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**THE GENERAL ASSEMBLY OF PENNSYLVANIA**

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**HOUSE BILL**

**No. 443** Session of 2007

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INTRODUCED BY MAHONEY, KING, DePASQUALE, BARRAR, BASTIAN,  
 CALTAGIRONE, CARROLL, CREIGHTON, DALLY, FREEMAN, GALLOWAY,  
 GEORGE, GERGELY, GIBBONS, GOODMAN, HARHAI, HARKINS, HORNAMAN,  
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 YOUNGBLOOD, SOLOBAY, DALEY, LENTZ, HUTCHINSON, YUDICHAK,  
 PYLE, R. STEVENSON, M. SMITH AND SWANGER, MARCH 13, 2007

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 13, 2007  
 AN ACT

1 Requiring certain records of the Commonwealth and its political  
 2 subdivisions, authorities and agencies and other public  
 3 bodies to be open for examination, inspection and copying for  
 4 denial or refusal of access under certain circumstances, for  
 5 final agency determinations, for appeals, for court costs and  
 6 attorney fees, for penalties and for immunity; establishing  
 7 the Office of Access to Public Records and providing for its  
 8 powers and duties; and making a related repeal.

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- 25 Section 714. Internet.
- 26 Chapter 21. Miscellaneous Provisions
- 27 Section 2101. Repeals.
- 28 Section 2102. Effective date.
- 29 The General Assembly of the Commonwealth of Pennsylvania
- 30 hereby enacts as follows:

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CHAPTER 1

PRELIMINARY PROVISIONS

- 3 Section 101. Short title.
- 4 This act shall be known and may be cited as the Open Access
- 5 Law.
- 6 Section 102. Declaration of policy.
- 7 (a) Findings.--The General Assembly finds and declares as
- 8 follows:

9 (1) Access to public records is vital to the

10 preservation and functioning of the democratic process. The

11 public is entitled to know and be informed fully about the

12 official business of public officials and public employees

13 and the activities of government agencies. Access to

14 information about the conduct and activities of public

15 officials, public employees and government agencies is

16 necessary to assist the public in understanding its

17 government, monitoring its government and making informed

18 judgments about how to exercise its political power.

19 (2) The public has a fundamental right of access to

20 information on the appropriation, expenditure and investment

21 of public money.

22 (3) Government agencies receive and maintain data,

23 information and public records about persons in their

24 commercial and private endeavors. It is important that access

25 to public records be balanced against rights of privacy and

26 confidentiality provided in law regarding personal data

27 gathered by government agencies.

28 (4) Technological advances have resulted in new ways to

29 create, store and use public records. These advances should

30 not hinder or restrict access to public records but should be

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1 used to facilitate access to public records.

2 (5) Providing access to public records is an essential

3 function of government agencies and an integral part of the

4 fundamental duties of public officials and public employees.

5 Rules regarding access to public records should be made

6 available to the public and should provide guidance to public

7 officials and public employees charged with the

8 responsibility of making public records accessible.

9 (6) Government agencies have a duty to preserve the

10 physical integrity of public records but must do so in a

11 manner that does not burden the right of the public to access

12 those records.

13 (7) The free and unfettered flow of information between

14 the government and the governed is essential to the continued  
15 growth and success of the democratic process.

16 (b) Intent.--It is the intent of the General Assembly to:

17 (1) Ensure and facilitate the right of the public to  
18 have access to information about the conduct and activities  
19 of its government.

20 (2) Make public records available for access by the  
21 public unless there is a specific provision of Federal or  
22 State law that makes the records exempt from access.

23 (3) Place the burden of proving that information is not  
24 a public record or that a public record is exempt from access  
25 on the government agency that denies access.

26 (4) Favor public access when, in the application of this  
27 act, countervailing interests are of equal weight.

28 (5) Provide guidelines to assist public officials and  
29 public employees in responding to requests for access to  
30 public records.

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1 (6) Establish practices for access to public records.  
2 Section 103. Definitions.

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

6 "Agency." Any of the following:

7 (1) The legislative branch of the government of this  
8 Commonwealth, including the Senate and the House of  
9 Representatives.

10 (2) The executive branch of the government of this  
11 Commonwealth, including its departments, offices, boards,  
12 commissions and other subordinate agencies.

13 (3) Independent agencies of the government of the  
14 Commonwealth which are not subject to the policy supervision  
15 and control of the Governor and are not part of the  
16 legislative or judicial branches of government.

17 (4) The Office of Attorney General, the Department of  
18 the Auditor General and the Treasury Department.

19 (5) Political subdivisions, intermediate units and  
20 public trade or vocational schools, intergovernmental  
21 agencies and councils of governments, including their  
22 departments, offices, boards, commissions and other  
23 subordinate agencies.

24 (6) An authority or instrumentality created by the  
25 Commonwealth or by a political subdivision or political  
26 subdivisions.

27 (7) State-aided colleges and universities, State-owned  
28 colleges and universities, State-related universities and  
29 community colleges.

30 (8) An entity created pursuant to a statute or pursuant

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1 to the action of an agency for the purpose of performing a  
2 governmental function. For the purposes of this paragraph,  
3 "governmental function" shall be broadly defined to include  
4 any services or functions previously performed by any  
5 governmental entity or which are for the benefit of the  
6 public as a whole or some segment of the public.

