

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 99 Session of 2023

INTRODUCED BY SCHMITT, MALONEY, ROAE AND GREINER, MARCH 7, 2023

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 7, 2023

AN ACT

1 Amending the act of February 14, 2008 (P.L.6, No.3), entitled
 2 "An act providing for access to public information, for a
 3 designated open-records officer in each Commonwealth agency,
 4 local agency, judicial agency and legislative agency, for
 5 procedure, for appeal of agency determination, for judicial
 6 review and for the Office of Open Records; imposing
 7 penalties; providing for reporting by State-related
 8 institutions; requiring the posting of certain State contract
 9 information on the Internet; and making related repeals," in
 10 preliminary provisions, further providing for definitions; in
 11 access, further providing for open-records officer, for
 12 appeals officer, for regulations and policies, for uniform
 13 form, for requests and for retention of records and providing
 14 for inmate access; in procedure, further providing for
 15 written requests, for redaction, for production of certain
 16 records and for exceptions for public records; in agency
 17 response, further providing for extension of time and
 18 providing for relief from vexatious requesters; in appeal of
 19 agency determination, further providing for filing of appeal
 20 and for appeals officers; in judicial review, further
 21 providing for court costs and attorney fees, for civil
 22 penalty, for fee limitations and for Office of Open Records;
 23 and, in miscellaneous provisions, further providing for
 24 relation to other laws.

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

27 Section 1. The definitions of "independent agency," "local
 28 agency" and "personal financial information" in section 102 of
 29 the act of February 14, 2008 (P.L.6, No.3), known as the Right-

1 to-Know Law, are amended and the section is amended by adding
2 definitions to read:

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 * * *

8 "Commercial purpose." As follows:

9 (1) The use of a record to obtain names and addresses
10 from the record for the purpose of commercial solicitation.

11 (2) The direct use of a record for sale or resale.

12 (3) The term does not include:

13 (i) the use of a record by an educational or
14 noncommercial scientific institution for scholarly or
15 scientific research or the use of a record by the news
16 media, a journalist or an author for news gathering or
17 dissemination in a newspaper, periodical, book, digital
18 publication or radio or television news broadcast;

19 (ii) a request for records from an attorney on
20 behalf of a client if the records are not obtained for
21 the purpose of selling, reselling or solicitation by the
22 attorney or client or used by the client for a purpose
23 under subparagraph (i);

24 (iii) a request for records from an entity holding a
25 certificate of authority or license from the Insurance
26 Department, their contractors, vendors, licensees,
27 service providers or affiliates, provided that the
28 records obtained shall only be used for the business of
29 insurance;

30 (iv) a request for real estate-related records used

1 for real estate purposes; or
2 (v) a request for records by an entity for purposes
3 of providing fraud prevention, identity theft, financial
4 transactions, credit reporting and public safety
5 services, including law enforcement.

6 * * *

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

11 "Inmate." An individual incarcerated, after having been
12 sentenced by a court of competent jurisdiction, in a Federal,
13 State or county correctional facility or prison.

14 * * *

15 "Local agency." As follows:

16 (1) Any of the following:

17 [(1)] (i) Any political subdivision, intermediate
18 unit, charter school, cyber charter school or public
19 trade or vocational school.

20 [(2)] (ii) Any local, intergovernmental, regional or
21 municipal agency, authority, council, board, commission
22 or similar governmental entity. This subparagraph
23 includes an economic development authority and an
24 industrial development authority.

25 (2) The term does not include the following volunteer
26 organizations:

27 (i) A volunteer ambulance service.

28 (ii) A volunteer fire company.

29 (iii) A volunteer rescue company.

30 (iv) A volunteer water rescue company.

1 (v) A volunteer organization that provides hazardous
2 materials response services.

3 (vi) A volunteer organization that provides
4 emergency medical services.

5 * * *

6 "Personal financial information." As follows:

7 (1) An individual's personal credit, charge or debit
8 card information; bank account or other financial institution
9 account information; bank, credit or financial statements;
10 account or PIN numbers; forms required to be filed by a
11 taxpayer with a Federal, State or local taxing authority;
12 employee benefit election information; individual employee
13 contributions to retirement plans and investment options;
14 individual employee contributions to health care benefits and
15 other benefits; individual employee contributions to
16 charitable organizations; and other information relating to
17 an individual's personal finances.

