

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
2007

INTRODUCED BY PILEGGI, SCARNATI, MELLOW, ORIE, KASUNIC, MUSTO,
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C. WILLIAMS, BRUBAKER, BROWNE AND REGOLA, MARCH 29, 2007

REFERRED TO STATE GOVERNMENT, MARCH 29, 2007

AN ACT

1 Amending the act of June 21, 1957 (P.L.390, No.212), entitled
2 "An act requiring certain records of the Commonwealth and its
3 political subdivisions and of certain authorities and other
4 agencies performing essential governmental functions, to be
5 open for examination and inspection by citizens of the
6 Commonwealth of Pennsylvania; authorizing such citizens under
7 certain conditions to make extracts, copies, photographs or
8 photostats of such records; and providing for appeals to the
9 courts of common pleas," further providing for public records
10 of judicial agencies, legislative agencies and state-related
11 universities; establishing an open records officer in each
12 agency; establishing exceptions officers to hear appeals;
13 establishing the Open Records Clearinghouse; and making
14 editorial changes.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The act of June 21, 1957 (P.L.390, No.212),
18 referred to as the Right-to-Know Law, is amended by adding a
19 chapter heading and a section to read:

20 CHAPTER 1

21 PRELIMINARY PROVISIONS

22 Section 101. Short title.

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

3 Section 2. Section 1 of the act, amended June 29, 2002
4 (P.L.663, No.100), is renumbered and amended to read:

5 Section [1] 102. Definitions.

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

9 "Agency." [Any office, department, board or commission of
10 the executive branch of the Commonwealth, any political
11 subdivision of the Commonwealth, the Pennsylvania Turnpike
12 Commission, the State System of Higher Education or any State or
13 municipal authority or similar organization created by or
14 pursuant to a statute which declares in substance that such
15 organization performs or has for its purpose the performance of
16 an essential governmental function.] A Commonwealth agency, a
17 local agency, a judicial agency and a legislative agency.

18 "Clearinghouse." The Open Records Clearinghouse established
19 pursuant to the provisions of section 1309.

20 "Commonwealth agency." [An agency which is a Commonwealth
21 agency as that term is defined under 62 Pa.C.S. § 103 (relating
22 to definitions).]

23 (1) Any office, department, authority or commission of
24 the executive branch; an independent agency; and a State-
25 affiliated entity. The term includes:

26 (i) The Governor's Office.

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

29 (iii) A statutorily established organization which
30 performs or is intended to perform an essential

1 governmental function.

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

4 "Exceptions officer." As follows:

5 (1) For a Commonwealth agency or a local agency, the
6 hearing officer designated under section 504(b).

7 (2) For a judicial agency, the individual designated
8 under section 504(c).

9 (3) For a legislative agency, the individual designated
10 under section 504(d).

11 "Financial record." Any account, voucher or contract dealing
12 with:

13 (1) the receipt or disbursement of funds by an agency;

14 or

15 (2) an agency's acquisition, use or disposal of
16 services, supplies, materials, equipment or property.

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

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

23 "Legislative agency." Any of the following:

24 (1) The Senate.

25 (2) The House of Representatives.

26 (3) The Capitol Preservation Committee.

27 (4) The Center for Rural Pennsylvania.

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

30 (6) The Joint State Government Commission.

1 (7) The Legislative Budget and Finance Committee.

2 (8) The Legislative Data Processing Committee.

3 (9) The Independent Regulatory Review Commission.

4 (10) The Legislative Reference Bureau.

5 (11) The Local Government Commission.

6 (12) The Pennsylvania Commission on Sentencing.

7 "[Non-Commonwealth] Local agency." [An agency which is not a
8 Commonwealth agency.] Any of the following:

9 (1) Any political subdivision, intermediate unit or
10 public, trade or vocational school.

11 (2) Any local, intergovernmental, regional or municipal
12 agency, authority, council, board or commission.

13 The term does not include a tax collector under the act of
14 December 31, 1965 (P.L.1257, No.511), known as The Local Tax
15 Enabling Act.

16 "Public record." As follows:

17 (1) Any [account, voucher or contract dealing with the
18 receipt or disbursement of funds by an agency or its
19 acquisition, use or disposal of services or of supplies,
20 materials, equipment or other property and any] minute, order
21 or decision by an agency fixing the personal or property
22 rights, privileges, immunities, duties or obligations of any
23 person or group of persons[: Provided, That the].

