

Pennsylvania's Right to Know Law:
Guide to The New Open Records Law:
Act 3 of 2008

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PENNSYLVANIA NEWSPAPER ASSOCIATION

GUIDE TO THE NEW OPEN RECORDS LAW ACT 3 OF 2008.

I. BACKGROUND

On February 14, 2008, Governor Rendell signed sweeping amendments to the Right to Know Law into law. Most provisions in the new law take effect on January 1, 2009, although certain provisions take effect immediately, and those relating to state-related institutions and the posting of state contract information online take effect on July 1, 2008.

The Right to Know Law is Pennsylvania's open records law. It requires government agencies in Pennsylvania to provide access to and copies of public records to the public. The Law, as amended, fundamentally changes the structure of Pennsylvania's open records law in favor of public access. It presumes that all records held by state and local agencies are public, that all legislative records of the General Assembly are public, and that all financial records of Pennsylvania's court system are public. The Law contains 30 categories of records that are exempt from disclosure under the Law, including records that, if disclosed, would threaten homeland security or a person's personal security, criminal investigative records, medical records, and certain personnel records.

For the first time since the Right to Know Law was passed in 1957, it will include the General Assembly and will give citizens the ability to appeal open records disputes to an administrative agency, the Office of Open Records, without the need to file a court action. The new law guarantees access to public records in the possession of government contractors performing "governmental functions" on behalf of an agency, establishes an online, searchable database for state contract information, and requires state-affiliated universities to make certain financial information public. The law also shortens agency response times and increases the civil penalties that can be awarded against an agency acting in bad faith.

The law does not apply to records held by federal agencies. Anyone interested in obtaining federal agency records, must make a request under the federal Freedom of Information Act (FOIA). For more information on making a FOIA request, including a letter generator, see <http://rcfp.org/foia/>.

II. WHO IS COVERED BY THE LAW (SECTION 102)

The law covers Commonwealth agencies, local agencies, judicial agencies, and legislative agencies. It also contains requirements for state-related institutions.

- A. Commonwealth agencies include:**
1. Any office, department, authority, board, multistate agency or commission of the executive branch;
 2. Any “independent agency,” including:
 - a. Any board, commission or other agency or officer of the Commonwealth that is not subject to the policy, supervision and control of the Governor.
 - b. “Independent agency” does not include a legislative or judicial agency.
 3. Any “State-affiliated agency,” which includes:
 - a. A Commonwealth authority or Commonwealth entity, including:
 - 1) The Pennsylvania Higher Education Assistance Agency and any entities created thereby;
 - 2) The Pennsylvania Gaming Control Board;
 - 3) The Pennsylvania Game Commission;
 - 4) The Pennsylvania Fish and Boat Commission;
 - 5) The Pennsylvania Housing Finance Agency;
 - 6) The Pennsylvania Municipal Retirement Board;
 - 7) The State System of Higher Education;
 - 8) Community colleges;
 - 9) The Pennsylvania Turnpike Commission;
 - 10) The Pennsylvania Public Utility Commission;
 - 11) The Pennsylvania Infrastructure Investment Authority;
 - 12) The State Public School Building Authority;
 - 13) The Pennsylvania Interscholastic Athletic Association; and
 - 14) The Pennsylvania Educational Facilities Authority.
 - b. The term does not include a “State-related institution.”
 4. “Commonwealth agency” also includes:
 - a. The Governor’s office;

- b. The Office of Attorney General;
 - c. The Department of the Auditor General;
 - d. The Treasury Department; and
 - e. Any other organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.
5. The term “Commonwealth agency” does not include a judicial or legislative agency.

B. Local agencies include:

1. Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school;
2. Any local, intergovernmental, regional, or municipal agency, authority, council, board, commission; or
3. Any similar governmental entity.

C. Judicial agencies include:

1. A court of the Commonwealth; or
2. Any other entity or office of the unified judicial system.

D. Legislative agencies include:

1. The Senate;
2. The House of Representatives;
3. The Capitol Preservation Committee;
4. The Center for Rural Pennsylvania;
5. The Joint Legislative Air and Water Pollution Control and Conservation Committee;
6. The Joint State Government Commission;
7. The Legislative Budget and Finance Committee;
8. The Legislative Data Processing Committee;
9. The Independent Regulatory Review Commission;
10. The Legislative Reference Bureau;
11. The Local Government Commission;
12. The Pennsylvania Commission on Sentencing;
13. The Legislative Reapportionment Commission;
14. The Legislative Office of Research Liaison; and
15. The Legislative Audit Advisory Commission.