18 (2) The term does not include employer costs or
19 aggregated data of employee costs related to retirement
20 benefits, health care benefits or other benefits or the
21 disclosure of options made available to employees regarding
22 retirement benefits, health care benefits or other benefits.

23 * * *

24 "Time response log." A log created, received, maintained or
25 retained by a public safety answering point (PSAP), as defined
26 in 35 Pa.C.S. § 5302 (relating to definitions), containing the
27 following information:

28 (1) The time the call was received by the PSAP.

29 (2) The time the PSAP contacted or dispatched the
30 dedicated emergency response organization for response.

1 (3) The dedicated emergency response organization
2 dispatched.

3 (4) The time the dedicated emergency response
4 organization responded.

5 (5) The time the dedicated emergency response
6 organization arrived on the scene.

7 (6) The time the dedicated emergency response
8 organization became available.

9 (7) The location of the incident by way of the street
10 block identifier, the cross street or the mile marker nearest
11 the scene of the incident.

12 (8) A description of the reason for the dispatch.

13 * * *

14 "Vexatious requester." A person who, by the person's
15 conduct, demonstrates an intent to annoy or harass a local
16 agency. An individual may not be found to be a vexatious
17 requester solely due to the number of requests they have filed
18 or the number of records sought.

19 Section 2. Section 502 of the act is amended by adding a
20 subsection to read:

21 Section 502. Open-records officer.

22 * * *

23 (c) Agency registration.--A Commonwealth agency or local
24 agency shall register the agency's open-records officer with the
25 Office of Open Records in a manner prescribed by the Office of
26 Open Records.

27 Section 2.1. Section 503(d) of the act is amended by adding
28 a paragraph to read:

29 Section 503. Appeals officer.

30 * * *

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

2 * * *

3 (3) An appeals officer designated by a district attorney
4 under paragraph (2) shall have jurisdiction over an appeal
5 only insofar as it relates to access to criminal
6 investigative records in possession of a local agency. To the
7 extent an appeal involves multiple issues, one of which
8 relates to access to criminal investigative records in
9 possession of a local agency, the Office of Open Records
10 shall have jurisdiction over all other issues in the appeal.

11 Section 3. Section 504(b) (1) of the act is amended to read:
12 Section 504. Regulations and policies.

13 * * *

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

17 (1) Contact information for the open-records officer[.],
18 including name, address, telephone number, facsimile number,
19 if applicable, and email address.

20 * * *

21 Section 4. Section 505 of the act is amended by adding a
22 subsection to read:

23 Section 505. Uniform form.

24 * * *

25 (d) Commercial requests.--The following shall apply:

26 (1) An agency may require a requester to certify in
27 writing whether the request is for a commercial purpose. A
28 requester that submits a false written statement under this
29 subsection shall be subject to 18 Pa.C.S. § 4904 (relating to
30 unsworn falsification to authorities).

1 (2) Certification to Commonwealth agencies and local
2 agencies shall be submitted in a manner approved by the
3 Office of Open Records.

4 Section 5. Sections 506(d)(1) and 507 of the act are amended
5 to read:

6 Section 506. Requests.

7 * * *

8 (d) Agency possession.--

9 (1) A public record that is not in the possession of an
10 agency but is in the possession of a party with whom the
11 agency has contracted to perform a governmental function on
12 behalf of the agency, and which directly relates to the
13 governmental function and is not exempt under this act, shall
14 be considered a public record of the agency for purposes of
15 this act. This paragraph shall apply to records of the
16 following volunteer organizations when the organization
17 contracts with a Commonwealth agency or local agency to
18 provide services, including, but not limited to:

19 (i) A volunteer ambulance service.

20 (ii) A volunteer fire company.

21 (iii) A volunteer rescue company.

22 (iv) A volunteer water rescue company.

23 (v) A volunteer organization that provides hazardous
24 materials response services.

25 (vi) A volunteer organization that provides
26 emergency medical services.