24 (2) The term ["public records" shall not mean any]
25 includes:

26 (i) A financial record.

27 (ii) The record of a conviction for a criminal act.

28 (3) The term does not include:

29 (i) Any report, communication or other paper, the
30 publication of which would disclose the institution,

1 progress or result of an investigation undertaken by an
2 agency in the performance of its official duties[,
3 except]. The exception under this subparagraph does not
4 apply to those reports filed by agencies pertaining to
5 safety and health in industrial plants[; it shall not
6 include any].

7 (ii) Any record, document, material, exhibit,
8 pleading, report, memorandum or other paper[,];

9 (A) access to or the publication of which is
10 prohibited, restricted or forbidden by statute law or
11 order, rule or decree of court[, or];

12 (B) which would operate to the prejudice or
13 impairment of a person's reputation or personal
14 security[, or]; or

15 (C) which would result in the loss by an agency,
16 the Commonwealth or any of its political subdivisions
17 or commissions or State or municipal authorities of
18 Federal funds[, excepting therefrom however the
19 record of any conviction for any criminal act].

20 "Record." Any document maintained by an agency, in any form,
21 whether public or not.

22 "Requester." A person [who is a resident of the Commonwealth
23 and] that requests a record pursuant to this act. The term
24 includes a political subdivision.

25 "Response." Access to a record or an agency's written notice
26 granting, denying or partially granting and partially denying
27 access to a record. access to a record.

28 "State-affiliated entity." A Commonwealth authority or
29 Commonwealth entity. The term includes the Pennsylvania Higher
30 Education Assistance Agency, the Pennsylvania Housing Finance

Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a State-related institution, a community college and the Pennsylvania Turnpike Commission.

"State-related institution." Any of the following:

(1) The Pennsylvania State University.

(2) The University of Pittsburgh.

(3) Lincoln University.

(4) Temple University.

Section 3. The act is amended by adding chapters to read:

CHAPTER 3

REQUIREMENTS AND PROHIBITIONS

Section 301. Commonwealth agencies.

(a) Requirement.--A Commonwealth agency shall provide public records under Chapters 5 and 7.

(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.

Section 302. Local agencies.

(a) Requirement.--A local agency shall provide public records under Chapters 5 and 7.

(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.

Section 303. Legislative agencies.

(a) Requirement.--A legislative agency shall provide financial records under Chapters 5 and 7.

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

Section 304. Judicial agencies.

1 (a) Requirement.--A judicial agency shall provide financial
2 records under Chapters 5 and 7.

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

6 CHAPTER 5

7 ACCESS

8 Section 501. Scope.

9 This chapter applies to all agencies.

10 Section 502. Open-records office.

11 An agency shall do all of the following:

12 (1) Establish at least one open-records office.

13 (2) Staff and equip the office in a manner which assures
14 prompt and efficient response to requests under this act.

15 Each office shall be capable of receiving facsimile and e-
16 mail transmissions.

17 Section 503. Open-records officer.

18 (a) Establishment.--

19 (1) Except as set forth in paragraph (2), all of the
20 following apply:

21 (i) An agency shall designate an official or
22 employee to act as the open-records officer.

23 (ii) The official address of the open-records
24 officer shall be the same as the open-records office
25 established under section 502.

26 (2) For a legislative agency other than the Senate or
27 the House of Representatives, the open-records officer
28 designated by the Legislative Reference Bureau shall serve as
29 the open-records officer.

30 (b) Functions.--

1 (1) The open-records officer shall receive requests
2 submitted to the agency, direct requests to other appropriate
3 persons, track the agency's progress in responding to
4 requests and issue interim and final responses under this
5 act.

6 (2) Upon receiving a request for a public record, the
7 open-records officer shall do all of the following:

8 (i) Date stamp of a request or put a contemporaneous
9 dated memo in the file if the request is verbal.

10 (ii) Compute the day on which the five-day period
11 under section 901 will expire and make a notation of that
12 date on the request.

13 (iii) Create an electronic or paper copy of the
14 request, including all documents submitted with the
15 request.

16 (iv) Create a file for the retention of the original
17 request, a copy of the response, a record of verbal or
18 written communications with the requester and a copy of
19 other communications.

