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## **Pennsylvania's New Right to Know Law**

Act 3 of 2008, as signed by Gov. Edward G. Rendell on February 14, 2008  
Effective January 1, 2009

### **AN ACT**

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

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

## CHAPTER 1. PRELIMINARY PROVISIONS

### Section 101. Short title.

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

### Section 102. Definitions.

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

**“Administrative proceeding.”** A proceeding by an agency the outcome of which is required to be based on a record or documentation prescribed by law or in which a statute or regulation is particularized in application to individuals. The term includes an appeal.

**“Agency.”** A Commonwealth agency, a local agency, a judicial agency or a legislative agency.

**“Aggregated data.”** A tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

**“Appeals officer.”** As follows:

- (1) For a Commonwealth agency or a local agency, the appeals officer designated under section 503(a).
- (2) For a judicial agency, the individual designated under section 503(b).
- (3) For a legislative agency, the individual designated under section 503(c).
- (4) For the Attorney General, State Treasurer, Auditor General and local agencies in possession of criminal investigative records, the individual designated under section 503(d).

**“Commonwealth agency.”** Any of the following:

- (i) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:
  - (i) The Governor’s Office.
  - (ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
  - (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.
- (2) The term does not include a judicial or legislative agency.

**“Confidential proprietary information.”** Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

**“Financial record.”** Any of the following:

- (1) Any account, voucher or contract dealing with:
  - (i) the receipt or disbursement of funds by an agency; or
  - (ii) 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.
- (3) A financial audit report. The term does not include work papers underlying an audit.

**“Homeland security.”** Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade. The term includes activities relating to the following:

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

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

**“Judicial agency.”** A court of the Commonwealth or any other entity or office of the unified judicial system.

**“Legislative agency.”** Any of the following:

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

**“Legislative record.”** 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.
- (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) An audit report prepared pursuant to the act of June 30, 1970 (P.L.442, No.151) entitled, “An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such 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.
- (19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

**“Local agency.”** Any of the following:

- (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 similar governmental entity.

**“Office of Open Records.”** The Office of Open Records established in section 1310.

**“Personal financial information.”** An individual’s personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual’s personal finances.

**“Privilege.”** 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.

**“Public record.”** A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

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

**“Requester.”** A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

**“Response.”** Access to a record or an agency’s written notice to a requester granting, denying or partially granting and partially denying access to a record.

**“Social services.”** Cash assistance and other welfare benefits, medical, mental and other health care services, drug and alcohol treatment, adoption services, vocational services and training, occupational training, education services, counseling services, workers’ compensation services and unemployment compensation services, foster care services, services for the elderly, services for individuals with disabilities and services for victims of crimes and domestic violence.

**“State-affiliated entity.”** A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities Authority. The term does not include a State-related institution.

**“State-related institution.”** Includes:

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

**“Terrorist act.”** A violent or life-threatening act that violates the criminal laws of the United States or any state and appears to be intended to:

- (1) intimidate or coerce a civilian population;
- (2) influence the policy of a government; or
- (3) affect the conduct of a government by mass destruction, assassination or kidnapping.

**“Trade secret.”** Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

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

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

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

### CHAPTER 3. REQUIREMENTS AND PROHIBITIONS

#### Section 301. Commonwealth agencies.

- (a) Requirement. — A Commonwealth agency shall provide public records in accordance with this act.
- (b) Prohibition. — A Commonwealth agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

#### Section 302. Local agencies.

- (a) Requirement. — A local agency shall provide public records in accordance with this act.
- (b) Prohibition. — A local agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

#### Section 303. Legislative agencies.

- (a) Requirement. — A legislative agency shall provide legislative records in accordance with this act.
- (b) Prohibition. — A legislative agency may not deny a requester access to a legislative record due to the intended use of the legislative record by the requester.

#### Section 304. Judicial agencies.

- (a) Requirement. — A judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.
- (b) Prohibition. — A judicial agency may not deny a requester access to a financial record due to the intended use of the financial record by the requester.

#### Section 305. Presumption.

- (a) General rule. — A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption shall not apply if:
  - (1) the record is exempt under section 708;
  - (2) the record is protected by a privilege; or
  - (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.
- (b) Legislative records and financial records. — A legislative record in the possession of a legislative agency and a financial record in the possession of a judicial agency shall be presumed to be available in accordance with this act. The presumption shall not apply if:
  - (1) the record is exempt under section 708;
  - (2) the record is protected by a privilege; or
  - (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree.

