

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
2007

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C. WILLIAMS, BRUBAKER, BROWNE, REGOLA AND DINNIMAN,
MARCH 29, 2007

SENATOR PICCOLA, STATE GOVERNMENT, AS AMENDED, OCTOBER 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 PROVIDING FOR ACCESS TO PUBLIC INFORMATION, FOR A DESIGNATED <—
16 OPEN-RECORDS OFFICER IN EACH COMMONWEALTH AGENCY, LOCAL
17 AGENCY, JUDICIAL AGENCY AND LEGISLATIVE AGENCY, FOR
18 PROCEDURE, FOR APPEAL OF AGENCY DETERMINATION, FOR JUDICIAL
19 REVIEW AND FOR AN OPEN RECORDS CLEARINGHOUSE; IMPOSING
20 PENALTIES; PROVIDING FOR REPORTING BY STATE-RELATED
21 INSTITUTIONS; REQUIRING THE POSTING OF CERTAIN STATE CONTRACT
22 INFORMATION ON THE INTERNET; AND MAKING RELATED REPEALS.

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52 SECTION 3102. REPEALS.
53 SECTION 3103. EFFECTIVE DATE.

54 The General Assembly of the Commonwealth of Pennsylvania
55 hereby enacts as follows:

56 ~~Section 1.~~—The

←

1 ~~act of June 21, 1957 (P.L.390, No.212),~~
2 ~~referred to as the Right to Know Law,~~
3 ~~is amended by adding a chapter heading and a section to read:~~

4 CHAPTER 1

5 PRELIMINARY PROVISIONS

6 Section 101. Short title.

7 This act shall be known and may be cited as the Right to Know
8 Law.

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

11 ~~Section [1] 102. Definitions.~~

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

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

24 ~~"Clearinghouse." The Open Records Clearinghouse established~~
25 ~~pursuant to the provisions of section 1309.~~

26 ~~"Commonwealth agency." [An agency which is a Commonwealth~~
27 ~~agency as that term is defined under 62 Pa.C.S. § 103 (relating~~
28 ~~to definitions).]~~

29 ~~(1) Any office, department, authority or commission of~~
30 ~~the executive branch; an independent agency; and a State~~

~~affiliated entity. The term includes:~~

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

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

~~(iii) A statutorily established organization which performs or is intended to perform an essential governmental function.~~

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

~~"Exceptions officer." As follows:~~

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

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

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

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

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

~~or~~

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

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

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

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

~~(1) The Senate.~~

- ~~(2) The House of Representatives.~~
- ~~(3) The Capitol Preservation Committee.~~
- ~~(4) The Center for Rural Pennsylvania.~~
- ~~(5) The Joint Legislative Air and Water Pollution Control and Conservation Committee.~~
- ~~(6) The Joint State Government Commission.~~
- ~~(7) The Legislative Budget and Finance Committee.~~
- ~~(8) The Legislative Data Processing Committee.~~
- ~~(9) The Independent Regulatory Review Commission.~~
- ~~(10) The Legislative Reference Bureau.~~
- ~~(11) The Local Government Commission.~~
- ~~(12) The Pennsylvania Commission on Sentencing.~~

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

- ~~(1) Any political subdivision, intermediate unit or public, trade or vocational school.~~
- ~~(2) Any local, intergovernmental, regional or municipal agency, authority, council, board or commission.~~

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

~~"Public record." As follows:~~

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

- ~~(2) The term ["public records" shall not mean any]~~

1 includes:

2 ~~(i) A financial record.~~

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

4 ~~(3) The term does not include:~~

5 ~~(i) Any report, communication or other paper, the~~
6 ~~publication of which would disclose the institution,~~
7 ~~progress or result of an investigation undertaken by an~~
8 ~~agency in the performance of its official duties[,~~
9 ~~except]. The exception under this subparagraph does not~~
10 ~~apply to those reports filed by agencies pertaining to~~
11 ~~safety and health in industrial plants[; it shall not~~
12 ~~include any].~~

13 ~~(ii) Any record, document, material, exhibit,~~
14 ~~pleading, report, memorandum or other paper[,]:~~

15 ~~(A) access to or the publication of which is~~
16 ~~prohibited, restricted or forbidden by statute law or~~
17 ~~order, rule or decree of court[, or];~~

18 ~~(B) which would operate to the prejudice or~~
19 ~~impairment of a person's reputation or personal~~
20 ~~security[, or]; or~~

21 ~~(C) which would result in the loss by an agency,~~
22 ~~the Commonwealth or any of its political subdivisions~~
23 ~~or commissions or State or municipal authorities of~~
24 ~~Federal funds[, excepting therefrom however the~~
25 ~~record of any conviction for any criminal act].~~

26 ~~"Record." Any document maintained by an agency, in any form,~~
27 ~~whether public or not.~~

28 ~~"Requester." A person [who is a resident of the Commonwealth~~
29 ~~and] that requests a record pursuant to this act. The term~~
30 ~~includes a political subdivision.~~

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

~~"State-affiliated entity." A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher 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.~~

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

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

~~CHAPTER 5~~

~~ACCESS~~

~~Section 501. Scope.~~

~~This chapter applies to all agencies.~~

~~Section 502. Open records office.~~

~~An agency shall do all of the following:~~

~~(1) Establish at least one open records office.~~

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

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

~~Section 503. Open records officer.~~

~~(a) Establishment.~~

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

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

~~(ii) The official address of the open records officer shall be the same as the open records office~~

~~established under section 502.~~

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

~~(b) Functions.~~

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

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

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

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

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

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

~~Section 504. Exceptions officer.~~

~~(a) Requirement.—An agency shall designate an exceptions officer to review requests which are denied or deemed denied by the agency.~~

~~(b) Commonwealth agencies and local agencies.—A hearing~~

~~officer designated by the clearinghouse under section 1309(4)
shall serve as the designated exceptions officer for all:~~

~~(1) Commonwealth agencies; and~~

~~(2) local agencies.~~

~~(c) Judicial agencies. A judicial agency shall designate an
exceptions officer.~~

~~(d) Legislative agencies.~~

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

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

~~(i) The Senate.~~

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

~~Section 505. Regulations and policies.~~

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

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

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

~~(2) Contact information for the applicable exceptions
officer.~~

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

~~Section 506. Uniform form.~~

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

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

~~(c) Legislative agencies.--A legislative agency may develop a form to request financial records or may use the form developed by the clearinghouse.~~

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

~~CHAPTER 7~~

~~PROCEDURE~~

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

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

~~(a) General rule.--]~~

~~Section 701. Access to public records.~~

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

~~[(b) Requests.--]~~

~~Section 702. Requests.~~

~~Agencies may fulfill verbal requests for access to public records and anonymous requests for access to public records. In the event that the requester wishes to pursue the relief and~~

1 ~~remedies provided for in this act, the requester must initiate~~
2 ~~such relief with a written request.~~

3 ~~[(c) Written requests.--]~~

4 ~~Section 703. Written requests.~~

5 ~~A written request for access to public records may be~~
6 ~~submitted in person, by mail, by e-mail, by facsimile or, to the~~
7 ~~extent provided by agency rules, any other electronic means. A~~
8 ~~written request shall be addressed to the agency head or [other~~
9 ~~person designated in the rules established by the agency] open-~~
10 ~~records officer designated in section 503. A written request~~
11 ~~should identify or describe the records sought with sufficient~~
12 ~~specificity to enable the agency to ascertain which records are~~
13 ~~being requested and shall include the name and address to which~~
14 ~~the agency should address its response. A written request need~~
15 ~~not include any explanation of the requester's reason for~~
16 ~~requesting or intended use of the records.~~

17 ~~[(d) Electronic access.--]~~

18 ~~Section 704. Electronic access.~~

19 ~~In addition to the requirements of [subsection (a)] section~~
20 ~~701, an agency may make its public records available through any~~
21 ~~publicly accessible electronic means. If access to a public~~
22 ~~record is routinely available by an agency only by electronic~~
23 ~~means, the agency shall provide access to inspect the public~~
24 ~~record at an office of the agency.~~

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

26 ~~Section 705. Creation of public record.~~

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

1 ~~compile, maintain, format or organize the public record.~~

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

3 ~~Section 706. Conversion of electronic record to paper.~~

4 ~~If a public record is only maintained electronically or in~~
5 ~~other nonpaper media, an agency shall, upon request, duplicate~~
6 ~~the public record on paper when responding to a request for~~
7 ~~access in accordance with this act.~~

8 ~~[(g) Retention of records.---]~~

9 ~~Section 707. Retention of records.~~

10 ~~Nothing in this act is intended to modify, rescind or~~
11 ~~supersede any record retention and disposition schedule~~
12 ~~established pursuant to law.~~

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

15 ~~[Section 3.1. Access to public records.~~

16 ~~An agency may not deny a requester access to a public record~~
17 ~~due to the intended use of the public record by the requester.]~~

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

20 ~~Section [3.2] 708. Redaction.~~

21 ~~If an agency determines that a public record contains~~
22 ~~information which is subject to access as well as information~~
23 ~~which is not subject to access, the agency's response shall~~
24 ~~grant access to the information which is subject to access and~~
25 ~~deny access to the information which is not subject to access.~~
26 ~~If the information which is not subject to access is an integral~~
27 ~~part of the public record and cannot be separated, the agency~~
28 ~~shall redact from the public record the information which is not~~
29 ~~subject to access, and the response shall grant access to the~~
30 ~~information which is subject to access. The agency may not deny~~

1 ~~access to the public record if the information which is not~~
2 ~~subject to access is able to be redacted. Information which an~~
3 ~~agency redacts in accordance with this subsection shall be~~
4 ~~deemed a denial under [section 3.3] Chapter 9.~~

5 ~~Section 8. The act is amended by adding a chapter heading to~~
6 ~~read:~~

7 ~~CHAPTER 9~~

8 ~~AGENCY RESPONSE~~

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

11 ~~[Section 3.3. Commonwealth agency's response to written~~
12 ~~requests for access.~~

13 ~~(a) General rule.--]~~

14 ~~Section 901. General rule.~~

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

27 ~~[(b) Exception.--]~~

28 ~~Section 902. Exception.~~

29 ~~(a) Determination.--Upon receipt of a written request for~~
30 ~~access, [if a Commonwealth agency determines that] the open-~~

~~records officer for an agency shall determine if one of the following applies:~~

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

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

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

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

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

~~(6) the requester refuses to pay applicable fees authorized by [section 7 of] this act[, the Commonwealth agency]~~

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

~~(c) [Denial.] Certified copies. If an agency's response grants a request for access, the agency shall, upon request,~~

1 ~~provide the requester with a certified copy of the public record~~
2 ~~if the requester pays the applicable fees pursuant to section~~
3 ~~1306.~~

4 ~~Section 903. Denial.~~

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

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

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

15 ~~(3) The typed or printed name, title, business address,~~
16 ~~business telephone number and signature of the [public~~
17 ~~official or public employee] open records officer on whose~~
18 ~~authority the denial is issued.~~

