

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 657 Session of 2023

INTRODUCED BY MASTRIANO, STEFANO AND BAKER, MAY 3, 2023

REFERRED TO STATE GOVERNMENT, MAY 3, 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 requirements and prohibitions, providing for Pennsylvania  
 12 Interscholastic Athletic Association; in access, further  
 13 providing for open-records officer, for appeals officer, for  
 14 regulations and policies, for requests and for retention of  
 15 records; in procedure, further providing for requests, for  
 16 written requests, for electronic access, for creation of  
 17 record, for production of certain records and for exceptions  
 18 for public records; in agency response, further providing for  
 19 general rule and for extension of time; in appeal of agency  
 20 determination, further providing for filing of appeal and for  
 21 appeals officers; in judicial review, further providing for  
 22 civil penalty and for Office of Open Records; and, in  
 23 miscellaneous provisions, further providing for relation to  
 24 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," "personal financial information" and "State-affiliated  
 29 entity" in section 102 of the act of February 14, 2008 (P.L.6,

1 No.3), known as the Right-to-Know Law, are amended and the  
2 section is amended by adding a definition 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 "Independent agency." Any board, commission, authority or  
9 other agency or officer of the Commonwealth, that is not subject  
10 to the policy supervision and control of the Governor. The term  
11 does not include a legislative or judicial agency.

12 \* \* \*

13 "Local agency." Any of the following:

14 (1) Any political subdivision, intermediate unit,  
15 charter school, cyber charter school or public trade or  
16 vocational school.

17 (2) Any local, intergovernmental, regional or municipal  
18 agency, authority, council, board, commission or similar  
19 governmental entity. This paragraph includes an economic  
20 development authority and an industrial development  
21 authority.

22 \* \* \*

23 "Personal financial information." An individual's personal  
24 credit, charge or debit card information; bank account or other  
25 financial institution account information; bank, credit or  
26 financial statements; account or PIN numbers; forms required to  
27 be filed by a taxpayer with a Federal or Commonwealth taxing  
28 authority; employee benefit election information; individual  
29 employee contributions to retirement plans and investment  
30 options; individual employee contributions to health care

1 benefits and other benefits; individual employee contributions  
2 to charitable organizations; and other information relating to  
3 an individual's personal finances.

4 \* \* \*

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

19 \* \* \*

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

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

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

27 (3) The dedicated emergency response organization  
28 dispatched.

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

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

3           (6) The time the dedicated emergency response  
4           organization became available.

5           (7) The address of the incident or the street block  
6           identifier, the cross street or the mile marker nearest the  
7           scene of the incident.

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

9           \* \* \*

10          Section 2. The act is amended by adding a section to read:  
11          Section 307. Pennsylvania Interscholastic Athletic Association.

12          For purposes of this act, the Pennsylvania Interscholastic  
13          Athletic Association is considered to be a local agency and  
14          shall provide public records in accordance with this act.

15          Section 3. Section 502 of the act is amended by adding a  
16          subsection to read:

17          Section 502. Open-records officer.

18          \* \* \*

19          (c) Agency registration.--An agency shall register the  
20          agency's open-records officer with the Office of Open Records in  
21          a manner prescribed by the Office of Open Records.

22          Section 4. Sections 503(d) (2), 504(b) (1), 506(a), 507, 702  
23          and 703 of the act are amended to read:

24          Section 503. Appeals officer.

25          \* \* \*

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

27          \* \* \*

28                 (2) The district attorney of a county shall designate  
29                 one or more appeals officers to hear appeals under Chapter 11  
30                 relating to access to criminal investigative records in

1 possession of a local agency of that county or a campus  
2 police department of a State-owned or State-related  
3 university of that county. The appeals officer designated by  
4 the district attorney shall determine if the record requested  
5 is a criminal investigative record.

6 Section 504. Regulations and policies.

7 \* \* \*

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

11 (1) Contact information for the open-records officer[.],  
12 including name, address, telephone number, facsimile number  
13 if used and email address if used.

14 \* \* \*

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 (1.1) An agency may deny a request to a party to  
22 litigation when the request:

23 (i) is material to a pending civil action or  
24 proceeding to which the agency is a party and the  
25 Pennsylvania Rules of Civil Procedure or the Federal  
26 Rules of Civil Procedure apply; or

27 (ii) was previously made in litigation discovery.