20 Section 504. Exceptions officer.

21 (a) Requirement.--An agency shall designate an exceptions
22 officer to review requests which are denied or deemed denied by
23 the agency.

24 (b) Commonwealth agencies and local agencies.--A hearing
25 officer designated by the clearinghouse under section 1309(4)
26 shall serve as the designated exceptions officer for all:

27 (1) Commonwealth agencies; and

28 (2) local agencies.

29 (c) Judicial agencies.--A judicial agency shall designate an
30 exceptions officer.

1 (d) Legislative agencies.--

2 (1) Except as set forth in paragraph (2), the
3 Legislative Reference Bureau shall designate an exceptions
4 officer to serve for all legislative agencies.

5 (2) Each of the following shall designate an exceptions
6 officer:

7 (i) The Senate.

8 (ii) The House of Representatives.

9 Section 505. Regulations and policies.

10 (a) Authority.--An agency may promulgate regulations, rules
11 or policies necessary to implement this act.

12 (b) Posting.--The following information shall be posted at
13 the open-records office and on the agency's Internet website:

14 (1) Contact information for the open-records officer.

15 (2) Contact information for the applicable exceptions
16 officer.

17 (3) Rules, regulations, policies and procedures of the
18 agency relating to this act.

19 Section 506. Uniform form.

20 (a) Commonwealth agencies.--The clearinghouse shall develop
21 a uniform form which may be used by all Commonwealth and local
22 agencies to file a request under this act. The form shall be
23 published in the Pennsylvania Bulletin and on the
24 clearinghouse's Internet website.

25 (b) Judicial agencies.--A judicial agency may develop a form
26 to request financial records or may use a form developed by the
27 Administrative Office of Pennsylvania Courts or the
28 clearinghouse.

29 (c) Legislative agencies.--A legislative agency may develop
30 a form to request financial records or may use the form

1 developed by the clearinghouse.

2 Section 4. The act is amended by adding a chapter heading to
3 read:

4 CHAPTER 7

5 PROCEDURE

6 Section 5. Section 2 of the act, amended June 29, 2002
7 (P.L.663, No.100), is renumbered and amended to read:

8 [Section 2. Procedure for access to public records.

9 (a) General rule.--]

10 Section 701. Access to public records.

11 Unless otherwise provided by law, a public record shall be
12 accessible for inspection and duplication by a requester in
13 accordance with this act. A public record shall be provided to a
14 requester in the medium requested if the public record exists in
15 that medium; otherwise, it shall be provided in the medium in
16 which it exists. Public records shall be available for access
17 during the regular business hours of an agency. Nothing in this
18 act shall provide for access to a record which is not a public
19 record.

20 [(b) Requests.--]

21 Section 702. Requests.

22 Agencies may fulfill verbal requests for access to public
23 records and anonymous requests for access to public records. In
24 the event that the requester wishes to pursue the relief and
25 remedies provided for in this act, the requester must initiate
26 such relief with a written request.

27 [(c) Written requests.--]

28 Section 703. Written requests.

29 A written request for access to public records may be
30 submitted in person, by mail, by e-mail, by facsimile or, to the

1 extent provided by agency rules, any other electronic means. A
2 written request shall be addressed to the agency head or [other
3 person designated in the rules established by the agency] open-
4 records officer designated in section 503. A written request
5 should identify or describe the records sought with sufficient
6 specificity to enable the agency to ascertain which records are
7 being requested and shall include the name and address to which
8 the agency should address its response. A written request need
9 not include any explanation of the requester's reason for
10 requesting or intended use of the records.

11 [(d) Electronic access.--]

12 Section 704. Electronic access.

13 In addition to the requirements of [subsection (a)] section
14 701, an agency may make its public records available through any
15 publicly accessible electronic means. If access to a public
16 record is routinely available by an agency only by electronic
17 means, the agency shall provide access to inspect the public
18 record at an office of the agency.

19 [(e) Creation of a public record.--]

20 Section 705. Creation of public record.

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

26 [(f) Conversion of an electronic record to paper.--]

27 Section 706. Conversion of electronic record to paper.

28 If a public record is only maintained electronically or in
29 other nonpaper media, an agency shall, upon request, duplicate
30 the public record on paper when responding to a request for

1 access in accordance with this act.