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

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

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

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

29 ~~[Section 3.4. Non-Commonwealth agency's response to written~~
30 ~~requests for access.~~

1 ~~(a) General rule. Upon receipt of a written request for~~
2 ~~access to a record, a non-Commonwealth agency shall make a good~~
3 ~~faith effort to determine if the record requested is a public~~
4 ~~record and to respond as promptly as possible under the~~
5 ~~circumstances existing at the time of the request but shall not~~
6 ~~exceed five business days from the date the written request is~~
7 ~~received by the non-Commonwealth agency head or other person~~
8 ~~designated in the rules established by the non-Commonwealth~~
9 ~~agency for receiving such requests. If the non-Commonwealth~~
10 ~~agency fails to send the response within five business days of~~
11 ~~receipt of the written request for access, the written request~~
12 ~~for access shall be deemed denied.~~

13 ~~(b) Exception. Upon receipt of a written request for~~
14 ~~access, if a non-Commonwealth agency determines that one of the~~
15 ~~following applies:~~

16 ~~(1) the request for access requires redaction of a~~
17 ~~public record in accordance with section 3.2;~~

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

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

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

25 ~~(5) the requester has not complied with the non-~~
26 ~~Commonwealth agency's policies regarding access to public~~
27 ~~records; or~~

28 ~~(6) the requester refuses to pay applicable fees~~
29 ~~authorized by section 7,~~

30 ~~the non-Commonwealth agency shall send written notice to the~~

~~1 requester within five business days of the non-Commonwealth
2 agency's receipt of the request notifying the requester that the
3 request for access is being reviewed, the reason for the review
4 and a reasonable date that a response is expected to be
5 provided. If the date that a response is expected to be provided
6 is in excess of 30 days, following the five business days
7 allowed in subsection (a), the request for access shall be
8 deemed denied.~~

~~9 (c) Denial. If a non-Commonwealth agency's response is a
10 denial of a written request for access, whether in whole or in
11 part, a written response shall be issued and include:~~

~~12 (1) A description of the record requested.~~

~~13 (2) The specific reasons for the denial, including a
14 citation of supporting legal authority. If the denial is the
15 result of a determination that the record requested is not a
16 public record, the specific reasons for the agency's
17 determination that the record is not a public record shall be
18 included.~~

~~19 (3) The typed or printed name, title, business address,
20 business telephone number and signature of the public
21 official or public employee on whose authority the denial is
22 issued.~~

~~23 (4) Date of the response.~~

~~24 (5) The procedure to appeal the denial of access under
25 this act.~~

~~26 (d) Certified copies. If a non-Commonwealth agency's
27 response grants a request for access, the non-Commonwealth
28 agency shall, upon request, provide the requester with a
29 certified copy of the public record if the requester pays the
30 applicable fees pursuant to section 7.]~~

1 ~~Section 11. The act is amended by adding a chapter heading~~
2 ~~to read:~~

3 ~~CHAPTER 11~~

4 ~~FINAL AGENCY DETERMINATION~~

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

7 ~~[Section 3.5. Final agency determination.~~

8 ~~(a) Filing of exceptions.]~~

9 ~~Section 1101. Filing of exceptions.~~

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

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

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

~~Section 1102. Exceptions officers.~~

~~(a) Scope. This section applies to all agencies.~~

~~(b) Duties. The exceptions officer 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 exceptions officer may hold a hearing. A decision to hold a hearing is not appealable. The exceptions officer may admit into evidence testimony, evidence and documents as the exceptions officer believes to be reasonably probative and relevant to an issue in dispute. The exceptions officer may limit the nature and extent of evidence found to be cumulative.~~

~~(3) Consult with agency counsel as necessary.~~

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

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

~~(1) If exceptions are 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 clearinghouse, legislative agency or judicial agency has adopted these chapters in its regulations or rules.~~

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

~~(3) In the absence of a regulation or rule governing~~

~~exceptions procedures, the exceptions officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.~~

~~Section 1103. Final determinations.~~

~~(a) Writing. A final determination by an exceptions officer must be in writing. If the exceptions officer determines that the agency correctly denied the request, the written explanation shall include the reason for the denial and may include exhibits or references to material as the person deems appropriate. The written determination shall be mailed to the requester by the last day of the exceptions period.~~

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

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

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

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

~~CHAPTER 13~~

~~APPEAL~~

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

~~[Section 4. Judicial appeal.~~

~~(a) Commonwealth agency.]~~

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

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

~~[(b) Other agency.]~~

~~Section 1302. Local agencies.~~

~~(a) Judicial determination. Within 30 days of a denial by a [non-Commonwealth] local agency under section [3.4(c)] 903 or of the mailing date of a final determination of a [non-Commonwealth] local agency affirming the denial of access, a requester may file a petition for review or other document as might be required by rule of court with the court of common pleas for the county where the [non-Commonwealth] local agency's office or facility is located or bring an action in the local magisterial district. A requester is entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached.~~

~~(b) (Reserved).~~

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

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

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

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

~~(a) Reversal of agency determination. If a court reverses an agency's final determination, the court may award reasonable attorney fees and costs of litigation or an appropriate portion~~

1 ~~thereof to a requester if the court finds either of the~~
2 ~~following:~~

3 ~~(1) the agency willfully or with wanton disregard~~
4 ~~deprived the requester of access to a public record subject~~
5 ~~to access under the provisions of this act; or~~

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

9 ~~(b) Sanctions for frivolous requests or appeals. If a court~~
10 ~~affirms an agency's final determination, the court may award~~
11 ~~reasonable attorney fees and costs of litigation or an~~
12 ~~appropriate portion thereof to the agency if the court finds~~
13 ~~that the legal challenge to the agency's final determination was~~
14 ~~frivolous.~~

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

18 ~~Section 17. Sections 5, 6, 7, 8 and 9 of the act, added June~~
19 ~~29, 2002 (P.L. 663, No. 100), are renumbered and amended to read:~~
20 ~~Section [5] 1304. Penalties.~~

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

29 ~~(b) Civil penalty. An agency or public official who does~~
30 ~~not promptly comply with a court order under this act is subject~~

1 ~~to a civil penalty of not more than [\$300] \$500 per day until~~
2 ~~the public records are provided.~~

3 ~~Section [6] 1305. Immunity.~~

4 ~~(a) General rule. Except as provided in sections [4.1 and~~
5 ~~5] 1303 and 1304 and other statutes governing the release of~~
6 ~~records, no agency, public official or public employee shall be~~
7 ~~liable for civil or criminal damages or penalties resulting from~~
8 ~~compliance or failure to comply with this act.~~

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

13 ~~Section [7] 1306. Fee limitations.~~

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

16 ~~(b) Duplication.~~

17 ~~(1) Fees for duplication by photocopying, printing from~~
18 ~~electronic media or microfilm, copying onto electronic media,~~
19 ~~transmission by facsimile or other electronic means and other~~
20 ~~means of duplication shall be established:~~

21 ~~(i) by the clearinghouse, for Commonwealth agencies~~
22 ~~and local agencies;~~

23 ~~(ii) by each judicial agency; and~~

24 ~~(iii) by each legislative agency.~~

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

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

1 ~~the public record.~~

2 ~~(d) Conversion to paper. If a public record is only~~
3 ~~maintained electronically or in other nonpaper media,~~
4 ~~duplication fees shall be limited to the lesser of the fee for~~
5 ~~duplication on paper or the fee for duplication in the native~~
6 ~~media as provided by subsection (b) unless the requester~~
7 ~~specifically requests for the public record to be duplicated in~~
8 ~~the more expensive medium.~~

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

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

29 ~~(1) the requester duplicates the public record; or~~

30 ~~(2) the agency deems it is in the public interest to do~~

1 ~~so.~~

2 ~~(g) Limitations. Except as otherwise provided by statute,~~
3 ~~no other fees may be imposed unless the agency necessarily~~
4 ~~incurs costs for complying with the request, and such fees must~~
5 ~~be reasonable. No fee may be imposed for an agency's review of a~~
6 ~~record to determine whether the record is a public record~~
7 ~~subject to access in accordance with this act.~~

8 ~~(h) Prepayment. Prior to granting a request for access in~~
9 ~~accordance with this act, an agency may require a requester to~~
10 ~~prepay an estimate of the fees authorized under this section if~~
11 ~~the fees required to fulfill the request are expected to exceed~~
12 ~~\$100.~~

13 ~~Section [8 Implementation] 1307. Prohibition.~~

14 ~~[(a) Requirement. An agency shall establish written~~
15 ~~policies and may promulgate regulations necessary to implement~~
16 ~~this act.~~

17 ~~(b) Content. The written policies shall include the name of~~
18 ~~the office to which requests for access shall be addressed and a~~
19 ~~list of applicable fees.~~

20 ~~(c) Prohibition.]A policy, rule or regulation may not~~
21 ~~include any of the following:~~

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

25 ~~(2) A requirement to disclose the purpose or motive in~~
26 ~~requesting access to records which are public records.~~

27 ~~[(d) Posting. The policies shall be conspicuously posted at~~
28 ~~the agency and may be made available by electronic means.]~~

29 ~~Section [9] 1308. Practice and procedure.~~

30 ~~The provisions of 2 Pa.C.S. (relating to administrative law~~

1 ~~and procedure) shall not apply to this act unless specifically~~
2 ~~adopted by rule or regulation.~~

3 ~~Section 18. The act is amended by adding a section to read:~~
4 ~~Section 1309. Clearinghouse.~~

5 ~~The Department of Community and Economic Development shall~~
6 ~~establish an Open Records Clearinghouse within the department.~~
7 ~~The clearinghouse shall do all of the following:~~

8 ~~(1) Provide information relating to the implementation~~
9 ~~and enforcement of this act.~~

10 ~~(2) Issue advisory opinions to agencies and requesters.~~

11 ~~(3) Provide annual training courses to Commonwealth~~
12 ~~agencies and local agencies.~~

13 ~~(4) Employ or contract with hearing examiners to serve~~
14 ~~as exceptions officers for administrative appeals under this~~
15 ~~act. Each hearing examiner must comply with all of the~~
16 ~~following:~~

17 ~~(i) Be a licensed attorney.~~

18 ~~(ii) Complete a training course provided by the~~
19 ~~clearinghouse prior to acting as an exceptions officer.~~

20 ~~(iii) If a hearing is necessary, hold hearings~~
21 ~~regionally as necessary to ensure access to the remedies~~
22 ~~provided by this act.~~

23 ~~(5) Establish an Internet website to include advisory~~
24 ~~opinions and decisions.~~

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

26 CHAPTER 1

27 PRELIMINARY PROVISIONS

28 SECTION 101. SHORT TITLE.

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

1 SECTION 102. DEFINITIONS.

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

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

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

11 "APPEALS OFFICER." AS FOLLOWS:

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

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

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

18 "CLEARINGHOUSE." THE OPEN RECORDS CLEARINGHOUSE ESTABLISHED
19 PURSUANT TO THE PROVISIONS OF SECTION 1310.

