WITH
13 THIS ACT. A RECORD BEING PROVIDED TO A REQUESTER SHALL BE
14 PROVIDED IN THE MEDIUM REQUESTED IF IT EXISTS IN THAT MEDIUM;
15 OTHERWISE, IT SHALL BE PROVIDED IN THE MEDIUM IN WHICH IT
16 EXISTS. PUBLIC RECORDS, LEGISLATIVE RECORDS OR FINANCIAL RECORDS
17 SHALL BE AVAILABLE FOR ACCESS DURING THE REGULAR BUSINESS HOURS
18 OF AN AGENCY.

19 (B) CONSTRUCTION.--NOTHING IN THIS ACT SHALL BE CONSTRUED TO
20 REQUIRE ACCESS TO ANY COMPUTER EITHER OF AN AGENCY OR INDIVIDUAL
21 EMPLOYEE OF AN AGENCY.

22 SECTION 702. REQUESTS.

23 AGENCIES MAY FULFILL VERBAL, WRITTEN OR ANONYMOUS VERBAL OR
24 WRITTEN REQUESTS FOR ACCESS TO RECORDS UNDER THIS ACT. IF THE
25 REQUESTER WISHES TO PURSUE THE RELIEF AND REMEDIES PROVIDED FOR
26 IN THIS ACT, THE REQUEST FOR ACCESS TO RECORDS MUST BE A WRITTEN
27 REQUEST.

28 SECTION 703. WRITTEN REQUESTS.

29 A WRITTEN REQUEST FOR ACCESS TO RECORDS MAY BE SUBMITTED IN
30 PERSON, BY MAIL, BY E-MAIL, BY FACSIMILE OR, TO THE EXTENT

1 PROVIDED BY AGENCY RULES, ANY OTHER ELECTRONIC MEANS. A WRITTEN
2 REQUEST MUST BE ADDRESSED TO THE OPEN-RECORDS OFFICER DESIGNATED
3 PURSUANT TO SECTION 502. EMPLOYEES OF AN AGENCY SHALL BE
4 DIRECTED TO FORWARD REQUESTS FOR RECORDS TO THE OPEN-RECORDS
5 OFFICER. A WRITTEN REQUEST SHOULD IDENTIFY OR DESCRIBE THE
6 RECORDS SOUGHT WITH SUFFICIENT SPECIFICITY TO ENABLE THE AGENCY
7 TO ASCERTAIN WHICH RECORDS ARE BEING REQUESTED AND SHALL INCLUDE
8 THE NAME AND ADDRESS TO WHICH THE AGENCY SHOULD ADDRESS ITS
9 RESPONSE. A WRITTEN REQUEST NEED NOT INCLUDE ANY EXPLANATION OF
10 THE REQUESTER'S REASON FOR REQUESTING OR INTENDED USE OF THE
11 RECORDS UNLESS OTHERWISE REQUIRED BY LAW.

12 SECTION 704. ELECTRONIC ACCESS.

13 (A) GENERAL RULE.--IN ADDITION TO THE REQUIREMENTS OF
14 SECTION 701, AN AGENCY MAY MAKE ITS RECORDS AVAILABLE THROUGH
15 ANY PUBLICLY ACCESSIBLE ELECTRONIC MEANS.

16 (B) RESPONSE.--

17 (1) IN ADDITION TO THE REQUIREMENTS OF SECTION 701, AN
18 AGENCY MAY RESPOND TO A REQUEST BY NOTIFYING THE REQUESTER
19 THAT THE RECORD IS AVAILABLE THROUGH PUBLICLY ACCESSIBLE
20 ELECTRONIC MEANS OR THAT THE AGENCY WILL PROVIDE ACCESS TO
21 INSPECT THE RECORD ELECTRONICALLY.

22 (2) IF THE REQUESTER IS UNWILLING OR UNABLE TO ACCESS
23 THE RECORD ELECTRONICALLY, THE REQUESTER MAY, WITHIN 30 DAYS
24 FOLLOWING RECEIPT OF THE AGENCY NOTIFICATION, SUBMIT A
25 WRITTEN REQUEST TO THE AGENCY TO HAVE THE RECORD CONVERTED TO
26 PAPER. THE AGENCY SHALL PROVIDE ACCESS TO THE RECORD IN
27 PRINTED FORM WITHIN FIVE DAYS OF THE RECEIPT OF THE WRITTEN
28 REQUEST FOR CONVERSION TO PAPER.

29 SECTION 705. CREATION OF RECORD.

30 WHEN RESPONDING TO A REQUEST FOR ACCESS, AN AGENCY SHALL NOT

1 BE REQUIRED TO CREATE A RECORD WHICH DOES NOT CURRENTLY EXIST OR
2 TO COMPILE, MAINTAIN, FORMAT OR ORGANIZE A RECORD IN A MANNER IN
3 WHICH THE AGENCY DOES NOT CURRENTLY COMPILE, MAINTAIN, FORMAT OR
4 ORGANIZE THE RECORD.

5 SECTION 706. REDACTION.

6 IF AN AGENCY DETERMINES THAT A PUBLIC RECORD, LEGISLATIVE
7 RECORD OR FINANCIAL RECORD CONTAINS INFORMATION WHICH IS SUBJECT
8 TO ACCESS AS WELL AS INFORMATION WHICH IS NOT SUBJECT TO ACCESS,
9 THE AGENCY'S RESPONSE SHALL GRANT ACCESS TO THE INFORMATION
10 WHICH IS SUBJECT TO ACCESS AND DENY ACCESS TO THE INFORMATION
11 WHICH IS NOT SUBJECT TO ACCESS. IF THE INFORMATION WHICH IS NOT
12 SUBJECT TO ACCESS IS AN INTEGRAL PART OF THE PUBLIC RECORD,
13 LEGISLATIVE RECORD OR FINANCIAL RECORD AND CANNOT BE SEPARATED,
14 THE AGENCY SHALL REDACT FROM THE RECORD THE INFORMATION WHICH IS
15 NOT SUBJECT TO ACCESS, AND THE RESPONSE SHALL GRANT ACCESS TO
16 THE INFORMATION WHICH IS SUBJECT TO ACCESS. THE AGENCY MAY NOT
17 DENY ACCESS TO THE RECORD IF THE INFORMATION WHICH IS NOT
18 SUBJECT TO ACCESS IS ABLE TO BE REDACTED. INFORMATION WHICH AN
19 AGENCY REDACTS IN ACCORDANCE WITH THIS SUBSECTION SHALL BE
20 DEEMED A DENIAL UNDER CHAPTER 9.

21 SECTION 707. PRODUCTION OF CERTAIN RECORDS.

22 (A) GENERAL RULE.--IF, IN RESPONSE TO A REQUEST, AN AGENCY
23 PRODUCES A RECORD THAT IS NOT A PUBLIC RECORD, LEGISLATIVE
24 RECORD OR FINANCIAL RECORD, THE AGENCY SHALL NOTIFY ANY THIRD
25 PARTY THAT PROVIDED THE RECORD TO THE AGENCY, THE PERSON THAT IS
26 THE SUBJECT OF THE RECORD AND THE REQUESTER.

27 (B) REQUESTS FOR TRADE SECRETS.--AN AGENCY SHALL NOTIFY A
28 THIRD PARTY OF A REQUEST FOR A RECORD IF THE THIRD PARTY
29 PROVIDED THE RECORD AND INCLUDED A WRITTEN STATEMENT SIGNED BY A
30 REPRESENTATIVE OF THE THIRD PARTY THAT THE RECORD CONTAINS A

1 TRADE SECRET OR CONFIDENTIAL PROPRIETARY INFORMATION.
2 NOTIFICATION SHALL BE PROVIDED WITHIN FIVE BUSINESS DAYS OF
3 RECEIPT OF THE REQUEST FOR THE RECORD. THE THIRD PARTY SHALL
4 HAVE FIVE BUSINESS DAYS FROM RECEIPT OF NOTIFICATION FROM THE
5 AGENCY TO PROVIDE INPUT ON THE RELEASE OF THE RECORD. THE AGENCY
6 SHALL DENY THE REQUEST FOR THE RECORD OR RELEASE THE RECORD
7 WITHIN TEN BUSINESS DAYS OF THE PROVISION OF NOTICE TO THE THIRD
8 PARTY AND SHALL NOTIFY THE THIRD PARTY OF THE DECISION.

9 (C) TRANSCRIPTS.--

10 (1) PRIOR TO AN ADJUDICATION BECOMING FINAL, BINDING AND
11 NONAPPEALABLE, A TRANSCRIPT OF AN ADMINISTRATIVE PROCEEDING
12 SHALL BE PROVIDED TO A REQUESTER BY THE AGENCY STENOGRAPHER
13 OR A COURT REPORTER, IN ACCORDANCE WITH AGENCY PROCEDURE OR
14 AN APPLICABLE CONTRACT.

15 (2) FOLLOWING AN ADJUDICATION BECOMING FINAL, BINDING
16 AND NONAPPEALABLE, A TRANSCRIPT OF AN ADMINISTRATIVE
17 PROCEEDING SHALL BE PROVIDED TO A REQUESTER IN ACCORDANCE
18 WITH THE DUPLICATION RATES ESTABLISHED IN SECTION 1307(B).

19 SECTION 708. EXCEPTIONS FOR PUBLIC RECORDS.

20 (A) BURDEN OF PROOF.--

21 (1) THE BURDEN OF PROVING THAT A RECORD OF A
22 COMMONWEALTH AGENCY OR LOCAL AGENCY IS EXEMPT FROM PUBLIC
23 ACCESS SHALL BE ON THE COMMONWEALTH AGENCY OR LOCAL AGENCY
24 RECEIVING A REQUEST BY A PREPONDERANCE OF THE EVIDENCE.

25 (2) THE BURDEN OF PROVING THAT A LEGISLATIVE RECORD IS
26 EXEMPT FROM PUBLIC ACCESS SHALL BE ON THE LEGISLATIVE AGENCY
27 RECEIVING A REQUEST BY A PREPONDERANCE OF THE EVIDENCE.

