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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1**

Session of  
2007

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EICHELBERGER, MARCH 29, 2007

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AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,  
FEBRUARY 11, 2008

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AN ACT

1 Providing for access to public information, for a designated  
2 open-records officer in each Commonwealth agency, local  
3 agency, judicial agency and legislative agency, for  
4 procedure, for appeal of agency determination, for judicial  
5 review and for the Office of Open Records; imposing  
6 penalties; providing for reporting by State-related  
7 institutions; requiring the posting of certain State contract  
8 information on the Internet; and making related repeals.

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26       The General Assembly of the Commonwealth of Pennsylvania  
27 hereby enacts as follows:

28   CHAPTER 1  
29   PRELIMINARY PROVISIONS

30 Section 101. Short title.

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

3 Section 102. Definitions.

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

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

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

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

18 "Appeals officer." As follows:

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

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

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

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

29 "Commonwealth agency." Any of the following:

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

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

3 (i) The Governor's Office.

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

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

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

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

14 (1) which is privileged or confidential; and

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

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

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

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

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

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

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

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

30 "Homeland security." Governmental actions designed to

1 prevent, detect, respond to and recover from acts of terrorism,  
2 major disasters and other emergencies, whether natural or  
3 manmade. The term includes activities relating to the following:

- 4 (1) emergency preparedness and response, including  
5 preparedness and response activities by volunteer medical,  
6 police, emergency management, hazardous materials and fire  
7 personnel;
- 8 (2) intelligence activities;
- 9 (3) critical infrastructure protection;
- 10 (4) border security;
- 11 (5) ground, aviation and maritime transportation  
12 security;
- 13 (6) biodefense;
- 14 (7) detection of nuclear and radiological materials; and
- 15 (8) research on next-generation securities technologies.

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

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

22 "Legislative agency." Any of the following:

- 23 (1) The Senate.
- 24 (2) The House of Representatives.
- 25 (3) The Capitol Preservation Committee.
- 26 (4) The Center for Rural Pennsylvania.
- 27 (5) The Joint Legislative Air and Water Pollution  
28 Control and Conservation Committee.
- 29 (6) The Joint State Government Commission.
- 30 (7) The Legislative Budget and Finance Committee.

- 1 (8) The Legislative Data Processing Committee.
- 2 (9) The Independent Regulatory Review Commission.
- 3 (10) The Legislative Reference Bureau.
- 4 (11) The Local Government Commission.
- 5 (12) The Pennsylvania Commission on Sentencing.
- 6 (13) The Legislative Reapportionment Commission.
- 7 (14) The Legislative Office of Research Liaison.
- 8 (15) THE LEGISLATIVE AUDIT ADVISORY COMMISSION. <—

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

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

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

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

12 (14) Legislative Budget and Finance Committee reports.

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

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

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

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

21 (19) The results of public opinion surveys, polls, focus  
22 groups, marketing research or similar efforts designed to  
23 measure public opinion funded by a legislative agency.

24 "Local agency." Any of the following:

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

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

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

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

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

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

14 (1) is not exempt under section 708;

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

18 (3) is not protected by a privilege.

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

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

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

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

3 "Social services." Cash assistance and other welfare  
4 benefits, medical, mental and other health care services, drug  
5 and alcohol treatment, adoption services, vocational ~~and~~ ←  
6 SERVICES AND TRAINING, occupational training, education ←  
7 services, counseling services, workers' compensation services  
8 and unemployment compensation services, foster care services, ←  
9 SERVICES FOR THE ELDERLY, SERVICES FOR INDIVIDUALS WITH  
10 DISABILITIES and services for victims of crimes AND DOMESTIC ←  
11 VIOLENCE.

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

26 "State-related institution." Includes:

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

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

4 (1) intimidate or coerce a civilian population;

5 (2) influence the policy of a government; or

6 (3) affect the conduct of a government by mass  
7 destruction, assassination or kidnapping.

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

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

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

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

19 CHAPTER 3

20 REQUIREMENTS AND PROHIBITIONS

21 Section 301. Commonwealth agencies.

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

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

28 Section 302. Local agencies.

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

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

4 Section 303. Legislative agencies.

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

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

10 Section 304. Judicial agencies.

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

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

17 Section 305. Presumption.

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

21 (1) the record is exempt under section 708;

22 (2) the record is protected by a privilege; or

23 (3) the record is exempt from disclosure under any other  
24 Federal or State law or regulation or judicial order or  
25 decree.