20 "COMMONWEALTH AGENCY." ANY OF THE FOLLOWING:

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

24 (I) THE GOVERNOR'S OFFICE.

25 (II) THE OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT
26 OF THE AUDITOR GENERAL AND THE TREASURY DEPARTMENT.

27 (III) A STATUTORILY ESTABLISHED ORGANIZATION WHICH
28 PERFORMS OR IS INTENDED TO PERFORM AN ESSENTIAL
29 GOVERNMENTAL FUNCTION.

30 (2) THE TERM DOES NOT INCLUDE A JUDICIAL OR LEGISLATIVE

1 AGENCY.

2 "CONFIDENTIAL PROPRIETARY INFORMATION." COMMERCIAL OR
3 FINANCIAL INFORMATION RECEIVED BY AN AGENCY:

4 (1) WHICH IS PRIVILEGED OR CONFIDENTIAL; AND

5 (2) THE DISCLOSURE OF WHICH WOULD CAUSE SUBSTANTIAL HARM
6 TO THE COMPETITIVE POSITION OF THE PERSON THAT SUBMITTED THE
7 INFORMATION.

8 "FINANCIAL RECORD." INCLUDES:

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

10 (I) THE RECEIPT OR DISBURSEMENT OF FUNDS BY AN
11 AGENCY; OR

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

14 (2) THE SALARY OR OTHER PAYMENTS OR EXPENSES PAID TO AN
15 OFFICER OR EMPLOYEE OF AN AGENCY, INCLUDING THE NAME AND
16 TITLE OF THE OFFICER OR EMPLOYEE.

17 (3) RESULTS OF A FINANCIAL AUDIT.

18 "HOMELAND SECURITY." GOVERNMENTAL ACTIONS DESIGNED TO
19 PREVENT, DETECT, RESPOND TO AND RECOVER FROM ACTS OF TERRORISM,
20 MAJOR DISASTERS AND OTHER EMERGENCIES, WHETHER NATURAL OR
21 MANMADE. THE TERM INCLUDES ACTIVITIES RELATING TO THE FOLLOWING:

22 (1) EMERGENCY PREPAREDNESS AND RESPONSE, INCLUDING
23 PREPAREDNESS AND RESPONSE ACTIVITIES BY VOLUNTEER MEDICAL,
24 POLICE, EMERGENCY MANAGEMENT, HAZARDOUS MATERIALS AND FIRE
25 PERSONNEL;

26 (2) INTELLIGENCE ACTIVITIES;

27 (3) CRITICAL INFRASTRUCTURE PROTECTION;

28 (4) BORDER SECURITY;

29 (5) GROUND, AVIATION AND MARITIME TRANSPORTATION
30 SECURITY;

- 1 (6) BIODEFENSE;
- 2 (7) DETECTION OF NUCLEAR AND RADIOLOGICAL MATERIALS; AND
- 3 (8) RESEARCH ON NEXT-GENERATION SECURITIES TECHNOLOGIES.

4 "INDEPENDENT AGENCY." ANY BOARD, COMMISSION OR OTHER AGENCY

5 OR OFFICER OF THE COMMONWEALTH, THAT IS NOT SUBJECT TO THE

6 POLICY SUPERVISION AND CONTROL OF THE GOVERNOR. THE TERM DOES

7 NOT INCLUDE A LEGISLATIVE OR JUDICIAL AGENCY.

8 "JUDICIAL AGENCY." A COURT OF THE COMMONWEALTH OR ANY OTHER

9 ENTITY OR OFFICE OF THE UNIFIED JUDICIAL SYSTEM.

10 "LEGISLATIVE AGENCY." ANY OF THE FOLLOWING:

- 11 (1) THE SENATE.
- 12 (2) THE HOUSE OF REPRESENTATIVES.
- 13 (3) THE CAPITOL PRESERVATION COMMITTEE.
- 14 (4) THE CENTER FOR RURAL PENNSYLVANIA.
- 15 (5) THE JOINT LEGISLATIVE AIR AND WATER POLLUTION
- 16 CONTROL AND CONSERVATION COMMITTEE.
- 17 (6) THE JOINT STATE GOVERNMENT COMMISSION.
- 18 (7) THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE.
- 19 (8) THE LEGISLATIVE DATA PROCESSING COMMITTEE.
- 20 (9) THE INDEPENDENT REGULATORY REVIEW COMMISSION.
- 21 (10) THE LEGISLATIVE REFERENCE BUREAU.
- 22 (11) THE LOCAL GOVERNMENT COMMISSION.
- 23 (12) THE PENNSYLVANIA COMMISSION ON SENTENCING.

24 "LEGISLATIVE RECORD." INCLUDES THE FOLLOWING INFORMATION

25 RELATING TO A LEGISLATIVE AGENCY OR STANDING COMMITTEE:

- 26 (1) A FINANCIAL RECORD.
- 27 (2) A BILL OR RESOLUTION THAT HAS BEEN INTRODUCED AND
- 28 AMENDMENTS OFFERED THERETO IN COMMITTEE OR IN LEGISLATIVE
- 29 SESSION, INCLUDING RESOLUTIONS TO ADOPT OR AMEND THE RULES OF
- 30 A CHAMBER.

- 1 (3) FISCAL NOTES.
- 2 (4) A COSPONSORSHIP MEMORANDUM.
- 3 (5) THE JOURNAL OF A CHAMBER.
- 4 (6) THE MINUTES OF A PUBLIC COMMITTEE MEETING.
- 5 (7) THE TRANSCRIPT OF A PUBLIC HEARING WHEN AVAILABLE.
- 6 (8) THE RECORD OF ATTENDANCE OF MEMBERS AT A COMMITTEE
- 7 MEETING.
- 8 (9) THE RULES OF A CHAMBER.
- 9 (10) A RECORD OF ALL RECORDED VOTES TAKEN IN A COMMITTEE
- 10 MEETING OR LEGISLATIVE SESSION.
- 11 (11) ANY ADMINISTRATIVE STAFF MANUALS OR WRITTEN
- 12 POLICIES.
- 13 (12) AN AUDIT PREPARED PURSUANT TO THE ACT OF JUNE 30,
- 14 1970 (P.L.442, NO.151) ENTITLED, "AN ACT IMPLEMENTING THE
- 15 PROVISIONS OF ARTICLE VIII, SECTION 10 OF THE CONSTITUTION OF
- 16 PENNSYLVANIA, BY DESIGNATING THE COMMONWEALTH OFFICERS WHO
- 17 SHALL BE CHARGED WITH THE FUNCTION OF AUDITING THE FINANCIAL
- 18 TRANSACTIONS AFTER THE OCCURRENCE THEREOF OF THE LEGISLATIVE
- 19 AND JUDICIAL BRANCHES OF THE GOVERNMENT OF THE COMMONWEALTH,
- 20 ESTABLISHING A LEGISLATIVE AUDIT ADVISORY COMMISSION, AND
- 21 IMPOSING CERTAIN POWERS AND DUTIES ON SUCH COMMISSION."
- 22 (13) FINAL OR ANNUAL REPORTS REQUIRED BY LAW TO BE
- 23 SUBMITTED TO THE GENERAL ASSEMBLY.
- 24 (14) LEGISLATIVE BUDGET AND FINANCE COMMITTEE REPORTS.
- 25 (15) MARKED CALENDARS.
- 26 "LOCAL AGENCY." ANY OF THE FOLLOWING:
- 27 (1) ANY POLITICAL SUBDIVISION, INTERMEDIATE UNIT,
- 28 CHARTER SCHOOL OR PUBLIC TRADE OR VOCATIONAL SCHOOL.
- 29 (2) ANY LOCAL, INTERGOVERNMENTAL, REGIONAL OR MUNICIPAL
- 30 AGENCY, AUTHORITY, COUNCIL, BOARD, COMMISSION OR SIMILAR

1 GOVERNMENTAL ENTITY.

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

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

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

- 13 (1) IS NOT EXEMPT UNDER SECTION 708;
14 (2) IS NOT EXEMPT FROM BEING DISCLOSED UNDER ANY OTHER
15 FEDERAL OR STATE LAW OR REGULATION OR JUDICIAL ORDER OR
16 DECREE; OR
17 (3) IS NOT PROTECTED BY A PRIVILEGE.

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

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

30 "RESPONSE." ACCESS TO A RECORD OR AN AGENCY'S WRITTEN NOTICE

1 GRANTING, DENYING OR PARTIALLY GRANTING AND PARTIALLY DENYING
2 ACCESS TO A RECORD.

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

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

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

- 23 (1) INTIMIDATE OR COERCE A CIVILIAN POPULATION;
24 (2) INFLUENCE THE POLICY OF A GOVERNMENT; OR
25 (3) AFFECT THE CONDUCT OF A GOVERNMENT BY MASS
26 DESTRUCTION, ASSASSINATION OR KIDNAPPING.

27 "TRADE SECRET." INFORMATION, INCLUDING A FORMULA, DRAWING,
28 PATTERN, COMPILATION, INCLUDING A CUSTOMER LIST, PROGRAM,
29 DEVICE, METHOD, TECHNIQUE OR PROCESS THAT:

- 30 (1) DERIVES INDEPENDENT ECONOMIC VALUE, ACTUAL OR

POTENTIAL, FROM NOT BEING GENERALLY KNOWN TO AND NOT BEING
READILY ASCERTAINABLE BY PROPER MEANS BY OTHER PERSONS WHO
CAN OBTAIN ECONOMIC VALUE FROM ITS DISCLOSURE OR USE; AND

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

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

CHAPTER 3

REQUIREMENTS AND PROHIBITIONS

SECTION 301. COMMONWEALTH AGENCIES.

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

(B) PROHIBITION.--A COMMONWEALTH AGENCY MAY NOT DENY A
REQUESTER ACCESS TO A PUBLIC RECORD DUE TO THE INTENDED USE OF
THE PUBLIC RECORD BY THE REQUESTER.

SECTION 302. LOCAL AGENCIES.

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

(B) PROHIBITION.--A LOCAL AGENCY MAY NOT DENY A REQUESTER
ACCESS TO A PUBLIC RECORD DUE TO THE INTENDED USE OF THE PUBLIC
RECORD BY THE REQUESTER.

SECTION 303. LEGISLATIVE AGENCIES.

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

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

SECTION 304. JUDICIAL AGENCIES.

(A) REQUIREMENT.--A JUDICIAL AGENCY SHALL PROVIDE FINANCIAL
RECORDS IN ACCORDANCE WITH THIS ACT.

1 (B) PROHIBITION.--A JUDICIAL AGENCY MAY NOT DENY A REQUESTER
2 ACCESS TO A FINANCIAL RECORD DUE TO THE INTENDED USE OF THE
3 FINANCIAL RECORD BY THE REQUESTER.