**III. RECORDS OF COMMONWEALTH AND LOCAL AGENCIES
(SECTIONS 102, 301-305)**

- A. Records are presumed open; burden is on agency.** The new law begins with the presumption that all records held by Commonwealth and local agencies are publicly available – both for viewing and

copying. The burden of proving that a record is non-public or that an exemption applies is on the agency denying access (Sections 102, 301, 302, 305).

- B. Government contractors.** The new law also provides access to public records in the possession of government contractors performing “governmental functions” on behalf of an agency and which directly relate to that governmental function. These records are to be requested from the agencies (Section 506(d)).
- C. No presumption.** The presumption of access does not apply to Commonwealth and local agency records that are: 1) protected by a privilege (e.g., attorney-client, doctor-patient); 2) exempt from disclosure under federal or state law or regulation or judicial order; or 3) exempt under Section 708 of the Right to Know Law. Section 708 of the Law lists 30 categories of records that are exempt from disclosure (Section 305(a)).

IV. RECORDS OF JUDICIAL AGENCIES

- A. Financial records are presumed open; burden is on agency.** The new law begins with the presumption that all **financial records** held by judicial agencies are publicly available – both for viewing and copying. The burden of proving that a financial record is non-public (or that an exemption applies) is on the judicial agency denying access (Sections 102, 304, 305(b)).
- B. Financial records include:**
 - 1. Any account, voucher or contract dealing with: 1) the receipt or disbursement of funds by an agency; or 2) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property;
 - 2. The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee; and
 - 3. A financial audit report (not including work papers underlying an audit).(Section 102).
- C. No presumption.** The presumption of access does not apply to financial records of judicial agencies that are: 1) protected by a privilege (e.g., attorney-client, doctor-patient); 2) exempt from disclosure under federal or state law or regulation or judicial order; or 3) exempt under Section 708 of the Right to Know Law. Section 708

of the Law lists 30 categories of records that are exempt from disclosure (Section 305(b)).

V. **RECORDS OF LEGISLATIVE AGENCIES**

- A. **Legislative records are presumed open; burden is on agency.** The new law begins with the presumption that all **legislative records** are publicly available – both for viewing and copying. The burden of proving that a legislative record is non-public (or that an exemption applies) is on the legislative agency denying access (Sections 102, 303, 305(b)).
- B. **Legislative Records** include any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:
1. A financial record (see definition above);
 2. A Bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber;
 3. Fiscal notes;
 4. A cosponsorship memorandum;
 5. The journal of a chamber;
 6. The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting;
 7. The transcript of a public hearing when available;
 8. Executive nomination calendars;
 9. The rules of a chamber;
 10. A record of all recorded votes taken in a legislative session;
 11. Any administrative staff manuals or written policies;
 12. Audit reports of the Legislative Audit Advisory Commission;
 13. Final or annual reports required by law to be submitted to the General Assembly;
 14. Legislative Budget and Finance Committee reports;
 15. Daily Legislative Session Calendars and marked calendars;
 16. A record communicating to an agency the official appointment of a legislative appointee;
 17. A record communicating to the appointing authority the resignation of a legislative appointee;
 18. Proposed regulations, final-form regulations, and final-omitted regulations submitted to a legislative agency; and

19. Results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

(Section 102).

C. **No presumption.** The presumption of access does not apply to legislative records that are: 1) protected by a privilege (e.g., attorney-client, doctor-patient); 2) exempt from disclosure under federal or state law; or 3) exempt under Section 708 of the Right to Know Law. Section 708 of the Law lists 30 categories of records that are exempt from disclosure (Section 305(b)).

VI. **RECORDS THAT ARE NOT PUBLIC**

A. **Records protected by a privilege.** Under the new law, records that are protected by a privilege are not public. “Privilege” is defined to include the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth (Sections 102, 305).

B. **Records that are expressly made non-public by another law.** Records that are non-public under some other law are not public (Sections 305, 306, 3101.1). The reverse is also true. **If another statute makes a record public, then that record is public, and the Right to Know Law does not change that.** For example, the Criminal History Record Information Act (CHRIA) expressly states that police blotters are public records. The Right to Know Law does not change this. Likewise, the law does not affect access to criminal and civil court records or voter registration records (Sections 306, 3101.1).

