
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
2007

INTRODUCED BY PILEGGI, SCARNATI, MELLOW, ORIE, KASUNIC, MUSTO,
RAFFERTY, O'PAKE, TOMLINSON, M. WHITE, ERICKSON, WAUGH,
FOLMER, COSTA, EARLL, VANCE, BOSCOLA, CORMAN, WONDERLING,
GORDNER, RHOADES, D. WHITE, PIPPY, MADIGAN, ARMSTRONG, BAKER,
C. WILLIAMS, BRUBAKER, BROWNE, REGOLA, DINNIMAN AND
EICHELBERGER, MARCH 29, 2007

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
FEBRUARY 11, 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 Office of Open Records; imposing
6 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 TABLE OF CONTENTS

10 Chapter 1. Preliminary Provisions
11 Section 101. Short title.
12 Section 102. Definitions.
13 Chapter 3. Requirements and Prohibitions
14 Section 301. Commonwealth agencies.
15 Section 302. Local agencies.
16 Section 303. Legislative agencies.
17 Section 304. Judicial agencies.

1 Section 305. Presumption.
2 Section 306. Nature of document.
3 Chapter 5. Access
4 Section 501. Scope of chapter.
5 Section 502. Open-records officer.
6 Section 503. Appeals officer.
7 Section 504. Regulations and policies.
8 Section 505. Uniform form.
9 Section 506. Requests.
10 Section 507. Retention of records.
11 Chapter 7. Procedure
12 Section 701. Access.
13 Section 702. Requests.
14 Section 703. Written requests.
15 Section 704. Electronic access.
16 Section 705. Creation of record.
17 Section 706. Redaction.
18 Section 707. Production of certain records.
19 Section 708. Exceptions for public records.
20 Chapter 9. Agency Response
21 Section 901. General rule.
22 Section 902. Extension of time.
23 Section 903. Denial.
24 Section 904. Certified copies.
25 Section 905. Record discard.
26 Chapter 11. Appeal of Agency Determination
27 Section 1101. Filing of appeal.
28 Section 1102. Appeals officers.
29 Chapter 13. Judicial Review
30 Section 1301. Commonwealth agencies, legislative agencies and

1 judicial agencies.

2 Section 1302. Local agencies.

3 Section 1303. Notice and records.

4 Section 1304. Court costs and attorney fees.

5 Section 1305. Penalties.

6 Section 1306. Immunity.

7 Section 1307. Fee limitations.

8 Section 1308. Prohibition.

9 Section 1309. Practice and procedure.

10 Section 1310. Office of Open Records.

11 Chapter 15. State-Related Institutions

12 Section 1501. Definition.

13 Section 1502. Reporting.

14 Section 1503. Contents of report.

15 Section 1504. Copies and posting.

16 Chapter 17. State Contract Information

17 Section 1701. Submission and retention of contracts.

18 Section 1702. Public availability of contracts.

19 Chapter 31. Miscellaneous Provisions

20 Section 3101. Applicability.

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

22 Section 3101.2. Severability.

23 Section 3102. Repeals.

24 Section 3103. References.

25 Section 3104. Effective date.

26 The General Assembly of the Commonwealth of Pennsylvania

27 hereby enacts as follows:

28 CHAPTER 1

29 PRELIMINARY PROVISIONS

30 Section 101. Short title.

1 This act shall be known and may be cited as the Right-to-Know
2 Law.

3 Section 102. Definitions.

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

7 "Administrative proceeding." A proceeding by an agency the
8 outcome of which is required to be based on a record or
9 documentation prescribed by law or in which a statute or
10 regulation is particularized in application to individuals. The
11 term includes an appeal.

12 "Agency." A Commonwealth agency, a local agency, a judicial
13 agency or a legislative agency.

14 "Aggregated data." A tabulation of data which relate to
15 broad classes, groups or categories so that it is not possible
16 to distinguish the properties of individuals within those
17 classes, groups or categories.

18 "Appeals officer." As follows:

19 (1) For a Commonwealth agency or a local agency, the
20 appeals officer designated under section 503(a).

21 (2) For a judicial agency, the individual designated
22 under section 503(b).

23 (3) For a legislative agency, the individual designated
24 under section 503(c).

25 (4) For the Attorney General, State Treasurer, Auditor
26 General and local agencies in possession of criminal
27 investigative records, the individual designated under
28 section 503(d).

29 "Commonwealth agency." Any of the following:

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

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

3 (i) The Governor's Office.