4 SECTION 305. PRESUMPTION.

5 A RECORD IN THE POSSESSION OF A COMMONWEALTH AGENCY OR LOCAL
6 AGENCY SHALL BE PRESUMED TO BE A PUBLIC RECORD UNLESS THE RECORD
7 IS EXEMPT UNDER SECTION 708.

8 SECTION 306. NATURE OF DOCUMENT.

9 NOTHING IN THIS ACT SHALL SUPERSEDE OR MODIFY THE PUBLIC OR
10 CONFIDENTIAL NATURE OF A RECORD OR DOCUMENT ESTABLISHED IN
11 FEDERAL OR STATE STATUTE OR LAW.

12 CHAPTER 5

13 ACCESS

14 SECTION 501. SCOPE OF CHAPTER.

15 THIS CHAPTER APPLIES TO ALL AGENCIES.

16 SECTION 502. OPEN-RECORDS OFFICER.

17 (A) ESTABLISHMENT.--

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

20 (2) FOR A LEGISLATIVE AGENCY OTHER THAN THE SENATE OR
21 THE HOUSE OF REPRESENTATIVES, THE OPEN-RECORDS OFFICER
22 DESIGNATED BY THE LEGISLATIVE REFERENCE BUREAU SHALL SERVE AS
23 THE OPEN-RECORDS OFFICER.

24 (B) FUNCTIONS.--

25 (1) THE OPEN-RECORDS OFFICER SHALL RECEIVE REQUESTS
26 SUBMITTED TO THE AGENCY UNDER THIS ACT, DIRECT REQUESTS TO
27 OTHER APPROPRIATE PERSONS WITHIN THE AGENCY, TRACK THE
28 AGENCY'S PROGRESS IN RESPONDING TO REQUESTS AND ISSUE INTERIM
29 AND FINAL RESPONSES UNDER THIS ACT.

30 (2) UPON RECEIVING A REQUEST FOR A PUBLIC RECORD,

1 LEGISLATIVE RECORD OR FINANCIAL RECORD, THE OPEN-RECORDS
2 OFFICER SHALL DO ALL OF THE FOLLOWING:

3 (I) DATE STAMP A 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.

10 (IV) CREATE A FILE FOR THE RETENTION OF THE ORIGINAL
11 REQUEST, A COPY OF THE RESPONSE, A RECORD OF VERBAL OR
12 WRITTEN COMMUNICATIONS WITH THE REQUESTER AND A COPY OF
13 OTHER COMMUNICATIONS.

14 SECTION 503. APPEALS OFFICER.

15 (A) COMMONWEALTH AGENCIES AND LOCAL AGENCIES.--THE
16 CLEARINGHOUSE ESTABLISHED UNDER SECTION 1310 SHALL DESIGNATE AN
17 APPEALS OFFICER UNDER SECTION 1101(A)(2) FOR ALL:

18 (1) COMMONWEALTH AGENCIES; AND

19 (2) LOCAL AGENCIES.

20 (B) JUDICIAL AGENCIES.--A JUDICIAL AGENCY SHALL DESIGNATE AN
21 APPEALS OFFICER.

22 (C) LEGISLATIVE AGENCIES.--

23 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), THE
24 LEGISLATIVE REFERENCE BUREAU SHALL DESIGNATE AN APPEALS
25 OFFICER TO SERVE FOR ALL LEGISLATIVE AGENCIES.

26 (2) EACH OF THE FOLLOWING SHALL DESIGNATE AN APPEALS
27 OFFICER:

28 (I) THE SENATE.

29 (II) THE HOUSE OF REPRESENTATIVES.

30 SECTION 504. REGULATIONS AND POLICIES.

1 (A) AUTHORITY.--AN AGENCY MAY PROMULGATE REGULATIONS, RULES
2 OR POLICIES NECESSARY FOR THE AGENCY TO IMPLEMENT THIS ACT. THE
3 CLEARINGHOUSE MAY PROMULGATE REGULATIONS RELATING TO APPEALS.

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

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

8 (2) CONTACT INFORMATION FOR THE CLEARINGHOUSE OR OTHER
9 APPLICABLE APPEALS OFFICER.

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

11 (4) RULES, REGULATIONS, POLICIES AND PROCEDURES OF THE
12 AGENCY RELATING TO THIS ACT.

13 SECTION 505. UNIFORM FORM.

14 (A) COMMONWEALTH AGENCIES.--THE CLEARINGHOUSE SHALL DEVELOP
15 A UNIFORM FORM WHICH SHALL BE ACCEPTED BY ALL COMMONWEALTH AND
16 LOCAL AGENCIES TO FILE A REQUEST UNDER THIS ACT. THE FORM SHALL
17 BE PUBLISHED IN THE PENNSYLVANIA BULLETIN AND ON THE
18 CLEARINGHOUSE'S INTERNET WEBSITE.

19 (B) JUDICIAL AGENCIES.--A JUDICIAL AGENCY MAY DEVELOP A FORM
20 TO REQUEST FINANCIAL RECORDS OR MAY USE A FORM DEVELOPED BY THE
21 ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS OR THE
22 CLEARINGHOUSE.

23 (C) LEGISLATIVE AGENCIES.--A LEGISLATIVE AGENCY MAY DEVELOP
24 A FORM TO REQUEST LEGISLATIVE RECORDS OR MAY USE THE FORM
25 DEVELOPED BY THE CLEARINGHOUSE.

26 SECTION 506. REQUESTS.

27 (A) DISRUPTIVE REQUESTS.--

28 (1) AN AGENCY MAY DENY A REQUESTER ACCESS TO A RECORD IF
29 THE REQUESTER HAS MADE REPEATED REQUESTS FOR THAT SAME RECORD
30 WHICH REQUESTS HAVE PLACED AN UNREASONABLE BURDEN ON THE

1 AGENCY.

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

4 (B) DISASTER OR POTENTIAL DAMAGE.--

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

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

8 (II) TO HISTORICAL, ANCIENT OR RARE DOCUMENTS,
9 RECORDS, ARCHIVES AND MANUSCRIPTS WHEN ACCESS MAY, IN THE
10 PROFESSIONAL JUDGMENT OF THE CURATOR OR CUSTODIAN OF
11 RECORDS, CAUSE PHYSICAL DAMAGE OR IRREPARABLE HARM TO THE
12 RECORD.

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

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

20 (1) DISCLOSURE OF THE RECORD IS NOT PROHIBITED UNDER ANY
21 OF THE FOLLOWING:

22 (I) FEDERAL OR STATE LAW OR REGULATION.

23 (II) JUDICIAL ORDER OR DECREE.

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

25 (3) THE AGENCY HEAD DETERMINES THAT THE PUBLIC INTEREST
26 FAVORING ACCESS OUTWEIGHS ANY INDIVIDUAL, AGENCY OR PUBLIC
27 INTEREST THAT MAY FAVOR RESTRICTION OF ACCESS.

28 (D) AGENCY POSSESSION.--

29 (1) A RECORD THAT IS NOT IN THE POSSESSION OF AN AGENCY
30 BUT IS IN THE POSSESSION OF A PARTY WITH WHOM THE AGENCY HAS

1 CONTRACTED TO PERFORM A GOVERNMENTAL FUNCTION FOR THE AGENCY,
2 AND WHICH DIRECTLY RELATES TO THE GOVERNMENTAL FUNCTION,
3 SHALL BE CONSIDERED A PUBLIC RECORD OF THE AGENCY FOR
4 PURPOSES OF THIS ACT.

5 (2) NOTHING IN THIS ACT SHALL BE CONSTRUED TO REQUIRE
6 ACCESS TO ANY OTHER RECORD OF THE PARTY IN POSSESSION OF THE
7 RECORD.

8 (3) A REQUEST FOR A RECORD IN POSSESSION OF A PARTY
9 OTHER THAN THE AGENCY SHALL BE SUBMITTED TO THE OPEN RECORDS
10 OFFICER OF THE AGENCY.

11 SECTION 507. RETENTION OF RECORDS.

12 NOTHING IN THIS ACT SHALL BE CONSTRUED TO MODIFY, RESCIND OR
13 SUPERSEDE ANY RECORD RETENTION DISPOSITION SCHEDULE OF AN AGENCY
14 ESTABLISHED PURSUANT TO LAW, REGULATION, POLICY OR OTHER
15 DIRECTIVE.

16 CHAPTER 7

17 PROCEDURE

18 SECTION 701. ACCESS TO PUBLIC RECORDS.

19 (A) GENERAL RULE.--UNLESS OTHERWISE PROVIDED BY LAW, A
20 PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL RECORD SHALL BE
21 ACCESSIBLE FOR INSPECTION AND DUPLICATION IN ACCORDANCE WITH
22 THIS ACT. A RECORD SHALL BE PROVIDED TO A REQUESTER IN THE
23 MEDIUM REQUESTED IF THE PUBLIC RECORD EXISTS IN THAT MEDIUM;
24 OTHERWISE, IT SHALL BE PROVIDED IN THE MEDIUM IN WHICH IT
25 EXISTS. PUBLIC RECORDS, LEGISLATIVE RECORDS OR FINANCIAL RECORDS
26 SHALL BE AVAILABLE FOR ACCESS DURING THE REGULAR BUSINESS HOURS
27 OF AN AGENCY.

28 (B) CONSTRUCTION.--NOTHING IN THIS ACT SHALL BE CONSTRUED TO
29 REQUIRE ACCESS TO THE COMPUTER OF AN AGENCY OR INDIVIDUAL
30 EMPLOYEE OF AN AGENCY.

1 SECTION 702. REQUESTS.

2 AGENCIES MAY FULFILL INFORMAL VERBAL, WRITTEN OR ANONYMOUS
3 VERBAL OR WRITTEN REQUESTS FOR ACCESS TO RECORDS UNDER THIS ACT.
4 IN THE EVENT THAT THE REQUESTER WISHES TO PURSUE THE RELIEF AND
5 REMEDIES PROVIDED FOR IN THIS ACT, THE REQUESTER MUST INITIATE
6 SUCH RELIEF WITH A WRITTEN REQUEST.

7 SECTION 703. WRITTEN REQUESTS.

8 A WRITTEN REQUEST FOR ACCESS TO RECORDS MAY BE SUBMITTED IN
9 PERSON, BY MAIL, BY E-MAIL, BY FACSIMILE OR, TO THE EXTENT
10 PROVIDED BY AGENCY RULES, ANY OTHER ELECTRONIC MEANS. A WRITTEN
11 REQUEST SHALL BE ADDRESSED TO THE AGENCY HEAD OR OPEN-RECORDS
12 OFFICER DESIGNATED IN SECTION 502. A WRITTEN REQUEST SHOULD
13 IDENTIFY OR DESCRIBE THE RECORDS SOUGHT WITH SUFFICIENT
14 SPECIFICITY TO ENABLE THE AGENCY TO ASCERTAIN WHICH RECORDS ARE
15 BEING REQUESTED AND SHALL INCLUDE THE NAME AND ADDRESS TO WHICH
16 THE AGENCY SHOULD ADDRESS ITS RESPONSE. A WRITTEN REQUEST NEED
17 NOT INCLUDE ANY EXPLANATION OF THE REQUESTER'S REASON FOR
18 REQUESTING OR INTENDED USE OF THE RECORDS.