7 (9) An entity contracted by an agency to perform a  
8 governmental function but only insofar as the entity's  
9 records regarding the contracted governmental function are  
10 concerned. With respect to records unrelated to the entity's  
11 performance of the governmental function, the entity shall  
12 not be an agency for the purposes of this chapter. For the

13 purposes of this paragraph, "governmental function" shall be  
 14 broadly defined to include any services or functions  
 15 previously performed by any governmental entity or which are  
 16 for the benefit of the public as a whole or some segment of  
 17 the public.

18 (10) Any entity or organization, board or body that  
 19 derives at least 25% of its funds from State or local public  
 20 money.

21 (11) Any committee of or created by any entity under  
 22 paragraph (1), (2), (3), (4), (5), (6), (7), (8) or (9),  
 23 which is authorized to render advice to or take official  
 24 action on behalf of any agency.

25 (12) Every State or local court or judicial agency,  
 26 including quasi-judicial boards and agencies.

27 (13) Every school board and board of education.

28 (14) Any body created by State or local authority in any  
 29 branch of government.

30 (15) Every State or local government officer.

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1 "Commonwealth agency." An agency which is a Commonwealth  
 2 agency as that term is defined under 62 Pa.C.S. § 103 (relating  
 3 to definitions).

4 "Custodian." The official custodian or any authorized person  
 5 having personal custody and control of the public records.

6 "Mechanical processing." Any operation or other procedure  
 7 which is transacted on a machine or by some mechanical means.

8 "Media." The physical material in or on which records are  
 9 stored.

10 "Non-Commonwealth agency." An agency which is not a  
 11 Commonwealth agency.

12 "OATR." The Commonwealth Office of Access to Public Records.

13 "Office." The Office of Access to Public Records established  
 14 in section 501.

15 "Official custodian." The chief administrative officer or  
 16 any other officer or employee of a public agency who is  
 17 responsible for the maintenance, care and keeping of public  
 18 records, regardless of whether the records are in the officer's  
 19 actual custody and control.

20 "Public record." All documents, papers, letters, maps,  
 21 books, tapes, photographs, films, sound recordings, data  
 22 processing software, database, data or other material,  
 23 regardless of the physical form, characteristics or means of  
 24 storage or transmission, made or received in connection with or  
 25 relating to the work of an agency, except those documents exempt  
 26 or prohibited from disclosure under Federal or State law. The  
 27 term does not include those items that are clearly personal in  
 28 nature and unrelated to the spending of public funds or the  
 29 duties imposed upon the agency.

30 "Requester." A person who requests a record pursuant to this

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1 act. The term includes a natural person, Commonwealth agency,  
 2 non-Commonwealth agency, corporation, unincorporated  
 3 association, partnership, limited liability company, business  
 4 trust and any other enterprise.

5 "Response." Access to a record or an agency's written notice  
 6 granting, denying or partially granting and partially denying  
 7 access to a record.

8 "Software." The program code which makes a computer system  
 9 function with the exception of passwords, access codes, user  
 10 identification, those records specifically exempt from  
 11 inspection or any other mechanism for controlling the security

12 or restricting access to public records in the agency's computer  
 13 system. The term includes the operating system, application  
 14 programs, procedures, routines and subroutines such as  
 15 translators and utility programs. The term does not include that  
 16 material which is prohibited from disclosure or copying by a  
 17 license agreement between a public agency and an outside entity  
 18 which supplied the material to the agency.

19 "Terrorist act." A criminal act intended to intimidate or  
 20 coerce an agency or all or part of the civilian population, to  
 21 disrupt a public system of any kind or to cause massive  
 22 destruction.

23 Section 104. Construction.

24 Nothing in this act is intended to modify, rescind or  
 25 supersede any public record retention and disposition schedule  
 26 established pursuant to law.

### 27 CHAPTER 3

#### 28 ACCESS TO PUBLIC RECORDS

29 Section 301. Procedure for access to public records.

30 (a) General rule.--Unless otherwise provided by law, a

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1 public record shall be accessible for inspection and duplication  
 2 by a requester in accordance with this act. A public record  
 3 shall be provided to a requester in the medium requested if the  
 4 public record exists in that medium, otherwise it shall be  
 5 provided in the medium in which it exists. Public records shall  
 6 be available for access during the regular business hours of an  
 7 agency. The following apply:

8 (1) For Commonwealth agencies a written request may be  
 9 made directly to the office.

10 (2) For non-Commonwealth agencies a written request may  
 11 be made directly to the non-Commonwealth agency. A denial of  
 12 the request may be appealed as provided in section 502.

13 (b) Requests.--An agency may fulfill verbal requests for  
 14 access to records and anonymous requests for access to records.  
 15 In the event that the requester wishes to pursue the relief and  
 16 remedies provided for in this act, the requester must initiate  
 17 the relief with a written request.

18 (c) Written requests.--A written request for access to  
 19 records may be submitted in person, by mail, by facsimile or, to  
 20 the extent provided by agency rules, by any other electronic  
 21 means. A written request shall be addressed to the agency head  
 22 or other person designated in the rules established by the  
 23 agency. A written request should identify or describe the  
 24 records sought with sufficient specificity to enable the agency  
 25 to ascertain which records are being requested and shall include  
 26 the name and address to which the agency should address its  
 27 response. A written request need not include any explanation of  
 28 the requester's reason for requesting or intended use of the  
 29 records except as provided by this act. The written request must  
 30 be specific enough so as not to be overly broad or burdensome or

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1 to be clearly harassing or of no legitimate purpose.

2 (d) Electronic access.--In addition to the requirements of  
 3 subsection (a), an agency may make its public records available  
 4 through any publicly accessible electronic means. If access to a  
 5 public record is routinely available by an agency only by  
 6 electronic means, the agency shall provide access to inspect the  
 7 public record at an office of the agency.