27 * * *

28 Section 507. Retention of records.

29 (a) Agency schedules.--Nothing in this act shall be
30 construed to modify, rescind or supersede any record retention

1 policy or disposition schedule of an agency established pursuant
2 to law, regulation, policy or other directive.

3 (b) Prohibition.--

4 (1) Notwithstanding subsection (a), once a request for
5 records has been submitted under Chapter 7, an agency may not
6 knowingly dispose of any potentially responsive record until
7 the request has been responded to and any related appeals
8 have been exhausted.

9 (2) A court may impose a civil penalty of not more than
10 \$2,500 if an agency or public official, in violation of
11 paragraph (1), disposes of any potentially responsive record
12 in bad faith.

13 Section 6. The act is amended by adding a section to read:
14 Section 508. Inmate access.

15 (a) Status.--Except as provided in subsection (b), an inmate
16 may not be a requester for purposes of this act.

17 (b) Records.--An agency shall provide an inmate with copies
18 of the following records as they pertain directly to the inmate
19 or inmate's case if the disclosure of the record will not
20 diminish the safety or security of any person or correctional
21 facility and if there are no other policies or procedures in
22 place for the inmate to obtain the requested information:

23 (1) Public records relating to the criminal commitment
24 of the inmate.

25 (2) Institutional housing information.

26 (3) The inmate's financial records.

27 (4) The inmate's work records.

28 (5) The inmate's educational records.

29 (6) The inmate's disciplinary records.

30 (7) Disciplinary, housing and other policies adopted by

1 the correctional institution or the Department of
2 Corrections.

3 (8) A record relating to any Federal or State benefit
4 received by the inmate or for which the inmate may be
5 eligible.

6 (9) The inmate's tax records.

7 (10) The inmate's voting records.

8 (11) Records relating to any license issued to the
9 inmate by a Commonwealth or local agency.

10 (c) Applicability.--This section shall not prohibit an
11 agency from voluntarily permitting an inmate to have access to
12 records not listed under subsection (b) or prevent an agency
13 from complying with a lawful subpoena or court order.

14 Section 7. Sections 703, 706 and 707(c) of the act are
15 amended to read:

16 Section 703. Written requests.

17 (a) General rule.--A written request for access to records
18 may be submitted in person, by mail, by e-mail, by facsimile or,
19 to the extent provided by agency rules, by any other electronic
20 means. A written request must be addressed to the open-records
21 officer designated pursuant to section 502. [Employees of an
22 agency shall be directed to forward requests for records to the
23 open-records officer.] A written request should identify or
24 describe the records sought with sufficient specificity to
25 enable the agency to ascertain which records are being requested
26 and shall include the name and address to which the agency
27 should address its response. [A] Except as required under
28 section 505(d), a written request need not include any
29 explanation of the requester's reason for requesting or intended
30 use of the records unless otherwise required by law.

1 (b) False certification.--A requester that submits a false
2 certification under section 505(d) shall be subject to 18
3 Pa.C.S. § 4904 (relating to unsworn falsification to
4 authorities).

5 Section 706. Redaction.

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

21 Section 707. Production of certain records.

22 * * *

23 (c) Transcripts.--

24 (1) Prior to an adjudication becoming final, binding and
25 nonappealable, a transcript, if it exists, of an
26 administrative proceeding shall be provided to a requester by
27 the agency stenographer or a court reporter, in accordance
28 with agency procedure or an applicable contract. This
29 paragraph does not apply to a transcript that is not part of
30 an adjudicatory proceeding.

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

5 (3) This subsection may not be construed to require an
6 agency to transcribe a proceeding solely for purposes of
7 responding to a request under this act.

8 Section 8. Section 708(b)(6)(i)(B), (7) introductory
9 paragraph and (iv), (9), (10), (13), (16), (17) and (18) and (c)
10 of the act are amended and subsection (b) is amended by adding a
11 paragraph to read:

12 Section 708. Exceptions for public records.

13 * * *

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

17 * * *

18 (6) (i) The following personal identification
19 information:

20 * * *

21 (B) A spouse's or immediate family member's
22 name, marital status or beneficiary or dependent
23 information, including the number, names and ages of
24 an employee's dependents.