VII. **RECORDS THAT ARE PUBLIC**

A. **Public, legislative, and financial records that are not privileged and not exempt.** Records of Commonwealth and local agencies are presumptively public, as are financial records of judicial agencies and legislative records of legislative agencies. These records must be released unless privileged, made confidential by some other law, or exempt under Section 708(b) (Sections 102, 305, 306, 3101.1).

B. **Records that are public under another law.** As stated above, if another law provides that a record is public, that record is public. The Right to Know Law does not change this result (Sections 306, 3101.1).

C. **All financial records, except those parts exempt under 708(b)(1), (2), (3), (4), (5), (6), (16), (17).** Many of the exemptions do not apply

to financial records, which are presumptively public for all covered agencies (Section 708(c)).

D. All records reflecting aggregated data, except those parts exempt under 708(b)(1), (2), (3), (4), or (5). Similarly, most exemptions do not apply to aggregated data, except those portions protected under 708(b)(1),(2),(3),(4), or (5) (Section 708(d)).

E. Exempt, non-privileged records that agency decides to release. Section 506(c) of the Law makes it clear that agencies have the discretion to release records that are exempt under Section 708 of the Law, provided that: 1) disclosure is not prohibited by some other law or by court order; 2) the record is not protected by a privilege; and 3) the agency head determines that the public interest in disclosure outweighs any need for confidentiality.

VIII. EXEMPTIONS (SECTION 708)

A. Section 708 of the new law contains 30 categories of exemptions. As stated above, agencies may release these records in many circumstances (Section 506(c)).

B. Financial records; aggregated data. As also stated above, many of the exemptions do not apply to financial records or aggregated data (Sections 708(c) and (d)).

C. Exemptions. The exemptions include the following:

1. A record that, if disclosed, would result in the loss of Federal or state funds (Section 708(b)(1));
2. A record that, if disclosed, would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual (Section 708(b)(1));
3. A record that, if disclosed, would be reasonably likely to jeopardize homeland security or public safety or preparedness (Section 708(b)(2));
4. A record that, if disclosed, would create a reasonable likelihood of endangering the safety or security of a building, public utility, infrastructure, or information storage system (Section 708(b)(3));
5. A record that, if disclosed, would be reasonably likely to jeopardize computer security (Section 708(b)(4));
6. Medical, psychological and related records that would disclose individually identifiable health information (Section 708(b)(5));

7. Personal identification information, including social security numbers, personal financial information, driver's license numbers, home, cellular or personal telephone numbers, personal e-mail addresses, employee numbers, other confidential personal identification numbers, a spouse's name, marital status, and beneficiary or dependent information (Section 708(b)(6));
8. Home addresses of law enforcement personnel and judges (Section 708(b)(6));
9. Certain personnel records relating to public employees, including:
 - a. letters of references unless related to an appointment to fill a vacancy in an elected office or an appointed office requiring Senate confirmation;
 - b. performance ratings or reviews;
 - c. state civil service test results and local results if restricted by collective bargaining agreement or if applicant failed;
 - d. applications of those not hired;
 - e. workplace support services program information;
 - f. written criticisms of an employee;
 - g. grievance material;
 - h. information regarding discipline, demotion, or discharge contained in a personnel file. This subparagraph does not apply to the final action of an agency that results in demotion or discharge; and
 - i. academic transcripts.(Section 708(b)(7));
10. Records relating to collective bargaining strategy or negotiations, except that final contracts and agreements and final awards and orders of arbitrators are public (Section 708(b)(8));
11. Drafts of bills, resolutions, regulations, policies, management directives, and ordinances (Section 708(b)(9)) ;
12. Records reflecting internal, predecisional deliberations of agencies, including predecisional deliberations relating to a budget recommendation, legislative proposal, or proposed policy, including internal strategies. This exemption does not apply to records reflecting an agency decision, records requesting state funding/grant money, or results of public