8 (e) Creation of a public record.--When responding to a  
 9 request for access, an agency shall not be required to create a  
 10 public record which does not currently exist or to compile,

11 maintain, format or organize a public record in a manner in  
 12 which the agency does not currently compile, maintain, format or  
 13 organize the public record. This provision does not apply to  
 14 public records stored electronically that can be compiled,  
 15 maintained, formatted or organized in a manner requested by a  
 16 requester without placing an unreasonable burden upon an agency.

17 (f) Conversion of an electronic record to paper.--If a  
 18 public record is only maintained electronically or in other  
 19 nonpaper media, an agency shall, upon request, duplicate the  
 20 public record on paper when responding to a request for access  
 21 in accordance with this act.

22 Section 302. Access generally.

23 A public record shall be made accessible for inspection and  
 24 copying by any person in accordance with this act unless  
 25 otherwise provided by Federal or State law. The burden shall be  
 26 on the agency to show that specific information may not be  
 27 accessed or that a public record is exempt from access by law.  
 28 Section 303. Exceptions.

29 (a) Enumerated exemptions.--A public record does not include  
 30 any of the following:

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1 (1) Any record the disclosure of which is prohibited by  
 2 Federal or State statute, including records the access to  
 3 which would result in the loss of Federal funds by an agency.

4 (2) Records that reflect an individual's medical history  
 5 or disability status, including evaluation, diagnosis or  
 6 treatment. This paragraph does not relate to autopsy records  
 7 or other official records of the coroner.

8 (3) That part of a record that lists an individual's  
 9 Social Security number, driver's license number or financial  
 10 account number.

11 (4) That part of a record that lists a nonelected public  
 12 employee's home telephone number or home address, unless the  
 13 public interest in disclosure outweighs the individual's  
 14 privacy interest in the information.

15 (5) Information regarding discipline, demotion or  
 16 discharge contained in an agency's personnel files, except  
 17 that the status of any disciplinary proceeding against a  
 18 public official or public employee and the disciplinary  
 19 action taken, if any, shall be accessible.

20 (6) (i) Records that, if disclosed, would endanger the  
 21 life or safety of any person or the disclosure of which  
 22 would create a substantial likelihood of endangering  
 23 public safety or the physical security of any building,  
 24 infrastructure facility or information storage system.

25 (ii) Notwithstanding the provisions of subparagraph  
 26 (i):

27 (A) Simple floor plans showing spatial  
 28 arrangements of buildings are public records.

29 (B) Information relating to the general adoption  
 30 of security plans and arrangements and budgetary

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1 information concerning the authorization of public  
 2 funds to implement public security plans and  
 3 arrangements, or for the construction, renovation or  
 4 repair of public buildings and infrastructure  
 5 facilities are public records.

6 (C) If an agency denies a record under this  
 7 paragraph, it must provide a general description of  
 8 the record being withheld and how disclosure of the  
 9 record would endanger the life or safety of any

10 person or create a substantial likelihood of  
 11 endangering public safety or the physical security of  
 12 a building, infrastructure facility or information  
 13 storage system.

14 (7) Drafts of bills, resolutions or amendments prepared  
 15 by a public official or public employee acting in a  
 16 legislative capacity until the drafts have been numbered and  
 17 filed with the Secretary of the Senate or the Chief Clerk of  
 18 the House of Representatives or, in the case of a political  
 19 subdivision, until the drafts have been presented to a number  
 20 of members of the governing body of the political subdivision  
 21 equal to or greater than a quorum.

22 (8) (i) Research requests from public officials or  
 23 public employees to the Legislative Reference Bureau, the  
 24 Local Government Commission, the Joint State Government  
 25 Commission, the Legislative Budget and Finance Committee,  
 26 the Joint Legislative Air and Water Pollution Control and  
 27 Conservation Committee, the Legislative Office for  
 28 Research Liaison, the Legislative Data Processing Center  
 29 or any other designated legislative service agency or the  
 30 staff of any caucus or committee of the General Assembly

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1 and research requests from a member of the General  
 2 Assembly to that member's legislative office staff.

3 (ii) This paragraph shall not apply to products of  
 4 research by the Legislative Reference Bureau, the Local  
 5 Government Commission, the Joint State Government  
 6 Commission, the Legislative Budget and Finance Committee,  
 7 the Joint Legislative Air and Water Pollution Control and  
 8 Conservation Committee, the Legislative Office for  
 9 Research Liaison, the Legislative Data Processing Center  
 10 or any other designated legislative service agency. In  
 11 providing access to those documents, the identity of the  
 12 person making the request may not be disclosed without  
 13 that person's consent.

14 (9) Records pertaining to strategy and negotiations with  
 15 respect to pending claims, threatened litigation or pending  
 16 litigation to which the agency is a party and which are not  
 17 records of any court until the litigation or claim has been  
 18 fully adjudicated or otherwise settled.

19 (10) Records pertaining to strategy and negotiations  
 20 with respect to labor relations or collective bargaining,  
 21 except that any contract or agreement between the parties  
 22 shall be public.

23 (11) Records of the Office of the Governor or, in the  
 24 case of a political subdivision, the chief executive officer  
 25 or governing body or the member or members of the governing  
 26 body thereof acting in an executive capacity, including, but  
 27 not limited to, budget recommendations, legislative proposals  
 28 and proposed policy statements that, if access were provided,  
 29 would:

30 (i) In the case of the Governor, reveal the

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1 Governor's contemplated policies or courses of action  
 2 before the Governor has formally proposed those policies  
 3 or courses of action or made them public.