25 * * *

26 (7) The following records relating to [an agency
27 employee:] a current, past or prospective applicant for
28 employment or for legislative or gubernatorial appointment:

29 * * *

30 (iv) The [employment] application of an individual

1 who is not hired [by the agency.] or appointed by the
2 agency, General Assembly or Governor.

3 * * *

4 (9) The draft of a bill, resolution, regulation,
5 statement of policy, management directive, ordinance or
6 amendment thereto prepared by or for an agency. This
7 paragraph shall not apply to a draft that is presented to a
8 quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7
9 (relating to open meetings) at a public meeting, regardless
10 of whether a vote occurs or is scheduled to occur at the
11 meeting.

12 (10) As follows:

13 (i) A record that reflects:

14 (A) The internal, predecisional deliberations of
15 an agency, its members, employees [or], officials,
16 contractors or subcontractors or predecisional
17 deliberations between agency members, employees [or],
18 officials, contractors or subcontractors and members,
19 employees [or], officials, contractors or
20 subcontractors of another agency, including
21 predecisional deliberations relating to a budget
22 recommendation, legislative proposal, legislative
23 amendment, contemplated or proposed policy or course
24 of action or any research, memos or other documents
25 used in the predecisional deliberations.

26 (B) The strategy to be used to develop or
27 achieve the successful adoption of a budget,
28 legislative proposal or regulation.

29 (ii) Subparagraph (i) (A) shall apply to agencies
30 subject to 65 Pa.C.S. Ch. 7 [(relating to open meetings)]

1 in a manner consistent with 65 Pa.C.S. Ch. 7. A record
2 which is not otherwise exempt from access under this act
3 and which is presented to a quorum for deliberation in
4 accordance with 65 Pa.C.S. Ch. 7 shall be a public record
5 regardless of whether a vote occurs, or is scheduled to
6 occur at the meeting.

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

10 (iv) This paragraph shall not apply to the results
11 of public opinion surveys, polls, focus groups, marketing
12 research or similar effort designed to measure public
13 opinion.

14 * * *

15 (13) Records that would disclose the identity of [an
16 individual], or personal financial information relating to, a
17 person who lawfully makes a donation to or for the benefit of
18 an agency unless the donation is intended for or restricted
19 to providing remuneration or personal tangible benefit to a
20 named public official or employee of the agency, including
21 lists of potential donors compiled by an agency to pursue
22 donations, donor profile information or personal identifying
23 information relating to a donor.

24 * * *

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

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

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

1 (iii) A record that includes the identity of a
2 confidential source or the identity of a suspect who has
3 not been charged with an offense to whom confidentiality
4 has been promised.

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

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

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

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

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

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

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

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

22 (vii) This paragraph shall not:

23 (A) Apply to records created more than 50 years
24 prior to the request, unless the agency can
25 demonstrate actual harm to an ongoing investigation
26 if the records are released.

27 (B) Establish any requirement that an agency
28 retain a record for any period of time not otherwise
29 required for retention by law.

30 This paragraph shall not apply to information contained in a

1 police blotter as defined in 18 Pa.C.S. § 9102 (relating to
2 definitions) and utilized or maintained by the Pennsylvania
3 State Police, local, campus, transit or port authority police
4 department or other law enforcement agency or in a traffic
5 report except as provided under 75 Pa.C.S. § 3754(b)
6 (relating to accident prevention investigations). Police
7 blotter information, in whatever form it exists, is public.

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

10 (i) Complaints submitted to an agency.

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

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

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

19 (v) Work papers underlying an audit.

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

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

30 (B) Deprive a person of the right to an

1 impartial adjudication.

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

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

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

8 (vii) This paragraph shall not:

9 (A) Apply to records created more than 25 years
10 prior to the request, unless the agency can
11 demonstrate actual harm to an ongoing investigation
12 if the records are released.

13 (B) Establish any requirement that an agency
14 retain a record for any period of time not otherwise
15 required for retention by law.