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

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

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

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

14 (1) which is privileged or confidential; and

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

18 "Financial record." ~~Includes:~~ ANY OF THE FOLLOWING: <—

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

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

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

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

27 ~~(3) Results of a financial audit.~~ <—

28 (3) A FINANCIAL AUDIT REPORT. THE TERM DOES NOT INCLUDE <—
29 WORK PAPERS UNDERLYING AN 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 (15) THE LEGISLATIVE AUDIT ADVISORY COMMISSION. <—

9 "Legislative record." Any of the following relating to a
10 legislative agency or a standing committee, subcommittee or
11 conference committee of a legislative agency:

- 12 (1) A financial record.
- 13 (2) A bill or resolution that has been introduced and
14 amendments offered thereto in committee or in legislative
15 session, including resolutions to adopt or amend the rules of
16 a chamber.
- 17 (3) Fiscal notes.
- 18 (4) A cosponsorship memorandum.
- 19 (5) The journal of a chamber.
- 20 (6) The minutes of, record of attendance of members at a
21 public hearing or a public committee meeting and all recorded
22 votes taken in a public committee meeting.
- 23 (7) The transcript of a public hearing when available.
- 24 (8) Executive nomination calendars.
- 25 (9) The rules of a chamber.
- 26 (10) A record of all recorded votes taken in a
27 legislative session.
- 28 (11) Any administrative staff manuals or written
29 policies.
- 30 (12) An audit REPORT prepared pursuant to the act of <—

1 June 30, 1970 (P.L.442, No.151) entitled, "An act
2 implementing the provisions of Article VIII, section 10 of
3 the Constitution of Pennsylvania, by designating the
4 Commonwealth officers who shall be charged with the function
5 of auditing the financial transactions after the occurrence
6 thereof of the Legislative and Judicial branches of the
7 government of the Commonwealth, establishing a Legislative
8 Audit Advisory Commission, and imposing certain powers and
9 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 public opinion surveys, polls, focus
22 groups, marketing research or similar efforts designed to
23 measure public opinion funded by a legislative agency.

24 "Local agency." Any of the following:

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

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

1 "Office of Open Records." The Office of Open Records
2 established in section 1310.

3 "Personal financial information." An individual's personal
4 credit, charge or debit card information; bank account
5 information; bank, credit or financial statements; account or
6 PIN numbers and other information relating to an individual's
7 personal finances.

8 "Privilege." The attorney-work product doctrine, the
9 attorney-client privilege, the doctor-patient privilege, THE <—
10 SPEECH AND DEBATE PRIVILEGE or other privilege recognized by a
11 court interpreting the laws of this Commonwealth.

12 "Public record." A record, INCLUDING A FINANCIAL RECORD, of <—
13 a Commonwealth or local agency that:

14 (1) is not exempt under section 708;

15 (2) is not exempt from being disclosed under any other
16 Federal or State law or regulation or judicial order or
17 decree; or

18 (3) is not protected by a privilege.

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

27 "Requester." A person that is a legal resident of the United
28 States and requests a record pursuant to this act. The term
29 includes an agency.

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 SERVICES AND TRAINING, occupational training, education <—
7 services, counseling services, workers' compensation services
8 and unemployment compensation services, foster care services, <—
9 SERVICES FOR THE ELDERLY, SERVICES FOR INDIVIDUALS WITH
10 DISABILITIES and services for victims of crimes AND DOMESTIC <—
11 VIOLENCE.

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

26 "State-related institution." Includes:

- 27 (1) Temple University.
- 28 (2) The University of Pittsburgh.
- 29 (3) The Pennsylvania State University.
- 30 (4) Lincoln University.

1 "Terrorist act." A violent or life-threatening act that
2 violates the criminal laws of the United States or any state and
3 appears to be intended to:

- 4 (1) intimidate or coerce a civilian population;
- 5 (2) influence the policy of a government; or
- 6 (3) affect the conduct of a government by mass
7 destruction, assassination or kidnapping.

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

- 11 (1) derives independent economic value, actual or
12 potential, from not being generally known to and not being
13 readily ascertainable by proper means by other persons who
14 can obtain economic value from its disclosure or use; and
- 15 (2) is the subject of efforts that are reasonable under
16 the circumstances to maintain its secrecy.

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

19 CHAPTER 3

20 REQUIREMENTS AND PROHIBITIONS

21 Section 301. Commonwealth agencies.

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

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

28 Section 302. Local agencies.

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

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

4 Section 303. Legislative agencies.

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

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

10 Section 304. Judicial agencies.

11 (a) Requirement.--A judicial agency shall provide financial
12 records in accordance with this act or any rule or order of
13 court providing equal or greater access to the records.

14 (b) Prohibition.--A judicial agency may not deny a requester
15 access to a financial record due to the intended use of the
16 financial record by the requester.

17 Section 305. Presumption.

18 (a) General rule.--A record in the possession of a
19 Commonwealth agency or local agency shall be presumed to be a
20 public record. The presumption shall not apply if:

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

26 (b) Legislative records and financial records.--A
27 legislative record in the possession of a legislative agency and
28 a financial record in the possession of a judicial agency shall
29 be presumed to be available in accordance with this act. The
30 presumption shall not apply if:

1 legislative record or financial record, the open-records
2 officer shall do all of the following:

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

4 (ii) Compute the day on which the five-day period
5 under section 901 will expire and make a notation of that
6 date on the written request.

7 (iii) Maintain an electronic or paper copy of a
8 written request, including all documents submitted with
9 the request until the request has been fulfilled. If the
10 request is denied, the written request shall be
11 maintained for 30 days or, if an appeal is filed, until a
12 final determination is issued under section 1101(b) or
13 the appeal is deemed denied.