4 (ii) In the case of a political subdivision, reveal  
 5 the contemplated policies or courses of action before the  
 6 policies or courses of action have been presented to a  
 7 number of members of the governing body of the political  
 8 subdivision equal to or greater than a quorum.

9 (12) Records that are trade secrets, as that term is  
 10 defined in 12 Pa.C.S. § 5302 (relating to definitions),  
 11 submitted to an agency by a commercial enterprise and which,  
 12 if disclosed, would cause substantial injury to the  
 13 competitive position of the subject enterprise. The  
 14 commercial enterprise submitting the information must provide  
 15 a written claim that the information contains trade secrets  
 16 regarding the enterprise and a concise statement of the  
 17 reasons supporting the claim. The claim shall be construed as  
 18 a public record for purposes of this act.

19 (13) Notes that are personally prepared by a public  
 20 official or public employee when the notes are used solely  
 21 for that official's or employee's own personal use as an aid  
 22 to memory.

23 (14) (i) Information that would result in the  
 24 disclosure of the name of a donor or a prospective donor  
 25 to an agency, provided that all of the following apply:

26 (A) The agency either is a public institution of  
 27 higher education or is primarily engaged in  
 28 educational, charitable or artistic endeavors.

29 (B) The donor requests anonymity in writing.

30 (C) The agency has no regulatory or legislative

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1 authority over the donor, a member of the donor's  
 2 immediate family or any entity owned or controlled by  
 3 the donor or the donor's immediate family.

4 (ii) Information regarding the terms, conditions,  
 5 restrictions or privileges relating to the donation shall  
 6 be construed as a public record and shall be made  
 7 available for inspection and copying notwithstanding any  
 8 other provision of this paragraph.

9 (iii) For the purposes of this paragraph, "immediate  
 10 family" means a parent, spouse, child, brother, sister or  
 11 like relative-in-law.

12 (15) Unpublished lecture notes, unpublished manuscripts,  
 13 creative works in progress and scholarly correspondence, any  
 14 of which have been developed, discovered or received by or on  
 15 behalf of faculty, staff, employees or students of a public  
 16 institution of education.

17 (16) (i) Records created by an agency in the process of  
 18 investigating a possible violation of statutory or  
 19 regulatory law if the release of the records would  
 20 identify a confidential source, disclose information made  
 21 confidential by law or court order or disclose an ongoing  
 22 criminal investigation by law enforcement.

23 (ii) Subparagraph (i) shall not apply to the  
 24 following records or information, which shall be  
 25 accessible except where prohibited by law or where the  
 26 agency can demonstrate that providing access to the  
 27 person making the request would endanger another person's  
 28 safety, deprive a person of a right to a fair and  
 29 impartial trial or hinder the agency's ability to secure  
 30 an arrest, prosecution or civil or criminal sanction:

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1 (A) Initial incident reports, police blotters  
 2 and similar records that summarize the date, time,  
 3 place, purpose and cause of services performed by law  
 4 enforcement agencies or investigative agencies.

5 (B) The date, time, location and nature of a  
 6 reported crime.

7 (C) The name, sex, age and address of a person



8 arrested, cited or otherwise charged with either a  
 9 criminal or civil violation; the date, time and  
 10 location of an arrest or citation; the charge or  
 11 charges brought against the person; and any documents  
 12 including warrants, informations, indictments,  
 13 complaints and notices given or required by law to be  
 14 given to the person charged.

15 (D) The name, sex, age and place of residence of  
 16 the victim of a crime or regulatory violation.

17 (E) Traffic accident reports and compilations of  
 18 data derived therefrom.

19 (F) Audio tapes or transcripts of telephone  
 20 calls or radio transmissions received by emergency  
 21 dispatch personnel.

22 (17) Records that reflect internal, predecisional  
 23 deliberations by or between agency members, but this  
 24 exception does not include:

25 (i) Statistical or factual tabulations or data.

26 (ii) Instructions to staff that affect the public.

27 (iii) Final agency policy or determinations.

28 (iv) Completed audits.

29 (v) Documents that are closely connected to or form  
 30 the basis for the agency decision once the decision has

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1 been made. For the purposes of this subparagraph, an  
 2 agency's decision to take no action on a matter shall  
 3 constitute a decision.

4 (18) Documents that are examination questions, scoring  
 5 keys or answers which are requested prior to the final  
 6 administration of the examination.

7 (19) Minutes of executive sessions and any record of  
 8 discussions held in executive session, except where  
 9 authorized and released by the agency or the release of which  
 10 is ordered by a court.

11 (20) The contents of real estate appraisals or  
 12 engineering or feasibility estimates and evaluations made for  
 13 or by a State or local agency relative to the acquisition of  
 14 property, or to prospective public supply and construction  
 15 contracts, until the property has been acquired or until a  
 16 contract or option obtained, or until all proceedings or  
 17 transactions have been terminated or abandoned. The law of  
 18 eminent domain shall not be affected by this provision.

19 (21) Test questions, scoring keys and other examination  
 20 data used to administer licensing examinations, examinations  
 21 for employment or academic examination before the exam is  
 22 given or if it is to be given again.

23 (22) All public records or information the disclosure of  
 24 which is prohibited by Federal or State law or regulation or  
 25 which is prohibited or restricted or otherwise made  
 26 confidential by enactment of the General Assembly.