19 SECTION 704. ELECTRONIC ACCESS.

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

23 (B) RESPONSE.--

24 (1) IN ADDITION TO THE REQUIREMENTS OF SECTION 701, AN
25 AGENCY MAY RESPOND TO A REQUEST BY NOTIFYING THE REQUESTER
26 THAT THE RECORD IS AVAILABLE THROUGH PUBLICLY ACCESSIBLE
27 ELECTRONIC MEANS OR THAT THE AGENCY WILL PROVIDE ACCESS TO
28 INSPECT THE RECORD ELECTRONICALLY.

29 (2) IF THE REQUESTER IS UNWILLING OR UNABLE TO USE THE
30 ELECTRONIC ACCESS, THE REQUESTER MAY SUBMIT A WRITTEN REQUEST

1 TO THE AGENCY, WITHIN 30 DAYS FOLLOWING RECEIPT OF THE AGENCY
2 NOTIFICATION, TO HAVE THE RECORD CONVERTED TO PAPER. THE
3 AGENCY SHALL PROVIDE THE RECORD IN PRINTED FORM WITHIN FIVE
4 DAYS OF THE RECEIPT OF THE WRITTEN REQUEST FOR CONVERSION TO
5 PAPER.

6 SECTION 705. CREATION OF RECORD.

7 WHEN RESPONDING TO A REQUEST FOR ACCESS, AN AGENCY SHALL NOT
8 BE REQUIRED TO CREATE A RECORD WHICH DOES NOT CURRENTLY EXIST OR
9 TO COMPILE, MAINTAIN, FORMAT OR ORGANIZE A RECORD IN A MANNER IN
10 WHICH THE AGENCY DOES NOT CURRENTLY COMPILE, MAINTAIN, FORMAT OR
11 ORGANIZE THE RECORD.

12 SECTION 706. REDACTION.

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

28 SECTION 707. PRODUCTION OF CERTAIN RECORDS.

29 IF, IN RESPONSE TO A REQUEST, AN AGENCY PRODUCES A RECORD
30 THAT IS NOT A PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL

1 RECORD, THE AGENCY SHALL NOTIFY ANY THIRD PARTY THAT PROVIDED
2 THE RECORD TO THE AGENCY, THE PERSON THAT IS THE SUBJECT OF THE
3 RECORD AND THE REQUESTER.

4 SECTION 708. EXCEPTIONS FOR PUBLIC RECORDS.

5 (A) BURDEN OF PROOF.--THE BURDEN OF PROVING THAT A PUBLIC
6 RECORD IS EXEMPT FROM PUBLIC ACCESS SHALL BE ON THE COMMONWEALTH
7 OR LOCAL AGENCY RECEIVING A REQUEST BY A PREPONDERANCE OF THE
8 EVIDENCE.

9 (B) EXCEPTIONS.--IN THE CASE OF A PUBLIC RECORD, UNLESS
10 DISCLOSURE IS OTHERWISE REQUIRED BY LAW, THE FOLLOWING ARE
11 EXEMPT FROM ACCESS BY A REQUESTER UNDER THIS ACT:

12 (1) A RECORD THE DISCLOSURE OF WHICH:

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

15 (II) WOULD BE REASONABLY LIKELY TO RESULT IN A
16 SUBSTANTIAL AND DEMONSTRABLE RISK OF PHYSICAL HARM TO AN
17 INDIVIDUAL.

18 (2) A RECORD MAINTAINED BY AN AGENCY IN CONNECTION WITH
19 THE MILITARY, HOMELAND SECURITY, NATIONAL DEFENSE, LAW
20 ENFORCEMENT OR OTHER PUBLIC SAFETY ACTIVITY THAT IF DISCLOSED
21 WOULD BE REASONABLY LIKELY TO JEOPARDIZE OR THREATEN PUBLIC
22 SAFETY OR PREPAREDNESS OR PUBLIC PROTECTION ACTIVITY OR A
23 RECORD THAT IS DESIGNATED CLASSIFIED BY AN APPROPRIATE
24 FEDERAL OR STATE MILITARY AUTHORITY.

25 (3) A RECORD, THE DISCLOSURE OF WHICH CREATES A
26 REASONABLE LIKELIHOOD OF ENDANGERING THE LIFE, SAFETY OR THE
27 PHYSICAL SECURITY OF A BUILDING, PUBLIC UTILITY, RESOURCE,
28 INFRASTRUCTURE, FACILITY OR INFORMATION STORAGE SYSTEM, WHICH
29 MAY INCLUDE:

30 (I) DOCUMENTS OR DATA RELATING TO COMPUTER HARDWARE,

SOURCE FILES, SOFTWARE AND SYSTEM NETWORKS THAT COULD
JEOPARDIZE COMPUTER SECURITY BY EXPOSING A VULNERABILITY
IN PREVENTING, PROTECTING AGAINST, MITIGATING OR
RESPONDING TO A TERRORIST ACT;

(II) LISTS OF INFRASTRUCTURE, RESOURCES AND
SIGNIFICANT SPECIAL EVENTS, INCLUDING THOSE DEFINED BY
THE FEDERAL GOVERNMENT IN THE NATIONAL INFRASTRUCTURE
PROTECTIONS, WHICH ARE DEEMED CRITICAL DUE TO THEIR
NATURE AND WHICH RESULT FROM RISK ANALYSIS; THREAT
ASSESSMENTS; CONSEQUENCES ASSESSMENTS; ANTITERRORISM
PROTECTIVE MEASURES AND PLANS; COUNTERTERRORISM MEASURES
AND PLANS; AND SECURITY AND RESPONSE NEEDS ASSESSMENTS;
AND

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

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

(5) A RECORD OF AN INDIVIDUAL'S MEDICAL, PSYCHIATRIC OR
PSYCHOLOGICAL HISTORY OR DISABILITY STATUS, INCLUDING
EVALUATION, CONSULTATION, A PRESCRIPTION, DIAGNOSIS OR
TREATMENT; RESULTS OF TESTS, INCLUDING DRUG TESTS; ENROLLMENT
IN A HEALTH CARE PROGRAM OR PROGRAM DESIGNED FOR
PARTICIPATION BY PERSONS WITH DISABILITIES, INCLUDING
VOCATION REHABILITATION, WORKERS' COMPENSATION AND

1 UNEMPLOYMENT COMPENSATION; OR RELATED INFORMATION THAT WOULD
2 DISCLOSE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

3 (6) (I) THE FOLLOWING PERSONAL IDENTIFICATION
4 INFORMATION:

5 (A) A RECORD CONTAINING ALL OR PART OF AN
6 INDIVIDUAL'S SOCIAL SECURITY NUMBER; DRIVER'S LICENSE
7 NUMBER; PERSONAL FINANCIAL INFORMATION OF AN
8 INDIVIDUAL; HOME, CELLULAR OR PERSONAL TELEPHONE
9 NUMBER; PERSONAL E-MAIL ADDRESS; EMPLOYEE NUMBER;
10 OTHER PERSONAL IDENTIFICATION NUMBER; OR OTHER
11 PERSONAL INFORMATION.

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

14 (II) NOTHING IN THIS PARAGRAPH SHALL PRECLUDE THE
15 RELEASE OF THE NAME, POSITION, SALARY, ACTUAL
16 COMPENSATION OR OTHER PAYMENTS OR EXPENSES, EMPLOYMENT
17 CONTRACT, EMPLOYMENT-RELATED CONTRACT OR AGREEMENT AND
18 LENGTH OF SERVICE OF A PUBLIC OFFICIAL OR AN AGENCY
19 EMPLOYEE.

20 (III) AN AGENCY MAY REDACT THE NAME OR OTHER
21 IDENTIFYING INFORMATION RELATING TO AN INDIVIDUAL
22 PERFORMING AN UNDERCOVER OR COVERT LAW ENFORCEMENT
23 ACTIVITY FROM A RECORD.

24 (7) THE FOLLOWING RECORDS RELATING TO AN AGENCY
25 EMPLOYEE:

26 (I) A LETTER OF REFERENCE OR RECOMMENDATION
27 PERTAINING TO THE CHARACTER OR QUALIFICATIONS OF AN
28 IDENTIFIABLE INDIVIDUAL, UNLESS IT WAS PREPARED IN
29 RELATION TO THE APPOINTMENT OF AN INDIVIDUAL TO FILL A
30 VACANCY IN AN ELECTED OFFICE OR AN APPOINTED OFFICE

1 REQUIRING SENATE CONFIRMATION.

2 (II) A PERFORMANCE RATING OR REVIEW.

3 (III) THE RESULT OF A CIVIL SERVICE OR SIMILAR TEST
4 ADMINISTERED BY A COMMONWEALTH AGENCY, LEGISLATIVE AGENCY
5 OR JUDICIAL AGENCY. THE RESULT OF A CIVIL SERVICE OR
6 SIMILAR TEST ADMINISTERED BY A LOCAL AGENCY SHALL NOT BE
7 DISCLOSED IF RESTRICTED BY A COLLECTIVE BARGAINING
8 AGREEMENT. ONLY TEST SCORES OF INDIVIDUALS WHO OBTAINED A
9 PASSING SCORE ON A TEST ADMINISTERED BY A LOCAL AGENCY
10 MAY BE DISCLOSED.

11 (IV) WORKPLACE SUPPORT SERVICES PROGRAM INFORMATION.

12 (V) WRITTEN CRITICISMS OF AN EMPLOYEE.

13 (VI) GRIEVANCE MATERIAL, INCLUDING DOCUMENTS RELATED
14 TO DISCRIMINATION OR SEXUAL HARASSMENT.

15 (VII) (A) INFORMATION REGARDING DISCIPLINE,
16 DEMOTION OR DISCHARGE CONTAINED IN A PERSONNEL FILE.

17 (B) THIS SUBPARAGRAPH SHALL NOT APPLY TO THE
18 RESULTS OF A DISCIPLINARY PROCEEDING OR ACTION THAT
19 RESULTS IN SUSPENSION, DEMOTION OR DISCHARGE.

20 (8) (I) A RECORD PERTAINING TO STRATEGY OR NEGOTIATIONS
21 RELATING TO LABOR RELATIONS OR COLLECTIVE BARGAINING OR
22 ARBITRATION AWARD.

23 (II) THIS PARAGRAPH DOES NOT APPLY TO ANY FINAL OR
24 EXECUTED CONTRACT OR AGREEMENT OR ARBITRATION AWARD
25 BETWEEN THE PARTIES.