16 (18) Emergency dispatches as follows:

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

21 (ii) This paragraph shall not apply to a 911
22 recording, or a transcript of a 911 recording, if the
23 agency or a court determines that the public interest in
24 disclosure outweighs the interest in nondisclosure.

25 * * *

26 (31) An agency's financial institution account numbers,
27 routing numbers, credit card numbers, PIN numbers and
28 passwords.

29 (c) Financial records.--The exceptions set forth in
30 subsection (b) shall not apply to financial records, except that

1 an agency may redact that portion of a financial record
2 protected under subsection (b) (1), (2), (3), (4), (5), (6),
3 (13), (16) [or], (17), (28), (30) or (31). An agency shall not
4 disclose the identity of an individual performing an undercover
5 or covert law enforcement activity.

6 * * *

7 Section 9. Section 902(b) (2) of the act is amended to read:
8 Section 902. Extension of time.

9 * * *

10 (b) Notice.--

11 * * *

12 (2) The notice shall include a statement notifying the
13 requester that the request for access is being reviewed, the
14 reason for the review, a reasonable date that a response is
15 expected to be provided and an estimate of applicable fees
16 owed when the record becomes available. [If the date that a
17 response is expected to be provided is in excess of 30 days,
18 following the five business days allowed for in section 901,
19 the request for access shall be deemed denied unless the
20 requester has agreed in writing to an extension to the date
21 specified in the notice.] The request for access shall be
22 deemed denied if the agency fails to send a response within
23 30 days following the five business days allowed under
24 section 901, unless the requester has agreed in writing to an
25 additional extension beyond 30 days.

26 * * *

27 Section 10. The act is amended by adding a section to read:
28 Section 906. Relief from vexatious requesters.

29 (a) General rule.--In order to merit relief under this
30 section, a local agency shall be required to demonstrate clear

1 and convincing evidence that a requester, by the requester's
2 conduct, has demonstrated an intent to annoy or harass the local
3 agency by filing a request or requests. A local agency may
4 petition the Office of Open Records for relief from an
5 individual that the local agency alleges is a vexatious
6 requester. The petition shall:

7 (1) Be submitted under penalty of 18 Pa.C.S. § 4904
8 (relating to unsworn falsification to authorities).

9 (2) Be provided to the Office of Open Records and the
10 requester alleged to be a vexatious requester.

11 (3) Detail the conduct by the individual which the local
12 agency alleges demonstrates vexatiousness, including, as
13 appropriate:

14 (i) The number of requests filed.

15 (ii) The total number of pending requests.

16 (iii) The scope of the requests.

17 (iv) The nature, content, language or subject matter
18 of the requests.

19 (v) The nature, content, language or subject matter
20 of other oral and written communications to the local
21 agency.

22 (vi) Conduct that the local agency alleges is
23 placing an unreasonable burden on the local agency.

24 (vii) Conduct that the local agency alleges is
25 intended to harass the local agency.

26 (viii) Any other relevant information, including
27 relief sought or granted to other agencies against the
28 same individual.

29 (b) Exception.--A local agency may not petition the Office
30 of Open Records for relief under subsection (a) from an

1 individual employed by or who contracts with a newspaper or
2 magazine of general circulation, weekly publication, press
3 association or radio or television station who submits a request
4 for the purpose of news gathering or dissemination in a
5 newspaper, periodical, book, digital publication or radio or
6 television broadcast.

7 (c) Timing.--Upon the filing of a petition for relief from a
8 vexatious requester, all other proceedings and deadlines under
9 this act shall be stayed pending a resolution of the petition by
10 the Office of Open Records. The stay shall apply to any pending
11 or new requests by the alleged vexatious requester.

12 (d) Processing requests.--Upon receipt of a petition under
13 subsection (a), the executive director of the Office of Open
14 Records or a designee shall, within five business days, notify
15 the requester alleged to be a vexatious requester that the
16 requester may, within 10 business days, file a preliminary
17 response to the petition.

18 (e) Initial finding.--The executive director or the
19 executive director's designee shall, within 30 calendar days
20 after receiving a petition under subsection (a), review the
21 petition and determine whether further proceedings are
22 warranted. The following shall apply:

23 (1) If the executive director or the executive
24 director's designee determines that further proceedings are
25 not warranted, the executive director or the executive
26 director's designee shall deny the petition. The denial shall
27 be in writing and include an explanation of the reasons for
28 the denial.