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

19 Section 503. Appeals officer.

20 (a) Commonwealth agencies and local agencies.--Except as
21 provided in subsection (d), the Office of Open Records
22 established under section 1310 shall designate an appeals
23 officer under section 1101(a)(2) for all:

24 (1) Commonwealth agencies; and

25 (2) local agencies.

26 (b) Judicial agencies.--A judicial agency shall designate an
27 appeals officer to hear appeals under Chapter 11.

28 (c) Legislative agencies.--

29 (1) Except as set forth in paragraph (2), the
30 Legislative Reference Bureau shall designate an appeals

officer to hear appeals under Chapter 11 for all legislative agencies.

(2) Each of the following shall designate an appeals officer to hear appeals under Chapter 11:

(i) The Senate.

(ii) The House of Representatives.

(d) Law enforcement records and Statewide officials.--

(1) The Attorney General, State Treasurer and Auditor General shall each designate an appeals officer to hear appeals under Chapter 11.

(2) The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.

Section 504. Regulations and policies.

(a) Authority.--An agency may promulgate regulations and policies necessary for the agency to implement this act. The Office of Open Records may promulgate regulations relating to appeals involving a Commonwealth 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 Office of Open Records or other applicable appeals officer.

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

(4) Regulations, policies and procedures of the agency relating to this act.

1 Section 505. Uniform form.

2 (a) Commonwealth and local agencies.--The Office of Open
3 Records shall develop a uniform form which shall be accepted by
4 all Commonwealth and local agencies in addition to any form used
5 by the agency to file a request under this act. The uniform form
6 shall be published in the Pennsylvania Bulletin and on the
7 Office of Open Record's Internet website.

8 (b) Judicial agencies.--A judicial agency or the
9 Administrative Office of Pennsylvania Courts may develop a form
10 to request financial records or may accept a form developed by
11 the Office of Open Records.

12 (c) Legislative agencies.--A legislative agency may develop
13 a form to request legislative records or may accept the form
14 developed by the Office of Open Records.

15 Section 506. Requests.

16 (a) Disruptive requests.--

17 (1) An agency may deny a requester access to a record if
18 the requester has made repeated requests for that same record
19 and the repeated requests have placed an unreasonable burden
20 on the agency.

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

23 (b) Disaster or potential damage.--

24 (1) An agency may deny a requester access:

25 (i) when timely access is not possible due to fire,
26 flood or other disaster; or

27 (ii) to historical, ancient or rare documents,
28 records, archives and manuscripts when access may, in the
29 professional judgment of the curator or custodian of
30 records, cause physical damage or irreparable harm to the

1 record.

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

5 (c) Agency discretion.--An agency may exercise its
6 discretion to make any otherwise exempt record accessible for
7 inspection and copying under this chapter, if all of the
8 following apply:

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

11 (i) Federal or State law or regulation.

12 (ii) Judicial order or decree.

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

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

17 (d) Agency possession.--

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

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

28 (3) A request for a public record in possession of a
29 party other than the agency shall be submitted to the open
30 records officer of the agency. Upon a determination that the

1 record is subject to access under this act, the open records
2 officer shall assess the duplication fee established under
3 section 1307(b) and upon collection shall remit the fee to
4 the party in possession of the record if the party duplicated
5 the record.

6 Section 507. Retention of records.

7 Nothing in this act shall be construed to modify, rescind or
8 supersede any record retention policy or disposition schedule of
9 an agency established pursuant to law, regulation, policy or
10 other directive.

11 CHAPTER 7

12 PROCEDURE

13 Section 701. Access.

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

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

26 Section 702. Requests.

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

1 request.

2 Section 703. Written requests.

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

16 Section 704. Electronic access.

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

20 (b) Response.--

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

26 (2) If the requester is unwilling or unable to access
27 the record electronically, the requester may, within 30 days
28 following receipt of the agency notification, submit a
29 written request to the agency to have the record converted to
30 paper. The agency shall provide access to the record in

1 printed form within five days of the receipt of the written
2 request for conversion to paper.

3 Section 705. Creation of record.

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

9 Section 706. Redaction.

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

25 Section 707. Production of certain records.

26 (a) General rule.--If, in response to a request, an agency
27 produces a record that is not a public record, legislative
28 record or financial record, the agency shall notify any third
29 party that provided the record to the agency, the person that is
30 the subject of the record and the requester.

1 (b) Requests for trade secrets.--An agency shall notify a
2 third party of a request for a record if the third party
3 provided the record and included a written statement signed by a
4 representative of the third party that the record contains a
5 trade secret or confidential proprietary information.
6 Notification shall be provided within five business days of
7 receipt of the request for the record. The third party shall
8 have five business days from receipt of notification from the
9 agency to provide input on the release of the record. The agency
10 shall deny the request for the record or release the record
11 within ten business days of the provision of notice to the third
12 party and shall notify the third party of the decision.

13 (c) Transcripts.--

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

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

23 Section 708. Exceptions for public records.

24 (a) Burden of proof.--

25 (1) The burden of proving that a record of a
26 Commonwealth agency or local agency is exempt from public
27 access shall be on the Commonwealth agency or local agency
28 receiving a request by a preponderance of the evidence.