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

30 \* \* \*

1 Section 507. Retention of records.

2 (a) Agency schedules.--Nothing in this act shall be  
3 construed to modify, rescind or supersede any record retention  
4 policy or disposition schedule of an agency established pursuant  
5 to law, regulation, policy or other directive.

6 (b) Prohibition.--

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

12 (2) A court may impose a civil penalty of not more than  
13 \$25,000, per request, if an agency or public official, in  
14 violation of paragraph (1), disposes of any potentially  
15 responsive record in bad faith.

16 Section 702. [Requests] Verbal requests.

17 Agencies may fulfill verbal[, written or anonymous verbal or  
18 written] requests for access to records under this act. If the  
19 requester wishes to pursue the relief and remedies provided for  
20 in this act, the request for access to records must be a written  
21 request.

22 Section 703. Written requests.

23 A written request for access to records may be submitted in  
24 person, by mail, by e-mail, by facsimile or, to the extent  
25 provided by agency rules, by any other electronic means. A  
26 written request must be addressed to the open-records officer  
27 designated pursuant to section 502[. Employees of an] or to the  
28 administrative office of the agency. The administrative office  
29 of the agency shall [be directed to] promptly forward requests  
30 for records to the open-records officer of the agency that

1 received the request. A written request should identify or  
2 describe the records sought with sufficient specificity to  
3 enable the agency to ascertain which records are being requested  
4 and shall include the name and address to which the agency  
5 should address its response. A written request need not include  
6 any explanation of the requester's reason for requesting or  
7 intended use of the records unless otherwise required by law.

8 Section 5. Section 704(b) of the act is amended by adding a  
9 paragraph to read:

10 Section 704. Electronic access.

11 \* \* \*

12 (b) Response.--

13 \* \* \*

14 (3) If the requester is seeking access to the contents  
15 of a database, the requester may, within 30 days following  
16 receipt of the agency notification, submit a written request  
17 to the agency to receive some or all of the underlying  
18 database. The agency shall provide a copy of the database in  
19 the same manner as it is utilized by the agency or provide a  
20 reason for denying a copy of the database within 14 days of  
21 the receipt of the written request. Any denial under this  
22 paragraph may be appealed pursuant to the provisions of  
23 Chapter 11.

24 Section 6. Sections 705 and 707 of the act are amended to  
25 read:

26 Section 705. Creation of record.

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

1 organize the record. Providing data from an agency database does  
2 not constitute creating a record.

3 Section 707. Production of certain records.

4 (a) General rule.--If, in response to a request, an agency  
5 produces a record that is not a public record, legislative  
6 record or financial record, the agency shall notify any third  
7 party that provided the record to the agency, the person that is  
8 the subject of the record and the requester.

9 (b) Requests for trade secrets.--An agency shall notify a  
10 third party of a request for a record if the third party  
11 provided the record and included a written statement signed by a  
12 representative of the third party that the record contains a  
13 trade secret or confidential proprietary information.  
14 Notification shall be provided within five business days of  
15 receipt of the request for the record. The third party shall  
16 have five business days from receipt of notification from the  
17 agency to provide input on the release of the record. The agency  
18 shall [deny the request for the record or release the record  
19 within ten business days of the provision of notice to the third  
20 party and shall notify the third party of the decision.] notify  
21 the third party of the agency's decision to deny access to the  
22 record or release the record within one business day of  
23 responding to the requester.

24 (c) Transcripts.--

25 (1) Prior to an adjudication becoming final, binding and  
26 nonappealable, a transcript, if it exists, of an  
27 administrative proceeding shall be provided to a requester by  
28 the agency stenographer or a court reporter, in accordance  
29 with agency procedure or an applicable contract.

30 (2) Following an adjudication becoming final, binding



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

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

7 (d) Information privacy.--When an agency believes that  
8 responsive material to a request may include personal  
9 information protected under section 1 of Article I of the  
10 Constitution of Pennsylvania, it may require a requester to  
11 provide additional information as to:

12 (1) why the requester believes that the information is  
13 not protected; or

14 (2) if the information is protected, why the interest of  
15 the public in having access to the information outweighs the  
16 individual privacy rights.

17 Section 7. Section 708(b)(6), (9), (10), (13), (16), (17)  
18 and (18) and (c) of the act are amended and subsection (b) is  
19 amended by adding paragraphs to read:

20 Section 708. Exceptions for public records.

21 \* \* \*

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

25 \* \* \*

26 (6) (i) The following personal identification  
27 information:

28 (A) A record containing all or part of a  
29 person's Social Security number, driver's license  
30 number, personal financial information, home,

1 cellular or personal telephone numbers, personal e-  
2 mail addresses, employee number or other confidential  
3 personal identification number.