28 (3) THE BURDEN OF PROVING THAT A FINANCIAL RECORD OF A
29 JUDICIAL AGENCY IS EXEMPT FROM PUBLIC ACCESS SHALL BE ON THE
30 JUDICIAL AGENCY RECEIVING A REQUEST BY A PREPONDERANCE OF THE

1 EVIDENCE.

2 (B) EXCEPTIONS.--EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND
3 (D), THE FOLLOWING ARE EXEMPT FROM ACCESS BY A REQUESTER UNDER
4 THIS ACT:

5 (1) A RECORD THE DISCLOSURE OF WHICH:

6 (I) WOULD RESULT IN THE LOSS OF FEDERAL OR STATE
7 FUNDS BY AN AGENCY OR THE COMMONWEALTH; OR

8 (II) WOULD BE REASONABLY LIKELY TO RESULT IN A
9 SUBSTANTIAL AND DEMONSTRABLE RISK OF PHYSICAL HARM TO AN
10 INDIVIDUAL.

11 (2) A RECORD MAINTAINED BY AN AGENCY IN CONNECTION WITH
12 THE MILITARY, HOMELAND SECURITY, NATIONAL DEFENSE, LAW
13 ENFORCEMENT OR OTHER PUBLIC SAFETY ACTIVITY THAT IF DISCLOSED
14 WOULD BE REASONABLY LIKELY TO JEOPARDIZE OR THREATEN PUBLIC
15 SAFETY OR PREPAREDNESS OR PUBLIC PROTECTION ACTIVITY OR A
16 RECORD THAT IS DESIGNATED CLASSIFIED BY AN APPROPRIATE
17 FEDERAL OR STATE MILITARY AUTHORITY.

18 (3) A RECORD, THE DISCLOSURE OF WHICH CREATES A
19 REASONABLE LIKELIHOOD OF ENDANGERING THE SAFETY OR THE
20 PHYSICAL SECURITY OF A BUILDING, PUBLIC UTILITY, RESOURCE,
21 INFRASTRUCTURE, FACILITY OR INFORMATION STORAGE SYSTEM, WHICH
22 MAY INCLUDE:

23 (I) DOCUMENTS OR DATA RELATING TO COMPUTER HARDWARE,
24 SOURCE FILES, SOFTWARE AND SYSTEM NETWORKS THAT COULD
25 JEOPARDIZE COMPUTER SECURITY BY EXPOSING A VULNERABILITY
26 IN PREVENTING, PROTECTING AGAINST, MITIGATING OR
27 RESPONDING TO A TERRORIST ACT;

28 (II) LISTS OF INFRASTRUCTURE, RESOURCES AND
29 SIGNIFICANT SPECIAL EVENTS, INCLUDING THOSE DEFINED BY
30 THE FEDERAL GOVERNMENT IN THE NATIONAL INFRASTRUCTURE

1 PROTECTIONS, WHICH ARE DEEMED CRITICAL DUE TO THEIR
2 NATURE AND WHICH RESULT FROM RISK ANALYSIS; THREAT
3 ASSESSMENTS; CONSEQUENCES ASSESSMENTS; ANTITERRORISM
4 PROTECTIVE MEASURES AND PLANS; COUNTERTERRORISM MEASURES
5 AND PLANS; AND SECURITY AND RESPONSE NEEDS ASSESSMENTS;
6 AND

7 (III) BUILDING PLANS OR INFRASTRUCTURE RECORDS THAT
8 EXPOSE OR CREATE VULNERABILITY THROUGH DISCLOSURE OF THE
9 LOCATION, CONFIGURATION OR SECURITY OF CRITICAL SYSTEMS,
10 INCLUDING PUBLIC UTILITY SYSTEMS, STRUCTURAL ELEMENTS,
11 TECHNOLOGY, COMMUNICATION, ELECTRICAL, FIRE SUPPRESSION,
12 VENTILATION, WATER, WASTEWATER, SEWAGE AND GAS SYSTEMS.

13 (4) A RECORD REGARDING COMPUTER HARDWARE, SOFTWARE AND
14 NETWORKS, INCLUDING ADMINISTRATIVE OR TECHNICAL RECORDS,
15 WHICH, IF DISCLOSED, WOULD BE REASONABLY LIKELY TO JEOPARDIZE
16 COMPUTER SECURITY.

17 (5) A RECORD OF AN INDIVIDUAL'S MEDICAL, PSYCHIATRIC OR
18 PSYCHOLOGICAL HISTORY OR DISABILITY STATUS, INCLUDING AN
19 EVALUATION, CONSULTATION, PRESCRIPTION, DIAGNOSIS OR
20 TREATMENT; RESULTS OF TESTS, INCLUDING DRUG TESTS; ENROLLMENT
21 IN A HEALTH CARE PROGRAM OR PROGRAM DESIGNED FOR
22 PARTICIPATION BY PERSONS WITH DISABILITIES, INCLUDING
23 VOCATION REHABILITATION, WORKERS' COMPENSATION AND
24 UNEMPLOYMENT COMPENSATION; OR RELATED INFORMATION THAT WOULD
25 DISCLOSE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

26 (6) (I) THE FOLLOWING PERSONAL IDENTIFICATION
27 INFORMATION:

28 (A) A RECORD CONTAINING ALL OR PART OF A
29 PERSON'S SOCIAL SECURITY NUMBER; DRIVER'S LICENSE
30 NUMBER; PERSONAL FINANCIAL INFORMATION; HOME,

1 CELLULAR OR PERSONAL TELEPHONE NUMBERS; PERSONAL E-
2 MAIL ADDRESSES; EMPLOYEE NUMBER OR OTHER CONFIDENTIAL
3 PERSONAL IDENTIFICATION NUMBER.

4 (B) A SPOUSE'S NAME; MARITAL STATUS, BENEFICIARY
5 OR DEPENDENT INFORMATION.

6 (C) THE HOME ADDRESS OF A LAW ENFORCEMENT
7 OFFICER OR JUDGE.

8 (II) NOTHING IN THIS PARAGRAPH SHALL PRECLUDE THE
9 RELEASE OF THE NAME, POSITION, SALARY, ACTUAL
10 COMPENSATION OR OTHER PAYMENTS OR EXPENSES, EMPLOYMENT
11 CONTRACT, EMPLOYMENT-RELATED CONTRACT OR AGREEMENT AND
12 LENGTH OF SERVICE OF A PUBLIC OFFICIAL OR AN AGENCY
13 EMPLOYEE.

14 (III) AN AGENCY MAY REDACT THE NAME OR OTHER
15 IDENTIFYING INFORMATION RELATING TO AN INDIVIDUAL
16 PERFORMING AN UNDERCOVER OR COVERT LAW ENFORCEMENT
17 ACTIVITY FROM A RECORD.

18 (7) THE FOLLOWING RECORDS RELATING TO AN AGENCY
19 EMPLOYEE:

20 (I) A LETTER OF REFERENCE OR RECOMMENDATION
21 PERTAINING TO THE CHARACTER OR QUALIFICATIONS OF AN
22 IDENTIFIABLE INDIVIDUAL, UNLESS IT WAS PREPARED IN
23 RELATION TO THE APPOINTMENT OF AN INDIVIDUAL TO FILL A
24 VACANCY IN AN ELECTED OFFICE OR AN APPOINTED OFFICE
25 REQUIRING SENATE CONFIRMATION.

26 (II) A PERFORMANCE RATING OR REVIEW.

27 (III) THE RESULT OF A CIVIL SERVICE OR SIMILAR TEST
28 ADMINISTERED BY A COMMONWEALTH AGENCY, LEGISLATIVE AGENCY
29 OR JUDICIAL AGENCY. THE RESULT OF A CIVIL SERVICE OR
30 SIMILAR TEST ADMINISTERED BY A LOCAL AGENCY SHALL NOT BE

1 DISCLOSED IF RESTRICTED BY A COLLECTIVE BARGAINING
2 AGREEMENT. ONLY TEST SCORES OF INDIVIDUALS WHO OBTAINED A
3 PASSING SCORE ON A TEST ADMINISTERED BY A LOCAL AGENCY
4 MAY BE DISCLOSED.

5 (IV) THE EMPLOYMENT APPLICATION OF AN INDIVIDUAL WHO
6 IS NOT HIRED BY THE AGENCY.

7 (V) WORKPLACE SUPPORT SERVICES PROGRAM INFORMATION.

8 (VI) WRITTEN CRITICISMS OF AN EMPLOYEE.

9 (VII) GRIEVANCE MATERIAL, INCLUDING DOCUMENTS
10 RELATED TO DISCRIMINATION OR SEXUAL HARASSMENT.

11 (VIII) INFORMATION REGARDING DISCIPLINE, DEMOTION OR
12 DISCHARGE CONTAINED IN A PERSONNEL FILE. THIS
13 SUBPARAGRAPH SHALL NOT APPLY TO THE FINAL ACTION OF AN
14 AGENCY THAT RESULTS IN DEMOTION OR DISCHARGE.

15 (IX) AN ACADEMIC TRANSCRIPT.

16 (8) (I) A RECORD PERTAINING TO STRATEGY OR NEGOTIATIONS
17 RELATING TO LABOR RELATIONS OR COLLECTIVE BARGAINING AND
18 RELATED ARBITRATION PROCEEDINGS. THIS SUBPARAGRAPH SHALL
19 NOT APPLY TO A FINAL OR EXECUTED CONTRACT OR AGREEMENT
20 BETWEEN THE PARTIES IN A COLLECTIVE BARGAINING PROCEDURE.

21 (II) IN THE CASE OF THE ARBITRATION OF A DISPUTE OR
22 GRIEVANCE UNDER A COLLECTIVE BARGAINING AGREEMENT, AN
23 EXHIBIT ENTERED INTO EVIDENCE AT AN ARBITRATION
24 PROCEEDING, A TRANSCRIPT OF THE ARBITRATION OR THE
25 OPINION. THIS SUBPARAGRAPH SHALL NOT APPLY TO THE FINAL
26 AWARD OR ORDER OF THE ARBITRATOR IN A DISPUTE OR
27 GRIEVANCE PROCEDURE.

28 (9) THE DRAFT OF A BILL, RESOLUTION, REGULATION,
29 STATEMENT OF POLICY, MANAGEMENT DIRECTIVE, ORDINANCE OR
30 AMENDMENT THERETO PREPARED BY OR FOR AN AGENCY.

1 (10) (I) A RECORD THAT REFLECTS:

2 (A) THE INTERNAL, PREDECISIONAL DELIBERATIONS OF
3 AN AGENCY, ITS MEMBERS, EMPLOYEES OR OFFICIALS OR
4 PREDECISIONAL DELIBERATIONS BETWEEN AGENCY MEMBERS,
5 EMPLOYEES OR OFFICIALS AND MEMBERS, EMPLOYEES OR
6 OFFICIALS OF ANOTHER AGENCY, INCLUDING PREDECISIONAL
7 DELIBERATIONS RELATING TO A BUDGET RECOMMENDATION,
8 LEGISLATIVE PROPOSAL, LEGISLATIVE AMENDMENT,
9 CONTEMPLATED OR PROPOSED POLICY OR COURSE OF ACTION
10 OR ANY RESEARCH, MEMOS OR OTHER DOCUMENTS USED IN THE
11 PREDECISIONAL DELIBERATIONS.