2 [(g) Retention of records.--]

3 Section 707. Retention of records.

4 Nothing in this act is intended to modify, rescind or
5 supersede any record retention and disposition schedule
6 established pursuant to law.

7 Section 6. Section 3.1 of the act, added June 29, 2002
8 (P.L.663, No.100), is repealed:

9 [Section 3.1. Access to public records.

10 An agency may not deny a requester access to a public record
11 due to the intended use of the public record by the requester.]

12 Section 7. Section 3.2 of the act, added June 29, 2002
13 (P.L.663, No.100), is renumbered and amended to read:

14 Section [3.2] 708. Redaction.

15 If an agency determines that a public record contains
16 information which is subject to access as well as information
17 which is not subject to access, the agency's response shall
18 grant access to the information which is subject to access and
19 deny access to the information which is not subject to access.
20 If the information which is not subject to access is an integral
21 part of the public record and cannot be separated, the agency
22 shall redact from the public record the information which is not
23 subject to access, and the response shall grant access to the
24 information which is subject to access. The agency may not deny
25 access to the public record if the information which is not
26 subject to access is able to be redacted. Information which an
27 agency redacts in accordance with this subsection shall be
28 deemed a denial under [section 3.3] Chapter 9.

29 Section 8. The act is amended by adding a chapter heading to
30 read:

1 CHAPTER 9

2 AGENCY RESPONSE

3 Section 9. Section 3.3 of the act, added June 29, 2002
4 (P.L.663, No.100), is renumbered and amended to read:

5 [Section 3.3. Commonwealth agency's response to written
6 requests for access.

7 (a) General rule.--]

8 Section 901. General rule.

9 Upon receipt of a written request for access to a record, [a
10 Commonwealth] an agency shall make a good faith effort to
11 determine if the record requested is a public record and to
12 respond as promptly as possible under the circumstances existing
13 at the time of the request but shall not exceed [ten] five
14 business days from the date the written request is received by
15 the [Commonwealth] agency head or [other person designated by
16 the Commonwealth agency for receiving such requests] open-
17 records officer for an agency. If the [Commonwealth] agency
18 fails to send the response within [ten] five business days of
19 receipt of the written request for access, the written request
20 for access shall be deemed denied.

21 [(b) Exception.--]

22 Section 902. Exception.

23 (a) Determination.--Upon receipt of a written request for
24 access, [if a Commonwealth agency determines that] the open-
25 records officer for an agency shall determine if one of the
26 following applies:

27 (1) the request for access requires redaction of a
28 public record in accordance with section [3.2] 708;

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

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

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

6 (5) the requester has not complied with the Commonwealth
7 agency's policies regarding access to public records; or

8 (6) the requester refuses to pay applicable fees
9 authorized by [section 7 of] this act_[, the Commonwealth
10 agency]

11 (b) Notice.--Upon a determination that one of the factors
12 listed in subsection (a) applies, the open-records officer shall
13 send written notice to the requester within [ten] five business
14 days of [the Commonwealth agency's] receipt of the request for
15 access under subsection (a). The notice shall include a
16 statement notifying the requester that the request for access is
17 being reviewed, the reason for the review and a reasonable date
18 that a response is expected to be provided. If the date that a
19 response is expected to be provided is in excess of 30 days,
20 following the [ten] five business days allowed for in
21 [subsection (a)] section 901, the request for access shall be
22 deemed denied.

23 (c) [Denial.--] Certified copies.--If an agency's response
24 grants a request for access, the agency shall, upon request,
25 provide the requester with a certified copy of the public record
26 if the requester pays the applicable fees pursuant to section
27 1306.

28 Section 903. Denial.

29 If [a Commonwealth] an agency's response is a denial of a
30 written request for access, whether in whole or in part, a

1 written response shall be issued and include:

2 (1) A description of the record requested.

3 (2) The specific reasons for the denial, including a
4 citation of supporting legal authority. If the denial is the
5 result of a determination that the record requested is not a
6 public record, the specific reasons for the agency's
7 determination that the record is not a public record shall be
8 included.

9 (3) The typed or printed name, title, business address,
10 business telephone number and signature of the [public
11 official or public employee] open-records officer on whose
12 authority the denial is issued.