27 (23) Public records the disclosure of which would have a  
 28 reasonable likelihood of threatening the public safety by  
 29 exposing a vulnerability in preventing, protecting against,  
 30 mitigating or responding to a terrorist act and includes a

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1 criticality list resulting from consequence and vulnerability  
 2 assessment; antiterrorism measures and plans, counter-  
 3 terrorism measures and plans; security and response needs  
 4 assessment and infrastructure records that expose  
 5 vulnerability.

6 (24) Electronic mail, provided that the electronic mail

7 does not contain discussion of the spending of public money  
8 or the duties and powers of the office, officeholder or  
9 agency.

10 (b) Nondescriptive information.--Notwithstanding the  
11 provisions of subsection (a)(1), (2) and (14), access to  
12 information that does not identify any particular individual or  
13 business entity shall be disclosed.

14 (c) Agency discretion.--An agency may exercise its  
15 discretion to make any public record enumerated under subsection  
16 (a) accessible for inspection and copying if:

17 (1) disclosure of that public record is not expressly  
18 prohibited by Federal or State law; and

19 (2) the governing body, agency head or designee with  
20 custody and control of the record determines that the public  
21 interest favoring access outweighs the individual or agency  
22 interest favoring restriction of access.

23 (d) Strict construction of exceptions.--The General Assembly  
24 finds and declares that the basic policy is that free and open  
25 examination of public records is in the public interest and the  
26 exceptions provided for by this act or otherwise provided by law  
27 shall be strictly construed, even though the examination may  
28 cause inconvenience or embarrassment to public officials or  
29 others.

30 (e) Exception limitation.--Any record that is determined to  
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1 be excepted from disclosure shall only be excepted as to the  
2 contents of the record and not as to any spending of public  
3 funds related to the record; for example, telephone bills may be  
4 exempt as to who was called and how long but shall not be exempt  
5 as to the cost of the call.

6 Section 304. Denial based on intended use prohibited.

7 An agency may not deny a requester access to a public record  
8 due to the intended use of the public record by the requester.

9 Section 305. Redaction.

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

24 Section 306. Commonwealth Office of Access to Public Records.

25 (a) General rule.--Upon receipt of a written request for  
26 access to a record, the OATR shall make a good faith effort to  
27 determine if the record requested is a public record and to  
28 respond as promptly as possible under the circumstances existing  
29 at the time of the request but, except as set forth in  
30 subsection (b), not more than 20 business days from the date the  
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1 written request is received by the OATR head or other person  
2 designated by the OATR for receiving requests. If the OATR fails  
3 to send a response within 20 business days of receipt of the  
4 written request for access, the written request for access shall  
5 be deemed denied.

- 6 (b) Extensions.--  
 7 (1) Upon receipt of a written request for access, the  
 8 time period under subsection (a) may be extended if the OATR  
 9 determines that one of the following applies:  
 10 (i) The request for access requires redaction of a  
 11 public record in accordance with this act.  
 12 (ii) The request for access requires the retrieval  
 13 of a record stored in a remote location.  
 14 (iii) A timely response to the request for access  
 15 cannot be accomplished due to bona fide and specified  
 16 staffing limitations.  
 17 (iv) A legal review is necessary to determine  
 18 whether the record is a public record subject to access  
 19 under this act.  
 20 (v) The requester has not complied with the OATR's  
 21 policies regarding access to public records.  
 22 (vi) The requester refuses to pay applicable fees  
 23 authorized by this act.

24 (2) The OATR shall send written notice to the requester  
 25 within 20 business days of the OATR's receipt of the request  
 26 for access. The notice shall include a statement notifying  
 27 the requester that the request for access is being reviewed,  
 28 the reason for the review and a reasonable date that a  
 29 response is expected to be provided. If the date that a  
 30 response is expected to be provided is in excess of 30 days,  
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1 following the 20 business days allowed for in subsection (a),  
 2 the request for access shall be deemed denied.

3 (c) Denial.--If the OATR's response is a denial of a written  
 4 request for access, whether in whole or in part, a written  
 5 response shall be issued and include:

- 6 (1) A description of the record requested.  
 7 (2) The specific reasons for the denial, including a  
 8 citation of supporting legal authority. If the denial is the  
 9 result of a determination that the record requested is not a  
 10 public record, the specific reasons for the OATR's  
 11 determination that the record is not a public record shall be  
 12 included.  
 13 (3) The typed or printed name, title, business address,  
 14 business telephone number and signature of the public  
 15 official or public employee on whose authority the denial is  
 16 issued.  
 17 (4) Date of the response.  
 18 (5) The procedure to appeal the denial of access under  
 19 this act.

20 (d) Certified copies.--All Commonwealth agencies shall  
 21 respond to all requests for information or documents from the  
 22 OATR within ten business days from the date the requests are  
 23 received and registered. All shall establish a procedure, if one  
 24 does not currently exist, for recording the date and time the  
 25 request from OATR is received. This procedure shall include, at  
 26 a minimum, a procedure for marking the date and time of receipt  
 27 on the face of the request and for filing and maintaining each  
 28 request for a period of not less than five years.  
 29 Section 307. Non-Commonwealth agency's response to written  
 30 requests for access.

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1 (a) General rule.--Upon receipt of a written request for  
 2 access to a record, a non-Commonwealth agency shall make a good  
 3 faith effort to determine if the record requested is a public  
 4 record and to respond as promptly as possible under the

5 circumstances existing at the time of the request but, except as  
 6 provided under subsection (b), not more than ten business days  
 7 from the date the written request is received by the non-  
 8 Commonwealth agency head or other person designated in the rules  
 9 established by the non-Commonwealth agency for receiving  
 10 requests. If the non-Commonwealth agency fails to send the  
 11 response within ten business days of receipt of the written  
 12 request for access, the written request for access shall be  
 13 deemed denied.