4 (B) A spouse's name, marital status or  
5 beneficiary or dependent information, including the  
6 number, names and ages of an employee's dependents.

7 (C) The home address of a law enforcement  
8 officer or judge.

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

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

19 (iv) Nothing in this paragraph shall prevent the  
20 disclosure of aggregated data of employer or employee  
21 costs related to retirement benefits, health care  
22 benefits or other benefits or the disclosure of options  
23 made available to employees regarding retirement, health  
24 care or other benefits plans.

25 \* \* \*

26 (9) The draft of a bill, resolution, regulation,  
27 statement of policy, management directive, ordinance or  
28 amendment thereto prepared by or for an agency. This  
29 paragraph shall not apply to a draft that is presented to a  
30 quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7

1 (relating to open meetings) or that is discussed by agency  
2 officials or employees at a public meeting regardless of  
3 whether a vote occurs at the meeting.

4 (10) As follows:

5 (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 or which is discussed by  
25 agency officials or employees at a public meeting shall  
26 be a public record regardless of whether a vote occurs at  
27 the meeting.

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

1 (iv) This paragraph shall not apply to the results  
2 of public opinion surveys, polls, focus groups, marketing  
3 research or similar effort designed to measure public  
4 opinion.

5 (v) This paragraph shall not apply to records  
6 created more than 20 years prior to the request.

7 \* \* \*

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

17 \* \* \*

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

20 (i) Complaints of potential criminal conduct other  
21 than a private criminal complaint.

22 (ii) Investigative materials, notes, correspondence,  
23 videos and reports.

24 (iii) A record that includes the identity of a  
25 confidential source or the identity of a suspect who has  
26 not been charged with an offense to whom confidentiality  
27 has been promised.

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

30 (v) Victim information, including any information

1 that would jeopardize the safety of the victim.

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

4 (A) Reveal the institution, progress or result  
5 of a criminal investigation, except the filing of  
6 criminal charges.

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

9 (C) Impair the ability to locate a defendant or  
10 codefendant.

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

13 (E) Endanger the life or physical safety of an  
14 individual.

15 (vii) This paragraph shall not apply to records  
16 created more than 60 years prior to the request, unless  
17 the agency can demonstrate actual harm to an ongoing  
18 investigation if the records are released.

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

26 (17) [A] Except for a final safety inspection report  
27 made pursuant to law or regulation or a final agency decision  
28 in the noncriminal investigation, a record of an agency  
29 relating to a noncriminal investigation, including:

30 (i) Complaints submitted to an agency.

1 (ii) Investigative materials, notes, correspondence  
2 and reports.

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

7 (iv) A record that includes information made  
8 confidential by law.

9 (v) Work papers underlying an audit.

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

12 (A) Reveal the institution, progress or result  
13 of an agency investigation, except the imposition of  
14 a fine or civil penalty, the suspension, modification  
15 or revocation of a license, permit, registration,  
16 certification or similar authorization issued by an  
17 agency or an executed settlement agreement unless the  
18 agreement is determined to be confidential by a  
19 court.

20 (B) Deprive a person of the right to an  
21 impartial adjudication.

22 (C) Constitute an unwarranted invasion of  
23 privacy.

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

26 (E) Endanger the life or physical safety of an  
27 individual.

28 (vii) This paragraph shall not apply to records  
29 created more than 35 years prior to the request, unless  
30 the agency can demonstrate actual harm to an ongoing

1 investigation if the records are released.

2 (18) Emergency dispatches as follows:

3 (i) Records or parts of records, except time  
4 response logs, pertaining to audio recordings, telephone  
5 or radio transmissions received by emergency dispatch  
6 personnel, including 911 recordings.

7 (ii) This paragraph shall not apply to a 911  
8 recording, or a transcript of a 911 recording, if the  
9 agency or a court determines that the public interest in  
10 disclosure outweighs the interest in nondisclosure.

11 \* \* \*

12 (31) An agency's financial institution account numbers,  
13 routing numbers, credit card numbers, PIN numbers and  
14 passwords.

15 (32) A record of any of the following:

16 (i) A volunteer ambulance service.

17 (ii) A volunteer fire company.

18 (iii) A volunteer rescue company.

19 (iv) A volunteer water rescue company.

20 (v) A volunteer organization that provides hazardous  
21 materials response services.