29 (2) If the executive director or the executive
30 director's designee determines that further proceedings are

1 warranted, the executive director or the executive director's
2 designee shall establish a briefing schedule to provide a
3 fair opportunity for the requester to respond to the local
4 agency's petition. The executive director or the executive
5 director's designee may admit into evidence testimony,
6 evidence and documents that the executive director or the
7 executive director's designee believes to be reasonably
8 probative and relevant. The executive director or the
9 executive director's designee may limit the nature and extent
10 of evidence found to be cumulative.

11 (f) Mediation.--At any time during proceedings under this
12 section, the executive director or the executive director's
13 designee may recommend that both parties participate in
14 mediation conducted by the Office of Open Records. If both
15 parties agree, the mediation shall last for a period of up to 30
16 calendar days. During the mediation, any other proceedings under
17 this section shall be stayed.

18 (g) Final opinion.--The executive director or the executive
19 director's designee shall issue a final opinion either granting
20 or denying the petition within 90 calendar days of its filing.
21 Upon a grant of the petition, the executive director or the
22 executive director's designee may provide appropriate relief
23 commensurate with the vexatious conduct, including an order that
24 the local agency need not comply with future requests from the
25 vexatious requester for a specified period of time, but not to
26 exceed one year in the first instance an individual is
27 determined to be a vexatious requester. The executive director
28 may also request that the Commonwealth Court impose a civil
29 penalty commensurate with the burden placed on the local agency
30 due to the vexatious conduct.

1 (h) Appeal to Commonwealth Court.--Any party aggrieved by a
2 decision made under this section may appeal the decision to the
3 Commonwealth Court within 15 calendar days. If a local agency
4 files a petition for relief under this section and the petition
5 is denied, the local agency may not file another petition under
6 this section for a period of twelve months.

7 Section 11. Sections 1101, 1102, 1304(a) and 1305 of the act
8 are amended to read:

9 Section 1101. Filing of appeal.

10 (a) Authorization.--The following shall apply:

11 (1) (i) If a written request for access to a record is
12 denied or deemed denied, the requester may file an appeal
13 with the Office of Open Records or judicial, legislative
14 or other appeals officer designated under section 503(d)
15 within [~~15 business~~] 30 days of the [~~mailing~~] postmark or
16 e-mail date of the agency's response or within [~~15~~
17 ~~business~~] 30 days of a deemed denial, whichever comes
18 first.

19 (ii) The appeal shall [~~state the grounds upon which~~
20 ~~the requester asserts that the record is a public record,~~
21 ~~legislative record or financial record and shall address~~
22 ~~any grounds stated by the agency for delaying or denying~~
23 ~~the request.] provide a succinct statement of the grounds
24 upon which the appeal is based and include all of the
25 following:~~

26 (A) The text of the original request.

27 (B) The text of the agency denial.

28 (C) Any other information the requester believes
29 to be relevant.

30 (iii) The Office of Open Records shall provide a

1 form on its publicly accessible Internet website that may
2 be used by the requester to file the appeal. The form
3 under this subparagraph may also be used to file an
4 appeal with a legislative agency or judicial agency.

5 (iv) The Office of Open Records may order a
6 requester who fails to include the information under
7 subparagraph (ii) to provide the required information.

8 (2) Except as provided in section 503(d), in the case of
9 an appeal of a decision by a Commonwealth agency or local
10 agency, the Office of Open Records shall assign an appeals
11 officer to review the denial.

12 (b) Determination.--

13 (1) Unless the requester agrees otherwise, the appeals
14 officer shall make a final determination which shall be
15 mailed to the requester and the agency within 30 days of
16 receipt of the appeal filed under subsection (a). The appeals
17 officer may extend this deadline by up to 15 days by
18 providing notice to both parties.

19 (1.1) If a hearing is ordered under section 1102(a)(2),
20 the appeals officer may extend the deadline up to 90
21 additional days.