- opinion surveys or polls. In addition, records presented to a quorum of an agency for public deliberation at a meeting subject to the Sunshine Act (e.g., board packets) are public records, unless otherwise exempt under the Act (Section 708(b)(10));
13. Trade secrets and confidential proprietary information (Section 708(b)(11));
 14. Notes and working papers used by a public official or employee solely for that individual's own personal use (Section 708(b)(12));
 15. Records that would disclose the identity of an agency donor, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency (Section 708(b)(13));
 16. Unpublished academic materials (Section 708(b)(14));
 17. Academic transcripts and examination materials (Section 708(b)(15));
 18. Criminal investigative records. This exemption does not apply to private criminal complaints or to information contained in a police blotter or in a traffic report (except for in-depth accident investigations) (Section 708(b)(16));
 19. Non-criminal investigative records. This exemption does not apply to fines levied by agencies, license revocations, settlement agreements, or similar agency actions (Section 708(b)(17));
 20. 911 records, except that time response logs are public, and agencies can disclose 911 recordings or transcripts if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure (Section 708(b)(18));
 21. DNA and RNA records (Section 708(b)(19)) ;
 22. Autopsy reports, except that name, cause, and manner of death of a deceased individual are public (Section 708(b)(20)) (but see 16 P.S. 1251);
 23. Draft minutes of an agency until the next meeting and minutes of an executive session (Section 708(b)(21));
 24. Real estate appraisals, environmental reviews, audits or evaluations relating to an agency's proposed lease, acquisition, or disposal of real property. The exemption no longer applies once the decision to lease, acquire or dispose of the property is made (Section 708(b)(22));

25. Library circulation records and certain archived materials (Section 708(b)(23) and (24));
26. Records identifying the location of an archeological site or an endangered or threatened plant or animal species if not already publicly known (Section 708(b)(25));
27. Proposals relating to agency procurement or disposal of supplies, services or construction prior to the award of the contract or the opening and rejection of all bids; financial information of a bidder or offeror (Section 708(b)(26));
28. Communications between an agency and its insurance carrier, administrative service organization, or risk management office. This exemption does not apply to contracts between agencies and these entities or to financial records relating to the provision of insurance (Section 708(b)(27));
29. Records identifying individuals who apply for or receive social services or disclosing the social services received by an individual (Section 708(b)(28));
30. Correspondence between a person and a legislator that would identify a person requesting assistance or constituent services. This exemption does not apply to communications from lobbyists (Section 708(b)(29)) ;
31. Records identifying the name, home address, or date of birth of a child 17 years of age or younger (Section 708(b)(30)).

IX. AGENCY DISCRETION TO RELEASE RECORDS

Agencies have the discretion to release records that are exempt under Section 708 of the Law, if: 1) disclosure is not prohibited by some other law or by court order; 2) the record is not protected by a privilege; and 3) the agency head determines that the public interest in disclosure outweighs any need for confidentiality (Section 506(c)).

X. MAKING A REQUEST FOR A PUBLIC RECORD

- A. **General Rule.** A public record, legislative record or financial record shall be accessible for inspection and duplication during the regular business hours of an agency (Section 701).
- B. **Procedure.** A requester may make a request in person, by mail, facsimile or e-mail (Section 703).
- C. **Requests must be directed to an agency's open records officer.** The law requires each agency to appoint an "open records officer" (see below) (Section 502). A requester must direct his or her request to the

agency's open records officer. If the request is sent to the wrong person, public employees "shall be directed" to forward it to the open records officer, however there is no apparent penalty for not doing so (Section 703).

- D. Substance of request.** A written request should identify or describe the records sought with sufficient specificity so that the agency can determine which records a requester seeks and must include the name and address to which the agency should address its response. A requester does not have to tell an agency why he or she wants a particular record, except as otherwise required by law (Section 703).
- E. Uniform request form (Section 505).**
- 1. Commonwealth and local agencies.** The Office of Open Records will develop a uniform form which must be accepted by Commonwealth and local agencies. The form is required to be posted at the agency and on an agency's website, if it has one. The law does not require a requester to use the form to make a request, nor does it restrict agencies from having and using their own forms, but any request must contain the information listed above. The uniform form will be available on the Office of Open Record's Internet website (Section 505(a)).
 - 2. Judicial agencies and legislative agencies.** Judicial agencies and legislative agencies may develop their own forms or use the form created by the Office of Open Records. Again, a requester is not required to use these forms, provided that the request contains the necessary information (Sections 505(b) and (c)).
- F. Verbal And Anonymous Requests /Written Requests.** An agency may, but is not required to, fulfill a verbal and/or an anonymous request. A requester must make a written request if he or she plans to seek the remedies provided for in the Act.
- G. Reason For The Request/Intended Use Of Documents.** A requester does not need to give a reason for the request, nor does he have to explain how he intends to use the record, except where permitted by some other law. Under the Right to Know Law, an agency cannot deny a request based on how a requester plans to use the document.