14 (b) Extensions.--

15 (1) Upon receipt of a written request for access, the  
 16 time period under subsection (a) may be extended if a non-  
 17 Commonwealth agency determines that one of the following  
 18 applies:

19 (i) The request for access requires redaction of a  
 20 public record in accordance with this act.

21 (ii) The request for access requires the retrieval  
 22 of a record stored in a remote location.

23 (iii) A timely response to the request for access  
 24 cannot be accomplished due to bona fide and specified  
 25 staffing limitations.

26 (iv) A legal review is necessary to determine  
 27 whether the record is a public record subject to access  
 28 under this act.

29 (v) The requester has not complied with the non-  
 30 Commonwealth agency's policies regarding access to public

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1 records.

2 (vi) The requester refuses to pay applicable fees  
 3 authorized by this act.

4 (2) The non-Commonwealth agency shall send written  
 5 notice to the requester within five business days of the non-  
 6 Commonwealth agency's receipt of the request notifying the  
 7 requester that the request for access is being reviewed, the  
 8 reason for the review and a reasonable date that a response  
 9 is expected to be provided. If the date that a response is  
 10 expected to be provided is in excess of 30 days following the  
 11 ten business days allowed in subsection (a), the request for  
 12 access shall be deemed denied.

13 (c) Denial.--If a non-Commonwealth agency's response is a  
 14 denial of a written request for access, whether in whole or in  
 15 part, a written response shall be issued and include:

16 (1) A description of the record requested.

17 (2) The specific reasons for the denial, including a  
 18 citation of supporting legal authority. If the denial is the  
 19 result of a determination that the record requested is not a  
 20 public record, the specific reasons for the agency's  
 21 determination that the record is not a public record shall be  
 22 included.

23 (3) The typed or printed name, title, business address,  
 24 business telephone number and signature of the public  
 25 official or public employee on whose authority the denial is  
 26 issued.

27 (4) Date of the response.

28 (5) The procedure to appeal the denial of access under  
 29 this act.

30 (d) Certified copies.--If a non-Commonwealth agency's

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1 response grants a request for access, the non-Commonwealth  
 2 agency shall, upon request, provide the requester with a  
 3 certified copy of the public record if the requester pays the

4 applicable fees pursuant to this act.

5 CHAPTER 5

6 OFFICE OF ACCESS TO PUBLIC RECORDS

7 Section 501. Office of Access to Public Records.

8 (a) Establishment.--The Office of Access to Public Records  
9 is hereby established as an independent administrative agency.  
10 The Governor shall, subject to the advice and consent of the  
11 Senate and House of Representatives, appoint an executive  
12 director of the office who shall hire other staff as necessary  
13 to operate the office.

14 (b) Powers and duties.--The office shall have the following  
15 powers and duties:

16 (1) To receive and respond to requests for information  
17 from Commonwealth agencies pursuant to this act from the  
18 public and from other agencies.

19 (2) To request information from Commonwealth agencies  
20 and non-Commonwealth agencies.

21 (3) To guide and oversee the compliance with this act by  
22 all Commonwealth and non-Commonwealth agencies.

23 (4) To provide a list of Federal and State laws that  
24 exempt certain types of records from disclosure.

25 (5) To make its written decisions available for review.

26 (6) To conduct training for public officials, public  
27 employees and third parties relating to this Commonwealth's  
28 access laws.

29 (7) To annually report on its activities and findings  
30 regarding this act, including recommendations for changes in

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1 the law, to the Governor and the General Assembly.

2 (c) Fees.--

3 (1) The office may impose a reasonable filing fee for an  
4 appeal made under section 502, and any fees collected under  
5 this subsection shall be deposited in a restricted account in  
6 the General Fund which is hereby established for the office.  
7 The money from this account shall be appropriated as  
8 necessary for the operation of the office.

9 (2) The agency may waive the filing fee if the person  
10 requesting access to the public record is unable to afford  
11 the fee based on guidelines established by the office.

12 Section 502. Appeals.

13 (a) Administrative appeal to office.--

14 (1) A party aggrieved by an agency's denial or deemed  
15 denial may, within 30 days after a request is denied or  
16 deemed denied, appeal to the office by forwarding to the  
17 office a copy of the request and the written explanation for  
18 the denial, if any, provided by the agency.

19 (2) (i) Within 20 days after receipt of the appeal, the  
20 office shall rule either that the agency's denial or  
21 deemed denial of access to the record is upheld or that  
22 the agency's decision to deny access to the record is  
23 overturned, and the agency must provide access to the  
24 record. The office may hold a hearing and may review the  
25 record in camera.

26 (ii) The 20-day period may be extended by agreement  
27 of the parties. If the parties do not agree to an  
28 extension or the office does not issue a ruling within 20  
29 days after the date of the appeal, the agency's denial  
30 shall be deemed affirmed.

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1 (3) If the office upholds the agency's decision to deny  
2 access to the public record, the office shall fully explain

3 in writing to the person requesting the public record the  
 4 reason for the denial. If the office rules that the agency  
 5 shall provide access to the public record, the office shall  
 6 fully explain in writing to the agency the reason access must  
 7 be provided.

8 (b) Judicial appeal.--

9 (1) A party aggrieved by the decision of the office may,  
 10 within 30 days after formally being served notice of the  
 11 office's ruling, appeal to a court of appropriate  
 12 jurisdiction.