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

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

30 (A) THE INTERNAL, PREDECISIONAL DELIBERATIONS OF

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

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

13 (II) THIS PARAGRAPH APPLIES TO:

14 (A) THE GOVERNOR'S OFFICE, THE HEAD OF A
15 COMMONWEALTH AGENCY AND THE STAFF OF THE GOVERNOR OR
16 AGENCY.

17 (B) THE CHIEF EXECUTIVE OFFICER OR GOVERNING
18 BODY OF A LOCAL AGENCY, OR A MEMBER OR STAFF OF THE
19 LOCAL AGENCY PRIOR TO THE PRESENTATION OF THE
20 DECISION, POLICY, PROPOSAL OR COURSE OF ACTION TO A
21 QUORUM OF THE GOVERNING BODY.

22 (III) THIS PARAGRAPH DOES NOT APPLY TO A WRITTEN
23 APPLICATION OR OTHER DOCUMENT USED TO REQUEST
24 COMMONWEALTH FUNDS.

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

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

1 THAT DO NOT HAVE AN OFFICIAL PURPOSE.

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

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

16 (15) EXAMINATION QUESTIONS, SCORING KEYS OR ANSWERS TO
17 AN EXAMINATION.

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

20 (I) COMPLAINTS OF POTENTIAL CRIMINAL CONDUCT OTHER
21 THAN A PRIVATE CRIMINAL COMPLAINT.

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

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

28 (IV) A RECORD THAT INCLUDES INFORMATION MADE
29 CONFIDENTIAL BY LAW OR COURT ORDER.

30 (V) VICTIM INFORMATION, INCLUDING ANY INFORMATION

1 THAT WOULD JEOPARDIZE THE SAFETY OF THE VICTIM.

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

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

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

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

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

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

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

17 (I) COMPLAINTS SUBMITTED TO AN AGENCY.

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

20 (III) A RECORD THAT INCLUDES THE IDENTITY OF A
21 CONFIDENTIAL SOURCE, INCLUDING INDIVIDUALS SUBJECT TO THE
22 ACT OF DECEMBER 12, 1986 (P.L.1559, NO.169), KNOWN AS THE
23 WHISTLEBLOWER LAW.

24 (IV) A RECORD THAT INCLUDES INFORMATION MADE
25 CONFIDENTIAL BY LAW OR COURT ORDER.

26 (V) WORK PAPERS UNDERLYING AN AUDIT.

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

29 (A) REVEAL THE INSTITUTION, PROGRESS OR RESULT
30 OF AN AGENCY INVESTIGATION, EXCEPT THE IMPOSITION OF

1 A FINE OR CIVIL PENALTY OR THE SUSPENSION,
2 MODIFICATION OR REVOCATION OF A LICENSE, PERMIT,
3 REGISTRATION, CERTIFICATION OR SIMILAR AUTHORIZATION
4 ISSUED BY AN AGENCY.

5 (B) DEPRIVE A PERSON OF THE RIGHT TO AN
6 IMPARTIAL ADJUDICATION.

7 (C) CONSTITUTE AN UNWARRANTED INVASION OF
8 PRIVACY.

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

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

13 (18) 911 RECORDINGS.

14 (19) DNA RECORDS.

15 (20) ANY PART OF AN AUTOPSY RECORD OR OTHER OFFICIAL
16 RECORD OF A CORONER OR MEDICAL EXAMINER THAT IS AN AUDIOTAPE
17 OF A POSTMORTEM EXAMINATION OR AUTOPSY, OR A COPY,
18 REPRODUCTION OR FACSIMILE OF A PHOTOGRAPH, NEGATIVE OR PRINT,
19 INCLUDING A PHOTOGRAPH OR VIDEOTAPE OF THE BODY OR ANY
20 PORTION OF THE BODY OF A DECEASED PERSON TAKEN BY OR FOR THE
21 CORONER OR MEDICAL EXAMINER AT THE SCENE OF DEATH OR IN THE
22 COURSE OF A POSTMORTEM EXAMINATION OR AUTOPSY MADE BY OR
23 CAUSED TO BE MADE BY THE CORONER OR MEDICAL EXAMINER.

24 (21) MINUTES OF AN EXECUTIVE SESSION AND ANY RECORD OF
25 DISCUSSIONS HELD IN EXECUTIVE SESSION.

26 (22) (I) THE CONTENTS OF REAL ESTATE APPRAISALS,
27 ENGINEERING OR FEASIBILITY ESTIMATES, ENVIRONMENTAL
28 REVIEWS, AUDITS OR EVALUATIONS MADE FOR OR BY AN AGENCY
29 RELATIVE TO THE FOLLOWING:

30 (A) THE LEASING, ACQUIRING OR DISPOSING OF REAL

1 PROPERTY.

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

4 (C) CONSTRUCTION PROJECTS.

5 (II) THIS PARAGRAPH DOES NOT APPLY ONCE THE DECISION
6 IS MADE TO PROCEED WITH THE LEASE, ACQUISITION OR
7 DISPOSAL OF REAL PROPERTY OR THE PURCHASE OF PUBLIC
8 SUPPLY OR CONSTRUCTION PROJECT.

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

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

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

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

27 (27) A RECORD OR INFORMATION RELATING TO A COMMUNICATION
28 BETWEEN AN AGENCY AND ITS INSURANCE CARRIER, ADMINISTRATIVE
29 SERVICE ORGANIZATION OR RISK MANAGEMENT OFFICE. THIS
30 PARAGRAPH DOES NOT APPLY TO A CONTRACT WITH AN INSURANCE

1 CARRIER, ADMINISTRATIVE SERVICE ORGANIZATION OR RISK
2 MANAGEMENT OFFICE OR TO FINANCIAL RECORDS RELATING TO THE
3 PROVISION OF INSURANCE.

4 (28) A RECORD OR INFORMATION:

5 (I) IDENTIFYING AN INDIVIDUAL WHO APPLIES FOR OR
6 RECEIVES SOCIAL SERVICES; OR

7 (II) RELATING TO THE FOLLOWING:

8 (A) THE TYPE OF SOCIAL SERVICES RECEIVED BY AN
9 INDIVIDUAL;

10 (B) AN INDIVIDUAL'S APPLICATION TO RECEIVE
11 SOCIAL SERVICES, INCLUDING A RECORD OR INFORMATION
12 RELATED TO AN AGENCY DECISION TO GRANT, DENY, REDUCE
13 OR RESTRICT BENEFITS, INCLUDING A QUASI-JUDICIAL
14 DECISION OF THE AGENCY AND THE IDENTITY OF A
15 CAREGIVER OR OTHERS WHO PROVIDE SERVICES TO THE
16 INDIVIDUAL; OR

17 (C) ELIGIBILITY TO RECEIVE SOCIAL BENEFITS,
18 INCLUDING THE INDIVIDUAL'S INCOME, ASSETS, PHYSICAL
19 OR MENTAL HEALTH, AGE, DISABILITY, FAMILY
20 CIRCUMSTANCES OR RECORD OF ABUSE.

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

1 (D) AGGREGATED DATA.--THE EXCEPTIONS SET FORTH IN SUBSECTION
2 (B) SHALL NOT APPLY TO AGGREGATED DATA, MAINTAINED OR RECEIVED
3 BY AN AGENCY, EXCEPT FOR DATA PROTECTED UNDER SUBSECTION (B)(1),
4 (2), (3) OR (4).

5 CHAPTER 9

6 AGENCY RESPONSE

7 SECTION 901. GENERAL RULE.

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

20 SECTION 902. EXTENSION OF TIME.

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

24 (1) THE REQUEST FOR ACCESS REQUIRES REDACTION OF A
25 RECORD IN ACCORDANCE WITH SECTION 706;

26 (2) THE REQUEST FOR ACCESS REQUIRES THE RETRIEVAL OF A
27 RECORD STORED IN A REMOTE LOCATION;

28 (3) A TIMELY RESPONSE TO THE REQUEST FOR ACCESS CANNOT
29 BE ACCOMPLISHED DUE TO BONA FIDE AND SPECIFIED STAFFING
30 LIMITATIONS;

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

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

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

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

9 (B) NOTICE.--

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

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

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

28 SECTION 903. DENIAL.

29 IF AN AGENCY'S RESPONSE IS A DENIAL OF A WRITTEN REQUEST FOR
30 ACCESS, WHETHER IN WHOLE OR IN PART, A WRITTEN RESPONSE SHALL BE

1 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.

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

8 (4) DATE OF THE RESPONSE.

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

11 SECTION 904. CERTIFIED COPIES.

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

16 CHAPTER 11

17 APPEAL OF AGENCY DETERMINATION

18 SECTION 1101. FILING OF APPEAL.

19 (A) AUTHORIZATION.--

20 (1) IF A WRITTEN REQUEST FOR ACCESS IS DENIED OR DEEMED
21 DENIED, THE REQUESTER MAY FILE AN APPEAL WITH THE
22 CLEARINGHOUSE OR OTHER APPROPRIATE APPEALS OFFICER WITHIN 15
23 BUSINESS DAYS OF THE MAILING DATE OF THE AGENCY'S RESPONSE OR
24 WITHIN 15 BUSINESS DAYS OF A DEEMED DENIAL. THE APPEAL SHALL
25 STATE THE GROUNDS UPON WHICH THE REQUESTER ASSERTS THAT THE
26 RECORD IS A PUBLIC RECORD, LEGISLATIVE RECORD OR FINANCIAL
27 RECORD AND SHALL ADDRESS ANY GROUNDS STATED BY THE AGENCY FOR
28 DELAYING OR DENYING THE REQUEST.

29 (2) IN THE CASE OF AN APPEAL OF A DECISION BY A
30 COMMONWEALTH AGENCY OR LOCAL AGENCY, THE CLEARINGHOUSE SHALL

1 ASSIGN AN APPEALS OFFICER TO REVIEW THE DENIAL.

2 (B) DETERMINATION.--

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

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

9 (3) PRIOR TO ISSUING A FINAL DETERMINATION, A HEARING
10 MAY BE CONDUCTED. THE DETERMINATION BY THE APPEALS OFFICER
11 SHALL BE A FINAL ORDER. THE APPEALS OFFICER SHALL PROVIDE A
12 WRITTEN EXPLANATION OF THE REASON FOR THE DECISION TO THE
13 REQUESTER AND THE AGENCY.

14 (C) DIRECT INTEREST.--

15 (1) A PERSON OTHER THAN THE AGENCY OR REQUESTER WITH A
16 DIRECT INTEREST IN THE RECORD SUBJECT TO AN APPEAL UNDER THIS
17 SECTION MAY, WITHIN 15 CALENDAR DAYS FOLLOWING RECEIPT OF
18 ACTUAL KNOWLEDGE OF THE APPEAL BUT NO LATER THAN THE DATE THE
19 APPEALS OFFICER ISSUES AN ORDER, FILE A WRITTEN REQUEST TO
20 PROVIDE INFORMATION OR APPEAR BEFORE THE APPEALS OFFICER OR
21 TO FILE INFORMATION IN SUPPORT OF THE REQUESTER'S OR AGENCY'S
22 POSITION.