22 (1.2) If an in-camera review is ordered under section
23 1102(a)(2), the appeals officer may extend the deadline up to
24 120 additional days.

25 (2) If the Office of Open Records or other appeals
26 officer fails to issue a final determination within 30 days
27 or as otherwise provided under paragraph (1), (1.1) or (1.2),
28 the appeal is deemed denied.

29 (3) Prior to issuing a final determination, a hearing
30 may be conducted. The determination by the appeals officer

1 shall be a final order. The appeals officer shall provide a
2 written explanation of the reason for the decision to the
3 requester and the agency.

4 (4) Except as provided in section 503(d), the Office of
5 Open Records shall have exclusive jurisdiction over all
6 appeals filed against Commonwealth and local agencies.

7 (5) If an appeals officer does not have jurisdiction to
8 hear an appeal or part of an appeal but another appeals
9 officer designated under section 503 has jurisdiction, the
10 appeals officer without jurisdiction shall transfer the
11 appeal or part of the appeal, as appropriate, to the appeals
12 officer with jurisdiction. If the appeal was timely filed
13 with the original appeals officer, it shall be considered
14 timely filed upon the transfer, but response times or
15 deadlines under this act shall be considered from the date of
16 the transfer to the appeals officer with jurisdiction.

17 (c) Direct interest.--

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

26 (2) The appeals officer may grant a request under
27 paragraph (1) if:

28 (i) no hearing has been held;

29 (ii) the appeals officer has not yet issued its

30 order; and

1 (iii) the appeals officer believes the information
2 will be probative.

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

5 Section 1102. Appeals officers.

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

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

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

21 [(3) Consult with agency counsel as appropriate.]

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

24 (5) For a local agency or an agency for which the Office
25 of Open Records designates an appeals officer under section
26 503(a), provide to the Office of Open Records, in a manner
27 and form prescribed by the Office of Open Records, a copy of
28 all final determinations issued within seven days of
29 issuance.

30 (b) Procedures.--The Office of Open Records, a judicial

1 agency, a legislative agency, the Attorney General, Auditor
2 General, State Treasurer or district attorney may adopt
3 procedures relating to appeals under this chapter.

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

9 (2) If a hearing is held, 1 Pa. Code Pt. II shall apply
10 unless the agency has adopted regulations, policies or
11 procedures to the contrary under this subsection.

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

16 (4) If a procedural defect would otherwise cause an
17 appeal to be dismissed, the appeals officer may, with the
18 agreement of the agency and the requester, waive the defect
19 and proceed to consider the case on its merits.

20 (c) Review.--The Office of Open Records may request that a
21 local agency or an agency for which the Office of Open Records
22 designates an appeals officer under section 503(a) submit a
23 record and a privilege or exemption log for the purpose of
24 conducting an in-camera review to determine if the record is a
25 public record.

26 Section 1304. Court costs and attorney fees.

27 (a) Reversal of agency determination.--If a court reverses
28 the final determination or response of the appeals officer or if
29 a court or appeals officer grants access to a record after a
30 request for access was deemed denied, the court or appeals

1 officer may award reasonable attorney fees and costs of
2 litigation or an appropriate portion thereof to a requester if
3 the court or appeals officer finds either of the following:

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

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

11 * * *

12 Section 1305. Civil penalty.

13 (a) Denial of access.--A court may impose a civil penalty of
14 not more than [~~\$1,500~~] \$2,500 if an agency [~~denied~~] denies
15 access to a public record in bad faith.

16 (b) Failure to comply with [~~court~~] order.--[~~An~~] A court may
17 impose a civil penalty of not more than \$500 per day if an
18 agency or public official [who does not promptly] fails to
19 comply with [a court] an 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 (c) Destruction of records.--A court may impose a civil
23 penalty of not more than \$2,500 if an agency or public official,
24 in violation of subsection (a), disposes of any potentially
25 responsive record in bad faith.