12 (B) THE STRATEGY TO BE USED TO DEVELOP OR
13 ACHIEVE THE SUCCESSFUL ADOPTION OF A BUDGET,
14 LEGISLATIVE PROPOSAL OR REGULATION.

15 (II) SUBPARAGRAPH (I)(A) SHALL APPLY TO AGENCIES
16 SUBJECT TO 65 PA.C.S. CH. 7 (RELATING TO OPEN MEETINGS)
17 IN A MANNER CONSISTENT WITH 65 PA.C.S. CH. 7.

18 (III) THIS PARAGRAPH SHALL NOT APPLY TO A WRITTEN OR
19 INTERNET APPLICATION OR OTHER DOCUMENT THAT HAS BEEN
20 SUBMITTED TO REQUEST COMMONWEALTH FUNDS.

21 (IV) THIS PARAGRAPH SHALL NOT APPLY TO THE RESULTS
22 OF PUBLIC OPINION SURVEYS, POLLS, FOCUS GROUPS, MARKETING
23 RESEARCH OR SIMILAR EFFORT DESIGNED TO MEASURE PUBLIC
24 OPINION.

25 (11) A RECORD THAT CONSTITUTES OR REVEALS A TRADE SECRET
26 OR CONFIDENTIAL PROPRIETARY INFORMATION.

27 (12) NOTES AND WORKING PAPERS PREPARED BY OR FOR A
28 PUBLIC OFFICIAL OR AGENCY EMPLOYEE USED SOLELY FOR THAT
29 OFFICIAL'S OR EMPLOYEE'S OWN PERSONAL USE, INCLUDING
30 TELEPHONE MESSAGE SLIPS, ROUTING SLIPS AND OTHER MATERIALS

1 THAT DO NOT HAVE AN OFFICIAL PURPOSE.

2 (13) RECORDS THAT WOULD DISCLOSE THE IDENTITY OF AN
3 INDIVIDUAL WHO LAWFULLY MAKES A DONATION TO AN AGENCY UNLESS
4 THE DONATION IS INTENDED FOR OR RESTRICTED TO PROVIDING
5 REMUNERATION OR PERSONAL TANGIBLE BENEFIT TO A NAMED PUBLIC
6 OFFICIAL OR EMPLOYEE OF THE AGENCY, INCLUDING LISTS OF
7 POTENTIAL DONORS COMPILED BY AN AGENCY TO PURSUE DONATIONS,
8 DONOR PROFILE INFORMATION OR PERSONAL IDENTIFYING INFORMATION
9 RELATING TO A DONOR.

10 (14) UNPUBLISHED LECTURE NOTES, UNPUBLISHED MANUSCRIPTS,
11 UNPUBLISHED ARTICLES, CREATIVE WORKS IN PROGRESS, RESEARCH-
12 RELATED MATERIAL AND SCHOLARLY CORRESPONDENCE OF A COMMUNITY
13 COLLEGE OR AN INSTITUTION OF THE STATE SYSTEM OF HIGHER
14 EDUCATION OR A FACULTY MEMBER, STAFF EMPLOYEE, GUEST SPEAKER
15 OR STUDENT THEREOF.

16 (15) EXAMINATION QUESTIONS, SCORING KEYS OR ANSWERS TO
17 AN EXAMINATION, INCLUDING QUESTIONS, KEYS AND ANSWERS OF
18 TESTS IN PRIMARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF
19 HIGHER EDUCATION.

20 (16) A RECORD OF AN AGENCY RELATING TO OR RESULTING IN A
21 CRIMINAL INVESTIGATION, INCLUDING:

22 (I) COMPLAINTS OF POTENTIAL CRIMINAL CONDUCT OTHER
23 THAN A PRIVATE CRIMINAL COMPLAINT.

24 (II) INVESTIGATIVE MATERIALS, NOTES, CORRESPONDENCE,
25 VIDEOS AND REPORTS.

26 (III) A RECORD THAT INCLUDES THE IDENTITY OF A
27 CONFIDENTIAL SOURCE OR THE IDENTITY OF A SUSPECT WHO HAS
28 NOT BEEN CHARGED WITH AN OFFENSE TO WHOM CONFIDENTIALITY
29 HAS BEEN PROMISED.

30 (IV) A RECORD THAT INCLUDES INFORMATION MADE

CONFIDENTIAL BY LAW OR COURT ORDER.

(V) VICTIM INFORMATION, INCLUDING ANY INFORMATION THAT WOULD JEOPARDIZE THE SAFETY OF THE VICTIM.

(VI) A RECORD THAT, IF DISCLOSED, WOULD DO ANY OF THE FOLLOWING:

(A) REVEAL THE INSTITUTION, PROGRESS OR RESULT OF A CRIMINAL INVESTIGATION, EXCEPT THE FILING OF CRIMINAL CHARGES.

(B) DEPRIVE A PERSON OF THE RIGHT TO A FAIR TRIAL OR AN IMPARTIAL ADJUDICATION.

(C) IMPAIR THE ABILITY TO LOCATE A DEFENDANT OR CODEFENDANT.

(D) HINDER AN AGENCY'S ABILITY TO SECURE AN ARREST, PROSECUTION OR CONVICTION.

(E) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

THIS PARAGRAPH SHALL NOT APPLY TO INFORMATION CONTAINED IN A POLICE BLOTTER AS DEFINED IN 18 PA.C.S. § 9102 (RELATING TO DEFINITIONS) AND UTILIZED OR MAINTAINED BY THE PENNSYLVANIA STATE POLICE, LOCAL, CAMPUS, TRANSIT OR PORT AUTHORITY POLICE DEPARTMENT OR OTHER LAW ENFORCEMENT AGENCY OR IN A TRAFFIC REPORT EXCEPT AS PROVIDED UNDER 75 PA.C.S. § 3754(B) (RELATING TO ACCIDENT PREVENTION INVESTIGATIONS).

(17) A RECORD OF AN AGENCY RELATING TO A NONCRIMINAL INVESTIGATION, INCLUDING:

(I) COMPLAINTS SUBMITTED TO AN AGENCY.

(II) INVESTIGATIVE MATERIALS, NOTES, CORRESPONDENCE AND REPORTS.

(III) A RECORD THAT INCLUDES THE IDENTITY OF A CONFIDENTIAL SOURCE, INCLUDING INDIVIDUALS SUBJECT TO THE

1 ACT OF DECEMBER 12, 1986 (P.L.1559, NO.169), KNOWN AS THE
2 WHISTLEBLOWER LAW.

3 (IV) A RECORD THAT INCLUDES INFORMATION MADE
4 CONFIDENTIAL BY LAW.

5 (V) WORK PAPERS UNDERLYING AN AUDIT.

6 (VI) A RECORD THAT, IF DISCLOSED, WOULD DO ANY OF
7 THE FOLLOWING:

8 (A) REVEAL THE INSTITUTION, PROGRESS OR RESULT
9 OF AN AGENCY INVESTIGATION, EXCEPT THE IMPOSITION OF
10 A FINE OR CIVIL PENALTY, THE SUSPENSION, MODIFICATION
11 OR REVOCATION OF A LICENSE, PERMIT, REGISTRATION,
12 CERTIFICATION OR SIMILAR AUTHORIZATION ISSUED BY AN
13 AGENCY OR AN EXECUTED SETTLEMENT AGREEMENT UNLESS THE
14 AGREEMENT IS DETERMINED TO BE CONFIDENTIAL BY A
15 COURT.

16 (B) DEPRIVE A PERSON OF THE RIGHT TO AN
17 IMPARTIAL ADJUDICATION.

18 (C) CONSTITUTE AN UNWARRANTED INVASION OF
19 PRIVACY.

20 (D) HINDER AN AGENCY'S ABILITY TO SECURE AN
21 ADMINISTRATIVE OR CIVIL SANCTION.

22 (E) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN
23 INDIVIDUAL.

24 (18) (I) RECORDS OR PARTS OF RECORDS, EXCEPT TIME
25 RESPONSE LOGS, PERTAINING TO AUDIO RECORDINGS, TELEPHONE
26 OR RADIO TRANSMISSIONS RECEIVED BY EMERGENCY DISPATCH
27 PERSONNEL, INCLUDING 911 RECORDINGS.

28 (II) THIS PARAGRAPH SHALL NOT APPLY TO A 911
29 RECORDING OR A TRANSCRIPT OF A 911 RECORDING IF THE
30 AGENCY OR A COURT DETERMINES THAT THE PUBLIC INTEREST IN

1 DISCLOSURE OUTWEIGHS THE INTEREST IN NONDISCLOSURE.

2 (19) DNA AND RNA RECORDS.

3 (20) AN AUTOPSY RECORD OF A CORONER OR MEDICAL EXAMINER
4 AND ANY AUDIOTAPE OF A POSTMORTEM EXAMINATION OR AUTOPSY, OR
5 A COPY, REPRODUCTION OR FACSIMILE OF AN AUTOPSY REPORT, A
6 PHOTOGRAPH, NEGATIVE OR PRINT, INCLUDING A PHOTOGRAPH OR
7 VIDEOTAPE OF THE BODY OR ANY PORTION OF THE BODY OF A
8 DECEASED PERSON AT THE SCENE OF DEATH OR IN THE COURSE OF A
9 POSTMORTEM EXAMINATION OR AUTOPSY TAKEN OR MADE BY OR CAUSED
10 TO BE TAKEN OR MADE BY THE CORONER OR MEDICAL EXAMINER. THIS
11 EXCEPTION SHALL NOT LIMIT THE REPORTING OF THE NAME OF THE
12 DECEASED INDIVIDUAL AND THE CAUSE AND MANNER OF DEATH.

13 (21) (I) DRAFT MINUTES OF ANY MEETING OF AN AGENCY
14 UNTIL THE NEXT REGULARLY SCHEDULED MEETING OF THE AGENCY.

15 (II) MINUTES OF AN EXECUTIVE SESSION AND ANY RECORD
16 OF DISCUSSIONS HELD IN EXECUTIVE SESSION.