13 (4) Date of the response.

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

16 [(d) Certified copies.--If a Commonwealth agency's response
17 grants a request for access, the Commonwealth agency shall, upon
18 request, provide the requester with a certified copy of the
19 public record if the requester pays the applicable fees pursuant
20 to section 7.]

21 Section 10. Section 3.4 of the act, added June 29, 2002
22 (P.L.663, No.100), is repealed:

23 [Section 3.4. Non-Commonwealth agency's response to written
24 requests for access.

25 (a) General rule.--Upon receipt of a written request for
26 access to a record, a non-Commonwealth agency shall make a good
27 faith effort to determine if the record requested is a public
28 record and to respond as promptly as possible under the
29 circumstances existing at the time of the request but shall not
30 exceed five business days from the date the written request is

1 received by the non-Commonwealth agency head or other person
2 designated in the rules established by the non-Commonwealth
3 agency for receiving such requests. If the non-Commonwealth
4 agency fails to send the response within five business days of
5 receipt of the written request for access, the written request
6 for access shall be deemed denied.

7 (b) Exception.--Upon receipt of a written request for
8 access, if a non-Commonwealth agency determines that one of the
9 following applies:

10 (1) the request for access requires redaction of a
11 public record in accordance with section 3.2;

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

14 (3) a timely response to the request for access cannot
15 be accompanied due to bona fide and specified staffing
16 limitations;

17 (4) a legal review is necessary to determine whether the
18 record is a public record subject to access under this act;

19 (5) the requester has not complied with the non-
20 Commonwealth agency's policies regarding access to public
21 records; or

22 (6) the requester refuses to pay applicable fees
23 authorized by section 7,

24 the non-Commonwealth agency shall send written notice to the
25 requester within five business days of the non-Commonwealth
26 agency's receipt of the request notifying the requester that the
27 request for access is being reviewed, the reason for the review
28 and a reasonable date that a response is expected to be
29 provided. If the date that a response is expected to be provided
30 is in excess of 30 days, following the five business days

1 allowed in subsection (a), the request for access shall be
2 deemed denied.

3 (c) Denial.--If a non-Commonwealth agency's response is a
4 denial of a written request for access, whether in whole or in
5 part, a written response shall be issued and include:

6 (1) A description of the record requested.

7 (2) The specific reasons for the denial, including a
8 citation of supporting legal authority. If the denial is the
9 result of a determination that the record requested is not a
10 public record, the specific reasons for the agency's
11 determination that the record is not a public record shall be
12 included.

13 (3) The typed or printed name, title, business address,
14 business telephone number and signature of the public
15 official or public employee on whose authority the denial is
16 issued.

17 (4) Date of the response.

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

20 (d) Certified copies.--If a non-Commonwealth agency's
21 response grants a request for access, the non-Commonwealth
22 agency shall, upon request, provide the requester with a
23 certified copy of the public record if the requester pays the
24 applicable fees pursuant to section 7.]

25 Section 11. The act is amended by adding a chapter heading
26 to read:

27 CHAPTER 11

28 FINAL AGENCY DETERMINATION

29 Section 12. Section 3.5 of the act, added June 29, 2002
30 (P.L.663, No.100), is renumbered and amended to read:

1 [Section 3.5. Final agency determination.

2 (a) Filing of exceptions.--]

3 Section 1101. Filing of exceptions.

4 (a) Authorization.--If a written request for access is
5 denied or deemed denied, the requester may file exceptions with
6 the [head of] exceptions officer for the agency denying the
7 request for access within 15 business days of the mailing date
8 of the agency's response or within 15 days of a deemed denial.
9 The exceptions shall state grounds upon which the requester
10 asserts that the record is a public record and shall address any
11 grounds stated by the agency for delaying or denying the
12 request.

13 (b) Determination.--Unless the requester agrees otherwise,
14 the [agency head or his designee] exceptions officer shall make
15 a final determination regarding the exceptions within 30 days of
16 the mailing date of the exceptions. Prior to issuing the final
17 determination regarding the exceptions, [the agency head or his
18 designee may conduct] a hearing may be conducted. The
19 determination shall be the final order of the agency. If [the
20 agency head or his designee determines] the determination is
21 that the agency correctly denied the request for access, [the
22 agency head or his designee shall provide] a written explanation
23 shall be provided to the requester of the reason for the denial.