XI. AGENCY OBLIGATIONS AND RESPONSES

A. Open Records Officer.

1. **Designation.** Each agency shall designate an official or employee to act as the open-records officer. For a legislative agency other than the Senate or the House, the open-records officer designated by the Legislative Reference Bureau shall serve as the open-records officer. Political party caucuses may, but are not required, to appoint their own open-records officers (Section 502).
2. **Posting of information.** The following information must be posted at each agency and on an agency's Internet website, if one exists: 1) contact information for the open-records officer; 2) contact information for the Office of Open Records or other applicable appeals officer; 3) a form which may be used to file a request; and 4) regulations, policies and procedures of the agency relating to the Right to Know Act (Section 504(b)).
3. **Function.** The open-records officer receives requests, directs them to the appropriate persons, tracks the agency's progress in responding, and issues interim and final responses. The Act includes tracking obligations on agencies, including noting the date of receipt, computing the due date for the agency response, maintaining records for certain time periods, and maintaining an agency file (relating to Commonwealth agency requests) (Section 502).

B. Appeals Officer (Section 503). The administrative appeals process varies, depending upon the agency that denied access to a record. Most Commonwealth and local agency denials will be handled by "appeals officers" acting on behalf of the Office of Open Records.

1. **Commonwealth agencies and local agencies.** Except as noted below, the Office of Open Records will designate the "appeals officer" for all Commonwealth agencies and local agencies, who will handle the administrative appeal to the Office of Open Records (Section 503(a)).
2. **Judicial agencies.** A judicial agency shall designate its own appeals officer, who will handle the administrative appeal of any denial by a judicial agency (Section 503(b)).
3. **Legislative agencies.** The Legislative Reference Bureau shall designate an appeals officer to hear administrative appeals from most legislative agency denials. The Senate and House shall each designate an appeals officer (Section 503(c)).

4. **Attorney General, State Treasurer, Auditor General.** These agencies shall each designate an appeals officer to hear administrative appeals of denials (Section 503(d)(1)).
5. **County District Attorneys (criminal investigative records only).** With respect to requests for criminal investigative records only, the district attorney of each county shall designate one or more appeals officers to hear appeals of denials relating to access to criminal investigative records in possession of a local agency of that county (Section 503(d)(2)).

C. Agency Response

1. **Timing.** An agency must make a good faith effort to determine whether a requested record is a public record, legislative record, or financial record and must respond to a request as promptly as possible, which cannot exceed 5 business days. If an agency fails to send its initial response within 5 business days, the request is “deemed denied” (Section 901).
2. The agency must respond within the 5 business days by doing one of the following:
 - a. Providing access to or copies of the records (or parts of them);
 - b. Requesting an extension of time to respond, which must be made in writing to a requester within the 5 business days; and/or
 - c. Issuing a written denial, which must include:
 - 1) A description of the record requested;
 - 2) The specific reasons for the denial, including a citation of supporting legal authority;
 - 3) The name, title, address, telephone number, and signature of the open-records officer who issued the denial;
 - 4) The date of the response; and
 - 5) The procedure to appeal the denial.(Section 903).
3. **Extensions.** If the agency requests an extension, it must issue its response within 5 business days explaining that the request is being reviewed, the reason for the review, and a reasonable date that a response is expected to be provided. This “response” is only permitted where one of the following applies:
 - a. The request requires redaction;

- b. The request requires the agency to retrieve documents that are stored in a remote location;
- c. The agency cannot respond due to “bona fide and specified” staffing limitations;
- d. A legal review is necessary to determine whether the record is subject to access;
- e. The requester has not complied with the agency’s policies regarding access to records;
- f. The requester refuses to pay applicable fees; or
- g. The extent or nature of the request precludes a response within the required time period.

(Section 902(a)).