17 (22) (I) THE CONTENTS OF REAL ESTATE APPRAISALS,
18 ENGINEERING OR FEASIBILITY ESTIMATES, ENVIRONMENTAL
19 REVIEWS, AUDITS OR EVALUATIONS MADE FOR OR BY AN AGENCY
20 RELATIVE TO THE FOLLOWING:

21 (A) THE LEASING, ACQUIRING OR DISPOSING OF REAL
22 PROPERTY OR AN INTEREST IN REAL PROPERTY.

23 (B) THE PURCHASE OF PUBLIC SUPPLIES OR EQUIPMENT
24 INCLUDED IN THE REAL ESTATE TRANSACTION.

25 (C) CONSTRUCTION PROJECTS.

26 (II) THIS PARAGRAPH SHALL NOT APPLY ONCE THE
27 DECISION IS MADE TO PROCEED WITH THE LEASE, ACQUISITION
28 OR DISPOSAL OF REAL PROPERTY OR AN INTEREST IN REAL
29 PROPERTY OR THE PURCHASE OF PUBLIC SUPPLY OR CONSTRUCTION
30 PROJECT.

1 (23) LIBRARY AND ARCHIVE CIRCULATION AND ORDER RECORDS
2 OF AN IDENTIFIABLE INDIVIDUAL OR GROUPS OF INDIVIDUALS.

3 (24) LIBRARY ARCHIVED AND MUSEUM MATERIALS, OR VALUABLE
4 OR RARE BOOK COLLECTIONS OR DOCUMENTS CONTRIBUTED BY GIFT,
5 GRANT, BEQUEST OR DEVISE, TO THE EXTENT OF ANY LIMITATIONS
6 IMPOSED BY THE DONOR AS A CONDITION OF THE CONTRIBUTION.

7 (25) A RECORD IDENTIFYING THE LOCATION OF AN
8 ARCHEOLOGICAL SITE OR AN ENDANGERED OR THREATENED PLANT OR
9 ANIMAL SPECIES IF NOT ALREADY KNOWN TO THE GENERAL PUBLIC.

10 (26) A PROPOSAL PERTAINING TO AGENCY PROCUREMENT OR
11 DISPOSAL OF SUPPLIES, SERVICES OR CONSTRUCTION PRIOR TO THE
12 AWARD OF THE CONTRACT OR PRIOR TO THE OPENING AND REJECTION
13 OF ALL BIDS; FINANCIAL INFORMATION OF A BIDDER OR OFFEROR
14 REQUESTED IN AN INVITATION FOR BID OR REQUEST FOR PROPOSALS
15 TO DEMONSTRATE THE BIDDER'S OR OFFEROR'S ECONOMIC CAPABILITY;
16 OR THE IDENTITY OF MEMBERS, NOTES AND OTHER RECORDS OF AGENCY
17 PROPOSAL EVALUATION COMMITTEES ESTABLISHED UNDER 62 PA.C.S. §
18 513 (RELATING TO COMPETITIVE SEALED PROPOSALS).

19 (27) A RECORD OR INFORMATION RELATING TO A COMMUNICATION
20 BETWEEN AN AGENCY AND ITS INSURANCE CARRIER, ADMINISTRATIVE
21 SERVICE ORGANIZATION OR RISK MANAGEMENT OFFICE. THIS
22 PARAGRAPH SHALL NOT APPLY TO A CONTRACT WITH AN INSURANCE
23 CARRIER, ADMINISTRATIVE SERVICE ORGANIZATION OR RISK
24 MANAGEMENT OFFICE OR TO FINANCIAL RECORDS RELATING TO THE
25 PROVISION OF INSURANCE.

26 (28) A RECORD OR INFORMATION:

27 (I) IDENTIFYING AN INDIVIDUAL WHO APPLIES FOR OR
28 RECEIVES SOCIAL SERVICES; OR

29 (II) RELATING TO THE FOLLOWING:

30 (A) THE TYPE OF SOCIAL SERVICES RECEIVED BY AN

1 INDIVIDUAL;

2 (B) AN INDIVIDUAL'S APPLICATION TO RECEIVE
3 SOCIAL SERVICES, INCLUDING A RECORD OR INFORMATION
4 RELATED TO AN AGENCY DECISION TO GRANT, DENY, REDUCE
5 OR RESTRICT BENEFITS, INCLUDING A QUASI-JUDICIAL
6 DECISION OF THE AGENCY AND THE IDENTITY OF A
7 CAREGIVER OR OTHERS WHO PROVIDE SERVICES TO THE
8 INDIVIDUAL; OR

9 (C) ELIGIBILITY TO RECEIVE SOCIAL SERVICES,
10 INCLUDING THE INDIVIDUAL'S INCOME, ASSETS, PHYSICAL
11 OR MENTAL HEALTH, AGE, DISABILITY, FAMILY
12 CIRCUMSTANCES OR RECORD OF ABUSE.

13 (29) CORRESPONDENCE BETWEEN A PERSON AND A MEMBER OF THE
14 GENERAL ASSEMBLY AND RECORDS ACCOMPANYING THE CORRESPONDENCE
15 WHICH WOULD IDENTIFY A PERSON THAT REQUESTS ASSISTANCE ON
16 CONSTITUENT SERVICES. THIS PARAGRAPH SHALL NOT APPLY TO
17 CORRESPONDENCE BETWEEN A MEMBER OF THE GENERAL ASSEMBLY AND A
18 PRINCIPAL OR LOBBYIST UNDER 65 PA.C.S. CH. 13A (RELATING TO
19 LOBBYIST DISCLOSURE).

20 (C) FINANCIAL RECORDS.--THE EXCEPTIONS SET FORTH IN
21 SUBSECTION (B) SHALL NOT APPLY TO FINANCIAL RECORDS, EXCEPT FOR
22 FINANCIAL RECORDS PROTECTED UNDER SUBSECTION (B)(1), (2), (3),
23 (4) OR (5) OR PERSONAL FINANCIAL INFORMATION. AN AGENCY SHALL
24 REDACT THAT PORTION OF A FINANCIAL RECORD WHICH WOULD DISCLOSE
25 INFORMATION PROTECTED UNDER SUBSECTION (B)(6). AN AGENCY SHALL
26 NOT DISCLOSE THE IDENTITY OF AN INDIVIDUAL PERFORMING AN
27 UNDERCOVER OR COVERT LAW ENFORCEMENT ACTIVITY OR OTHER
28 NONFINANCIAL INFORMATION PROTECTED UNDER SUBSECTION (B)(16) OR
29 (17).

30 (D) AGGREGATED DATA.--THE EXCEPTIONS SET FORTH IN SUBSECTION

1 (B) SHALL NOT APPLY TO AGGREGATED DATA MAINTAINED OR RECEIVED BY
2 AN AGENCY, EXCEPT FOR DATA PROTECTED UNDER SUBSECTION (B)(1),
3 (2), (3), (4) OR (5).

4 CHAPTER 9
5 AGENCY RESPONSE

6 SECTION 901. GENERAL RULE.

7 UPON RECEIPT OF A WRITTEN REQUEST FOR ACCESS TO A RECORD, AN
8 AGENCY SHALL MAKE A GOOD FAITH EFFORT TO DETERMINE IF THE RECORD
9 REQUESTED IS A PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL
10 RECORD AND WHETHER THE AGENCY HAS POSSESSION, CUSTODY OR CONTROL
11 OF THE IDENTIFIED RECORD, AND TO RESPOND AS PROMPTLY AS POSSIBLE
12 UNDER THE CIRCUMSTANCES EXISTING AT THE TIME OF THE REQUEST. ALL
13 APPLICABLE FEES SHALL BE PAID IN ORDER TO RECEIVE ACCESS TO THE
14 RECORD REQUESTED. THE TIME FOR RESPONSE SHALL NOT EXCEED FIVE
15 BUSINESS DAYS FROM THE DATE THE WRITTEN REQUEST IS RECEIVED BY
16 THE OPEN-RECORDS OFFICER FOR AN AGENCY. IF THE AGENCY FAILS TO
17 SEND THE RESPONSE WITHIN FIVE BUSINESS DAYS OF RECEIPT OF THE
18 WRITTEN REQUEST FOR ACCESS, THE WRITTEN REQUEST FOR ACCESS SHALL
19 BE DEEMED DENIED.

20 SECTION 902. EXTENSION OF TIME.

21 (A) DETERMINATION.--UPON RECEIPT OF A WRITTEN REQUEST FOR
22 ACCESS, THE OPEN-RECORDS OFFICER FOR AN AGENCY SHALL DETERMINE
23 IF ONE OF THE FOLLOWING APPLIES:

- 24 (1) THE REQUEST FOR ACCESS REQUIRES REDACTION OF A
25 RECORD IN ACCORDANCE WITH SECTION 706;
26 (2) THE REQUEST FOR ACCESS REQUIRES THE RETRIEVAL OF A
27 RECORD STORED IN A REMOTE LOCATION;
28 (3) A TIMELY RESPONSE TO THE REQUEST FOR ACCESS CANNOT
29 BE ACCOMPLISHED DUE TO BONA FIDE AND SPECIFIED STAFFING
30 LIMITATIONS;

1 (4) A LEGAL REVIEW IS NECESSARY TO DETERMINE WHETHER THE
2 RECORD IS A RECORD SUBJECT TO ACCESS UNDER THIS ACT;

3 (5) THE REQUESTER HAS NOT COMPLIED WITH THE COMMONWEALTH
4 AGENCY'S POLICIES REGARDING ACCESS TO RECORDS;

5 (6) THE REQUESTER REFUSES TO PAY APPLICABLE FEES
6 AUTHORIZED BY THIS ACT; OR

7 (7) THE EXTENT OR NATURE OF THE REQUEST PRECLUDES A
8 RESPONSE WITHIN THE REQUIRED TIME PERIOD.

9 (B) NOTICE.--

10 (1) UPON A DETERMINATION THAT ONE OF THE FACTORS LISTED
11 IN SUBSECTION (A) APPLIES, THE OPEN-RECORDS OFFICER SHALL
12 SEND WRITTEN NOTICE TO THE REQUESTER WITHIN FIVE BUSINESS
13 DAYS OF RECEIPT OF THE REQUEST FOR ACCESS UNDER SUBSECTION
14 (A).