22 (vi) A volunteer organization that provides  
23 emergency medical services.

24 Section 506(d)(1) shall apply to a volunteer organization  
25 under this paragraph that contracts with a local agency to  
26 provide services to the local agency.

27 (c) Financial records.--The exceptions set forth in  
28 subsection (b) shall not apply to financial records, except that  
29 an agency may redact that portion of a financial record  
30 protected under subsection (b)(1), (2), (3), (4), (5), (6),

1 (11), (13), (16) [or], (17), (28) or (30). An agency shall not  
2 disclose the identity of an individual performing an undercover  
3 or covert law enforcement activity.

4 \* \* \*

5 Section 8. Sections 901, 902(b)(2), 1101, 1102, 1305, 1310  
6 and 3101.1 of the act are amended to read:

7 Section 901. General rule.

8 (a) Determination.--Upon receipt of a written request for  
9 access to a record, an agency shall make a good faith effort to  
10 determine if the record requested is a public record,  
11 legislative record or financial record and whether the agency  
12 has possession, custody or control of the identified record, and  
13 to respond as promptly as possible under the circumstances  
14 existing at the time of the request. All applicable fees shall  
15 be paid in order to receive access to the record requested.

16 (b) Time for response.--The time for response shall not  
17 exceed, in the case of a request made in person or submitted by  
18 regular mail, email, web form, facsimile or similar means, five  
19 business days from the date the written request is received by  
20 the open-records officer for an agency. If the agency fails to  
21 send the response within five business days of receipt of the  
22 written request for access, the written request for access shall  
23 be deemed denied.

24 Section 902. Extension of time.

25 \* \* \*

26 (b) Notice.--

27 \* \* \*

28 (2) The notice shall include a statement notifying the  
29 requester that the request for access is being reviewed, the  
30 reason for the review, a reasonable date that a response is



1 expected to be provided and an estimate of applicable fees  
2 owed when the record becomes available. [If the date that a  
3 response is expected to be provided is in excess of 30 days,  
4 following the five business days allowed for in section 901,  
5 the request for access shall be deemed denied unless the  
6 requester has agreed in writing to an extension to the date  
7 specified in the notice.] The request for access shall be  
8 deemed denied if the agency fails to send a response within  
9 30 days following the five business days under section 901,  
10 unless the requester has agreed in writing to an additional  
11 extension beyond 30 days.

12 \* \* \*

13 Section 1101. Filing of appeal.

14 (a) Authorization.--

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

23 (ii) The appeal shall [state the grounds upon which  
24 the requester asserts that the record is a public record,  
25 legislative record or financial record and shall address  
26 any grounds stated by the agency for delaying or denying  
27 the request.] include all of the following:

28 (A) A copy of the original request.

29 (B) A copy of the agency denial.

30 (C) Any other information the requester believes

1           to be relevant.

2           (iii) The Office of Open Records shall provide a  
3           form on its publicly accessible Internet website that may  
4           be used by the requester to file the appeal.

5           (iv) The appeals officer may order a requester who  
6           fails to include the information required 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:

24           (i) Up to 45 additional days, if the number of  
25           records is 10 or fewer.

26           (ii) Up to 90 additional days, if the number of  
27           records is greater than 10 or the records include audio  
28           or video recordings.

29           (1.3) If the issue before the Office of Open Records is  
30           substantially the same as an issue currently on appeal to a

1 court of common pleas, Commonwealth Court or the Supreme  
2 Court, the appeals officer may stay the opinion of the Office  
3 of Open Records until the appeal is decided.

4 (2) If the Office of Open Records or other appeals  
5 officer fails to issue a final determination within 30 days  
6 or as otherwise provided under paragraph (1), the appeal is  
7 deemed denied.

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

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

16 (5) An appeals officer designated by a district attorney  
17 under section 503(d)(2) shall have jurisdiction over an  
18 appeal only insofar as it relates to access to criminal  
19 investigative records in possession of a local agency or a  
20 campus police department of a State-owned or State-related  
21 university in that county. To the extent an appeal involves  
22 multiple issues, one of which relates to access to criminal  
23 investigative records in possession of a local agency, the  
24 Office of Open Records shall have jurisdiction over all other  
25 issues in the appeal.

26 (6) If an appeals officer does not have jurisdiction to  
27 hear an appeal or part of an appeal but another appeals  
28 officer designated under section 503 has jurisdiction, the  
29 appeals officer without jurisdiction shall transfer the  
30 appeal or part of the appeal, as appropriate, to the appeals

1 officer with jurisdiction. If the appeal was timely filed  
2 with the original appeals officer, it shall be considered  
3 timely filed upon the transfer.