Even if one of the above exceptions applies, the anticipated “final” response date must be within 5 business days + 30 calendar days of the original request, unless the requester has agreed in writing to an additional extension. If no extension has been granted, and the response is expected to or actually does take longer than 30 additional days, the agency’s response is deemed denied. If the requester has agreed to an additional extension, the request is deemed denied on the day after the extension expires (Section 902(b)).

D. Specific Issues.

1. **Redaction.** If an agency determines that a record contains information that is subject to access, as well as information that is not subject to access, it must redact the non-public information and release the remainder of the record. The information redacted must be treated as a “denial” (Section 706).
2. **Creation of record.** Agencies are not required to “create” a public record if none exists or to “compile, maintain, format or organize” a public record in a manner in which it does not already do so (Section 705).
3. **Production of certain records.** The Act contains a number of new provisions relating to specific types of records, including provisions requiring notification to third parties under certain circumstances, relating to disclosures of trade secrets or confidential proprietary information, and relating to access to administrative transcripts (Section 707).
4. **Disruptive Requests.** Agencies may deny access to a requester if a requester has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the

agency. A denial based on a disruptive request shall not restrict a requester's ability to request a different record (Section 506).

XII. FORM OF DOCUMENT/ELECTRONIC ACCESS

- A. Medium.** An agency must make a record available in the medium requested if the record exists in that medium. Otherwise, the agency must make the record available in the medium in which it exists (Section 701).
- B. Publicly accessible electronic means.** In addition to the requirements of the Act, agencies can make public records available through any publicly accessible electronic means (Section 704). In addition to the requirements of the Act, agencies may respond to a request by notifying a requester that a document is available through publicly accessible electronic means or that an agency will provide access electronically. The Act sets forth procedures for a requester and agency to follow if the requester is unable or unwilling to access such a record electronically (Section 704(b)).
- C. Paper copies.** If a record is maintained electronically only, an agency must make a paper copy if requested (Sections 704, 1307(d)).

XIII. FEES

- A. Duplication fees.** The Office of Open Records will set fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication for Commonwealth and local agencies. Legislative agencies and judicial agencies may establish their own fees. Any such fees must be reasonable and based upon prevailing fees for comparable duplication services provided by local business entities. Fees for local agencies may reflect regional price differences (Section 1307(b)).
- B. Postage and certified copies.** Agencies may also collect fees for postage (actual cost only) and reasonable certification fees, where certification is requested by the requester (Sections 1307(a) and (c)).
- C. Fee waivers.** Agencies may waive fees at any time (Section 1307(f)).
- D. "Complex and extensive datasets."** In certain, limited circumstances, agencies are permitted to charge fees based on the reasonable market value of records. This increased fee provision only applies to requests for "complex and extensive datasets," such as geographic information systems databases or integrated property assessment list databases. The increased fee provisions do not apply to

media requesters or to nonprofit organizations conducting educational research (Section 1307(b)(4)).

- E. Fee limitations.** Except as provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with a request, and any such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is subject to access under the Act (Section 1307(g)).
- F. Prepayment.** Agencies may require prepayment where fees are expected to exceed \$100 (Section 1307(h)).
- G. Conversion to paper.** If a public record is only maintained electronically or in other nonpaper media, duplication fees are limited to the lesser of the fee for duplication on paper or the fee for duplication in the native media (although the requester can request the more expensive medium) (Section 1307(d)).
- H. Enhanced electronic access.** If an agency offers enhanced electronic access to public records (in addition to making them accessible for inspection and duplication as required by the Act), the agency can establish user fees. These fees must be reasonable and cannot be established with the intent or effect of creating profit for the agency (Section 1307(e)).

XIV. OFFICE OF OPEN RECORDS (SECTION 1310)

- A. The Office.** The new Law creates the Office of Open Records, housed in the Department of Community and Economic Development.
- B. The Office will:**
 1. Hear most open records appeals from Commonwealth and local agencies and issue orders and opinions;
 2. Provide information relating to the implementation and enforcement of the Act;
 3. Issue advisory opinions to agencies and requesters;
 4. Provide annual training courses to agencies, public officials and public employees on the open records and open meetings laws;
 5. Provide annual, regional training courses to local agencies, public officials, and public employees;
 6. Assign appeals officers to review appeals from most Commonwealth and local agencies;
 7. Establish an informal mediation program to resolve disputes under the Act;

8. Establish an Internet website with information relating to the Act;
 9. Conduct a biannual review of fees charged under the Act; and
 10. Annually report on its activities to the Governor and General Assembly.
- C. **The Executive Director** is appointed by the Governor. He or she will serve a six year term for no more than two terms. The Executive Director is prohibited from seeking election or accepting appointment to any political office during his tenure and for one year thereafter.