15 (2) THE NOTICE SHALL INCLUDE A STATEMENT NOTIFYING THE
16 REQUESTER THAT THE REQUEST FOR ACCESS IS BEING REVIEWED, THE
17 REASON FOR THE REVIEW, A REASONABLE DATE THAT A RESPONSE IS
18 EXPECTED TO BE PROVIDED AND AN ESTIMATE OF APPLICABLE FEES
19 OWED WHEN THE RECORD BECOMES AVAILABLE. IF THE DATE THAT A
20 RESPONSE IS EXPECTED TO BE PROVIDED IS IN EXCESS OF 30 DAYS,
21 FOLLOWING THE FIVE BUSINESS DAYS ALLOWED FOR IN SECTION 901,
22 THE REQUEST FOR ACCESS SHALL BE DEEMED DENIED UNLESS THE
23 REQUESTER HAS AGREED IN WRITING TO AN EXTENSION TO THE DATE
24 SPECIFIED IN THE NOTICE.

25 (3) IF THE REQUESTER AGREES TO THE EXTENSION, THE
26 REQUEST SHALL BE DEEMED DENIED ON THE DAY FOLLOWING THE DATE
27 SPECIFIED IN THE NOTICE IF THE AGENCY HAS NOT PROVIDED A
28 RESPONSE BY THAT DATE.

29 SECTION 903. DENIAL.

30 IF AN AGENCY'S RESPONSE IS A DENIAL OF A WRITTEN REQUEST FOR

1 ACCESS, WHETHER IN WHOLE OR IN PART, THE DENIAL SHALL BE ISSUED
2 IN WRITING AND SHALL INCLUDE:

3 (1) A DESCRIPTION OF THE RECORD REQUESTED.

4 (2) THE SPECIFIC REASONS FOR THE DENIAL, INCLUDING A
5 CITATION OF SUPPORTING LEGAL AUTHORITY.

6 (3) THE TYPED OR PRINTED NAME, TITLE, BUSINESS ADDRESS,
7 BUSINESS TELEPHONE NUMBER AND SIGNATURE OF THE OPEN-RECORDS
8 OFFICER ON WHOSE AUTHORITY THE DENIAL IS ISSUED.

9 (4) DATE OF THE RESPONSE.

10 (5) THE PROCEDURE TO APPEAL THE DENIAL OF ACCESS UNDER
11 THIS ACT.

12 SECTION 904. CERTIFIED COPIES.

13 IF AN AGENCY'S RESPONSE GRANTS A REQUEST FOR ACCESS, THE
14 AGENCY SHALL, UPON REQUEST, PROVIDE THE REQUESTER WITH A
15 CERTIFIED COPY OF THE RECORD IF THE REQUESTER PAYS THE
16 APPLICABLE FEES UNDER SECTION 1307.

17 SECTION 905. RECORD DISCARD.

18 IF AN AGENCY RESPONSE TO A REQUESTER STATES THAT COPIES OF
19 THE REQUESTED RECORDS ARE AVAILABLE FOR DELIVERY AT THE OFFICE
20 OF AN AGENCY AND THE REQUESTER FAILS TO RETRIEVE THE RECORDS
21 WITHIN 60 DAYS OF THE AGENCY'S RESPONSE, THE AGENCY MAY DISPOSE
22 OF ANY COPIES WHICH HAVE NOT BEEN RETRIEVED AND RETAIN ANY FEES
23 PAID TO DATE.

24 CHAPTER 11

25 APPEAL OF AGENCY DETERMINATION

26 SECTION 1101. FILING OF APPEAL.

27 (A) AUTHORIZATION.--

28 (1) IF A WRITTEN REQUEST FOR ACCESS TO A RECORD IS
29 DENIED OR DEEMED DENIED, THE REQUESTER MAY FILE AN APPEAL
30 WITH THE OFFICE OF OPEN RECORDS OR JUDICIAL, LEGISLATIVE OR

1 OTHER APPEALS OFFICER DESIGNATED UNDER SECTION 503(D) WITHIN
2 15 BUSINESS DAYS OF THE MAILING DATE OF THE AGENCY'S RESPONSE
3 OR WITHIN 15 BUSINESS DAYS OF A DEEMED DENIAL. THE APPEAL
4 SHALL STATE THE GROUNDS UPON WHICH THE REQUESTER ASSERTS THAT
5 THE RECORD IS A PUBLIC RECORD, LEGISLATIVE RECORD OR
6 FINANCIAL RECORD AND SHALL ADDRESS ANY GROUNDS STATED BY THE
7 AGENCY FOR DELAYING OR DENYING THE REQUEST.

8 (2) IN THE CASE OF AN APPEAL OF A DECISION BY A
9 COMMONWEALTH AGENCY OR LOCAL AGENCY, THE OFFICE OF OPEN
10 RECORDS SHALL ASSIGN AN APPEALS OFFICER TO REVIEW THE DENIAL.

11 (B) DETERMINATION.--

12 (1) UNLESS THE REQUESTER AGREES OTHERWISE, THE APPEALS
13 OFFICER SHALL MAKE A FINAL DETERMINATION WHICH SHALL BE
14 MAILED TO THE REQUESTER AND THE AGENCY WITHIN 30 DAYS OF
15 RECEIPT OF THE APPEAL FILED UNDER SUBSECTION (A).

16 (2) IF THE APPEALS OFFICER FAILS TO ISSUE A FINAL
17 DETERMINATION WITHIN 30 DAYS, THE APPEAL IS DEEMED DENIED.

18 (3) PRIOR TO ISSUING A FINAL DETERMINATION, A HEARING
19 MAY BE CONDUCTED. THE DETERMINATION BY THE APPEALS OFFICER
20 SHALL BE A FINAL ORDER. THE APPEALS OFFICER SHALL PROVIDE A
21 WRITTEN EXPLANATION OF THE REASON FOR THE DECISION TO THE
22 REQUESTER AND THE AGENCY.

23 (C) DIRECT INTEREST.--

24 (1) A PERSON OTHER THAN THE AGENCY OR REQUESTER WITH A
25 DIRECT INTEREST IN THE RECORD SUBJECT TO AN APPEAL UNDER THIS
26 SECTION MAY, WITHIN 15 DAYS FOLLOWING RECEIPT OF ACTUAL
27 KNOWLEDGE OF THE APPEAL BUT NO LATER THAN THE DATE THE
28 APPEALS OFFICER ISSUES AN ORDER, FILE A WRITTEN REQUEST TO
29 PROVIDE INFORMATION OR TO APPEAR BEFORE THE APPEALS OFFICER
30 OR TO FILE INFORMATION IN SUPPORT OF THE REQUESTER'S OR

1 AGENCY'S POSITION.

2 (2) THE APPEALS OFFICER MAY GRANT A REQUEST UNDER
3 PARAGRAPH (1) IF:

4 (I) NO HEARING HAS BEEN HELD;

5 (II) THE APPEALS OFFICER HAS NOT YET ISSUED ITS
6 ORDER; AND

7 (III) THE APPEALS OFFICER BELIEVES THE INFORMATION
8 WILL BE PROBATIVE.

9 (3) COPIES OF THE WRITTEN REQUEST SHALL BE SENT TO THE
10 AGENCY AND THE REQUESTER.

11 SECTION 1102. APPEALS OFFICERS.

12 (A) DUTIES.--AN APPEALS OFFICER DESIGNATED UNDER SECTION 503
13 SHALL DO ALL OF THE FOLLOWING:

14 (1) SET A SCHEDULE FOR THE REQUESTER AND THE OPEN-
15 RECORDS OFFICER TO SUBMIT DOCUMENTS IN SUPPORT OF THEIR
16 POSITIONS.

17 (2) REVIEW ALL INFORMATION FILED RELATING TO THE
18 REQUEST. THE APPEALS OFFICER MAY HOLD A HEARING. A DECISION
19 TO HOLD OR NOT TO HOLD A HEARING IS NOT APPEALABLE. THE
20 APPEALS OFFICER MAY ADMIT INTO EVIDENCE TESTIMONY, EVIDENCE
21 AND DOCUMENTS THAT THE APPEALS OFFICER BELIEVES TO BE
22 REASONABLY PROBATIVE AND RELEVANT TO AN ISSUE IN DISPUTE. THE
23 APPEALS OFFICER MAY LIMIT THE NATURE AND EXTENT OF EVIDENCE
24 FOUND TO BE CUMULATIVE.

25 (3) CONSULT WITH AGENCY COUNSEL AS APPROPRIATE.

26 (4) ISSUE A FINAL DETERMINATION ON BEHALF OF THE OFFICE
27 OF OPEN RECORDS OR OTHER AGENCY.

28 (B) PROCEDURES.--THE OFFICE OF OPEN RECORDS, A JUDICIAL
29 AGENCY, A LEGISLATIVE AGENCY, THE ATTORNEY GENERAL, AUDITOR
30 GENERAL, STATE TREASURER OR DISTRICT ATTORNEY MAY ADOPT

1 PROCEDURES RELATING TO APPEALS UNDER THIS CHAPTER.

2 (1) IF AN APPEAL IS RESOLVED WITHOUT A HEARING, 1 PA.
3 CODE PT. II (RELATING TO GENERAL RULES OF ADMINISTRATIVE
4 PRACTICE AND PROCEDURE) DOES NOT APPLY EXCEPT TO THE EXTENT
5 THAT THE AGENCY HAS ADOPTED THESE CHAPTERS IN ITS REGULATIONS
6 OR RULES UNDER THIS SUBSECTION.

7 (2) IF A HEARING IS HELD, 1 PA. CODE PT. II SHALL APPLY
8 UNLESS THE AGENCY OR THE LEGISLATIVE AGENCY HAS ADOPTED
9 REGULATIONS, POLICIES OR PROCEDURES TO THE CONTRARY UNDER
10 THIS SUBSECTION.

11 (3) IN THE ABSENCE OF A REGULATION, POLICY OR PROCEDURE
12 GOVERNING APPEALS UNDER THIS CHAPTER, THE APPEALS OFFICER
13 SHALL RULE ON PROCEDURAL MATTERS ON THE BASIS OF JUSTICE,
14 FAIRNESS AND THE EXPEDITIOUS RESOLUTION OF THE DISPUTE.