4 (c) Direct interest.--

5 (1) A person other than the agency or requester with a  
6 direct interest in the record subject to an appeal under this  
7 section may, within 15 days following receipt of actual  
8 knowledge of the appeal but no later than the date the  
9 appeals officer issues an order, file a written request to  
10 provide information or to appear before the appeals officer  
11 or to file information in support of the requester's or  
12 agency's position.

13 (2) The appeals officer may grant a request under  
14 paragraph (1) if:

15 (i) no hearing has been held;

16 (ii) the appeals officer has not yet issued its  
17 order; and

18 (iii) the appeals officer believes the information  
19 will be probative.

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

22 Section 1102. Appeals officers.

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

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

28 (2) Review all information filed relating to the  
29 request. The appeals officer may hold a hearing or conduct an  
30 in-camera review. A decision to hold or not to hold a hearing

1 is not appealable. A decision to conduct or not to conduct an  
2 in-camera review is not appealable. The appeals officer may  
3 admit into evidence testimony, evidence and documents that  
4 the appeals officer believes to be reasonably probative and  
5 relevant to an issue in dispute. The appeals officer may  
6 limit the nature and extent of evidence found to be  
7 cumulative.

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

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

11 (5) Provide to the Office of Open Records, in a manner  
12 and form prescribed by the Office of Open Records, a copy of  
13 all final determinations issued within seven days of  
14 issuance.

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

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

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

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

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

5           (c) Review.--The appeals officer may require an agency to  
6 submit a record and a privilege or exemption log for the purpose  
7 of conducting an in-camera review to determine if the record is  
8 a public record.

9 Section 1305. Civil penalty.

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

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

19 Section 1310. Office of Open Records.

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

23           (1) Provide information relating to the implementation  
24 and enforcement of this act.

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

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

29           (4) Provide [~~annual,~~] regional and online training  
30 courses throughout the year to local agencies, public

1 officials and public employees.

2 (5) Assign appeals officers to review appeals of  
3 decisions by Commonwealth agencies or local agencies, except  
4 as provided in section 503(d), filed under section 1101 and  
5 issue orders and opinions. The office shall employ or  
6 contract with attorneys to serve as appeals officers to  
7 review appeals and, if necessary, to hold hearings on a  
8 regional basis under this act. Each appeals officer must  
9 comply with all of the following:

10 (i) Complete a training course provided by the  
11 Office of Open Records prior to acting as an appeals  
12 officer.

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

16 (iii) Comply with the procedures under section  
17 1102(b).

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

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

24 (8) Conduct a biannual review of fees charged under this  
25 act.

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

30 (b) Executive director.--Within 90 days of the effective

1 date of this section, the Governor shall appoint an executive  
2 director of the office who shall serve for a term of six years.  
3 Compensation shall be set by the Executive Board established  
4 under section 204 of the act of April 9, 1929 (P.L.177, No.175),  
5 known as The Administrative Code of 1929. The executive director  
6 may serve no more than two terms.

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

10 (d) Staffing.--The executive director shall appoint  
11 attorneys to act as appeals officers and additional clerical,  
12 technical and professional staff as may be appropriate and may  
13 contract for additional services as necessary for the  
14 performance of the executive director's duties. The compensation  
15 of attorneys and other staff shall be set by the Executive  
16 [Board] Director. The appointment of attorneys shall not be  
17 subject to the act of October 15, 1980 (P.L.950, No.164), known  
18 as the Commonwealth Attorneys Act.

19 (e) Duties.--

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

23 (2) The Department of Community and Economic Development  
24 shall provide payroll, leave and benefits, budget,  
25 information technology and administrative support, and any  
26 other support which may be necessary for the operation of the  
27 Office of Open Records, to the Office of Open Records.

28 (e.1) Public comment.--The Office of Open Records shall  
29 abstain from public comment about a pending proceeding before  
30 the Office of Open Records. This subsection shall not prohibit



1 employees of the Office of Open Records from making public  
2 statements in the course of official duties, from issuing  
3 written advisory opinions, from making general comments on this  
4 act that are not related to a specific pending proceeding before  
5 the Office of Open Records or from explaining the procedures of  
6 the Office of Open Records.

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

10 Section 3101.1. Relation to other laws.

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

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

17 Section 9. This act shall take effect in 90 days.