XV. **APPEALING AN AGENCY DECISION**

- A. **Local and State Agency denials.** Except as stated below, all denials or deemed denials from local and Commonwealth agencies are appealable to the Office of Open Records, an administrative agency within the Department of Community and Economic Development.
- B. **Denials from judicial agencies and legislative agencies.** The law permits judicial agencies and legislative agencies to appoint their own appeals officers, and any appeal regarding these agencies should be filed with the appropriate appeals officer, as identified by the individual agencies.
- C. **Denials from the State Treasurer, Auditor General, Attorney General, county District Attorneys (criminal records only).** As stated above, the law also permits the State Treasurer, the Auditor General, and the Attorney General to appoint separate appeals officers. As a result, any appeal regarding these agencies must be filed with the appropriate appeals officer, as identified by the individual agencies. In addition, the district attorney of a county may appoint an appeals officer to hear local appeals relating to access to criminal investigative records only.
- D. **Timing and content of administrative appeal.** Any appeal must be filed with the appropriate appeals officer within 15 business days of the mailing date of a denial or 15 business days of a deemed denial. The appeal must state the grounds upon which the requester asserts that the record is a public record, legislative record, or financial record and must address any grounds stated by the agency for delaying or denying the request (Section 1101(a)).
- E. **Final Determination.** The appeals officer must make a “final determination,” which must include a written explanation and must be mailed to the requester and the agency within 30 days of receipt of the appeal. If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied (unless the requester agrees to a longer period) (Section 1101(b)).

- F. **Hearings**. The appeals officer may hold a hearing on the issue (Sections 1101(b), 1102).
- G. **Direct Interest**. The Act also permits third parties with a direct interest in a record to participate in the appeal under certain circumstances (Section 1101(c)).

XVI. COURT APPEALS

- A. **Commonwealth, legislative, judicial agency denials/deemed denials**. Must appeal to Commonwealth Court within 30 days of the mailing date of a final determination or deemed denial (Section 1301).
- B. **Local agency denial**. Must appeal to common pleas court within 30 days of the mailing date of the final determination or deemed denial (Section 1302).

XVII. COURT COSTS AND ATTORNEYS' FEES

- A. A court may award attorneys' fees to a requester if an agency willfully or with wanton disregard deprived the requester of access to a public record, otherwise acted in bad faith, or based its denial on an unreasonable interpretation of the law (Section 1304).
- B. A court may also award attorneys' fees to an agency or a requester if a court finds that the legal challenge was frivolous (Section 1304).

XVIII. PENALTIES

- A. **Civil Penalties**. A court may impose a civil penalty of up to \$1,500 if an agency denied access to a public record in bad faith (Section 1305).
- B. **Failure to comply with court order**. An agency or public official who does not promptly comply with a court order under the Act is subject to a civil penalty of up to \$500 per day until the records are provided (Section 1305).

XIX. STATE-RELATED INSTITUTIONS (CHAPTER 15)

- A. **Financial disclosures**. The Act requires Temple University, The University of Pittsburgh, The Pennsylvania State University, and Lincoln University to make public annual reports, which must include the following:
 - 1. Information contained in Form 990 of the IRS (except for individual donor information);
 - 2. The salaries of all officers and directors; and
 - 3. The highest 25 salaries paid to employees.

B. **Effective Date.** These provisions take effect on July 1, 2008.

XX. **STATE CONTRACT INFORMATION (CHAPTER 17).**

- A. **General rule.** With limited exceptions, agencies must file contracts worth \$5,000 or more with the Treasury Department within ten days after the contract is fully executed or otherwise becomes an obligation of the agency. If required by the Treasury Department, each agency must also provide a contract summary.
- B. **Posting.** The Treasury Department shall post the information received under this Chapter in a manner that allows the public to search contracts or contract summaries by date, amount, agency, parties, and subject matter.
- C. **Paper copies.** Paper copies may be requested from the agency that executed the contract.
- D. **Effective Date.** These provisions take effect on July 1, 2008.