13 (2) Within 30 days of the mailing date of the decision  
 14 of the office, an aggrieved party seeking information and  
 15 access from a Commonwealth agency may file a petition for  
 16 review or other document as might be required by rule of  
 17 court with the Commonwealth Court.

18 (3) Within 30 days of the mailing date of the decision  
 19 of the office, an aggrieved party may file a petition for  
 20 review or other document as might be required by rule of  
 21 court with the court of common pleas for the county where the  
 22 non-Commonwealth agency's office or facility is located.

23 (c) Notice.--All parties shall be served notice of actions  
 24 commenced in accordance with subsection (a) or (b) and shall  
 25 have an opportunity to respond in accordance with applicable  
 26 court rules.

27 (d) Record on appeal.--The record before a court shall  
 28 consist of the request, the agency's response, the record before  
 29 the office, including the hearing transcript, if any, and the  
 30 decision of the office. A court may take additional testimony

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1 and accept additional evidence as appropriate.

#### 2 CHAPTER 7

#### 3 ADMINISTRATION AND ENFORCEMENT

4 Section 701. Penalties, court costs and fees.

5 (a) Grounds.--

6 (1) If a court finds that an agency intentionally  
 7 violated any provision of this act, acted in bad faith or  
 8 relied upon an unreasonable interpretation of the law in not  
 9 providing access to a public record:

10 (i) The court may order the agency to pay a civil  
 11 penalty of not more than \$1,000 to be paid into a  
 12 restricted account established in the General Fund under  
 13 section 501(c).

14 (ii) The court shall award the prevailing party  
 15 reasonable attorney fees and costs of litigation or an  
 16 appropriate portion of the fees and costs.

17 (iii) Any other sanction the court deems appropriate  
 18 under the circumstances of the case.

19 (2) If the court finds that the legal challenge was of a  
 20 frivolous nature or was brought with no substantial  
 21 justification, the court shall award the prevailing party  
 22 reasonable attorney fees and costs of litigation or an  
 23 appropriate portion of the fees and costs and a civil penalty  
 24 of not less than \$1,000 and not more than \$10,000 to be paid  
 25 into the restricted account established in the General Fund.

26 (3) If the court finds that the appeal of the requester  
 27 was frivolous or that the request violated this act, was made  
 28 in bad faith or was made only to harass or annoy the agency,  
 29 then the court shall impose a civil penalty of not less than  
 30 \$100 nor more than \$1,000 to be paid into the restricted

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1 account established in the General Fund.

2 (b) Civil penalty.--An agency or public official that does  
3 not promptly comply with a court order under this act is subject  
4 to a civil penalty of not more than \$300 per day until the  
5 public records are provided, to be paid into the restricted  
6 account established in the General Fund under section 501(c).

7 (c) Training.--Any court may order agency officials and  
8 employees to attend mandatory training sessions conducted by the  
9 office, which shall include testing on compliance with the law.

10 (d) Other appeals.--Costs or attorney fees shall not be  
11 awarded under this section for administrative appeal to the  
12 office under section 502.

13 Section 702. Immunity.

14 (a) General rule.--Except as provided in this act and other  
15 statutes governing the release of records, no agency, public  
16 official or public employee shall be liable for civil or  
17 criminal damages or penalties resulting from compliance or  
18 failure to comply with this act.

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

23 Section 703. Fee limitations.

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

26 (b) Duplication.--Fees for duplication by photocopying,  
27 printing from electronic media or microfilm, copying onto  
28 electronic media, transmission by facsimile or other electronic  
29 means and other means of duplication must be reasonable and  
30 based on prevailing fees for comparable duplication services

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1 provided by local copying services.

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

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

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

30 (f) Waiver of fees.--An agency may waive the fees for

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1 duplication of a public record, including, but not limited to,  
2 when:

- 3 (1) the requester duplicates the public record; or
- 4 (2) the agency deems it is in the public interest to do  
5 so.

6 (g) Limitations.--Except as otherwise provided by statute,  
7 no other fee may be imposed unless the agency necessarily incurs  
8 costs for complying with the request, and the fee must be  
9 reasonable. No fee may be imposed for an agency's review of a  
10 record to determine whether the record is a public record  
11 subject to access in accordance with this act. No fee relating  
12 to any search for records may be imposed unless the required  
13 search places an unreasonable burden upon agency employees and  
14 the agency can establish and itemize its costs for complying  
15 with the request, and the fee must be reasonable.

16 (h) Prepayment.--Prior to granting a request for access in  
17 accordance with this act, an agency may require a requester to  
18 prepay an estimate of the fees authorized under this section if  
19 the fees required to fulfill the request are expected to exceed  
20 \$100.

21 Section 704. Implementation.

22 (a) Requirement.--An agency shall establish written policies  
23 and may promulgate regulations necessary to implement this act.

24 (b) Content.--The written policies shall include the name of  
25 the office to which requests for access shall be addressed and a  
26 list of applicable fees.

27 (c) Prohibition.--A policy or regulation may not include any  
28 of the following:

- 29 (1) A limitation on the number of public records which  
30 may be requested or made available for inspection or

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1 duplication.

- 2 (2) A requirement to disclose the purpose or motive in  
3 requesting access to records which are public records.

4 (d) Posting.--The policies shall be conspicuously posted at  
5 the agency and may be made available by electronic means.