26 Section 12. Section 1307 of the act is amended by adding
27 subsections to read:

28 Section 1307. Fee limitations.

29 * * *

30 (i) Records to be used for a commercial purpose.--The

1 following apply:

2 (1) In responding to a request for records that will be
3 used for a commercial purpose, an agency may charge a
4 requester additional standard fees for the search, retrieval,
5 review, redaction and duplication of the records. The fees
6 shall be calculated at no more than the hourly wage of the
7 lowest-paid public employee of the agency who is capable of
8 searching, retrieving, reviewing, redacting or duplicating
9 the information necessary to comply with the request.

10 (2) Prior to granting a commercial request, the agency,
11 upon request, shall provide the requester with an estimate of
12 the fees to be incurred by the agency in fulfilling the
13 request.

14 (3) Paragraph (1) shall not apply to the following:

15 (i) A request for records subject to the fees under
16 subsection (b) (4).

17 (ii) A request for records subject to fees
18 established in laws or regulations of this Commonwealth
19 not subject to this act.

20 (iii) A request for records from an attorney on
21 behalf of a client if records are not obtained for the
22 purpose of selling, reselling or solicitation by the
23 attorney or the client or used by the client for a
24 commercial purpose.

25 (j) Alternative fee arrangement.--An agency and a requester
26 may enter into a contract, memorandum of understanding or other
27 agreement that provides an alternative fee arrangement to the
28 fees authorized under this section. An agreement under this
29 subsection shall be public.

30 (k) Appeals.--A fee charged under this section by a local

1 agency or an agency for which the Office of Open Records
2 designates an appeals officer under section 503(a) may be
3 appealed to the Office of Open Records.

4 Section 13. Sections 1310 and 3101.1 of the act are amended
5 to read:

6 Section 1310. Office of Open Records.

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

10 (1) Provide information relating to the implementation
11 and enforcement of this act.

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

13 (3) Provide an annual training [courses] course to
14 agencies, public officials and public employees on this act
15 and 65 Pa.C.S. Ch. 7 (relating to open meetings).

16 (4) Provide [annual,] regional and online training
17 courses throughout the year to local agencies, public
18 officials and public employees.

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

27 (i) Complete a training course provided by the
28 Office of Open Records prior to acting as an appeals
29 officer.

30 (ii) If a hearing is necessary, hold hearings

1 regionally as necessary to ensure access to the remedies
2 provided by this act.

3 (iii) Comply with the procedures under section
4 1102(b).

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

7 (7) Establish an Internet website with information
8 relating to this act, including information on fees, advisory
9 opinions and decisions and the name and address of all open
10 records officers in this Commonwealth.

11 (8) Conduct a biannual review of fees charged under this
12 act.

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

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

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

27 (d) Staffing.--The executive director shall appoint
28 attorneys to act as appeals officers and additional clerical,
29 technical and professional staff as may be appropriate and may
30 contract for additional services as necessary for the

1 performance of the executive director's duties. The compensation
2 of attorneys and other staff shall be set by the Executive
3 [Board] Director. The appointment of attorneys shall not be
4 subject to the act of October 15, 1980 (P.L.950, No.164), known
5 as the Commonwealth Attorneys Act.

6 (e) Duties.--

7 (1) The executive director shall ensure that the duties
8 of the Office of Open Records are carried out and shall
9 monitor cases appealed to the Office of Open Records.

10 (2) The Department of Community and Economic Development
11 shall provide payroll, leave and benefits, budget,
12 information technology and administrative support, and any
13 other support which may be necessary for the operation of the
14 Office of Open Records, to the Office of Open Records.

15 (e.1) Public comment.--The Office of Open Records shall
16 abstain from public comment about a pending proceeding before
17 the Office of Open Records. This subsection shall not prohibit
18 employees of the Office of Open Records from making public
19 statements in the course of official duties, from issuing
20 written advisory opinions, from making general comments on this
21 act that are not related to a specific pending proceeding before
22 the Office of Open Records or from explaining the procedures of
23 the Office of Open Records.

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

27 Section 3101.1. Relation to other laws.

28 (a) General rule.--If the provisions of this act regarding
29 access to records conflict with any other Federal or State law,
30 the provisions of this act shall not apply.

1 (b) Records made public under other laws.--If records are
2 expressly made public under any Federal law, the exceptions set
3 forth in section 708(b) shall not apply.

4 Section 14. This act shall take effect in 30 days.