15 CHAPTER 13

16 JUDICIAL REVIEW

17 SECTION 1301. COMMONWEALTH AGENCIES, LEGISLATIVE AGENCIES AND
18 JUDICIAL AGENCIES.

19 (A) GENERAL RULE.--WITHIN 30 DAYS OF THE MAILING DATE OF THE
20 FINAL DETERMINATION OF THE APPEALS OFFICER RELATING TO A
21 DECISION OF A COMMONWEALTH AGENCY, A LEGISLATIVE AGENCY OR A
22 JUDICIAL AGENCY ISSUED UNDER SECTION 1101(B) OR THE DATE A
23 REQUEST FOR ACCESS IS DEEMED DENIED, A REQUESTER OR THE AGENCY
24 MAY FILE A PETITION FOR REVIEW OR OTHER DOCUMENT AS MIGHT BE
25 REQUIRED BY RULE OF COURT WITH THE COMMONWEALTH COURT. THE
26 DECISION OF THE COURT SHALL CONTAIN FINDINGS OF FACT AND
27 CONCLUSIONS OF LAW BASED UPON THE EVIDENCE AS A WHOLE. THE
28 DECISION SHALL CLEARLY AND CONCISELY EXPLAIN THE RATIONALE FOR
29 THE DECISION.

30 (B) STAY.--A PETITION FOR REVIEW UNDER THIS SECTION SHALL

1 STAY THE RELEASE OF DOCUMENTS UNTIL A DECISION UNDER SUBSECTION
2 (A) IS ISSUED.

3 SECTION 1302. LOCAL AGENCIES.

4 (A) GENERAL RULE.--WITHIN 30 DAYS OF THE MAILING DATE OF THE
5 FINAL DETERMINATION OF THE APPEALS OFFICER RELATING TO A
6 DECISION OF A LOCAL AGENCY ISSUED UNDER SECTION 1101(B) OR OF
7 THE DATE A REQUEST FOR ACCESS IS DEEMED DENIED, A REQUESTER OR
8 LOCAL AGENCY MAY FILE A PETITION FOR REVIEW OR OTHER DOCUMENT AS
9 REQUIRED BY RULE OF COURT WITH THE COURT OF COMMON PLEAS FOR THE
10 COUNTY WHERE THE LOCAL AGENCY IS LOCATED. THE DECISION OF THE
11 COURT SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW
12 BASED UPON THE EVIDENCE AS A WHOLE. THE DECISION SHALL CLEARLY
13 AND CONCISELY EXPLAIN THE RATIONALE FOR THE DECISION.

14 (B) STAY.--A PETITION FOR REVIEW UNDER THIS SECTION SHALL
15 STAY THE RELEASE OF DOCUMENTS UNTIL A DECISION UNDER SUBSECTION
16 (A) IS ISSUED.

17 SECTION 1303. NOTICE AND RECORDS.

18 (A) NOTICE.--AN AGENCY, THE REQUESTER AND THE OFFICE OF OPEN
19 RECORDS OR DESIGNATED APPEALS OFFICER SHALL BE SERVED NOTICE OF
20 ACTIONS COMMENCED IN ACCORDANCE WITH SECTION 1301 OR 1302 AND
21 SHALL HAVE AN OPPORTUNITY TO RESPOND IN ACCORDANCE WITH
22 APPLICABLE COURT RULES.

23 (B) RECORD ON APPEAL.--THE RECORD BEFORE A COURT SHALL
24 CONSIST OF THE REQUEST, THE AGENCY'S RESPONSE, THE APPEAL FILED
25 UNDER SECTION 1101, THE HEARING TRANSCRIPT, IF ANY, AND THE
26 FINAL WRITTEN DETERMINATION OF THE APPEALS OFFICER.

27 SECTION 1304. COURT COSTS AND ATTORNEY FEES.

28 (A) REVERSAL OF AGENCY DETERMINATION.--IF A COURT REVERSES
29 THE FINAL DETERMINATION OF THE APPEALS OFFICER OR GRANTS ACCESS
30 TO A RECORD AFTER A REQUEST FOR ACCESS WAS DEEMED DENIED, THE

1 COURT MAY AWARD REASONABLE ATTORNEY FEES AND COSTS OF LITIGATION
2 OR AN APPROPRIATE PORTION THEREOF TO A REQUESTER IF THE COURT
3 FINDS EITHER OF THE FOLLOWING:

4 (1) THE AGENCY RECEIVING THE ORIGINAL REQUEST WILLFULLY
5 OR WITH WANTON DISREGARD DEPRIVED THE REQUESTER OF ACCESS TO
6 A PUBLIC RECORD SUBJECT TO ACCESS OR OTHERWISE ACTED IN BAD
7 FAITH UNDER THE PROVISIONS OF THIS ACT; OR

8 (2) THE EXEMPTIONS, EXCLUSIONS OR DEFENSES ASSERTED BY
9 THE AGENCY IN ITS FINAL DETERMINATION WERE NOT BASED ON A
10 REASONABLE INTERPRETATION OF LAW.

11 (B) SANCTIONS FOR FRIVOLOUS REQUESTS OR APPEALS.--THE COURT
12 MAY AWARD REASONABLE ATTORNEY FEES AND COSTS OF LITIGATION OR AN
13 APPROPRIATE PORTION THEREOF TO AN AGENCY OR THE REQUESTER IF THE
14 COURT FINDS THAT THE LEGAL CHALLENGE UNDER THIS CHAPTER WAS
15 FRIVOLOUS.

16 (C) OTHER SANCTIONS.--NOTHING IN THIS ACT SHALL PROHIBIT A
17 COURT FROM IMPOSING PENALTIES AND COSTS IN ACCORDANCE WITH
18 APPLICABLE RULES OF COURT.

19 SECTION 1305. CIVIL PENALTY.

20 (A) DENIAL OF ACCESS.--A COURT MAY IMPOSE A CIVIL PENALTY OF
21 NOT MORE THAN \$1,500 IF AN AGENCY DENIED ACCESS TO A PUBLIC
22 RECORD IN BAD FAITH.

23 (B) FAILURE TO COMPLY WITH COURT ORDER.--AN AGENCY OR PUBLIC
24 OFFICIAL WHO DOES NOT PROMPTLY COMPLY WITH A COURT ORDER UNDER
25 THIS ACT IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$500 PER
26 DAY UNTIL THE PUBLIC RECORDS ARE PROVIDED.

27 SECTION 1306. IMMUNITY.

28 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SECTIONS 1304 AND
29 1305 AND OTHER STATUTES GOVERNING THE RELEASE OF RECORDS, NO
30 AGENCY, PUBLIC OFFICIAL OR PUBLIC EMPLOYEE SHALL BE LIABLE FOR

1 CIVIL PENALTIES RESULTING FROM COMPLIANCE OR FAILURE TO COMPLY
2 WITH THIS ACT.

3 (B) SCHEDULES.--NO AGENCY, PUBLIC OFFICIAL OR PUBLIC
4 EMPLOYEE SHALL BE LIABLE FOR CIVIL OR CRIMINAL DAMAGES OR
5 PENALTIES UNDER THIS ACT FOR COMPLYING WITH ANY WRITTEN PUBLIC
6 RECORD RETENTION AND DISPOSITION SCHEDULE.

7 SECTION 1307. FEE LIMITATIONS.

8 (A) POSTAGE.--FEES FOR POSTAGE MAY NOT EXCEED THE ACTUAL
9 COST OF MAILING.

10 (B) DUPLICATION.--

11 (1) FEES FOR DUPLICATION BY PHOTOCOPYING, PRINTING FROM
12 ELECTRONIC MEDIA OR MICROFILM, COPYING ONTO ELECTRONIC MEDIA,
13 TRANSMISSION BY FACSIMILE OR OTHER ELECTRONIC MEANS AND OTHER
14 MEANS OF DUPLICATION SHALL BE ESTABLISHED:

15 (I) BY THE OFFICE OF OPEN RECORDS, FOR COMMONWEALTH
16 AGENCIES AND LOCAL AGENCIES;

17 (II) BY EACH JUDICIAL AGENCY; AND

18 (III) BY EACH LEGISLATIVE AGENCY.

19 (2) THE FEES MUST BE REASONABLE AND BASED ON PREVAILING
20 FEES FOR COMPARABLE DUPLICATION SERVICES PROVIDED BY LOCAL
21 BUSINESS ENTITIES.

22 (3) FEES FOR LOCAL AGENCIES MAY REFLECT REGIONAL PRICE
23 DIFFERENCES.

24 (4) THE FOLLOWING APPLY TO COMPLEX AND EXTENSIVE DATA
25 SETS, INCLUDING GEOGRAPHIC INFORMATION SYSTEMS OR INTEGRATED
26 PROPERTY ASSESSMENT LISTS.

27 (I) FEES FOR COPYING MAY BE BASED ON THE REASONABLE
28 MARKET VALUE OF THE SAME OR CLOSELY RELATED DATA SETS.

29 (II) SUBPARAGRAPH (I) SHALL NOT APPLY TO:

30 (A) A REQUEST BY AN INDIVIDUAL EMPLOYED BY A

1 NEWSPAPER OR MAGAZINE OF GENERAL CIRCULATION, WEEKLY
2 NEWSPAPER, PRESS ASSOCIATION OR RADIO OR TELEVISION
3 STATION, FOR THE PURPOSE OF OBTAINING INFORMATION FOR
4 PUBLICATION OR BROADCAST; OR

5 (B) A REQUEST BY A NONPROFIT ORGANIZATION FOR
6 THE CONDUCT OF EDUCATIONAL RESEARCH.

7 (III) INFORMATION OBTAINED UNDER SUBPARAGRAPH (II)
8 SHALL BE SUBJECT TO PARAGRAPHS (1), (2) AND (3).

9 (IV) INFORMATION OBTAINED UNDER THIS PARAGRAPH SHALL
10 NOT BE SOLD OR OTHERWISE PROVIDED TO ANOTHER PERSON FOR
11 COMMERCIAL PURPOSES.

12 (C) CERTIFICATION.--AN AGENCY MAY IMPOSE REASONABLE FEES FOR
13 OFFICIAL CERTIFICATION OF COPIES IF THE CERTIFICATION IS AT THE
14 BEHEST OF THE REQUESTER AND FOR THE PURPOSE OF LEGALLY VERIFYING
15 THE PUBLIC RECORD.

16 (D) CONVERSION TO PAPER.--IF A RECORD IS ONLY MAINTAINED
17 ELECTRONICALLY OR IN OTHER NONPAPER MEDIA, DUPLICATION FEES
18 SHALL BE LIMITED TO THE LESSER OF THE FEE FOR DUPLICATION ON
19 PAPER OR THE FEE FOR DUPLICATION IN THE ORIGINAL MEDIA AS
20 PROVIDED BY SUBSECTION (B) UNLESS THE REQUESTER SPECIFICALLY
21 REQUESTS FOR THE RECORD TO BE DUPLICATED IN THE MORE EXPENSIVE
22 MEDIUM.