29 (2) The burden of proving that a legislative record is
30 exempt from public access shall be on the legislative agency

1 receiving a request by a preponderance of the evidence.

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

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

9 (1) A record the disclosure of which:

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

12 (ii) would be reasonably likely to result in a
13 substantial and demonstrable risk of physical harm to OR <—
14 THE PERSONAL SECURITY OF an individual.

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

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

27 (i) documents or data relating to computer hardware,
28 source files, software and system networks that could
29 jeopardize computer security by exposing a vulnerability
30 in preventing, protecting against, mitigating or

1 responding to a terrorist act;

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

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

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

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

30 (6) (i) The following personal identification

1 information:

2 (A) A record containing all or part of a
3 person's Social Security number; driver's license
4 number; personal financial information; home,
5 cellular or personal telephone numbers; personal e-
6 mail addresses; employee number or other confidential
7 personal identification number.

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

10 (C) The home address of a law enforcement
11 officer or judge.

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

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

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

24 (i) A letter of reference or recommendation
25 pertaining to the character or qualifications of an
26 identifiable individual, unless it was prepared in
27 relation to the appointment of an individual to fill a
28 vacancy in an elected office or an appointed office
29 requiring Senate confirmation.

30 (ii) A performance rating or review.

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

9 (iv) The employment application of an individual who
10 is not hired by the agency.

11 (v) Workplace support services program information.

12 (vi) Written criticisms of an employee.

13 (vii) Grievance material, including documents
14 related to discrimination or sexual harassment.

15 (viii) Information regarding discipline, demotion or
16 discharge contained in a personnel file. This
17 subparagraph shall not apply to the final action of an
18 agency that results in demotion or discharge.

19 (ix) An academic transcript.

20 (8) (i) A record pertaining to strategy or negotiations
21 relating to labor relations or collective bargaining and
22 related arbitration proceedings. This subparagraph shall
23 not apply to a final or executed contract or agreement
24 between the parties in a collective bargaining procedure.

25 (ii) In the case of the arbitration of a dispute or
26 grievance under a collective bargaining agreement, an
27 exhibit entered into evidence at an arbitration
28 proceeding, a transcript of the arbitration or the
29 opinion. This subparagraph shall not apply to the final
30 award or order of the arbitrator in a dispute or

1 grievance procedure.

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

5 (10) (i) A record that reflects:

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

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

19 (ii) Subparagraph (i)(A) shall apply to agencies
20 subject to 65 Pa.C.S. Ch. 7 (relating to open meetings)
21 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
22 WHICH IS NOT OTHERWISE EXEMPT FROM ACCESS UNDER THIS ACT <—
23 AND WHICH IS presented to a quorum for deliberation in
24 accordance with 65 Pa.C.S. Ch. 7 shall be a public
25 record.

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

29 (iv) This paragraph shall not apply to the results
30 of public opinion surveys, polls, focus groups, marketing

1 research or similar effort designed to measure public
2 opinion.

3 (11) A record that constitutes or reveals a trade secret
4 or confidential proprietary information.

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

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

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

24 ~~(15) Examination questions, scoring keys or answers to~~ <—
25 ~~an examination, including questions, keys and answers on~~
26 ~~tests in primary and secondary schools and institutions of~~
27 ~~higher education.~~

28 (15) (I) ACADEMIC TRANSCRIPTS. <—

29 (II) EXAMINATIONS, EXAMINATION QUESTIONS, SCORING
30 KEYS OR ANSWERS TO EXAMINATIONS. THIS SUBPARAGRAPH SHALL

1 INCLUDE LICENSING AND OTHER EXAMINATIONS RELATING TO THE
2 QUALIFICATIONS OF AN INDIVIDUAL AND TO EXAMINATIONS GIVEN
3 IN PRIMARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF
4 HIGHER EDUCATION.

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

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

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

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

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

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

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

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

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

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

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

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

1 individual.

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

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

11 (i) Complaints submitted to an agency.

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

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

18 (iv) A record that includes information made
19 confidential by law.

20 (v) Work papers underlying an audit.

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

23 (A) Reveal the institution, progress or result
24 of an agency investigation, except the imposition of
25 a fine or civil penalty, the suspension, modification
26 or revocation of a license, permit, registration,
27 certification or similar authorization issued by an
28 agency or an executed settlement agreement unless the
29 agreement is determined to be confidential by a
30 court.

1 (B) Deprive a person of the right to an
2 impartial adjudication.

3 (C) Constitute an unwarranted invasion of
4 privacy.

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

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

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

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

17 (19) DNA and RNA records.

18 (20) An autopsy record of a coroner or medical examiner
19 and any audiotape of a postmortem examination or autopsy, or
20 a copy, reproduction or facsimile of an autopsy report, a
21 photograph, negative or print, including a photograph or
22 videotape of the body or any portion of the body of a
23 deceased person at the scene of death or in the course of a
24 postmortem examination or autopsy taken or made by or caused
25 to be taken or made by the coroner or medical examiner. This
26 exception shall not limit the reporting of the name of the
27 deceased individual and the cause and manner of death.

28 (21) (i) Draft minutes of any meeting of an agency
29 until the next regularly scheduled meeting of the agency.