6 Section 705. Practice and procedure.

7 The provisions of 2 Pa.C.S. (relating to administrative law  
8 and procedure) shall not apply to this act.

9 Section 706. Commercial purposes.

10 It shall be unlawful for a person to obtain a copy of any  
11 part of a public record for a:

- 12 (1) Commercial purpose, without stating the commercial  
13 purpose, if a certified statement from the requester was  
14 required by the public agency.

15 (2) Commercial purpose, if the person uses or knowingly  
16 allows the use of the public record for a different  
17 commercial purpose.

18 (3) Noncommercial purpose, if the person uses or  
19 knowingly allows the use of the public record for a  
20 commercial purpose. A newspaper, periodical, radio or  
21 television station shall not be held to have used or  
22 knowingly allowed the use of the public record for a  
23 commercial purpose merely because of its publication or  
24 broadcast.

25 Section 707. Damages recoverable by public agency for person's  
26 misuse of public records.

27 A person who misuses a public record shall be liable to the  
28 agency from which the public records were obtained for damages  
29 in the amount of all of the following:

- 30 (1) Three times the amount that would have been charged



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1 for the public record if the actual commercial purpose for  
 2 which it was obtained or used has been stated.  
 3 (2) Costs and reasonable attorney fees.  
 4 (3) Any other penalty established by law.  
 5 Section 708. Agency to adopt rules and regulations.  
 6 (a) General rule.--Each agency shall adopt rules and  
 7 regulations in conformity with the provisions of this act to  
 8 provide full access to public records, to protect public records  
 9 from damage and disorganization, to prevent excessive disruption  
 10 of its essential functions, to provide assistance and  
 11 information upon request and to ensure efficient and timely  
 12 action in response to application for inspection. The rules and  
 13 regulations shall include, but shall not be limited to:  
 14 (1) The principal office of the agency and its regular  
 15 office hours.  
 16 (2) The title and address of the official custodian of  
 17 the agency's records.  
 18 (3) The fees, to the extent authorized by this act or  
 19 other statute, charged for copies.  
 20 (4) The procedures to be followed in requesting public  
 21 records.  
 22 (b) Display.--Each agency shall display a copy of its rules  
 23 and regulations pertaining to public records in a prominent  
 24 location accessible to the public.  
 25 (c) Uniformity.--The OATR may promulgate uniform rules and  
 26 regulations in accordance with this act for all Commonwealth and  
 27 non-Commonwealth agencies and all other persons and entities  
 28 subject to this act.  
 29 Section 709. Access to personal record.

30 Any person shall have access to any public record relating to

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1 the person, or in which the person is mentioned by name, upon  
 2 presentation of appropriate identification, subject to the  
 3 provisions of this act.  
 4 Section 710. Prohibition against destruction or damage of  
 5 records.  
 6 (a) Prohibition.--All records are the property of the agency  
 7 concerned and shall not be removed, destroyed, mutilated,  
 8 transferred or otherwise damaged or disposed of, in whole or in  
 9 part, except as provided by law or under the rules adopted by  
 10 the office. Records shall be delivered by outgoing officials and  
 11 employees to their successors and shall not be otherwise  
 12 removed, transferred or destroyed unlawfully.  
 13 (b) Civil action.--Any person who is aggrieved by the  
 14 removal, destruction, mutilation, or transfer of or by other  
 15 damage to or disposition of a record in violation of subsection  
 16 (a), or by threat of removal, destruction, mutilation, transfer  
 17 or other damage to or disposition of a record may commence either  
 18 or both of the following in the court of common pleas of the  
 19 county in which subsection (a) allegedly was violated or is  
 20 threatened to be violated:  
 21 (1) A civil action for injunctive relief to compel  
 22 compliance with subsection (a) and to obtain an award of the  
 23 reasonable attorney fees incurred by the person in the civil  
 24 action.  
 25 (2) A civil action to recover a forfeiture in the amount  
 26 of \$1,000 for each violation and to obtain an award of the  
 27 reasonable attorney fees incurred by the person in the civil  
 28 action.  
 29 Section 711. Laws prohibiting the destruction of records.

30 If any law prohibits the destruction of a record, then an  
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1 agency shall not order its destruction or other disposition. If  
2 any law provides that a record shall be kept for a specified  
3 period of time, then an agency shall not order its destruction  
4 or other disposition prior to the expiration of that period.  
5 Section 712. Replevin of public records unlawfully removed.  
6 Any public record which has been unlawfully transferred or  
7 removed in violation of this act or otherwise transferred or  
8 removed unlawfully is subject to replevin by the Attorney  
9 General upon request of the office. The record shall be returned  
10 to the agency of origin and safeguards shall be established to  
11 prevent further recurrence of unlawful transfer or removal.  
12 Section 713. Authority not restricted.  
13 The provisions of this act shall not impair or restrict the  
14 authority given by other statutes over the creation of records,  
15 systems, forms, procedures or the control over purchases of  
16 equipment by agencies.  
17 Section 714. Internet.  
18 All agencies shall make all budgets, expense accounts, grants  
19 and other records related to the expenditure of public funds  
20 available on the Internet without a fee or charge.  
21 CHAPTER 21  
22 MISCELLANEOUS PROVISIONS  
23 Section 2101. Repeals.  
24 (a) Intent.--The General Assembly declares that the repeal  
25 under subsection (b) is necessary to effectuate the provisions  
26 of this act.  
27 (b) Provision.--The act of June 21, 1957 (P.L.390, No.212),  
28 referred to as the Right-to-Know Law, is repealed.  
29 Section 2102. Effective date.  
30 This act shall take effect in 60 days.  
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