24 Section 13. The act is amended by adding sections to read:

25 Section 1102. Exceptions officers.

26 (a) Scope.--This section applies to all agencies.

27 (b) Duties.--The exceptions officer shall do all of the
28 following:

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

1 positions.

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

10 (3) Consult with agency counsel as necessary.

11 (4) Issue the agency's final determination.

12 (c) Procedures.--The clearinghouse, a judicial agency or a
13 legislative agency may adopt procedures to review exceptions
14 filed.

15 (1) If exceptions are resolved without a hearing, 1 Pa.
16 Code Pt. II (relating to general rules of administrative
17 practice and procedure) does not apply except to the extent
18 that the clearinghouse, legislative agency or judicial agency
19 has adopted these chapters in its regulations or rules.

20 (2) If a hearing is held, 1 Pa. Code Pt. II applies
21 unless the clearinghouse, the judicial agency or the
22 legislative agency has adopted regulations or rules to the
23 contrary.

24 (3) In the absence of a regulation or rule governing
25 exceptions procedures, the exceptions officer shall rule on
26 procedural matters on the basis of justice, fairness and the
27 expeditious resolution of the dispute.

28 Section 1103. Final determinations.

29 (a) Writing.--A final determination by an exceptions officer
30 must be in writing. If the exceptions officer determines that

1 the agency correctly denied the request, the written explanation
2 shall include the reason for the denial and may include exhibits
3 or references to material as the person deems appropriate. The
4 written determination shall be mailed to the requester by the
5 last day of the exceptions period.

6 (b) Record.--The official record for purposes of appeal
7 under Chapter 13 consists of all of the following:

8 (1) Testimony from the hearing under section 1102(b)(2).

9 (2) The written determination under subsection (a).

10 Section 14. The act is amended by adding a chapter heading
11 to read:

12 CHAPTER 13

13 APPEAL

14 Section 15. Section 4 of the act, amended June 29, 2002
15 (P.L.663, No.100), is renumbered and amended to read:
16 [Section 4. Judicial appeal.

17 (a) Commonwealth agency.--]

18 Section 1301. Commonwealth agencies, judicial agencies and
19 legislative agencies.

20 Within 30 days of the mailing date of a final determination
21 [of] relating to a Commonwealth agency, a judicial agency or a
22 legislative agency affirming the denial of access, a requester
23 may file a petition for review or other document as might be
24 required by rule of court with the Commonwealth Court.

25 [(b) Other agency.--]

26 Section 1302. Local agencies.

27 (a) Judicial determination.--Within 30 days of a denial by a
28 [non-Commonwealth] local agency under section [3.4(c)] 903 or of
29 the mailing date of a final determination of a [non-
30 Commonwealth] local agency affirming the denial of access, a

1 requester may file a petition for review or other document as
2 might be required by rule of court with the court of common
3 pleas for the county where the [non-Commonwealth] local agency's
4 office or facility is located or bring an action in the local
5 magisterial district. A requester is entitled to a reasoned
6 decision containing findings of fact and conclusions of law
7 based upon the evidence as a whole which clearly and concisely
8 states and explains the rationale for the decisions so that all
9 can determine why and how a particular result was reached.

10 (b) (Reserved).

11 (c) Notice.--An agency shall be served notice of actions
12 commenced in accordance with section 1301 or subsection (a) [or
13 (b)] and shall have an opportunity to respond in accordance with
14 applicable court rules.

15 (d) Record on appeal.--The record before a court shall
16 consist of the request, the agency's response, the requester's
17 exceptions, if applicable, the hearing transcript, if any, and
18 the agency's final determination, if applicable.

19 Section 16. Section 4.1 of the act, added June 29, 2002
20 (P.L.663, No.100), is renumbered to read:

21 Section [4.1] 1303. Court costs and attorney fees.

22 (a) Reversal of agency determination.--If a court reverses
23 an agency's final determination, the court may award reasonable
24 attorney fees and costs of litigation or an appropriate portion
25 thereof to a requester if the court finds either of the
26 following:

27 (1) the agency willfully or with wanton disregard
28 deprived the requester of access to a public record subject
29 to access under the provisions of this act; or

30 (2) the exemptions, exclusions or defenses asserted by

1 the agency in its final determination were not based on a
2 reasonable interpretation of law.