23 (E) ENHANCED ELECTRONIC ACCESS.--IF AN AGENCY OFFERS
24 ENHANCED ELECTRONIC ACCESS TO RECORDS IN ADDITION TO MAKING THE
25 RECORDS ACCESSIBLE FOR INSPECTION AND DUPLICATION BY A REQUESTER
26 AS REQUIRED BY THIS ACT, THE AGENCY MAY ESTABLISH USER FEES
27 SPECIFICALLY FOR THE PROVISION OF THE ENHANCED ELECTRONIC
28 ACCESS, BUT ONLY TO THE EXTENT THAT THE ENHANCED ELECTRONIC
29 ACCESS IS IN ADDITION TO MAKING THE RECORDS ACCESSIBLE FOR
30 INSPECTION AND DUPLICATION BY A REQUESTER AS REQUIRED BY THIS

1 ACT. THE USER FEES FOR ENHANCED ELECTRONIC ACCESS MAY BE A FLAT
2 RATE, A SUBSCRIPTION FEE FOR A PERIOD OF TIME, A PER-TRANSACTION
3 FEE, A FEE BASED ON THE CUMULATIVE TIME OF SYSTEM ACCESS OR ANY
4 OTHER REASONABLE METHOD AND ANY COMBINATION THEREOF. THE USER
5 FEES FOR ENHANCED ELECTRONIC ACCESS MUST BE REASONABLE, MUST BE
6 APPROVED BY THE OFFICE OF OPEN RECORDS AND MAY NOT BE
7 ESTABLISHED WITH THE INTENT OR EFFECT OF EXCLUDING PERSONS FROM
8 ACCESS TO RECORDS OR DUPLICATES THEREOF OR OF CREATING PROFIT
9 FOR THE AGENCY.

10 (F) WAIVER OF FEES.--AN AGENCY MAY WAIVE THE FEES FOR
11 DUPLICATION OF A RECORD, INCLUDING, BUT NOT LIMITED TO, WHEN:

12 (1) THE REQUESTER DUPLICATES THE RECORD; OR

13 (2) THE AGENCY DEEMS IT IS IN THE PUBLIC INTEREST TO DO
14 SO.

15 (G) LIMITATIONS.--EXCEPT AS OTHERWISE PROVIDED BY STATUTE,
16 NO OTHER FEES MAY BE IMPOSED UNLESS THE AGENCY NECESSARILY
17 INCURS COSTS FOR COMPLYING WITH THE REQUEST, AND SUCH FEES MUST
18 BE REASONABLE. NO FEE MAY BE IMPOSED FOR AN AGENCY'S REVIEW OF A
19 RECORD TO DETERMINE WHETHER THE RECORD IS A PUBLIC RECORD,
20 LEGISLATIVE RECORD OR FINANCIAL RECORD SUBJECT TO ACCESS IN
21 ACCORDANCE WITH THIS ACT.

22 (H) PREPAYMENT.--PRIOR TO GRANTING A REQUEST FOR ACCESS IN
23 ACCORDANCE WITH THIS ACT, AN AGENCY MAY REQUIRE A REQUESTER TO
24 PREPAY AN ESTIMATE OF THE FEES AUTHORIZED UNDER THIS SECTION IF
25 THE FEES REQUIRED TO FULFILL THE REQUEST ARE EXPECTED TO EXCEED
26 \$100.

27 SECTION 1308. PROHIBITION.

28 A POLICY OR REGULATION ADOPTED UNDER THIS ACT MAY NOT INCLUDE
29 ANY OF THE FOLLOWING:

30 (1) A LIMITATION ON THE NUMBER OF RECORDS WHICH MAY BE

1 REQUESTED OR MADE AVAILABLE FOR INSPECTION OR DUPLICATION.

2 (2) A REQUIREMENT TO DISCLOSE THE PURPOSE OR MOTIVE IN
3 REQUESTING ACCESS TO RECORDS, EXCEPT WHEN THE REQUEST IS FOR
4 A DATE OF BIRTH.

5 SECTION 1309. PRACTICE AND PROCEDURE.

6 THE PROVISIONS OF 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW
7 AND PROCEDURE) SHALL NOT APPLY TO THIS ACT UNLESS SPECIFICALLY
8 ADOPTED BY REGULATION OR POLICY.

9 SECTION 1310. OFFICE OF OPEN RECORDS.

10 (A) ESTABLISHMENT.--THERE IS ESTABLISHED IN THE DEPARTMENT
11 OF COMMUNITY AND ECONOMIC DEVELOPMENT AN OFFICE OF OPEN RECORDS.
12 THE OFFICE SHALL DO ALL OF THE FOLLOWING:

13 (1) PROVIDE INFORMATION RELATING TO THE IMPLEMENTATION
14 AND ENFORCEMENT OF THIS ACT.

15 (2) ISSUE ADVISORY OPINIONS TO AGENCIES AND REQUESTERS.

16 (3) PROVIDE ANNUAL TRAINING COURSES TO AGENCIES, PUBLIC
17 OFFICIALS AND PUBLIC EMPLOYEES ON THIS ACT AND 65 PA.C.S. CH.
18 7 (RELATING TO OPEN MEETINGS).

19 (4) PROVIDE ANNUAL, REGIONAL TRAINING COURSES TO LOCAL
20 AGENCIES, PUBLIC OFFICIALS AND PUBLIC EMPLOYEES.

21 (5) ASSIGN APPEALS OFFICERS TO REVIEW APPEALS OF
22 DECISIONS BY COMMONWEALTH AGENCIES OR LOCAL AGENCIES, EXCEPT
23 AS PROVIDED IN SECTION 503(D), FILED UNDER SECTION 1101 AND
24 ISSUE ORDERS AND OPINIONS. THE OFFICE SHALL EMPLOY OR
25 CONTRACT WITH ATTORNEYS TO SERVE AS APPEALS OFFICERS TO
26 REVIEW APPEALS AND, IF NECESSARY, TO HOLD HEARINGS ON A
27 REGIONAL BASIS UNDER THIS ACT. EACH APPEALS OFFICER MUST
28 COMPLY WITH ALL OF THE FOLLOWING:

29 (I) COMPLETE A TRAINING COURSE PROVIDED BY THE
30 OFFICE OF OPEN RECORDS PRIOR TO ACTING AS AN APPEALS

1 OFFICER.

2 (II) IF A HEARING IS NECESSARY, HOLD HEARINGS
3 REGIONALLY AS NECESSARY TO ENSURE ACCESS TO THE REMEDIES
4 PROVIDED BY THIS ACT.

5 (III) COMPLY WITH THE PROCEDURES UNDER SECTION
6 1102(B).

7 (6) ESTABLISH AN INFORMAL MEDIATION PROGRAM TO RESOLVE
8 DISPUTES UNDER THIS ACT.

9 (7) ESTABLISH AN INTERNET WEBSITE WITH INFORMATION
10 RELATING TO THIS ACT, INCLUDING INFORMATION ON FEES, ADVISORY
11 OPINIONS AND DECISIONS AND THE NAME AND ADDRESS OF ALL OPEN
12 RECORDS OFFICERS IN THIS COMMONWEALTH.

13 (8) CONDUCT A BIENNIAL REVIEW OF FEES CHARGED UNDER THIS
14 ACT.

15 (9) ANNUALLY REPORT ON ITS ACTIVITIES AND FINDINGS TO
16 THE GOVERNOR AND THE GENERAL ASSEMBLY. THE REPORT SHALL BE
17 POSTED AND MAINTAINED ON THE INTERNET WEBSITE ESTABLISHED
18 UNDER PARAGRAPH (7).

19 (B) EXECUTIVE DIRECTOR.--WITHIN 90 DAYS OF THE EFFECTIVE
20 DATE OF THIS SECTION, THE GOVERNOR SHALL APPOINT AN EXECUTIVE
21 DIRECTOR OF THE OFFICE WHO SHALL SERVE FOR A TERM OF SIX YEARS.
22 COMPENSATION SHALL BE SET BY THE EXECUTIVE BOARD ESTABLISHED
23 UNDER SECTION 204 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),
24 KNOWN AS THE ADMINISTRATIVE CODE OF 1929. THE EXECUTIVE DIRECTOR
25 MAY SERVE NO MORE THAN TWO TERMS.

26 (C) LIMITATION.--THE EXECUTIVE DIRECTOR SHALL NOT SEEK
27 ELECTION NOR ACCEPT APPOINTMENT TO ANY POLITICAL OFFICE DURING
28 HIS TENURE AS EXECUTIVE DIRECTOR AND FOR ONE YEAR THEREAFTER.

29 (D) STAFFING.--THE EXECUTIVE DIRECTOR SHALL APPOINT
30 ATTORNEYS TO ACT AS APPEALS OFFICERS AND ADDITIONAL CLERICAL,

1 TECHNICAL AND PROFESSIONAL STAFF AS MAY BE APPROPRIATE AND MAY
2 CONTRACT FOR ADDITIONAL SERVICES AS NECESSARY FOR THE
3 PERFORMANCE OF THE EXECUTIVE DIRECTOR'S DUTIES. THE COMPENSATION
4 OF ATTORNEYS AND OTHER STAFF SHALL BE SET BY THE EXECUTIVE
5 BOARD. THE APPOINTMENT OF ATTORNEYS SHALL NOT BE SUBJECT TO THE
6 ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE
7 COMMONWEALTH ATTORNEYS ACT.

8 (E) DUTIES.--THE EXECUTIVE DIRECTOR SHALL ENSURE THAT THE
9 DUTIES OF THE OFFICE OF OPEN RECORDS ARE CARRIED OUT AND SHALL
10 MONITOR CASES APPEALED TO THE OFFICE OF OPEN RECORDS.

11 (F) APPROPRIATION.--THE APPROPRIATION FOR THE OFFICE SHALL
12 BE IN A SEPARATE LINE ITEM AND SHALL BE UNDER THE JURISDICTION
13 OF THE EXECUTIVE DIRECTOR.

14 CHAPTER 15

15 STATE-RELATED INSTITUTIONS

16 SECTION 1501. DEFINITION.

17 AS USED IN THIS CHAPTER, "STATE-RELATED INSTITUTION" MEANS
18 ANY OF THE FOLLOWING:

- 19 (1) TEMPLE UNIVERSITY.
- 20 (2) THE UNIVERSITY OF PITTSBURGH.
- 21 (3) THE PENNSYLVANIA STATE UNIVERSITY.
- 22 (4) LINCOLN UNIVERSITY.