#### Section 306. Nature of document.

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

## CHAPTER 5. ACCESS

### Section 501. Scope of chapter.

This chapter applies to all agencies.

### Section 502. Open-records officer.

#### (a) Establishment. —

- (1) An agency shall designate an official or employee to act as the open-records officer.
- (2) For a legislative agency other than the Senate or the House of Representatives, the open-records officer designated by the Legislative Reference Bureau shall serve as the open-records officer. Notwithstanding paragraph (1), a political party caucus of a legislative agency may appoint an open-records officer under this section.

#### (b) Functions. —

- (1) The open-records officer shall receive requests submitted to the agency under this act, direct requests to other appropriate persons within the agency or to appropriate persons in another agency, track the agency's progress in responding to requests and issue interim and final responses under this act.
- (2) Upon receiving a request for a public record, legislative record or financial record, the open-records officer shall do all of the following:
  - (i) Note the date of receipt on the written request.
  - (ii) Compute the day on which the five-day period under section 901 will expire and make a notation of that date on the written request.
  - (iii) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) or the appeal is deemed denied.
  - (iv) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications. This subparagraph shall only apply to Commonwealth agencies.

### Section 503. Appeals officer.

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

- (1) Commonwealth agencies; and
- (2) local agencies.

#### (b) Judicial agencies. — A judicial agency shall designate an appeals officer to hear appeals under Chapter 11.

#### (c) Legislative agencies. —

- (1) Except as set forth in paragraph (2), the Legislative Reference Bureau shall designate an appeals officer to hear appeals under Chapter 11 for all legislative agencies.
- (2) Each of the following shall designate an appeals officer to hear appeals under Chapter 11:
  - (i) The Senate.
  - (ii) The House of Representatives.

**(d) Law enforcement records and Statewide officials. —**

- (1) The Attorney General, State Treasurer and Auditor General shall each designate an appeals officer to hear appeals under Chapter 11.
- (2) The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.

**Section 504. Regulations and policies.**

- (a) **Authority.** — An agency may promulgate regulations and policies necessary for the agency to implement this act. The Office of Open Records may promulgate regulations relating to appeals involving a Commonwealth agency or local agency.
- (b) **Posting.** — The following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:
  - (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.
  - (4) Regulations, policies and procedures of the agency relating to this act.

**Section 505. Uniform form.**

- (a) **Commonwealth and local agencies.** — The Office of Open Records shall develop a uniform form which shall be accepted by all Commonwealth and local agencies in addition to any form used by the agency to file a request under this act. The uniform form shall be published in the Pennsylvania Bulletin and on the Office of Open Record's Internet website.
- (b) **Judicial agencies.** — A judicial agency or the Administrative Office of Pennsylvania Courts may develop a form to request financial records or may accept a form developed by the Office of Open Records.
- (c) **Legislative agencies.** — A legislative agency may develop a form to request legislative records or may accept the form developed by the Office of Open Records.

**Section 506. Requests.**

**(a) Disruptive requests. —**

- (1) An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.
- (2) A denial under this subsection shall not restrict the ability to request a different record.

**(b) Disaster or potential damage. —**

- (1) An agency may deny a requester access:
  - (i) when timely access is not possible due to fire, flood or other disaster; or
  - (ii) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.
- (2) To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

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

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

(i) Federal or State law or regulation.

(ii) Judicial order or decree.

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

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

**(d) Agency possession. —**

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

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

(3) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee established under section 1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

#### **Section 507. Retention of records.**

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

### **CHAPTER 7 PROCEDURE**

#### **Section 701. Access.**

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

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

#### **Section 702. Requests.**

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

#### **Section 703. Written requests.**

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

#### **Section 704. Electronic access.**

- (a) **General rule.** — In addition to the requirements of section 701, an agency may make its records available through any publicly accessible electronic means.
- (b) **Response.** —
- (i) In addition to the requirements of section 701, an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically.
  - (2) If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper. The agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.

#### **Section 705. Creation of record.**

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

#### **Section 706. Redaction.**

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

#### **Section 707. Production of certain records.**

- (a) **General rule.** — If, in response to a request, an agency produces a record that is not a public record, legislative record or financial record, the agency shall notify any third party that provided the record to the agency, the person that is the subject of the record and the requester.
- (b) **Requests for trade secrets.** — An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information.
- Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.

(c) **Transcripts.** —

- (i) Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester by the agency stenographer or a court reporter, in accordance with agency procedure or an applicable contract.
- (2) Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester in accordance with the duplication rates established in section 1307(b).