23 (2) THE APPEALS OFFICER MAY GRANT THE REQUEST IF:

24 (I) NO HEARING HAS BEEN HELD;

25 (II) THE OFFICE HAS NOT YET ISSUED ITS ORDER; AND

26 (III) THE APPEALS OFFICER BELIEVES THE INFORMATION
27 WILL BE PROBATIVE.

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

30 SECTION 1102. APPEALS OFFICERS.

1 (A) SCOPE.--THIS SECTION APPLIES TO ALL AGENCIES.

2 (B) DUTIES.--THE APPEALS OFFICER SHALL DO ALL OF THE
3 FOLLOWING:

4 (1) SET A SCHEDULE FOR THE REQUESTER AND THE OPEN-
5 RECORDS OFFICER TO SUBMIT DOCUMENTS IN SUPPORT OF THEIR
6 POSITIONS.

7 (2) REVIEW ALL INFORMATION FILED RELATING TO THE
8 REQUEST. THE APPEALS OFFICER MAY HOLD A HEARING. A DECISION
9 TO HOLD OR NOT TO HOLD A HEARING IS NOT APPEALABLE. THE
10 APPEALS OFFICER MAY ADMIT INTO EVIDENCE TESTIMONY, EVIDENCE
11 AND DOCUMENTS THAT THE APPEALS OFFICER BELIEVES TO BE
12 REASONABLY PROBATIVE AND RELEVANT TO AN ISSUE IN DISPUTE. THE
13 APPEALS OFFICER MAY LIMIT THE NATURE AND EXTENT OF EVIDENCE
14 FOUND TO BE CUMULATIVE.

15 (3) CONSULT WITH AGENCY COUNSEL AS APPROPRIATE.

16 (4) ISSUE A FINAL DETERMINATION ON BEHALF OF THE AGENCY.

17 (C) PROCEDURES.--THE CLEARINGHOUSE, A JUDICIAL AGENCY OR A
18 LEGISLATIVE AGENCY MAY ADOPT PROCEDURES RELATING TO APPEALS
19 UNDER THIS CHAPTER.

20 (1) IF AN APPEAL IS RESOLVED WITHOUT A HEARING, 1 PA.
21 CODE PT. II (RELATING TO GENERAL RULES OF ADMINISTRATIVE
22 PRACTICE AND PROCEDURE) DOES NOT APPLY EXCEPT TO THE EXTENT
23 THAT THE CLEARINGHOUSE, LEGISLATIVE AGENCY OR JUDICIAL AGENCY
24 HAS ADOPTED THESE CHAPTERS IN ITS REGULATIONS OR RULES.

25 (2) IF A HEARING IS HELD, 1 PA. CODE PT. II SHALL APPLY
26 UNLESS THE CLEARINGHOUSE, THE JUDICIAL AGENCY OR THE
27 LEGISLATIVE AGENCY HAS ADOPTED REGULATIONS OR RULES TO THE
28 CONTRARY.

29 (3) IN THE ABSENCE OF A REGULATION OR RULE GOVERNING
30 APPEALS UNDER THIS CHAPTER, THE APPEALS OFFICER SHALL RULE ON

1 PROCEDURAL MATTERS ON THE BASIS OF JUSTICE, FAIRNESS AND THE
2 EXPEDITIOUS RESOLUTION OF THE DISPUTE.

3 CHAPTER 13

4 JUDICIAL REVIEW

5 SECTION 1301. COMMONWEALTH AGENCIES, LEGISLATIVE AGENCIES AND
6 JUDICIAL AGENCIES.

7 (A) GENERAL RULE.--WITHIN 30 DAYS OF THE MAILING DATE OF THE
8 FINAL DETERMINATION OF THE APPEALS OFFICER RELATING TO A
9 DECISION OF A COMMONWEALTH AGENCY, A LEGISLATIVE AGENCY OR A
10 JUDICIAL AGENCY ISSUED UNDER SECTION 1103 OR THE DATE A REQUEST
11 FOR ACCESS IS DEEMED DENIED, A REQUESTER OR THE AGENCY MAY FILE
12 A PETITION FOR REVIEW OR OTHER DOCUMENT AS MIGHT BE REQUIRED BY
13 RULE OF COURT WITH THE COMMONWEALTH COURT. THE DECISION OF THE
14 COURT SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW
15 BASED UPON THE EVIDENCE AS A WHOLE. THE DECISION SHALL CLEARLY
16 AND CONCISELY EXPLAIN THE RATIONALE FOR THE DECISION.

17 (B) STAY.--A COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR
18 JUDICIAL AGENCY MAY REQUEST A STAY OF THE RELEASE OF RECORDS
19 FROM A COURT PENDING APPEAL.

20 SECTION 1302. LOCAL AGENCIES.

21 (A) GENERAL RULE.--WITHIN 30 DAYS OF THE MAILING DATE OF THE
22 FINAL DETERMINATION OF THE APPEALS OFFICER RELATING TO A
23 DECISION OF A LOCAL AGENCY ISSUED UNDER SECTION 1103 OR OF THE
24 DATE A REQUEST FOR ACCESS IS DEEMED DENIED, A REQUESTER OR LOCAL
25 AGENCY MAY FILE A PETITION FOR REVIEW OR OTHER DOCUMENT AS
26 REQUIRED BY RULE OF COURT WITH THE COURT OF COMMON PLEAS FOR THE
27 COUNTY WHERE THE LOCAL AGENCY IS LOCATED. THE DECISION OF THE
28 COURT SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW
29 BASED UPON THE EVIDENCE AS A WHOLE. THE DECISION SHALL CLEARLY
30 AND CONCISELY EXPLAIN THE RATIONALE FOR THE DECISION.

1 (B) STAY.--A LOCAL AGENCY MAY REQUEST A STAY OF THE RELEASE
2 OF RECORDS FROM A COURT PENDING APPEAL.

3 SECTION 1303. NOTICE AND RECORDS.

4 (A) NOTICE.--AN AGENCY, THE REQUESTER AND THE APPEALS
5 OFFICER SHALL BE SERVED NOTICE OF ACTIONS COMMENCED IN
6 ACCORDANCE WITH SECTION 1301 OR 1302 AND SHALL HAVE AN
7 OPPORTUNITY TO RESPOND IN ACCORDANCE WITH APPLICABLE COURT
8 RULES.

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

13 SECTION 1304. COURT COSTS AND ATTORNEY FEES.

14 (A) REVERSAL OF AGENCY DETERMINATION.--IF A COURT REVERSES
15 THE FINAL DETERMINATION OF THE APPEALS OFFICER OR GRANTS ACCESS
16 AFTER A REQUEST FOR ACCESS WAS DEEMED DENIED, THE COURT MAY
17 AWARD REASONABLE ATTORNEY FEES AND COSTS OF LITIGATION OR AN
18 APPROPRIATE PORTION THEREOF TO A REQUESTER IF THE COURT FINDS
19 EITHER OF THE FOLLOWING:

20 (1) THE AGENCY RECEIVING THE ORIGINAL REQUEST WILLFULLY
21 OR WITH WANTON DISREGARD DEPRIVED THE REQUESTER OF ACCESS TO
22 A PUBLIC RECORD SUBJECT TO ACCESS UNDER THE PROVISIONS OF
23 THIS ACT; OR

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

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

1 FRIVOLOUS.

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

5 SECTION 1305. PENALTIES.

6 (A) SUMMARY OFFENSE.--AN AGENCY OR PUBLIC OFFICIAL WHO
7 INTENTIONALLY OR KNOWINGLY VIOLATES THIS ACT COMMITS A SUMMARY
8 OFFENSE SUBJECT TO PROSECUTION BY THE ATTORNEY GENERAL OR THE
9 APPROPRIATE DISTRICT ATTORNEY AND SHALL, UPON CONVICTION FOR AN
10 INITIAL OFFENSE, BE SENTENCED TO PAY A FINE OF NOT MORE THAN
11 \$1,000 PLUS COSTS OF PROSECUTION AND UPON CONVICTION FOR A
12 SUBSEQUENT OFFENSE, BE SENTENCED TO PAY A FINE OF NOT MORE THAN
13 \$2,000 PLUS COST OF PROSECUTION.

14 (B) CIVIL PENALTY.--

15 (1) A COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN
16 \$1,000 IF AN AGENCY DENIED ACCESS TO A PUBLIC RECORD IN BAD
17 FAITH.

18 (2) AN AGENCY OR PUBLIC OFFICIAL WHO DOES NOT PROMPTLY
19 COMPLY WITH A COURT ORDER UNDER THIS ACT IS SUBJECT TO A
20 CIVIL PENALTY OF NOT MORE THAN \$500 PER DAY UNTIL THE PUBLIC
21 RECORDS ARE PROVIDED.

22 SECTION 1306. IMMUNITY.

23 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SECTIONS 1304 AND
24 1305 AND OTHER STATUTES GOVERNING THE RELEASE OF RECORDS, NO
25 AGENCY, PUBLIC OFFICIAL OR PUBLIC EMPLOYEE SHALL BE LIABLE FOR
26 CIVIL OR CRIMINAL DAMAGES OR PENALTIES RESULTING FROM COMPLIANCE
27 OR FAILURE TO COMPLY WITH THIS ACT.

28 (B) SCHEDULES.--NO AGENCY, PUBLIC OFFICIAL OR PUBLIC
29 EMPLOYEE SHALL BE LIABLE FOR CIVIL OR CRIMINAL DAMAGES OR
30 PENALTIES UNDER THIS ACT FOR COMPLYING WITH ANY WRITTEN PUBLIC

1 RECORD RETENTION AND DISPOSITION SCHEDULE.

2 SECTION 1307. FEE LIMITATIONS.

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

5 (B) DUPLICATION.--

6 (1) FEES FOR DUPLICATION BY PHOTOCOPYING, PRINTING FROM
7 ELECTRONIC MEDIA OR MICROFILM, COPYING ONTO ELECTRONIC MEDIA,
8 TRANSMISSION BY FACSIMILE OR OTHER ELECTRONIC MEANS AND OTHER
9 MEANS OF DUPLICATION SHALL BE ESTABLISHED:

10 (I) BY THE CLEARINGHOUSE, FOR COMMONWEALTH AGENCIES
11 AND LOCAL AGENCIES;

12 (II) BY EACH JUDICIAL AGENCY; AND

13 (III) BY EACH LEGISLATIVE AGENCY.

14 (2) THE FEES MUST BE REASONABLE AND BASED ON PREVAILING
15 FEES FOR COMPARABLE DUPLICATION SERVICES PROVIDED BY LOCAL
16 COPYING SERVICES.

17 (C) CERTIFICATION.--AN AGENCY MAY IMPOSE REASONABLE FEES FOR
18 OFFICIAL CERTIFICATION OF COPIES IF THE CERTIFICATION IS AT THE
19 BEHEST OF THE REQUESTER AND FOR THE PURPOSE OF LEGALLY VERIFYING
20 THE PUBLIC RECORD.