30 (ii) Minutes of an executive session and any record

1 of discussions held in executive session.

2 (22) (i) The contents of real estate appraisals,
3 engineering or feasibility estimates, environmental
4 reviews, audits or evaluations made for or by an agency
5 relative to the following:

6 (A) The leasing, acquiring or disposing of real
7 property or an interest in real property.

8 (B) The purchase of public supplies or equipment
9 included in the real estate transaction.

10 (C) Construction projects.

11 (ii) This paragraph shall not apply once the
12 decision is made to proceed with the lease, acquisition
13 or disposal of real property or an interest in real
14 property or the purchase of public supply or construction
15 project.

16 (23) Library and archive circulation and order records
17 of an identifiable individual or groups of individuals.

18 (24) Library archived and museum materials, or valuable
19 or rare book collections or documents contributed by gift,
20 grant, bequest or devise, to the extent of any limitations
21 imposed by the donor as a condition of the contribution.

22 (25) A record identifying the location of an
23 archeological site or an endangered or threatened plant or
24 animal species if not already known to the general public.

25 (26) A proposal pertaining to agency procurement or
26 disposal of supplies, services or construction prior to the
27 award of the contract or prior to the opening and rejection
28 of all bids; financial information of a bidder or offeror
29 requested in an invitation for bid or request for proposals
30 to demonstrate the bidder's or offeror's economic capability;

1 or the identity of members, notes and other records of agency
2 proposal evaluation committees established under 62 Pa.C.S. §
3 513 (relating to competitive sealed proposals).

4 (27) A record or information relating to a communication
5 between an agency and its insurance carrier, administrative
6 service organization or risk management office. This
7 paragraph shall not apply to a contract with an insurance
8 carrier, administrative service organization or risk
9 management office or to financial records relating to the
10 provision of insurance.

11 (28) A record or information:

12 (i) identifying an individual who applies for or
13 receives social services; or

14 (ii) relating to the following:

15 (A) the type of social services received by an
16 individual;

17 (B) an individual's application to receive
18 social services, including a record or information
19 related to an agency decision to grant, deny, reduce
20 or restrict benefits, including a quasi-judicial
21 decision of the agency and the identity of a
22 caregiver or others who provide services to the
23 individual; or

24 (C) eligibility to receive social services,
25 including the individual's income, assets, physical
26 or mental health, age, disability, family
27 circumstances or record of abuse.

28 (29) Correspondence between a person and a member of the
29 General Assembly and records accompanying the correspondence
30 which would identify a person that requests assistance or

1 constituent services. This paragraph shall not apply to
2 correspondence between a member of the General Assembly and a
3 principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to
4 lobbyist disclosure).

5 (30) A RECORD IDENTIFYING THE NAME, HOME ADDRESS OR DATE <—
6 OF BIRTH OF A CHILD 17 YEARS OF AGE OR YOUNGER.

7 (c) Financial records.--The exceptions set forth in
8 subsection (b) shall not apply to financial records, except for <—
9 ~~financial records~~ THAT AN AGENCY MAY REDACT THAT PORTION OF A <—
10 FINANCIAL RECORD protected under subsection (b)(1), (2), (3),
11 ~~(4) or (5) or personal financial information. An agency shall <—~~
12 ~~redact that portion of a financial record which would disclose~~
13 ~~information protected under subsection (b)(6). An agency shall~~
14 (4), (5), (6), (16) OR (17). AN AGENCY SHALL not disclose the <—
15 identity of an individual performing an undercover or covert law
16 enforcement activity. ~~or other nonfinancial information <—~~
17 ~~protected under subsection (b)(16) or (17).~~

18 (d) Aggregated data.--The exceptions set forth in subsection
19 (b) shall not apply to aggregated data maintained or received by
20 an agency, except for data protected under subsection (b)(1),
21 (2), (3), (4) or (5).

22 (E) CONSTRUCTION.--IN DETERMINING WHETHER A RECORD IS EXEMPT <—
23 FROM ACCESS UNDER THIS SECTION, AN AGENCY SHALL CONSIDER AND
24 APPLY EACH EXEMPTION SEPARATELY.

25 CHAPTER 9

26 AGENCY RESPONSE

27 Section 901. General rule.

28 Upon receipt of a written request for access to a record, an
29 agency shall make a good faith effort to determine if the record
30 requested is a public record, legislative record or financial

1 record and whether the agency has possession, custody or control
2 of the identified record, and to respond as promptly as possible
3 under the circumstances existing at the time of the request. All
4 applicable fees shall be paid in order to receive access to the
5 record requested. The time for response shall not exceed five
6 business days from the date the written request is received by
7 the open-records officer for an agency. If the agency fails to
8 send the response within five business days of receipt of the
9 written request for access, the written request for access shall
10 be deemed denied.