23 SECTION 1502. REPORTING.

24 NO LATER THAN MAY 30 OF EACH YEAR, A STATE-RELATED
25 INSTITUTION SHALL FILE WITH THE GOVERNOR'S OFFICE, THE GENERAL
26 ASSEMBLY, THE AUDITOR GENERAL AND THE STATE LIBRARY THE
27 INFORMATION SET FORTH IN SECTION 1503.

28 SECTION 1503. CONTENTS OF REPORT.

29 THE REPORT REQUIRED UNDER SECTION 1502 SHALL INCLUDE THE
30 FOLLOWING:

(1) EXCEPT AS PROVIDED IN PARAGRAPH (4), ALL INFORMATION REQUIRED BY FORM 990 OR AN EQUIVALENT FORM, OF THE UNITED STATES DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, ENTITLED THE RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX, REGARDLESS OF WHETHER THE STATE-RELATED INSTITUTION IS REQUIRED TO FILE THE FORM BY THE FEDERAL GOVERNMENT.

(2) THE SALARIES OF ALL OFFICERS AND DIRECTORS OF THE
STATE-RELATED INSTITUTION.

(3) THE HIGHEST 25 SALARIES PAID TO EMPLOYEES OF THE INSTITUTION THAT ARE NOT INCLUDED UNDER PARAGRAPH (2).

(4) THE REPORT SHALL NOT INCLUDE INFORMATION RELATING TO INDIVIDUAL DONORS.

SECTION 1504. COPIES AND POSTING.

A STATE-RELATED INSTITUTION SHALL MAINTAIN, FOR AT LEAST SEVEN YEARS, A COPY OF THE REPORT IN THE INSTITUTION'S LIBRARY AND SHALL PROVIDE FREE ACCESS TO THE REPORT ON THE INSTITUTION'S INTERNET WEBSITE.

CHAPTER 17

STATE CONTRACT INFORMATION

SECTION 1701. SUBMISSION AND RETENTION OF CONTRACTS.

(A) GENERAL RULE. --WHENEVER ANY COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR JUDICIAL AGENCY SHALL ENTER INTO ANY CONTRACT INVOLVING ANY PROPERTY, REAL, PERSONAL OR MIXED OF ANY KIND OR DESCRIPTION OR ANY CONTRACT FOR PERSONAL SERVICES WHERE THE CONSIDERATION INVOLVED IN THE CONTRACT IS \$5,000 OR MORE, A COPY OF THE CONTRACT SHALL BE FILED WITH THE TREASURY DEPARTMENT WITHIN TEN DAYS AFTER THE CONTRACT IS FULLY EXECUTED ON BEHALF OF THE COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR JUDICIAL AGENCY OR OTHERWISE BECOMES AN OBLIGATION OF THE COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR JUDICIAL AGENCY. THE PROVISIONS OF

1 THIS CHAPTER SHALL NOT APPLY TO CONTRACTS FOR SERVICES PROTECTED
2 BY A PRIVILEGE. THE PROVISIONS OF THIS CHAPTER SHALL NOT APPLY
3 TO A PURCHASE ORDER. THE FOLLOWING SHALL APPLY:

4 (1) EACH COMMONWEALTH AGENCY, LEGISLATIVE AGENCY AND
5 JUDICIAL AGENCY SHALL SUBMIT CONTRACTS IN A FORM AND
6 STRUCTURE MUTUALLY AGREED UPON BY THE COMMONWEALTH AGENCY,
7 LEGISLATIVE AGENCY OR JUDICIAL AGENCY AND THE STATE
8 TREASURER.

9 (2) THE TREASURY DEPARTMENT MAY REQUIRE EACH
10 COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR JUDICIAL AGENCY TO
11 PROVIDE A SUMMARY WITH EACH CONTRACT, WHICH SHALL INCLUDE THE
12 FOLLOWING:

- 13 (I) DATE OF EXECUTION.
- 14 (II) AMOUNT OF THE CONTRACT.
- 15 (III) BEGINNING DATE OF THE CONTRACT.
- 16 (IV) END DATE OF THE CONTRACT, IF APPLICABLE.
- 17 (V) NAME OF THE AGENCY ENTERING INTO THE CONTRACT.
- 18 (VI) THE NAME OF ALL PARTIES EXECUTING THE CONTRACT.
- 19 (VII) SUBJECT MATTER OF THE CONTRACT.

20 EACH AGENCY SHALL CREATE AND MAINTAIN THE DATA UNDER THIS
21 PARAGRAPH IN AN ASCII-DELIMITED TEXT FILE, SPREADSHEET FILE
22 OR OTHER FILE PROVIDED BY TREASURY DEPARTMENT REGULATION.

23 (B) RETENTION.--EVERY CONTRACT FILED PURSUANT TO SUBSECTION
24 (A) SHALL REMAIN ON FILE WITH THE TREASURY DEPARTMENT FOR A
25 PERIOD OF NOT LESS THAN FOUR YEARS AFTER THE END DATE OF THE
26 CONTRACT.

27 (C) ACCURACY.--EACH COMMONWEALTH AGENCY, LEGISLATIVE AGENCY
28 AND JUDICIAL AGENCY IS RESPONSIBLE FOR VERIFYING THE ACCURACY
29 AND COMPLETENESS OF THE INFORMATION THAT IT SUBMITS TO THE STATE
30 TREASURER. THE CONTRACT PROVIDED TO THE TREASURY DEPARTMENT

1 PURSUANT TO THIS CHAPTER SHALL BE REDACTED IN ACCORDANCE WITH
2 APPLICABLE PROVISIONS OF THIS ACT BY THE AGENCY FILING THE
3 CONTRACT TO THE TREASURY DEPARTMENT.

4 (D) EXEMPT FROM POSTING.--THE PROVISIONS OF THIS CHAPTER
5 SHALL NOT APPLY TO COPIES OF CONTRACTS SUBMITTED TO THE TREASURY
6 DEPARTMENT, THE OFFICE OF AUDITOR GENERAL OR OTHER AGENCY FOR
7 PURPOSES OF AUDITS AND WARRANTS FOR DISBURSEMENTS UNDER SECTION
8 307, 401, 402 OR 403 OF THE ACT OF APRIL 9, 1929 (P.L.343,
9 NO.176), KNOWN AS THE FISCAL CODE.

10 SECTION 1702. PUBLIC AVAILABILITY OF CONTRACTS.

11 (A) GENERAL RULE.--THE TREASURY DEPARTMENT SHALL MAKE EACH
12 CONTRACT FILED PURSUANT TO SECTION 1701 AVAILABLE FOR PUBLIC
13 INSPECTION EITHER BY POSTING A COPY OF THE CONTRACT ON THE
14 TREASURY DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE OR BY
15 POSTING A CONTRACT SUMMARY ON THE DEPARTMENT'S PUBLICLY
16 ACCESSIBLE INTERNET WEBSITE.

17 (B) POSTING.--THE TREASURY DEPARTMENT SHALL POST THE
18 INFORMATION RECEIVED PURSUANT TO THIS CHAPTER IN A MANNER THAT
19 ALLOWS THE PUBLIC TO SEARCH CONTRACTS OR CONTRACT SUMMARIES BY
20 THE CATEGORIES ENUMERATED IN SECTION 1701(A)(2).

21 (C) REQUEST TO REVIEW OR RECEIVE COPY OF CONTRACT.--THE
22 TREASURY DEPARTMENT SHALL MAINTAIN A PAGE ON ITS PUBLICLY
23 ACCESSIBLE INTERNET WEBSITE THAT INCLUDES INSTRUCTIONS ON HOW TO
24 REVIEW A CONTRACT ON THE INTERNET WEBSITE.

25 (D) PAPER COPY.--A PAPER COPY OF A CONTRACT MAY BE REQUESTED
26 FROM THE AGENCY THAT EXECUTED THE CONTRACT IN ACCORDANCE WITH
27 THIS ACT.

28 CHAPTER 31

29 MISCELLANEOUS PROVISIONS

30 SECTION 3101. APPLICABILITY.

THIS ACT APPLIES AS FOLLOWS:

(1) THIS ACT SHALL APPLY TO REQUESTS FOR INFORMATION
MADE AFTER DECEMBER 31, 2008.

(2) CHAPTER 15 SHALL APPLY TO FISCAL YEARS BEGINNING
AFTER JUNE 30, 2008.

(3) CHAPTER 17 SHALL APPLY TO CONTRACTS ENTERED INTO OR
RENEWED AFTER JUNE 30, 2008.

SECTION 3101.1. RELATION TO OTHER LAW OR JUDICIAL ACTIONS.

IF THE PROVISIONS OF THIS ACT REGARDING ACCESS TO PUBLIC
RECORDS CONFLICT WITH ANY FEDERAL OR STATE LAW, JUDICIAL ORDER
OR DECREE, THE PROVISIONS OF THIS ACT SHALL NOT APPLY.

SECTION 3101.2. SEVERABILITY.

ALL PROVISIONS OF THIS ACT ARE SEVERABLE.

SECTION 3102. REPEALS.

REPEALS ARE AS FOLLOWS:

(1) THE GENERAL ASSEMBLY DECLARES AS FOLLOWS:

(I) THE REPEAL UNDER PARAGRAPH (2)(I) IS NECESSARY
TO EFFECTUATE CHAPTER 17.

(II) THE REPEALS UNDER PARAGRAPH (2)(II) AND (III)
ARE NECESSARY TO EFFECTUATE THIS ACT.

(2) THE FOLLOWING ACTS AND PARTS OF ACTS ARE REPEALED:

(I) SECTION 1104 OF THE ACT OF APRIL 9, 1929
(P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF
1929.

(II) THE ACT OF JUNE 21, 1957 (P.L.390, NO.212),
REFERRED TO AS THE RIGHT-TO-KNOW LAW.

(III) 62 PA.C.S. § 106.

SECTION 3103. REFERENCES.

A REFERENCE IN A STATUTE, REGULATION OR JUDICIAL ORDER OR
DECREE TO THE ACT OF JUNE 21, 1957 (P.L.390, NO.212), REFERRED

1 TO AS THE RIGHT-TO-KNOW LAW, SHALL BE DEEMED A REFERENCE TO THIS
2 ACT.

3 SECTION 3104. EFFECTIVE DATE.

4 THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

5 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT
6 IMMEDIATELY:

7 (I) SECTIONS 101, 102 AND 1310.

8 (II) THIS SECTION.

9 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JANUARY
10 1, 2009.