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

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

5 Section 306. Nature of document.

6 Nothing in this act shall supersede or modify the public or  
7 nonpublic nature of a record or document established in Federal  
8 or State law, regulation or judicial order or decree.

9 CHAPTER 5

10 ACCESS

11 Section 501. Scope of chapter.

12 This chapter applies to all agencies.

13 Section 502. Open-records officer.

14 (a) Establishment.--

15 (1) An agency shall designate an official or employee to  
16 act as the open-records officer.

17 (2) For a legislative agency other than the Senate or  
18 the House of Representatives, the open-records officer  
19 designated by the Legislative Reference Bureau shall serve as  
20 the open-records officer. Notwithstanding paragraph (1), a  
21 political party caucus of a legislative agency may appoint an  
22 open-records officer under this section.

23 (b) Functions.--

24 (1) The open-records officer shall receive requests  
25 submitted to the agency under this act, direct requests to  
26 other appropriate persons within the agency or to appropriate  
27 persons in another agency, track the agency's progress in  
28 responding to requests and issue interim and final responses  
29 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) Note the date of receipt on the written request.

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

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

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

19 Section 503. Appeals officer.

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

24 (1) Commonwealth agencies; and

25 (2) local agencies.

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

28 (c) Legislative agencies.--

29 (1) Except as set forth in paragraph (2), the

30 Legislative Reference Bureau shall designate an appeals

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

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

5 (i) The Senate.

6 (ii) The House of Representatives.

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

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

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

17 Section 504. Regulations and policies.

18 (a) Authority.--An agency may promulgate regulations and  
19 policies necessary for the agency to implement this act. The  
20 Office of Open Records may promulgate regulations relating to  
21 appeals involving a Commonwealth agency or local agency.

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

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

26 (2) Contact information for the Office of Open Records  
27 or other applicable appeals officer.

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

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

1 Section 505. Uniform form.

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

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

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

15 Section 506. Requests.

16 (a) Disruptive requests.--

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

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

23 (b) Disaster or potential damage.--

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

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

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

1 record.

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

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

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

11 (i) Federal or State law or regulation.

12 (ii) Judicial order or decree.

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

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

17 (d) Agency possession.--

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

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

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

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

6 Section 507. Retention of records.

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

11 CHAPTER 7

12 PROCEDURE

13 Section 701. Access.

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

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

26 Section 702. Requests.

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

1 request.

2 Section 703. Written requests.

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

16 Section 704. Electronic access.

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

20 (b) Response.--

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

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

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

3 Section 705. Creation of record.

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

9 Section 706. Redaction.

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

25 Section 707. Production of certain records.

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

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

13 (c) Transcripts.--

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

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

23 Section 708. Exceptions for public records.

24 (a) Burden of proof.--

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

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

1 receiving a request by a preponderance of the evidence.

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

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

9 (1) A record the disclosure of which:

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

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

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

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

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

1           responding to a terrorist act;

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

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

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

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

30          (6) (i) The following personal identification

1 information:

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

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

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

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

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

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

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

30 (ii) A performance rating or review.

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

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

11 (v) Workplace support services program information.

12 (vi) Written criticisms of an employee.

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

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

19 (ix) An academic transcript.

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

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

1 grievance procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (15) (I) ACADEMIC TRANSCRIPTS. <—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 individual.

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

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

11 (i) Complaints submitted to an agency.

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

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

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

20 (v) Work papers underlying an audit.

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

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

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

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

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

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

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

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

17 (19) DNA and RNA records.

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

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

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

1 of discussions held in executive session.

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

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

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

10 (C) Construction projects.

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

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

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

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

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

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

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

11 (28) A record or information:

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

14 (ii) relating to the following:

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

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

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

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

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

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

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

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

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

25 CHAPTER 9

26 AGENCY RESPONSE

27 Section 901. General rule.

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

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

11 Section 902. Extension of time.

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

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

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

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

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

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

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

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

30 (b) Notice.--

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

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

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

20 Section 903. Denial.

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

24           (1) A description of the record requested.

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

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

30           (4) Date of the response.