11 Section 902. Extension of time.

12 (a) Determination.--Upon receipt of a written request for
13 access, the open-records officer for an agency shall determine
14 if one of the following applies:

15 (1) the request for access requires redaction of a
16 record in accordance with section 706;

17 (2) the request for access requires the retrieval of a
18 record stored in a remote location;

19 (3) a timely response to the request for access cannot
20 be accomplished due to bona fide and specified staffing
21 limitations;

22 (4) a legal review is necessary to determine whether the
23 record is a record subject to access under this act;

24 (5) the requester has not complied with the agency's
25 policies regarding access to records;

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

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

30 (b) Notice.--

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

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

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

20 Section 903. Denial.

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

24 (1) A description of the record requested.

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

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

30 (4) Date of the response.

1 agency, the Office of Open Records shall assign an appeals
2 officer to review the denial.

3 (b) Determination.--

4 (1) Unless the requester agrees otherwise, the appeals
5 officer shall make a final determination which shall be
6 mailed to the requester and the agency within 30 days of
7 receipt of the appeal filed under subsection (a).

8 (2) If the appeals officer fails to issue a final
9 determination within 30 days, the appeal is deemed denied.

10 (3) Prior to issuing a final determination, a hearing
11 may be conducted. The determination by the appeals officer
12 shall be a final order. The appeals officer shall provide a
13 written explanation of the reason for the decision to the
14 requester and the agency.

15 (c) Direct interest.--

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

24 (2) The appeals officer may grant a request under
25 paragraph (1) if:

26 (i) no hearing has been held;

27 (ii) the appeals officer has not yet issued its
28 order; and

29 (iii) the appeals officer believes the information
30 will be probative.

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

Section 1102. Appeals officers.

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

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

(2) Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.

(3) Consult with agency counsel as appropriate.

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

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

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

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

1 procedures to the contrary under this subsection.

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

6 CHAPTER 13

7 JUDICIAL REVIEW

8 Section 1301. Commonwealth agencies, legislative agencies and
9 judicial agencies.

10 (a) General rule.--Within 30 days of the mailing date of the
11 final determination of the appeals officer relating to a
12 decision of a Commonwealth agency, a legislative agency or a
13 judicial agency issued under section 1101(b) or the date a
14 request for access is deemed denied, a requester or the agency
15 may file a petition for review or other document as might be
16 required by rule of court with the Commonwealth Court. The
17 decision of the court shall contain findings of fact and
18 conclusions of law based upon the evidence as a whole. The
19 decision shall clearly and concisely explain the rationale for
20 the decision.

21 (b) Stay.--A petition for review under this section shall
22 stay the release of documents until a decision under subsection
23 (a) is issued.

24 Section 1302. Local agencies.

25 (a) General rule.--Within 30 days of the mailing date of the
26 final determination of the appeals officer relating to a
27 decision of a local agency issued under section 1101(b) or of
28 the date a request for access is deemed denied, a requester or
29 local agency may file a petition for review or other document as
30 required by rule of court with the court of common pleas for the

1 county where the local agency is located. The decision of the
2 court shall contain findings of fact and conclusions of law
3 based upon the evidence as a whole. The decision shall clearly
4 and concisely explain the rationale for the decision.

5 (b) Stay.--A petition for review under this section shall
6 stay the release of documents until a decision under subsection
7 (a) is issued.

8 Section 1303. Notice and records.

9 (a) Notice.--An agency, the requester and the Office of Open
10 Records or designated appeals officer shall be served notice of
11 actions commenced in accordance with section 1301 or 1302 and
12 shall have an opportunity to respond in accordance with
13 applicable court rules.

14 (b) Record on appeal.--The record before a court shall
15 consist of the request, the agency's response, the appeal filed
16 under section 1101, the hearing transcript, if any, and the
17 final written determination of the appeals officer.

18 Section 1304. Court costs and attorney fees.

19 (a) Reversal of agency determination.--If a court reverses
20 the final determination of the appeals officer or grants access
21 to a record after a request for access was deemed denied, the
22 court may award reasonable attorney fees and costs of litigation
23 or an appropriate portion thereof to a requester if the court
24 finds either of the following:

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

29 (2) the exemptions, exclusions or defenses asserted by
30 the agency in its final determination were not based on a

1 reasonable interpretation of law.

2 (b) Sanctions for frivolous requests or appeals.--The court
3 may award reasonable attorney fees and costs of litigation or an
4 appropriate portion thereof to an agency or the requester if the
5 court finds that the legal challenge under this chapter was
6 frivolous.

7 (c) Other sanctions.--Nothing in this act shall prohibit a
8 court from imposing penalties and costs in accordance with
9 applicable rules of court.

10 Section 1305. Civil penalty.

11 (a) Denial of access.--A court may impose a civil penalty of
12 not more than \$1,500 if an agency denied access to a public
13 record in bad faith.

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

18 Section 1306. Immunity.

19 (a) General rule.--Except as provided in sections 1304 and
20 1305 and other statutes governing the release of records, no
21 agency, public official or public employee shall be liable for
22 civil penalties resulting from compliance or failure to comply
23 with this act.

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

28 Section 1307. Fee limitations.

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

1 (b) Duplication.--

2 (1) Fees for duplication by photocopying, printing from
3 electronic media or microfilm, copying onto electronic media,
4 transmission by facsimile or other electronic means and other
5 means of duplication shall be established:

6 (i) by the Office of Open Records, for Commonwealth
7 agencies and local agencies;

8 (ii) by each judicial agency; and

9 (iii) by each legislative agency.