3 (b) Sanctions for frivolous requests or appeals.--If a court
4 affirms an agency's final determination, the court may award
5 reasonable attorney fees and costs of litigation or an
6 appropriate portion thereof to the agency if the court finds
7 that the legal challenge to the agency's final determination was
8 frivolous.

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

12 Section 17. Sections 5, 6, 7, 8 and 9 of the act, added June
13 29, 2002 (P.L.663, No.100), are renumbered and amended to read:
14 Section [5] 1304. Penalties.

15 (a) Summary offense.--An agency or public official who
16 violates this act with the intent and purpose of violating this
17 act commits a summary offense subject to prosecution by the
18 Attorney General or the appropriate district attorney and shall,
19 upon conviction for an initial offense, be sentenced to pay a
20 fine of not more than [\$300] \$1,000 plus costs of prosecution
21 and upon conviction for a subsequent offense, be sentenced to
22 pay a fine of not more than \$2,000 plus cost of prosecution.

23 (b) Civil penalty.--An agency or public official who does
24 not promptly comply with a court order under this act is subject
25 to a civil penalty of not more than [\$300] \$500 per day until
26 the public records are provided.

27 Section [6] 1305. Immunity.

28 (a) General rule.--Except as provided in sections [4.1 and
29 5] 1303 and 1304 and other statutes governing the release of
30 records, no agency, public official or public employee shall be

1 liable for civil or criminal damages or penalties resulting from
2 compliance or failure to comply 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 [7] 1306. 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 clearinghouse, for Commonwealth agencies
16 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 (c) Certification.--An agency may impose reasonable fees for
23 official certification of copies if the certification is at the
24 behest of the requester and for the purpose of legally verifying
25 the public record.

26 (d) Conversion to paper.--If a public record is only
27 maintained electronically or in other nonpaper media,
28 duplication fees shall be limited to the lesser of the fee for
29 duplication on paper or the fee for duplication in the native
30 media as provided by subsection (b) unless the requester

1 specifically requests for the public record to be duplicated in
2 the more expensive medium.

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

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

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

26 (g) Limitations.--Except as otherwise provided by statute,
27 no other fees may be imposed unless the agency necessarily
28 incurs costs for complying with the request, and such fees must
29 be reasonable. No fee may be imposed for an agency's review of a
30 record to determine whether the record is a public record

1 subject to access in accordance with this act.

2 (h) Prepayment.--Prior to granting a request for access in
3 accordance with this act, an agency may require a requester to
4 prepay an estimate of the fees authorized under this section if
5 the fees required to fulfill the request are expected to exceed
6 \$100.

7 Section [8 Implementation] 1307. Prohibition.

8 [(a) Requirement.--An agency shall establish written
9 policies and may promulgate regulations necessary to implement
10 this act.

11 (b) Content.--The written policies shall include the name of
12 the office to which requests for access shall be addressed and a
13 list of applicable fees.

14 (c) Prohibition.--]A policy, rule or regulation may not
15 include any of the following:

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

19 (2) A requirement to disclose the purpose or motive in
20 requesting access to records which are public records.

21 [(d) Posting.--The policies shall be conspicuously posted at
22 the agency and may be made available by electronic means.]

23 Section [9] 1308. Practice and procedure.

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

27 Section 18. The act is amended by adding a section to read:
28 Section 1309. Clearinghouse.

29 The Department of Community and Economic Development shall
30 establish an Open Records Clearinghouse within the department.

1 The clearinghouse shall do all of the following:

2 (1) Provide information relating to the implementation
3 and enforcement of this act.

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

5 (3) Provide annual training courses to Commonwealth
6 agencies and local agencies.

7 (4) Employ or contract with hearing examiners to serve
8 as exceptions officers for administrative appeals under this
9 act. Each hearing examiner must comply with all of the
10 following:

11 (i) Be a licensed attorney.

12 (ii) Complete a training course provided by the
13 clearinghouse prior to acting as an exceptions officer.

14 (iii) If a hearing is necessary, hold hearings
15 regionally as necessary to ensure access to the remedies
16 provided by this act.

17 (5) Establish an Internet website to include advisory
18 opinions and decisions.

19 Section 19. This act shall take effect in 60 days.