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

28 (E) ENHANCED ELECTRONIC ACCESS.--IF AN AGENCY OFFERS
29 ENHANCED ELECTRONIC ACCESS TO RECORDS IN ADDITION TO MAKING THE
30 RECORDS ACCESSIBLE FOR INSPECTION AND DUPLICATION BY A REQUESTER

1 AS REQUIRED BY THIS ACT, THE AGENCY MAY ESTABLISH USER FEES
2 SPECIFICALLY FOR THE PROVISION OF THE ENHANCED ELECTRONIC
3 ACCESS, BUT ONLY TO THE EXTENT THAT THE ENHANCED ELECTRONIC
4 ACCESS IS IN ADDITION TO MAKING THE RECORDS ACCESSIBLE FOR
5 INSPECTION AND DUPLICATION BY A REQUESTER AS REQUIRED BY THIS
6 ACT. THE USER FEES FOR ENHANCED ELECTRONIC ACCESS MAY BE A FLAT
7 RATE, A SUBSCRIPTION FEE FOR A PERIOD OF TIME, A PER-TRANSACTION
8 FEE, A FEE BASED ON THE CUMULATIVE TIME OF SYSTEM ACCESS OR ANY
9 OTHER REASONABLE METHOD AND ANY COMBINATION THEREOF. THE USER
10 FEES FOR ENHANCED ELECTRONIC ACCESS MUST BE REASONABLE, MUST BE
11 APPROVED BY THE CLEARINGHOUSE AND MAY NOT BE ESTABLISHED WITH
12 THE INTENT OR EFFECT OF EXCLUDING PERSONS FROM ACCESS TO RECORDS
13 OR DUPLICATES THEREOF OR OF CREATING PROFIT FOR THE AGENCY.

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

- 16 (1) THE REQUESTER DUPLICATES THE RECORD; OR
17 (2) THE AGENCY DEEMS IT IS IN THE PUBLIC INTEREST TO DO
18 SO.

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

26 (H) PREPAYMENT.--PRIOR TO GRANTING A REQUEST FOR ACCESS IN
27 ACCORDANCE WITH THIS ACT, AN AGENCY MAY REQUIRE A REQUESTER TO
28 PREPAY AN ESTIMATE OF THE FEES AUTHORIZED UNDER THIS SECTION IF
29 THE FEES REQUIRED TO FULFILL THE REQUEST ARE EXPECTED TO EXCEED
30 \$100.

1 SECTION 1308. PROHIBITION.

2 A POLICY, RULE OR REGULATION ADOPTED UNDER THIS ACT MAY NOT
3 INCLUDE ANY OF THE FOLLOWING:

4 (1) A LIMITATION ON THE NUMBER OF RECORDS WHICH MAY BE
5 REQUESTED OR MADE AVAILABLE FOR INSPECTION OR DUPLICATION.

6 (2) A REQUIREMENT TO DISCLOSE THE PURPOSE OR MOTIVE IN
7 REQUESTING ACCESS TO RECORDS.

8 SECTION 1309. PRACTICE AND PROCEDURE.

9 THE PROVISIONS OF 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW
10 AND PROCEDURE) SHALL NOT APPLY TO THIS ACT UNLESS SPECIFICALLY
11 ADOPTED BY RULE OR REGULATION.

12 SECTION 1310. CLEARINGHOUSE.

13 THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT SHALL
14 ESTABLISH AN OPEN RECORDS CLEARINGHOUSE WITHIN THE DEPARTMENT.
15 THE CLEARINGHOUSE SHALL DO ALL OF THE FOLLOWING:

16 (1) PROVIDE INFORMATION RELATING TO THE IMPLEMENTATION
17 AND ENFORCEMENT OF THIS ACT.

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

19 (3) PROVIDE ANNUAL TRAINING COURSES TO AGENCIES.

20 (4) PROVIDE ANNUAL, REGIONAL TRAINING COURSES TO LOCAL
21 AGENCIES.

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

29 (I) COMPLETE A TRAINING COURSE PROVIDED BY THE
30 CLEARINGHOUSE PRIOR TO ACTING AS AN APPEALS OFFICER.

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

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

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

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

12 (8) ANNUALLY REPORT ON ITS ACTIVITIES AND FINDINGS TO
13 THE GOVERNOR AND THE GENERAL ASSEMBLY. THE REPORT SHALL BE
14 POSTED AND MAINTAINED ON THE INTERNET WEBSITE ESTABLISHED
15 UNDER PARAGRAPH (7).

16 CHAPTER 15

17 STATE-RELATED INSTITUTIONS

18 SECTION 1501. DEFINITION.

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

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

25 SECTION 1502. REPORTING.

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

30 SECTION 1503. CONTENTS OF REPORT.

1 THE REPORT REQUIRED UNDER SECTION 1502 SHALL INCLUDE THE
2 FOLLOWING:

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

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

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

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

15 SECTION 1504. COPIES AND POSTING.

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

20 CHAPTER 17

21 STATE CONTRACT INFORMATION

22 SECTION 1701. SUBMISSION AND RETENTION OF CONTRACTS.

23 (A) GENERAL RULE.--WHENEVER ANY COMMONWEALTH AGENCY,
24 LEGISLATIVE AGENCY OR JUDICIAL AGENCY SHALL ENTER INTO ANY
25 CONTRACT INVOLVING ANY PROPERTY, REAL, PERSONAL OR MIXED OF ANY
26 KIND OR DESCRIPTION OR ANY CONTRACT FOR PERSONAL SERVICES WHERE
27 THE CONSIDERATION INVOLVED IN THE CONTRACT IS \$5,000 OR MORE, A
28 COPY OF THE CONTRACT SHALL BE FURNISHED TO THE TREASURY
29 DEPARTMENT WITHIN TEN DAYS AFTER THE CONTRACT IS EXECUTED ON
30 BEHALF OF THE COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR

JUDICIAL AGENCY OR OTHERWISE BECOMES AN OBLIGATION OF THE
COMMONWEALTH AGENCY, LEGISLATIVE AGENCY OR JUDICIAL AGENCY.

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

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

(I) DATE OF EXECUTION.

(II) AMOUNT OF THE CONTRACT.

(III) LENGTH OF THE CONTRACT.

(IV) NAME OF THE AGENCY ENTERING INTO THE CONTRACT.

(V) ALL PARTIES INVOLVED IN THE CONTRACT.

(VI) SUBJECT MATTER OF THE CONTRACT.

(B) RETENTION.--EVERY CONTRACT FILED PURSUANT TO SUBSECTION
(A) SHALL REMAIN ON FILE WITH THE TREASURY DEPARTMENT FOR A
PERIOD OF NOT LESS THAN FOUR YEARS AFTER ALL DISBURSEMENTS HAVE
BEEN MADE ON THE CONTRACTS.

(C) ACCURACY.--EACH COMMONWEALTH AGENCY, LEGISLATIVE AGENCY
AND JUDICIAL AGENCY IS RESPONSIBLE FOR VERIFYING THE ACCURACY
AND COMPLETENESS OF THE INFORMATION THAT IT SUBMITS TO THE STATE
TREASURER.

SECTION 1702. PUBLIC AVAILABILITY OF CONTRACTS.

(A) GENERAL RULE.--THE TREASURY DEPARTMENT SHALL MAKE EACH
CONTRACT FILED PURSUANT TO SECTION 1701 AVAILABLE FOR PUBLIC
INSPECTION EITHER BY POSTING A COMPLETE COPY OF THE CONTRACT ON
THE TREASURY DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE

1 OR BY POSTING A CONTRACT SUMMARY ON THE DEPARTMENT'S PUBLICLY
2 ACCESSIBLE INTERNET WEBSITE.

3 (B) POSTING.--THE TREASURY DEPARTMENT SHALL POST THE
4 INFORMATION RECEIVED PURSUANT TO THIS CHAPTER IN A WAY THAT
5 ALLOWS THE PUBLIC TO SEARCH CONTRACTS OR CONTRACT SUMMARIES BY
6 THE CATEGORIES ENUMERATED IN SECTION 1701(A)(2).

7 (C) REQUEST TO REVIEW OR RECEIVE COPY OF CONTRACT.--THE
8 TREASURY DEPARTMENT SHALL MAINTAIN A PAGE ON ITS PUBLICLY
9 ACCESSIBLE INTERNET WEBSITE WITH INSTRUCTIONS ON HOW TO REQUEST
10 TO REVIEW A CONTRACT AND HOW TO REQUEST A COPY OF A CONTRACT.
11 REQUESTS TO REVIEW OR RECEIVE A COPY OF A CONTRACT SHALL BE
12 ALLOWED BY LETTER, FACSIMILE OR E-MAIL. ADDITIONALLY, BOTH
13 REQUESTS SHALL BE HONORED WITHIN FIVE DAYS OF THE SUBMISSION OF
14 THE REQUEST AND IN THE CASE OF A REQUEST FOR A COPY OF A
15 CONTRACT IT SHALL BE PROVIDED TO THE INDIVIDUAL AT COST. THE
16 TREASURY DEPARTMENT MAY OFFER TO PROVIDE A COPY OF THE REQUESTED
17 CONTRACT ELECTRONICALLY TO THE REQUESTER AT NO COST.

18 SECTION 1703. COMMERCIAL USE OF DATA PROHIBITED.

19 IT SHALL BE UNLAWFUL FOR ANY PERSON TO USE THE CONTENTS OF
20 THE POSTING OF INFORMATION UNDER THIS CHAPTER FOR ANY COMMERCIAL
21 PURPOSE WHATSOEVER.

22 CHAPTER 31

23 MISCELLANEOUS PROVISIONS

24 SECTION 3101. APPLICABILITY.

25 THIS ACT APPLIES AS FOLLOWS:

26 (1) THIS ACT SHALL APPLY TO REQUESTS FILED AFTER THE
27 EFFECTIVE DATE OF THIS SECTION.

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

30 (3) SECTION 3102(1)(II)(B) SHALL APPLY TO BIDS SUBMITTED

1 ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

2 SECTION 3102. REPEALS.

3 REPEALS ARE AS FOLLOWS:

4 (1) (I) GENERAL ASSEMBLY DECLARES THAT THE REPEALS
5 UNDER SUBPARAGRAPH (II) ARE NECESSARY TO EFFECTUATE THIS
6 ACT.

7 (II) THE FOLLOWING ACTS AND PARTS OF ACTS ARE
8 REPEALED:

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

11 (B) 62 PA.C.S. § 106.

12 (2) (I) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL
13 UNDER SUBPARAGRAPH (II) IS NECESSARY TO EFFECTUATE
14 CHAPTER 17.

15 (II) SECTION 1104 OF THE ACT OF APRIL 9, 1929
16 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF
17 1929, IS REPEALED.

18 SECTION 3103. EFFECTIVE DATE.

19 THIS ACT SHALL TAKE EFFECT IN 180 DAYS.