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

3 Section 904. Certified copies.

4 If an agency's response grants a request for access, the  
5 agency shall, upon request, provide the requester with a  
6 certified copy of the record if the requester pays the  
7 applicable fees under section 1307.

8 Section 905. Record discard.

9 If an agency response to a requester states that copies of  
10 the requested records are available for delivery at the office  
11 of an agency and the requester fails to retrieve the records  
12 within 60 days of the agency's response, the agency may dispose  
13 of any copies which have not been retrieved and retain any fees  
14 paid to date.

## 15 CHAPTER 11

### 16 APPEAL OF AGENCY DETERMINATION

17 Section 1101. Filing of appeal.

18 (a) Authorization.--

19 (1) If a written request for access to a record is  
20 denied or deemed denied, the requester may file an appeal  
21 with the Office of Open Records or judicial, legislative or  
22 other appeals officer designated under section 503(d) within  
23 15 business days of the mailing date of the agency's response  
24 or within 15 business days of a deemed denial. The appeal  
25 shall state the grounds upon which the requester asserts that  
26 the record is a public record, legislative record or  
27 financial record and shall address any grounds stated by the  
28 agency for delaying or denying the request.

29 (2) Except as provided in section 503(d), in the case of  
30 an appeal of a decision by a Commonwealth agency or local

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

3 (b) Determination.--

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

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

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

15 (c) Direct interest.--

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

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

26 (i) no hearing has been held;

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

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

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

3 Section 1102. Appeals officers.

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

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

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

17           (3) Consult with agency counsel as appropriate.

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

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

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

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

1 procedures to the contrary under this subsection.

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

6 CHAPTER 13

7 JUDICIAL REVIEW

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

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

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

24 Section 1302. Local agencies.

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

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

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

8 Section 1303. Notice and records.

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

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

18 Section 1304. Court costs and attorney fees.

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

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

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

1 reasonable interpretation of law.

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

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

10 Section 1305. Civil penalty.

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

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

18 Section 1306. Immunity.

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

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

28 Section 1307. Fee limitations.

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

1 (b) Duplication.--

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

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

8 (ii) by each judicial agency; and

9 (iii) by each legislative agency.

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

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

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

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

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

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

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

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

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

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

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

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

1 for the agency.

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

4 (1) the requester duplicates the record; or

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

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

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

19 Section 1308. Prohibition.

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

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

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

26 Section 1309. Practice and procedure.

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

30 Section 1310. Office of Open Records.

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

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

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

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

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

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

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

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

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

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

30 (7) Establish an Internet website with information

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

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

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

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

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

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

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

1 monitor cases appealed to the Office of Open Records.

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

5 CHAPTER 15

6 STATE-RELATED INSTITUTIONS

7 Section 1501. Definition.

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

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

14 Section 1502. Reporting.

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

19 Section 1503. Contents of report.

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

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

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

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

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

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

4 Section 1504. Copies and posting.

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

9 CHAPTER 17

10 STATE CONTRACT INFORMATION

11 Section 1701. Submission and retention of contracts.

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

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

1 Treasurer.

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

6 (i) Date of execution.

7 (ii) Amount of the contract.

8 (iii) Beginning date of the contract.

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

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

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

12 (vii) Subject matter of the contract.

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

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

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

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

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

3 Section 1702. Public availability of contracts.

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

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

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

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

21 CHAPTER 31

22 MISCELLANEOUS PROVISIONS

23 Section 3101. Applicability.

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

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

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

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

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

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

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

7 SECTION 3101.1. RELATION TO OTHER LAWS.

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

11 Section 3101.2. Severability.

12 All provisions of this act are severable.

13 Section 3102. Repeals.

14 Repeals are as follows:

15 (1) The General Assembly declares as follows:

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

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

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

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

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

26 (iii) 62 Pa.C.S. § 106.

27 Section 3103. References.

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

1 No.212), referred to as the Right-to-Know Law, shall be deemed a  
2 reference to this act.

3 Section 3104. Effective date.

4 This act shall take effect as follows:

5 (1) The following provisions shall take effect  
6 immediately:

7 (i) Sections 101, 102 and 1310.

8 (ii) This section.

9 ~~(2) The remainder of this act shall take effect January~~ <—

10 (2) CHAPTERS 15 AND 17 AND SECTIONS 3102(1)(I) AND <—  
11 3102(2)(I) SHALL TAKE EFFECT JULY 1, 2008.

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