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

13 (3) Fees for local agencies may reflect regional price
14 differences.

15 (4) The following apply to complex and extensive data
16 sets, including geographic information systems or integrated
17 property assessment lists.

18 (i) Fees for copying may be based on the reasonable
19 market value of the same or closely related data sets.

20 (ii) Subparagraph (i) shall not apply to:

21 (A) a request by an individual employed by OR <—
22 CONNECTED WITH a newspaper or magazine of general
23 circulation, weekly newspaper PUBLICATION, press <—
24 association or radio or television station, for the
25 purpose of obtaining information for publication or
26 broadcast; or

27 (B) a request by a nonprofit organization for
28 the conduct of educational research.

29 (iii) Information obtained under subparagraph (ii)
30 shall be subject to paragraphs (1), (2) and (3).

1 ~~(iv) Information obtained under this paragraph shall~~ <—
2 ~~not be sold or otherwise provided to another person for~~
3 ~~commercial purposes.~~

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

8 (d) Conversion to paper.--If a record is only maintained
9 electronically or in other nonpaper media, duplication fees
10 shall be limited to the lesser of the fee for duplication on
11 paper or the fee for duplication in the original media as
12 provided by subsection (b) unless the requester specifically
13 requests for the record to be duplicated in the more expensive
14 medium.

15 (e) Enhanced electronic access.--If an agency offers
16 enhanced electronic access to records in addition to making the
17 records accessible for inspection and duplication by a requester
18 as required by this act, the agency may establish user fees
19 specifically for the provision of the enhanced electronic
20 access, but only to the extent that the enhanced electronic
21 access is in addition to making the records accessible for
22 inspection and duplication by a requester as required by this
23 act. The user fees for enhanced electronic access may be a flat
24 rate, a subscription fee for a period of time, a per-transaction
25 fee, a fee based on the cumulative time of system access or any
26 other reasonable method and any combination thereof. The user
27 fees for enhanced electronic access must be reasonable, must be
28 approved by the Office of Open Records and may not be
29 established with the intent or effect of excluding persons from
30 access to records or duplicates thereof or of creating profit

1 for the agency.

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

4 (1) the requester duplicates the record; or

5 (2) the agency deems it is in the public interest to do
6 so.

7 (g) Limitations.--Except as otherwise provided by statute,
8 no other fees may be imposed unless the agency necessarily
9 incurs costs for complying with the request, and such fees must
10 be reasonable. No fee may be imposed for an agency's review of a
11 record to determine whether the record is a public record,
12 legislative record or financial record subject to access in
13 accordance with this act.

14 (h) Prepayment.--Prior to granting a request for access in
15 accordance with this act, an agency may require a requester to
16 prepay an estimate of the fees authorized under this section if
17 the fees required to fulfill the request are expected to exceed
18 \$100.

19 Section 1308. Prohibition.

20 A policy or regulation adopted under this act may not include
21 any of the following:

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

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

26 Section 1309. Practice and procedure.

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

30 Section 1310. Office of Open Records.

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

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

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

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

10 (4) Provide annual, regional training courses to local
11 agencies, public officials and public employees.

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

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

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

26 (iii) Comply with the procedures under section
27 1102(b).

28 (6) Establish an informal mediation program to resolve
29 disputes under this act.

30 (7) Establish an Internet website with information

1 relating to this act, including information on fees, advisory
2 opinions and decisions and the name and address of all open
3 records officers in this Commonwealth.

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

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

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

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

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

29 (e) Duties.--The executive director shall ensure that the
30 duties of the Office of Open Records are carried out and shall

1 monitor cases appealed to the Office of Open Records.

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

5 CHAPTER 15

6 STATE-RELATED INSTITUTIONS

7 Section 1501. Definition.

8 As used in this chapter, "State-related institution" means
9 any of the following:

- 10 (1) Temple University.
- 11 (2) The University of Pittsburgh.
- 12 (3) The Pennsylvania State University.
- 13 (4) Lincoln University.

14 Section 1502. Reporting.

15 No later than May 30 of each year, a State-related
16 institution shall file with the Governor's Office, the General
17 Assembly, the Auditor General and the State Library the
18 information set forth in section 1503.

19 Section 1503. Contents of report.

20 The report required under section 1502 shall include the
21 following:

22 (1) Except as provided in paragraph (4), all information
23 required by Form 990 or an equivalent form, of the United
24 States Department of the Treasury, Internal Revenue Service,
25 entitled the Return of Organization Exempt From Income Tax,
26 regardless of whether the State-related institution is
27 required to file the form by the Federal Government.

28 (2) The salaries of all officers and directors of the
29 State-related institution.

30 (3) The highest 25 salaries paid to employees of the

1 institution that are not included under paragraph (2).

2 (4) The report shall not include information relating to
3 individual donors.

4 Section 1504. Copies and posting.

5 A State-related institution shall maintain, for at least
6 seven years, a copy of the report in the institution's library
7 and shall provide free access to the report on the institution's
8 Internet website.

9 CHAPTER 17

10 STATE CONTRACT INFORMATION

11 Section 1701. Submission and retention of contracts.

12 (a) General rule.--Whenever any Commonwealth agency,
13 legislative agency or judicial agency shall enter into any
14 contract involving any property, real, personal or mixed of any
15 kind or description or any contract for personal services where
16 the consideration involved in the contract is \$5,000 or more, a
17 copy of the contract shall be filed with the Treasury Department
18 within ten days after the contract is fully executed on behalf
19 of the Commonwealth agency, legislative agency or judicial
20 agency or otherwise becomes an obligation of the Commonwealth
21 agency, legislative agency or judicial agency. The provisions of
22 this chapter shall not apply to contracts for services protected
23 by a privilege. The provisions of this chapter shall not apply
24 to a purchase order evidencing fulfillment of an existing
25 ~~obligation~~ CONTRACT but shall apply to a purchase order <—
26 evidencing new obligations. The following shall apply:

27 (1) Each Commonwealth agency, legislative agency and
28 judicial agency shall submit contracts in a form and
29 structure mutually agreed upon by the Commonwealth agency,
30 legislative agency or judicial agency and the State

1 Treasurer.

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

6 (i) Date of execution.

7 (ii) Amount of the contract.

8 (iii) Beginning date of the contract.

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

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

11 (vi) The name of all parties executing the contract.

12 (vii) Subject matter of the contract.

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

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

20 (c) Accuracy.--Each Commonwealth agency, legislative agency
21 and judicial agency is responsible for verifying the accuracy
22 and completeness of the information that it submits to the State
23 Treasurer. The contract provided to the Treasury Department
24 pursuant to this chapter shall be redacted in accordance with
25 applicable provisions of this act by the agency filing the
26 contract to the Treasury Department.

27 (d) Applicability.--The provisions of this act shall not
28 apply to copies of contracts submitted to the Treasury
29 Department, the Office of Auditor General or other agency for
30 purposes of audits and warrants for disbursements under section

1 307, 401, 402 or 403 of the act of April 9, 1929 (P.L.343,
2 No.176), known as The Fiscal Code.

3 Section 1702. Public availability of contracts.

4 (a) General rule.--The Treasury Department shall make each
5 contract filed pursuant to section 1701 available for public
6 inspection either by posting a copy of the contract on the
7 Treasury Department's publicly accessible Internet website or by
8 posting a contract summary on the department's publicly
9 accessible Internet website.

10 (b) Posting.--The Treasury Department shall post the
11 information received pursuant to this chapter in a manner that
12 allows the public to search contracts or contract summaries by
13 the categories enumerated in section 1701(a)(2).

14 (c) Request to review or receive copy of contract.--The
15 Treasury Department shall maintain a page on its publicly
16 accessible Internet website that includes instructions on how to
17 review a contract on the Internet website.

18 (d) Paper copy.--A paper copy of a contract may be requested
19 from the agency that executed the contract in accordance with
20 this act.

21 CHAPTER 31

22 MISCELLANEOUS PROVISIONS

23 Section 3101. Applicability.

24 ~~This act applies as follows:~~ <—

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

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

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

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

2 ~~If the provisions of this act regarding access to public~~
3 ~~records conflict with any Federal or State law, judicial order~~
4 ~~or decree, the provisions of this act shall not apply.~~

5 THIS ACT SHALL APPLY TO REQUESTS FOR INFORMATION MADE AFTER
6 DECEMBER 31, 2008. <—

7 SECTION 3101.1. RELATION TO OTHER LAWS.

8 IF THE PROVISIONS OF THIS ACT REGARDING ACCESS TO RECORDS
9 CONFLICT WITH ANY OTHER FEDERAL OR STATE LAW, THE PROVISIONS OF
10 THIS ACT SHALL NOT APPLY.

11 Section 3101.2. Severability.

12 All provisions of this act are severable.

13 Section 3102. Repeals.

14 Repeals are as follows:

15 (1) The General Assembly declares as follows:

16 (i) The repeal under paragraph (2)(i) is necessary
17 to effectuate Chapter 17.

18 (ii) The repeals under paragraph (2)(ii) and (iii)
19 are necessary to effectuate this act.

20 (2) The following acts and parts of acts are repealed:

21 (i) Section 1104 of the act of April 9, 1929
22 (P.L.177, No.175), known as The Administrative Code of
23 1929.

24 (ii) The act of June 21, 1957 (P.L.390, No.212),
25 referred to as the Right-to-Know Law.

26 (iii) 62 Pa.C.S. § 106.

27 Section 3103. References.

28 ~~A reference in a statute, regulation or judicial order or~~ <—
29 ~~decree~~ NOTWITHSTANDING 1 PA.C.S. § 1937(B), A REFERENCE IN A <—
30 STATUTE OR REGULATION to the act of June 21, 1957 (P.L.390,

1 No.212), referred to as the Right-to-Know Law, shall be deemed a
2 reference to this 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 (2) CHAPTERS 15 AND 17 AND SECTIONS 3102(1)(I) AND <—
11 3102(2)(I) SHALL TAKE EFFECT JULY 1, 2008.

12 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JANUARY
13 1, 2009.